

THE QUEST FOR ENVIRONMENTAL JUSTICE

HUMAN RIGHTS AND THE POLITICS OF POLLUTION

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peoples, and poor people in the developing South. Mobilization of grassroots groups has spawned new leadership, new definitions, new members, and new energy that has benefited both the environmental and civil rights movements. People of color have filled the leadership vacuum in many grassroots environmental struggles from New York to Alaska. Women activists are assuming key leadership roles. Environmental racism is now a household word. Yet the struggle against racism and sexism continues.

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Environmental Justice in the Twenty-first Century

Hardly a day passes without the media discovering some community or neighborhood fighting an attempt to build near it a landfill, incinerator, chemical plant, or other polluting facility, or fighting to bring attention to the harmful effects that people are suffering as a result of such an entity already located nearby. This was not always the case. Just three decades ago, the concept of environmental justice had not yet registered on the radar screens of environmental, civil rights, and social justice groups.¹ Dr. Martin Luther King Jr., however, went to Memphis in 1968 on an early environmental and economic justice mission for striking black garbage workers. These strikers had demanded equal pay and better working conditions. Of course, Dr. King was assassinated before he could complete his mission.

Another landmark garbage dispute took place a decade later in Houston, when African American homeowners in 1979 began a bitter fight to keep a sanitary landfill out of their suburban middle-income neighborhood.² Residents formed the Northeast Community Action Group. The group and their attorney, Linda McKeever Bullard (my wife), filed a class action lawsuit to block construction of the facility. The 1979 lawsuit, *Bean v. Southwestern Waste Management Corp.*, was the first to use civil rights law to challenge the siting of a waste facility.

Three years later, a similar case catapulted the environmental justice movement into the limelight. The movement has come a long way since

its humble beginnings in Warren County, North Carolina, a rural and mostly African American community, where a proposed landfill for disposing of polychlorinated biphenyls (PCBs) ignited protests that resulted in more than five hundred arrests. These protests prompted a study by the U.S. General Accounting Office, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*.³ This study revealed that three of the four off-site, commercial hazardous waste landfills in the U.S. Environmental Protection Agency's Region 4 (composed of eight southern states) happen to be located in predominantly African American communities, although African Americans made up only 20 percent of the region's population. The protesters of Warren County put the term "environmental racism" on the map.

The protests also led the United Church of Christ Commission for Racial Justice in 1987 to produce *Toxic Wastes and Race in the United States*, the first national study to correlate waste facility sites and demographic characteristics.⁴ The study found that race was the most potent variable in predicting where such facilities would be located—more powerful than poverty, land values, and home ownership. In 1990, my book *Dumping in Dixie: Race, Class, and Environmental Quality* chronicled the convergence of two social movements—the social justice and environmental movements—into one, the environmental justice movement. This book highlighted African Americans' environmental activism in the South, the same region that gave birth to the modern civil rights movement. What started out as local and often isolated community-based struggles against the siting of toxic waste and industrial facilities blossomed into a multi-issue, multiethnic, and multiregional movement.⁵

The 1991 First National People of Color Environmental Leadership Summit was probably the single most important event in the environmental justice movement's history. The summit broadened the movement beyond its early focus against toxics to include issues of public health, worker safety, land use, transportation, housing, resource allocation, and community empowerment. The meeting also demonstrated that it is possible to build a multiracial grassroots movement around environmental and economic justice.⁶

Held in Washington, D.C., the four-day summit was attended by more than 650 grassroots and national leaders from around the world. Delegates came from all fifty states, Puerto Rico, Chile, and Mexico, and from as far away as the Marshall Islands. People attended the summit to share their action strategies, redefine the environmental movement, and develop common plans for addressing environmental problems affecting people of color in the United States and around the world.

On September 27, 1991, summit delegates adopted seventeen "Principles of Environmental Justice." These principles were developed as a guide for organizing, networking, and relating to governmental and nongovernmental organizations. In June 1992, Spanish and Portuguese translations of the principles were used and circulated by nongovernmental organizations and environmental justice groups at the Earth Summit in Rio de Janeiro.

In response to growing public concern and mounting scientific evidence, President Bill Clinton on February 11, 1994 (the second day of the "Health Research Needs to Ensure Environmental Justice Symposium," organized by the National Institute for Environmental Health Sciences and held in Washington, D.C.) issued Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. This order attempts to address environmental injustice within existing federal laws and regulations.

Executive Order 12898 reinforces Title VI of the four-decades-old Civil Rights Act of 1964, which prohibits discriminatory practices in programs receiving federal funds. It also focuses the spotlight back on the National Environmental Policy Act, a law that set policy goals for the protection, maintenance, and enhancement of the environment. The act's goal is to ensure for all Americans a safe, healthful, productive, and aesthetically and culturally pleasing environment. To that end, it requires federal agencies to prepare a detailed statement on the anticipated environmental effects of proposed federal actions that will significantly affect the quality of human health and the environment.

The executive order calls for improved methodologies for assessing and mitigating impacts of proposed projects, for determining the anticipated health effects that will result from multiple and cumulative exposure to these impacts, for the collection of data on low-income and minority populations who may be disproportionately at risk to exposure, and for determining the effects of exposure on subsistence fishers and wildlife consumers. The executive order specifically focuses on subsistence fishers and wildlife consumers because not everyone buys his or her fish at the supermarket. Many individuals augment their diets by fishing from rivers, streams, and lakes that may be polluted. These subpopulations may be underprotected when basic assumptions about environmental safety are made using the dominant risk paradigm. The order also encourages participation by the affected populations in the various phases of assessing impacts, including scoping, data gathering, discovery of alternatives, analysis, mitigation, and monitoring.

Many grassroots activists are convinced that waiting for the govern-

ment to act has endangered the health and welfare of their communities. Unlike the U.S. Environmental Protection Agency (EPA), communities of color discovered environmental inequities long before 1990. That year the EPA took action on environmental justice concerns, but only after extensive prodding from grassroots environmental justice activists, educators, and academics.⁷ Making government respond to the needs of communities composed of the poor, working-class, and people of color has not been easy.⁸ Environmental justice advocates continue to challenge the current environmental protection apparatus and offer their own framework for addressing environmental racism, unequal protection, health disparities, and unsustainable development in the United States and around the world.⁹

THE 2002 PEOPLE OF COLOR SUMMIT

In October 2002, environmental justice leaders convened the Second National People of Color Environmental Leadership Summit (Summit II) in Washington, D.C. Organizers planned the four-day meeting for five hundred participants. However, over fourteen thousand individuals—representing grassroots and community-based organizations, faith-based groups, organized labor, civil rights groups, youth groups, and academic institutions—made their way to the nation's capital to participate in the historic gathering.

The vast majority—over 75 percent—of attendees came from community-based organizations. Summit II brought three generations (elders, seasoned leaders, and youth activists) of the environmental justice movement together. The “new” faces—persons not present at the First National People of Color Environmental Leadership Summit, held in 1991—outnumbered the veteran environmental justice leaders two to one. Summit II attendees came from nearly every state, including Alaska and Hawaii, and from Puerto Rico. Other delegates came from elsewhere in North America, the Caribbean, South and Central America, Asia, Africa, and Europe. The nations represented were Mexico, Canada, Jamaica, Trinidad, Panama, Columbia, Dominican Republic, Granada, South Africa, Nigeria, the Philippines, India, Peru, Ecuador, Guatemala, the Marshall Islands, and the United Kingdom.

The environmental justice movement continues to expand and mature. For example, the 1992 *People of Color Environmental Groups Directory* listed only three hundred environmental justice groups in the United States. By 2000, the list had grown to include over one thousand organizations and consisted of groups in the United States and Puerto Rico (see Figure 1.1) as well as in Canada and Mexico.

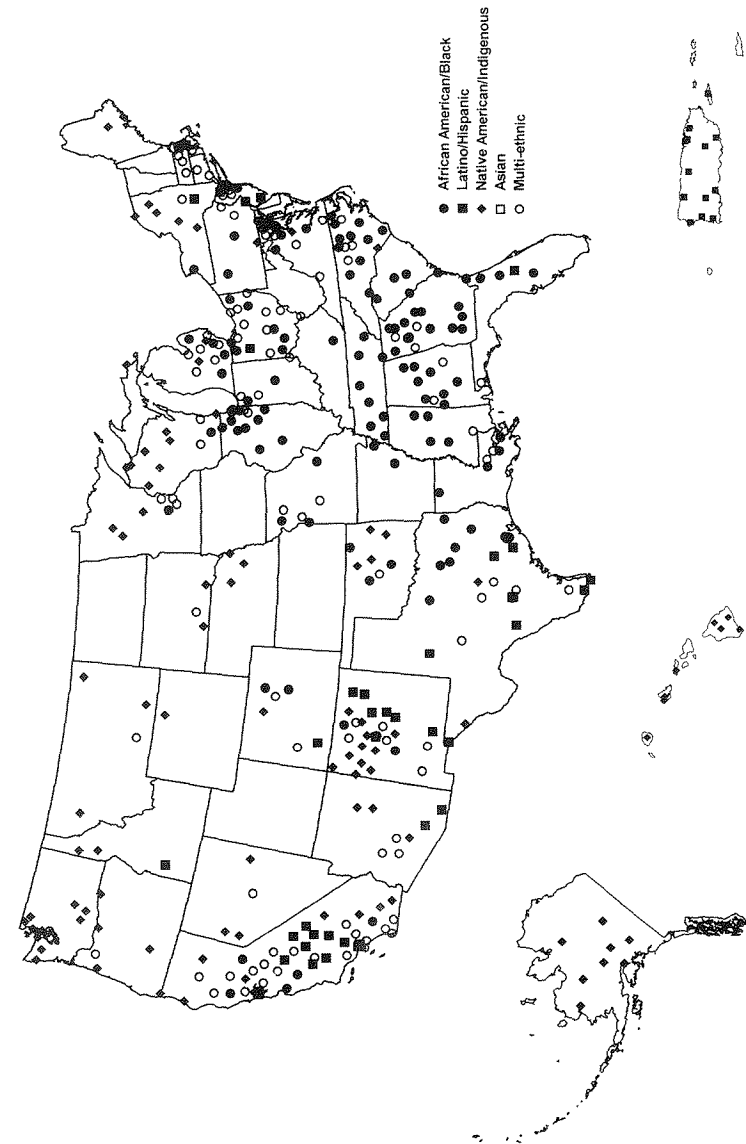


Figure 1.1. Environmental justice groups in the United States and Puerto Rico that have been coordinated by people of color, for the year 2000.

Women led, moderated, or presented in more than half of the eighty-six workshops and plenaries. Summit II leaders honored twelve outstanding “sheroes,” the women warriors of the movement, in the Crown-ing Women Awards Dinner. The awards event was dedicated to the late Dana Alston and Jean Sindab, two giants in the environmental justice movement, and other women of color who were deceased and who had dedicated their lives to environmental justice. One of the twelve sheroes, Hazel Johnson of People for Community Recovery—a Chicago-based grassroots environmental justice organization—was also presented with the Dana Alston Award.

Students and young people have fueled every social movement in the United States, including the civil rights, environmental, antiwar, and women’s movements. Several hundred youth and student leaders attended the conference and made their voices heard by means of a well-timed protest demonstration and long hours of hard work. The young people were able to incorporate many of their issues and priorities into the program.

In an effort to have substantive materials for use at Summit II, conference organizers put out a nationwide call for resource policy papers. The end result was two dozen resource papers on subjects including childhood asthma, energy, transportation, “dirty” power plants, climate justice, military toxics, clean production, brownfields redevelopment, sustainable agriculture, human rights, occupational health and safety, and farmworkers. The resource papers provided background materials for hands-on training sessions in the workshops.

The environmental justice movement has made tremendous strides over the past decade. When the First National People of Color Environmental Leadership Summit convened in 1991, there was no environmental justice network or university-based environmental justice centers or environmental justice legal clinics. Today, there are a dozen environmental justice networks, four environmental justice centers, and a growing number of university-based legal clinics that emphasize environmental justice. The University of Michigan offers master’s and doctoral degrees in environmental justice; it is the only such program in the country.¹⁰

In 1991, there was only one book—*Dumping in Dixie*—published on environmental justice. Today, there are dozens of books in print on the subject. Six leading environmental justice authors were brought to Summit II to discuss their writings and research. These authors’ work helped lay the foundation for environmental justice theory, policy, community-university partnerships, and legal practice.

Several general themes emerged from the four-day meeting. There was a consensus among participants that environmental justice had to be a top priority in the twenty-first century. Despite improvements in how the government addressed environmental protection, gaps persisted. Communities were faced with the steady chipping away of civil liberties, basic civil and human rights, and environmental and health protection.

Summit delegates called for students and other youths to be integrated into the leadership of the environmental justice movement. “Growing new leaders must be a top priority of the movement,” said Angelo Pinto, a youth delegate and student at Clark Atlanta University. “Leadership by example and mentoring will go a long way in training young people to take up the torch of environmental justice.”¹¹

Summit II delegates reaffirmed the Principles of Environmental Justice and the Call to Action adopted at the 1991 summit. Delegates adopted three principles—Principles of Working Together, Youth Principles, and Principles Opposing the War against Iraq—and presented fifteen resolutions.

AN ENVIRONMENTAL JUSTICE FRAMEWORK

The question of environmental justice is not anchored in a debate about whether decision makers should tinker with risk management. The framework seeks instead to prevent environmental threats.¹² Moreover, it incorporates the aims of other social movements that seek to eliminate harmful practices in housing (discrimination harms the victim), land use, industrial planning, health care, and sanitation services. The effects of racial redlining (an illegal practice in which mortgage lenders figuratively draw a red line around minority neighborhoods and refuse to make loans available to those who live inside the redlined area), economic disinvestment, infrastructure decline, deteriorating housing, lead poisoning, industrial pollution, poverty, and unemployment are not unrelated problems if one lives in an urban ghetto or barrio, in a rural hamlet, or on a reservation.

The environmental justice framework attempts to uncover the underlying assumptions that may contribute to and produce unequal protection. This framework brings to the surface the ethical and political questions of “who gets what, why, and how much.” General characteristics of the framework include the following:

The framework incorporates the principle that all individuals have a right to be protected from environmental degradation. The precedents

for this point of the framework are the Civil Rights Act of 1964, Fair Housing Act of 1968 and its amended 1988 version, and Voting Rights Act of 1965.

The framework adopts the public health model of prevention as the preferred strategy: it focuses on eliminating a threat before harm occurs. Affected communities should not have to wait until causation or conclusive proof is established before preventive action is taken. For example, the framework offers a solution to the problem of lead poisoning in children by shifting the primary focus from treatment (after children have been poisoned) to prevention (elimination of the threat by removing lead from houses).

Overwhelming scientific evidence exists concerning the ill effects of lead on the human body. In fact, Louis Sullivan, while serving as secretary of the U.S. Department of Health and Human Services, identified lead as the “number one environmental health threat to children.”¹³ However, actions by state and federal governments to eliminate this source of preventable childhood illness have been inadequate. It took a lawsuit, *Matthews v. Coye*, by a parent and a community organization to get some 557,000 poor children tested for lead under the federally mandated Medicaid program.¹⁴ In 1991, an Oakland parent and the organization People United for a Better Oakland, with the help of the Natural Resources Defense Council, NAACP Legal Defense and Educational Fund, American Civil Liberties Union, and Legal Aid Society of Alameda County, won an out-of-court settlement from the state of California worth \$15–20 million for an ongoing blood-lead testing program in California. As a result, in 1991 the California Department of Health Services, via its Child Health and Disability Prevention Program, issued a directive to physicians to screen all children under the age of six when they undergo health assessments. This historic settlement triggered similar actions in other states that failed to live up to federally mandated screening.¹⁵

Lead screening is an important element in this problem, but screening is not the solution. Prevention is the solution. Surely, if termite inspections can be mandated to protect individuals’ investments in homes, then lead-free housing can be mandated to protect public health. Ultimately, the lead abatement debate, which concerns public health (who is affected) vs. property rights (who pays for cleanup), is a value conflict that will not be resolved by the scientific community. Lead poisoning is a classic example of an environmental health problem that disproportionately affects low-income children and children of color.¹⁶ Over the

past four decades, the U.S. Centers for Disease Control and Prevention lowered the threshold for lead levels considered dangerous in children by 88 percent, from 60 to 10 micrograms per deciliter. Even 10 micrograms per deciliter is not safe. Some medical and health professionals advocate lowering the threshold to 2.5 micrograms per deciliter.¹⁷

On January 31, 2003, the Centers for Disease Control and Prevention released its *Second National Report on Human Exposure to Environmental Chemicals*. This report includes exposure information on the concentration of 116 chemicals measured in blood and urine specimens in a sample of the population for the years 1999 and 2000.¹⁸ Progress has been made in reducing human exposure to dangerous chemicals and heavy metals, but concerns remain. According to the new report, in 1999–2000, among children aged one to five years, 2.2 percent had elevated blood-lead levels (levels greater than or equal to 10 micrograms per deciliter). This percentage decreased from 4.4 percent for the period 1991–1994.

The Environmental Justice and Health Union conducted a racial analysis of the findings published by the Centers for Disease Control and Prevention. This racial analysis, published in “Environmental Exposure and Racial Disparities,” revealed the following: Non-Hispanic blacks are much more likely to be exposed to dioxins and PCBs and to be exposed at higher levels. Mexican Americans are much more likely to be exposed to pesticides, herbicides, and pest repellants and to be exposed at higher levels. Non-Hispanic whites are much more likely to be exposed to polycyclic aromatic hydrocarbons and phytoestrogens and are more likely to be exposed to phthalates at higher levels. Non-Hispanic blacks and Mexican Americans are much more likely to have higher levels of less common chemicals. Non-Hispanic blacks are exposed to the greatest number of chemicals in the study.¹⁹ Although the federal government banned lead paint in 1978, it still poses a threat in millions of older homes.

There have been numerous attempts in recent years to target lead paint in class action suits. None has been successful.²⁰ In the meanwhile, children continue to be poisoned. It would cost between \$50 billion and \$100 billion to eradicate lead poisoning in the United States. It also costs to do nothing. Significant health costs, education costs related to lead-caused learning disabilities, and other social costs have resulted from the presence of lead-based paint in public and private buildings, including housing.²¹

Inspired in part by the recent tobacco industry settlement, states, counties, municipalities, school districts, and housing authorities have

joined in the lawsuits against the lead industry for medical and other costs associated with lead poisoning that has resulted from exposure to deteriorated lead paint in homes. The legal assault on big tobacco yielded a \$240-billion settlement by cigarette makers after states took on the industry in a series of lawsuits.²² The lead lawsuits seek unspecified money damages from eight manufacturers and a trade association. Even though no previous lawsuit against the lead industry has succeeded, there is hope that one will succeed in the future. Lawsuits filed over the decades against the tobacco industry failed too, until the Tobacco Settlement Agreement, finalized on November 23, 1998, between the tobacco industry and forty-six states, five commonwealths and territories, and the District of Columbia.

The environmental justice framework rests on the Precautionary Principle for protecting workers, communities, and ecosystems. The Precautionary Principle evolved out of the German sociolegal tradition and centers on the concept of good household management. It asks “How little harm is possible?” rather than “How much harm is allowable?” This principle demands that decision makers set goals for safe environments and examine all available alternatives for achieving the goals, and it places the burden of proof of safety on those who propose to use inherently dangerous and risky technologies.²³

Essentially, the Precautionary Principle states that, before you undertake an action, if you have reasonable suspicion that harm may result from it, and if there is scientific uncertainty about it, then you have a duty to act to prevent harm. This can be done by shifting the burden of proof of safety onto those people whose activities raised the suspicion of harm in the first place and by evaluating the available alternatives to find the least harmful way to carry out the activities, using a decision-making process that is open, informed, and democratic and that includes the people who will be affected by the decision. In 2003, San Francisco became the first city in the country to adopt the Precautionary Principle.²⁴

The environmental justice framework shifts the burden of proof to polluters and dischargers who do harm, who discriminate, or who do not give equal protection to racial and ethnic minorities. Under the current system, individuals who challenge polluters must prove that they have been harmed, discriminated against, or disproportionately affected. Few affected communities have the resources to hire the lawyers, expert witnesses, and doctors needed to sustain such a challenge. The environmental justice framework requires instead that the parties applying for operating permits for landfills, incinerators, smelters, refineries, chemical

plants, and similar operations must prove that their operations are not harmful to human health, will not disproportionately affect racial and ethnic minorities and other protected groups, and are nondiscriminatory.

The environmental justice framework redresses disproportionate impact by targeting action and resources. This strategy targets resources where environmental and health problems are greatest (as determined by some ranking scheme that is not limited to risk assessment). Relying solely on objective science to identify environmental and health problems prevents us from seeing the exploitative way that polluting industries have operated in some communities. It also permits a passive acceptance of the status quo. Human values are involved in determining which geographic areas are worth public investment. Generally, communities occupied by people of color receive lower quality-of-life ratings and thus get fewer dollars, based on these subjective ratings.²⁵

The dominant environmental protection paradigm reinforces instead of challenges the stratification of people (according to race, ethnicity, status, power, and so on), places (central cities, suburbs, rural areas, unincorporated areas, Native American reservations, and so on), and types of work (for example, office workers are afforded greater protection than farmworkers). The dominant paradigm exists to manage, regulate, and distribute risks. As a result, the current system has institutionalized unequal enforcement of safety precautions; traded human health for profit; placed the burden of proof on the victims and not the polluting industry; legitimated human exposure to harmful chemicals, pesticides, and hazardous substances; promoted risky technologies such as incinerators; exploited the vulnerability of economically and politically disenfranchised communities; subsidized ecological destruction; created an industry around risk assessment (assessing risk does little to eliminate risks; the risk assessment industry would go out of business if the risks were eliminated); delayed cleanup actions; and failed to develop pollution prevention as the overarching strategy.²⁶

The EPA was never designed to address environmental policies and practices that result in unfair, unjust, and inequitable outcomes. It is a regulatory agency, not a health agency. Officials of the EPA and other government agencies are not likely to ask the questions that go to the heart of environmental injustice: What groups are most affected by a specific environmental problem? Why are they affected? Who caused the problem? What can be done to remedy it? How can communities be justly compensated and reparations be paid to individuals harmed by industry and government actions? How could the problem have been

prevented? As a result, vulnerable communities, populations, and individuals exposed to environmental problems often fall between the regulatory cracks. They are in many ways invisible communities. The environmental justice movement has served to make these disenfranchised communities visible and vocal.

IMPETUS FOR A PARADIGM SHIFT

Change in the dominant environmental protection paradigm did *not* come from an effort made by regulatory agencies, the polluting industry, academia, or the industry built around risk management. Instead, impetus for the change came from a movement led by a loose alliance of grassroots and national environmental and civil rights leaders who questioned the foundation of the current environmental protection paradigm. The environmental justice movement has changed the way scientists, researchers, policy makers, educators, and government officials go about their daily work. With its bottom-up approach, this movement has redefined the term “environment” to include the places where people live, work, play, and go to school, as well as brought attention to how these things interact with the physical and natural world.

Despite significant improvements in environmental protection over the past thirty-five years, however, millions of Americans continue to live, work, play, and go to school in unsafe and unhealthy physical environments.²⁷ Over the past three decades, the EPA has not always recognized that many government and industry practices (whether intended or unintended) have had an adverse impact on poor people and people of color. Grassroots community resistance emerged in response to practices, policies, and conditions that residents judged to be unjust, unfair, and illegal. Discrimination is a fact of life in America. Racial discrimination is also illegal.

The EPA is mandated to enforce the nation’s environmental laws and regulations equally across the board. It is also required to protect all Americans—not just individuals or groups who can afford lawyers, lobbyists, and experts. Environmental protection is a right, not a privilege reserved for a few who can fend off environmental stressors that address environmental inequities.

Equity may mean different things to different people. Equity can be distilled into three broad categories: procedural, geographic, and social equity. *Procedural equity* refers to the “fairness” question: the extent to

which governing rules, regulations, evaluation criteria, and enforcement are applied uniformly across the board. Unequal protection might result from nonscientific and undemocratic decisions, exclusionary practices, public hearings held in remote locations and at inconvenient times, and the use of English alone in communicating information about, and conducting hearings for, the non-English-speaking public. *Geographic equity* refers to location and spatial configuration of communities and their proximity to environmental hazards and locally unwanted land uses such as landfills, incinerators, sewer treatment plants, lead smelters, refineries, and other noxious facilities. For example, unequal protection may result from land-use decisions that determine the location of residential amenities and disamenities. Communities that are unincorporated, poor, and populated by people of color often suffer triple vulnerability to the siting of noxious facilities simply because of these characteristics. *Social equity* assesses the role of sociological factors, such as race, ethnicity, class, culture, lifestyles, political power, and so on, in environmental decision making. Poor people and people of color often work in the most dangerous jobs and live in the most polluted neighborhoods, and their children are exposed to a host of environmental toxins on the playgrounds and in their homes.

As noted earlier, the nation’s environmental laws, regulations, and policies are not applied uniformly, resulting in some individuals, neighborhoods, and communities being exposed more than others to elevated health risks. Staff writers in the *National Law Journal* revealed glaring inequities in the way the federal EPA enforces laws:

There is a racial divide in the way the U.S. government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results and stiffer penalties than communities where blacks, Hispanics and other minorities live. This unequal protection often occurs whether the community is wealthy or poor.²⁸

These findings suggest that unequal protection is placing communities of color at special risk. The *National Law Journal* study supplements the findings of earlier studies and reinforces what many grassroots leaders have been saying all along: not only are people of color differentially affected by industrial pollution, but also they can expect different treatment from the government. Environmental decision making operates at the juncture of science, economics, politics, special interests, and ethics. The current environmental model places communities of color at special risk.

ENVIRONMENTAL RACISM

Many of the differences in environmental quality between black and white communities result from institutional racism. Institutional racism influences local land use, the enforcement of environmental regulations, the siting of industrial facilities, and, for people of color, their choice of place to live, work, and play. The roots of institutional racism are deep and have been difficult to eliminate. Discrimination is a manifestation of institutional racism and, because of it, whites and blacks lead very different lives. Racism has historically been, and it continues to be, a major part of the American sociopolitical system. As a result, people of color find themselves at a disadvantage in contemporary society.

Environmental racism is real—as real as the racism found in the housing industry, educational institutions, employment arena, and judicial system.²⁹ What is it, and how does one recognize it? Environmental racism refers to any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities because of their race or color. Environmental racism in public policies and industry practices results in benefits being provided to whites and costs being shifted to people of color.³⁰ Environmental racism is reinforced by government, legal, economic, political, and military institutions.³¹

People of color are often victims of land use decisions that mirror the power arrangements of the dominant society. Historically, exclusionary zoning (and rezoning) has been a subtle form of using government authority to foster and perpetuate discriminatory practices, including discriminatory environmental planning practices.³² Zoning is probably the most widely applied mechanism in regulating urban land use in the United States. Zoning laws broadly define land for residential, commercial, or industrial uses and may impose land use restrictions (for example, minimum and maximum lot size, number of dwellings per acre, maximum square footage per dwelling, maximum height of buildings, and so on).³³ Few people of color participate in writing these zoning laws. In fact, most of the individuals who do participate can be covered by a narrow description. A 2003 report from the National Academy of Public Administration, *Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning*, found that members of most planning and zoning boards are men; more than nine out of ten members are white; and most members are forty years old or more. Furthermore, boards contain mostly professionals and few, if any, nonprofessional representatives.³⁴

Historically, local land use and zoning policies are “a root enabling cause of disproportionate burdens and environmental injustice” in the United States.³⁵ Exclusionary zoning has been used to zone *against* something rather than *for* something. Expulsive zoning has pushed out residents and allowed “dirty” industries to invade communities.³⁶ Largely the poor, people of color, and renters inhabit the most vulnerable communities. Zoning laws are often legal weapons “deployed in the cause of racism” by allowing certain “undesirable” people—such as immigrants, people of color, and poor people—and operations, such as polluting industries, to be excluded from areas.³⁷

With or without zoning, deed restrictions or other devices, various groups are unequally able to protect their environmental interests. More often than not, communities made up of people of color get short-changed in the neighborhood protection game.³⁸

Building a multiethnic, multiracial, multi-issue, antiracist movement is not easy. Much work is still needed to develop trust, mutual respect, and principled relationships across racial, ethnic, cultural, gender, and age lines. Internalized racism—the process by which a member of an oppressed group comes to accept and live out the inaccurate myths and stereotypes applied to the group—still keeps oppressed groups from working together, even though they know it is in their best interests to do so.³⁹ This internalization of negative feelings, images, stereotypes, prejudices, myths, and misinformation promoted by the racist system contributes to self-doubt and mistrust within and among other groups of people of color. For example, as Laura M. Padilla has noted, “patterns of internalized oppression cause us to attack, criticize or have unrealistic expectations of any one of us who has the courage to step forward and take on leadership responsibilities. This leads to a lack of the support that is absolutely necessary for effective leadership to emerge and group strength to grow. It also leads directly to the ‘burn out’ phenomenon we have all witnessed in, or experienced as, effective . . . leaders.”⁴⁰

This problem is not unique to the environmental justice movement, nor will it likely disappear overnight. A cottage industry has emerged around undoing racism.⁴¹ Concerns about racism were around long before the 1991 summit. They were still present at Summit II in 2002. And they continue to permeate the larger society. Language and cultural barriers still hinder communication between the various racial and ethnic groups. It may be unrealistic to expect such a diverse collection of people, groups, organizations, and networks as is found in the environmental justice movement to mirror the mainstream environmental move-

ment. Nevertheless, the strength of the movement lies in the diversity of its constituents and organizations, who are working toward common goals.

Environmental decision-making and policies often mirror the power arrangements of the dominant society and its institutions. Environmental racism disadvantages people of color while providing advantages to whites. A form of illegal exaction forces people of color to pay the costs of environmental benefits for the public at large. The question of who *pays* and who *benefits* from the current environmental and industrial policies is central to this analysis of environmental racism and other systems of domination and exploitation.

Racism influences the likelihood of exposure to environmental and health risks, as well as influences one's access to health care.⁴² Many of the nation's environmental policies distribute the costs in a regressive pattern while providing disproportionate benefits for whites and individuals who fall at the upper end of the education and income scale. Numerous studies, dating back to the 1970s, reveal that people of color have borne greater health and environmental risk burdens than the society at large.⁴³ For example, people of color are subjected to elevated health risks from contaminated fish consumption; from close proximity to municipal landfills, incinerators, and toxic waste dumps; and from toxic schools, toxic housing, and toxic air releases.⁴⁴

THE RIGHT TO BREATHE CLEAN AIR

Clean air is a basic right. Air pollution is not randomly distributed across communities and the landscape, so some populations are at greater risk from dirty air. In a national study done in 1992, National Argonne Laboratory researchers reported that 57 percent of all whites, 65 percent of all African Americans, and 80 percent of all Latinos lived in the 437 counties that failed to meet at least one of the EPA ambient air quality standards.⁴⁵ A 2000 study by the American Lung Association shows that children of color are disproportionately represented in areas with high ozone levels.⁴⁶ Additionally, 61.3 percent of black children, 69.2 percent of Hispanic children and 67.7 percent of Asian American children live in areas that exceed the ozone standard of .08 parts per million, while only 50.8 percent of white children live in such areas.

Dirty air hurts. Air pollution from vehicle emissions causes significant amounts of illness, hospitalization, and premature death. A 2002 study that was reported in *Lancet* indicates a strong causal link between

ozone and asthma.⁴⁷ Ground-level ozone may exacerbate health problems such as asthma, nasal congestion, throat irritation, and respiratory tract inflammation; may reduce resistance to infection; and may cause chest pains, lung scarring, loss of lung elasticity, formation of lesions within the lungs, premature aging of lung tissues, and changes in cell function.⁴⁸

Air pollution claims seventy thousand lives a year, nearly twice the number killed in traffic accidents. Emissions from "dirty" diesel vehicles also pose health threats—including premature mortality, aggravation of existing asthma, acute respiratory symptoms, chronic bronchitis, and decreased lung function—to people who live near busy streets and bus depots. Long-term exposure to high levels of diesel exhaust increases the risk of developing lung cancer.⁴⁹ Diesel particulate matter alone contributes to 125,000 cancers each year in the United States.⁵⁰

In New York City, six of the Metropolitan Transit Authority's eight diesel bus depots in Manhattan are located in northern Manhattan, a low-income community of color; citywide, twelve of twenty depots are located in communities of color. In addition, five of the depots in northern Manhattan are in residential communities, within two hundred feet of people's homes.⁵¹ Diesel bus fumes from two thousand buses housed in the area inflict life-threatening pollution on West Harlem residents.⁵² In 1998, West Harlem Environmental Action, a local environmental justice organization, successfully lobbied to have buses at one depot converted to run on natural gas.

Vehicular traffic along freeways and major thoroughfares produces harmful noise and pollution. Students attending schools close to major thoroughfares have higher incidences of respiratory distress.⁵³ Adults and children living, working, or attending school within 984.25 feet (300 meters) of major roadways are significantly more likely to get asthma and other respiratory illnesses and leukemia; they may also suffer a higher incidence of cardiovascular disease. Children are at special risk from the ground-level ozone (which is the main ingredient of smog) produced by traffic.⁵⁴ One out of four American children lives in an area where the EPA's maximum permissible ozone level is regularly exceeded.⁵⁵

Although it is difficult to establish the dollar cost of air pollution, estimates of its annual cost range from \$10 billion to \$200 billion.⁵⁶ Asthma is the number one reason for childhood emergency room visits in most major cities in the country. The hospitalization rate for African Americans is three to four times the rate for whites. In 2003, the Centers for

Disease Control reported that African Americans had an asthma death rate 200 percent higher than that of whites.⁵⁷

In January and February 2003, the U.S. Commission on Civil Rights held hearings on environmental justice. Experts presented evidence of environmental inequities in communities of color, including disproportionate incidences of environmentally related disease, lead paint in homes, proximity to hazardous waste sites, toxic playgrounds, and schools located near Superfund sites and facilities that release toxic chemicals. In its 2003 report, *Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice*, the commission concluded, "Minority and low-income communities are most often exposed to multiple pollutants and from multiple sources. . . . There is no presumption of adverse health risk from multiple exposures, and no policy on cumulative risk assessment that considers the roles of social, economic, and behavioral factors when assessing risk."⁵⁸ The report was distributed to members of Congress and President George W. Bush.

SETTING THE RECORD STRAIGHT

The environmental protection apparatus is broken and must be fixed. The environmental justice movement has set out a clear goal: to fix this protection apparatus by eliminating unequal enforcement of environmental, civil rights, and public health laws. Environmental justice leaders have made a difference in the lives of people and in the physical environment. They have assisted public decision makers in identifying at-risk populations, toxic hot spots, research gaps, and action models in order to correct existing imbalances and prevent future threats. However, affected communities are not waiting for the government and industry to get their acts together. Grassroots groups have taken decisive steps to ensure that government and industry do the right thing.

Communities have begun to organize their own networks and have demanded to be included in public decision making. They have also developed communication channels between themselves and environmental justice leaders, other grassroots groups, professional associations (for example, legal, public health, and education associations), scientific groups, and public policy makers.

As noted earlier, President Clinton issued Executive Order 12898 in 1994. According to a report written by the EPA's Office of the Inspector General, *EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice* (March 2004), the agency earned a

TABLE 1.1. TITLE VI COMPLAINTS
FILED WITH THE EPA

Status of Complaint	Number of Complaints
Rejected	75
Dismissed	26
Accepted	16
Suspended	7
Under review	5
Partially dismissed	3
Informally resolved	2
Referred to another federal agency	2
<i>Total</i>	<i>136</i>

SOURCE: U.S. Environmental Protection Agency, *Title VI Complaints Filed with EPA* (Washington, D.C.: June 20, 2003).

failing mark on implementing the ten-year-old executive order.⁵⁹ Environmental justice advocates are calling for vigorous enforcement of civil rights laws and environmental laws. Many of the hard-won gains in environmental protection are under attack, at the same time that right-wing conservative forces are attempting to dismantle affirmative action, civil rights, and basic civil liberties. But these attacks have the potential to draw environmentalists and human rights advocates closer together.

Grassroots community groups and individuals have continued to file Title VI complaints with the EPA and other federal agencies—even though they have received little sympathy from governmental agencies and even less from the courts. The bulk of the complaints raising environmental justice concerns have been filed with the EPA.⁶⁰ From 1993 to June 2003 (the latest figures compiled by the EPA), the agency's Office of Civil Rights received 136 Title VI complaints (see Table 1.1). Most complaints were rejected, dismissed, or suspended. Justice has been incomplete and slow for many environmental justice complainants, whose cases are still pending.⁶¹

For example, the suit against the Genesee Power Station, *St. Francis Prayer Center v. Michigan Department of Environmental Quality* (*Genesee Power Station*), was originally filed in 1992, and it has yet to be decided by the EPA, which handles the administrative Title VI complaints. Nevertheless, the \$85-million power station began operation in 1995, burning 365,000 tons of wood a year. The power station is still operating. As recently as 2001, it was reported as "discharging toxic pollutants into the

low-income predominantly African American neighborhood, with no determination by the EPA as to whether or not the issuance of that permit violated Title VI.”⁶² In December 2002, wood chips from thousands of trees infested with fungus were burned at the plant. The Genesee Power Station is one of five wood-burning facilities in Michigan.⁶³

JUSTICE DELAYED: WARREN COUNTY, NORTH CAROLINA

In December 2003, after a wait of more than two decades, an environmental justice victory finally came to the residents of Afton, in Warren County, North Carolina. Since 1982, residents of this county—more than 84 percent of whom are black—had lived with the legacy of a 142-acre PCB-filled waste dump. “Midnight dumpers” had illegally dumped PCB-laced oil along roadways in North Carolina in 1978. After the state discovered what had happened, it dug up and removed the contaminated dirt from the roadsides. In 1982, to dispose of the contaminated dirt, the state selected Afton to be the location of a state-owned PCB landfill.

Detoxification work on the dump began in June 2001, and it was completed in late December 2003. State and federal agencies spent \$18 million to detoxify or neutralize PCB-contaminated soil stored in the landfill.⁶⁴ To detoxify the PCBs, a private contractor hired by the state dug up and burned 81,500 tons of the oil-laced soil in a kiln that reached more than eight hundred degrees Fahrenheit. The soil was then put back in a football-field-size pit at the dump, covered to form a mound, graded, and seeded with grass.

Warren County environmental justice leaders and their allies across the state deserve a gold medal for not giving up the long fight, for pressuring government officials to keep their promise to clean up the mess they created when they authorized the dump. This was no small win, given state deficits, budget cuts, and past broken promises. Residents and officials now must grapple with what to do with the site. The controversial PCB landfill, owned by the North Carolina Department of Environment and Natural Resources, is located about sixty miles northeast of Raleigh off State Road 1604 and U.S. Highway 401. The sign at the entrance to the landfill reads, “PCB Landfill—No Trespassing.” Addition of the slogan “Justice Delayed is Justice Denied” might be appropriate.

This toxic-waste dump was forced on the tiny community, helping trigger the national environmental justice movement. While the midnight dumpers who illegally unloaded PCBs along highways in North

Carolina were fined and jailed, members of the innocent Afton community became victims of environmental racism: they were confined to a “toxic prison” created by the state of North Carolina. Warren County was their home, and many did not want to leave or get run out by an act of the state government that placed a landfill near them. The PCB landfill later became the most recognized symbol in the county. Despite the stigma, however, Warren County also became a symbol of the environmental justice movement.

Warren County residents had pleaded for a more permanent solution, rather than a quick fix that would eventually allow the PCBs to leak into the groundwater and wells. Their pleas had fallen on deaf ears. State and federal officials chose landfilling, the cheap way out. By 1993, however, the landfill was failing, and for a decade community leaders pressed the state to decontaminate the site.

Residents of Warren County were searching for a guarantee that the government was not creating a future Superfund site that would later threaten the community. North Carolina state officials and federal EPA officials could give no guarantees, since there is no such thing as a hazardous waste landfill that is 100 percent safe—that will not eventually leak. It all boiled down to trust. Can communities really trust state and federal governments to do the right thing? Recent history is filled with cases in which government has whitewashed real threats to public health.

Even after detoxification, some Warren County residents still question the completeness of the cleanup. They wonder whether contamination may have migrated beyond the 3-acre landfill site, into the 137-acre buffer zone that surrounds the landfill and the nearby creek and outlet basin. PCBs are persistent, bioaccumulative, and highly toxic pollutants. That is, they can build up in the food chain to levels that are harmful to human and ecosystem health. They are probable human carcinogens, cause developmental effects such as low birth weight, and disrupt hormone function.

Warren County is located in eastern North Carolina. The twenty-nine counties in the eastern part of the state are noticeably different from the rest of North Carolina.⁶⁵ According to the 2000 census, whites constitute 62 percent of the population in eastern North Carolina and 72 percent statewide. Blacks are concentrated in the northeastern and the central parts of the region. Warren County is one of six counties in the region where blacks constitute a majority: Bertie County (62.3 percent), Hertford (59.6 percent), Northampton (59.4 percent), Edgecombe (57.5 percent), Warren (54.5 percent), and Halifax (52.6 percent). Eastern

North Carolina is also significantly poorer than the rest of the state.⁶⁶ In 1999, the per capita income in North Carolina was \$26,463, but in the eastern region it was only \$18,550.⁶⁷

But there's more to the story. Warren County is not only mostly black, but it is also mostly populated by people who are poor, rural, and politically powerless. The county had a population of 16,232 in 1980. Blacks constituted 63.7 percent of the county population and 24.2 percent of the state population in 1980. The county continues to be economically worse off than the state as a whole, according to all major social indicators. Per capita income for Warren County residents was \$6,984 in 1982 compared with \$9,283 for the state. Residents earned about 75 percent of the state's per capita income. The county ranked ninety-second out of one hundred counties in median family income in 1980. In the 1990s, the economic gap between Warren County and the rest of the state actually widened. The county's per capita income ranked ninety-eighth in 1990 and ninety-ninth in 2001. One-fourth of Warren County children live in poverty, compared with the state's 15.7 percent poverty rate among children.

The pattern of infrastructure development in this part of North Carolina diverted traffic and economic development away from Warren County. For example, Interstates 85 and 95 run past, not through, Warrenton, the county seat. Generally, development follows along major highways, and, indeed, economic development has bypassed much of the county. Over 19.4 percent of Warren County residents, compared with 12.3 percent of state residents, lived below the poverty level in 1999. The 1999 North Carolina Economic Development Scan gave Warren County a score of two (scores range from one, the lowest, to one hundred, the highest) in relation to its ability to attract new business.

That the state finally detoxified the Warren County PCB landfill, a problem it had created, is a major victory for local residents and the environmental justice movement. However, the surrounding land area and local community must now be made environmentally whole. Soil in the dump still containing low PCB levels is buried at least fifteen feet below the surface. Government officials claim the site is safe and suitable for reuse. Questions remain about the suitable reuse of the site. There is no evidence that the land has been brought back to its pre-1982 condition—where homes with deep basements could have been built and occupied and backyard vegetable gardens grown with little worry about toxic contamination or safety.

The siting of the PCB landfill in Afton is a textbook case of environ-

mental racism. Around the world, environmental racism is defined as a human rights violation. Strong and persuasive arguments have been made for reparations as a remedy for serious human rights abuse. Under traditional human rights law and policy, we expect governments that practice or tolerate racial discrimination to acknowledge and end this human rights violation and compensate the victims. Environmental remediation is *not* the same as reparations. No reparations have been paid for the two decades of economic loss and mental anguish suffered by the Warren County residents.

Justice will not be complete until the twenty thousand Warren County residents receive a public apology and financial reparations from the perpetrators of environmental racism. Determining how much should be paid is problematic, since it is difficult for anyone to put a price tag on peace of mind. At minimum, Warren County residents should be paid reparations equal to the cost of detoxifying the landfill site, or \$18 million, to be divided among them. Another reparations formula might include payment of a minimum of \$1 million a year for every year the mostly black Afton community hosted the PCB landfill, or \$21 million.

It probably would not be difficult for a poor county that lacks a hospital to spend \$18 to \$21 million. The hospitals nearest to Afton are located in neighboring Vance County (fifteen miles away) and across the state line in South Hill, Virginia (thirty-three miles away). Some people may think the idea of paying monetary damages is farfetched. However, until the community is made whole, the PCB-landfill detoxification victory—won by the tenacity and perseverance of local Warren County residents—remains incomplete.

When it comes to enforcing the rights of poor people and people of color in the United States, government officials often look the other way. Too often they must be prodded to enforce environmental and civil rights laws and regulations without regard to race, color, national origin, and socioeconomic background. Laws, regulations, and executive orders are only as good as their enforcement. In many communities populated by poor people and people of color, unequal enforcement has left a gaping hole in environmental protection. Waiting for government to act is a recipe for disaster.

Environmental justice at the EPA was initiated under the George H. W. Bush administration, but since then it has become all but nonexistent. The title of a March 2004 report by the Office of the Inspector General, *EPA Needs to Consistently Implement the Intent of the Execu-*

tive Order on Environmental Justice, alludes to how environmental justice has fared under President George W. Bush.⁶⁸ After ten years, the EPA “has not developed a clear vision or a comprehensive strategic plan, and has not established values, goals, expectations, and performance measurements” for integrating environmental justice into its day-to-day operations.⁶⁹

The solution to environmental injustice lies in the realm of equal protection of all individuals, groups, and communities. No community, rich or poor, urban or suburban, black or white, should be made into a sacrifice zone or dumping ground. However, the officials responsible for issuing permits to hazardous waste facilities and dirty industries have followed the path of least resistance. This is not rocket science, but political science—a question of who gets what, when, why, and how much.

Environmental justice is also about how benefits are distributed and allocated. It is not about poor people being forced to trade their health and the health of their communities for jobs. Poor people and poor communities are given a false choice between having, on the one hand, no jobs and no development and, on the other hand, risky low-paying jobs and pollution. In reality, unemployment and poverty are also hazardous to one’s health. This jobs-versus-unemployment scenario is a form of economic blackmail. Poverty makes economic blackmail easy in the United States and abroad, especially in developing countries. Industries and governments, including the military, often exploit the economic vulnerability of poor communities, poor states, poor regions, and poor nations when finding sites for risky operations.

The environmental justice movement challenges toxic colonialism, environmental racism, the international toxics trade, economic blackmail, corporate welfare, and human rights violations at home and abroad. Groups are demanding a clean, safe, just, healthy, and sustainable environment for all. They see this not only as the right thing to do but also as the moral and just path to ensuring our survival.

2

Neighborhoods “Zoned” for Garbage

Before the rise of the national environmental justice movement, the early research on the connection between race and waste facility siting, begun in Houston, Texas, was undertaken with the assumption that all Americans have a basic right to live, work, play, go to school, and worship in a clean, healthy, sustainable, and just environment. This articulation later became the working definition of environmentalism for many environmental justice activists, academics, and analysts alike.¹

SOCIOHISTORICAL CONTEXT

Houston is the nation’s fourth-largest city. Between 1850 and 2003, it expanded from a mere nine square miles to more than six hundred square miles. The city’s black population lives in a broad belt extending from the south central and southeast portion of the city into the northeast and north central area. Henry Allen Bullock, a noted black sociologist, described the concentration of Houston’s blacks in the 1950s this way: “Houston’s Negro population is very tightly concentrated in a few areas. Although the population has responded to the suburban movement like all other urban populations, tradition has prevented basic changes in the geography of the Negro settlement.”²