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Environmental Justice and Sustainable Development

Integrating Local Communities in Environmental Management

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I. Introduction

Environmental justice and sustainable development have more in common than a cursory look at either reveals. Central to both is the intra- and inter-generation distribution of costs and benefits of development. Their primary concern is the improvement of the quality of life of people and enhanced access to resources.

The environmental justice movement in the United States challenges a process of development that does not ensure the sharing of environmental costs and benefits equitably among all citizens. It singles out the siting of waste treatment facilities in certain communities as inordinately burdening them. Like sustainable development proponents, advocates of environmental justice are concerned about the changes that development occasions in access to environmental goods. Both seek to have integrated into the development process mechanisms for ensuring access for all. However, sustainable development is not limited to quality of life concerns but also includes concerns about unequal access to natural resources, especially for rural people.

One major strength of the environmental justice movement is that it focuses on communities. It thus goes beyond the ambit of most international instruments pertaining to sustainable development which emphasise mainly the role of states and individuals. It would however benefit from tackling the root causes of injustices that it has identified.

While the imbalances discerned in environmentalism may seem to coalesce into racial concerns in the United States, the same imbalances occur at the international level in relationships between states and at the national level in communities that would appear to be monolithic on the surface. In this latter case, the imbalances are discernible between people in different socio-economic categories. The political clout of a racial group, a country or an individual determines to a great extent the flow of burdens vis-à-vis benefits. This paper aims at broadening the purview of environmental justice to include not only issues of race and waste but issues of sustainable development, international environmental law and human rights.

II. Environmental Justice in the United States

A. Background

The term environmental justice has featured prominently in the environmental debate for the last two decades but only surfaced in legal parlance in the 1990s.¹ It focuses on the disproportionate sharing of environmental benefits and burdens between different categories of persons. In the United States, environmental justice focuses broadly on the equity and fairness dimension of environmental policies. It is based upon the recognition that environmental costs and benefits are not distributed in a fair and equitable manner and that traditional environmentalism has not been sufficiently concerned with very divergent local situations and the plight of minorities.² Indeed, the term environmental justice is almost synonymous with environmental racism and has been used to describe the distribution of environmental benefits and burdens across society along the lines of race or colour.³

Thus the concerns of environmental justice centre mainly on “side” effects of industrial activity, such as the siting of waste disposal facilities,⁴ the proximity of industrial pollution and workplace exposure to industrial toxins and in-house lead exposure, in particular for children. The environmental justice movement seeks to redefine the traditional environmental movement by incorporating the concerns of minorities within environmental policy making and thereby engendering environmental equality.⁵

Some commentators have based their analysis of environmental justice problems on intent arguing that the main problem that has to be dealt with is the issue of intentional discrimination, in particular in the siting of hazardous waste facilities.⁶ Others have highlighted the results of current environmental policies in terms of the unequal distribution of benefits and burdens among the population at large.⁷

Major Reports

Studies carried out in the area of environmental justice have concentrated on the relationship between race and toxic waste location and the trends in enforcement of environmental regulation in neighbourhoods occupied by persons of different racial groups. The first study examined the racial and socio-economic characteristics of the communities surrounding four landfill sites in one US Environmental Protection Agency (EPA) region,⁸ while a subsequent study looked at the racial composition of communities surrounding hazardous waste sites in the United States.⁹ These studies found out that the majority of the waste landfills in the areas studied were situated in minority neighbourhoods, and consequently that pollution control laws have disproportionate impacts on the poor and people of colour.¹⁰ The other major study focused on the role of the federal government in issues of race and environment, specifically on the way environmental laws are enforced in the United States.¹¹ It concluded that enforcement standards of environmental legislation tend to be less stringent in impoverished and coloured neighbourhoods in comparison to upper-income white communities’ neighbourhoods both in terms of the fines imposed for flouting laws, the time taken and the methods used to clean up waste sites.¹²

Basic Principles

The major thrust of the environmental justice movement is to shift the focus of attention from the environment to people, specifically communities. It seeks to show that environmental protection should not be planned in a vacuum and that environmental goals should take into account social, political and economic realities. In a broad sense, environmental justice is about positive discrimination: it seeks to achieve a redistribution of the costs of environmental justice so as to lower the disproportionately high burden borne by some segments of society.

Environmental justice brings a new dimension to American mainstream environmentalism by shifting the central focus of environmentalism from the predominantly middle-class concerns with aesthetic values and environmental improvements to social concerns and relations between different communities. Environmental protection thus becomes part of a larger social justice movement that does not aim at protecting nature as such but strives to achieve a more reasonable balancing of the costs and benefits of environmental protection across human societies. In other words, it is shifting the goals of environmental protection towards taking into account the needs of the poorer sections of the community that have suffered the environmental consequences of industrialisation more than others.¹³

However, it must be noted that environmental justice relies on the same broad issues which have constituted the main plank of the mainstream environmental movement over the past decades. It is fundamentally concerned with the negative side-effects of industrialisation and is seeking solutions to mitigate problems caused by the current development process. It does not question the current path of development and its associated environmental woes. For the movement to achieve long-term and meaningful gains, the root causes of environmental problems such as mass consumerism must be tackled.¹⁴

Emphasis on Waste

A lot of the work done in the area of environmental justice in the United States has focused on hazardous waste disposal. Public attention was first drawn to issues of environmental justice in 1982 with the Warren County residents in North Carolina opposing the location of a hazardous waste dump in their neighbourhood (predominantly poor and black).¹⁵ The community challenged the identification of their neighbourhood as a potential hazardous waste dump site on the ground that it was not necessarily the most environmentally sound choice. They argued that they had been chosen because their community seemed incapable of resisting. Despite the failure of the protests to ward off this particular siting, this event led to increased interest in the question of environmental justice prompting the commissioning of several studies looking at the question of environmental justice.¹⁶

Emphasis on People

Environmental problems have traditionally been addressed through command and control legislation. The disillusionment with this approach has led to the search for alternatives. The quest for efficiency in dealing with environmental problems has resulted in the use of market instruments which tend to emphasise individual behaviour. Neither of the two approaches has focused on communities.¹⁷

Mainstream environmentalism has thus failed to consider the operation of environmental legislation vis-à-vis people by assuming that uniform laws will affect everybody uniformly. However, the assumption that everybody benefits from environmental regulation has been severely tested by the proliferation of grass-roots movements challenging the effects of those programmes on the poor and minority communities.¹⁸

Environmental justice seeks to draw the necessary link between conservation and economically disadvantaged communities which was missing in environmental laws whose basic concern was nature conservation. Further, it brings out the connection between civil rights and environmental law.¹⁹ In this way, the movement is taking on some of the principles of international sustainable development which emphasise the centrality of human beings in the development process.

B. Causes of the Problem

Race Relations

Race has been identified as a major factor in environmental justice concerns at the domestic level in the United States and the primary focus of the movement has been on the issue of racial inequalities. The United Church of Christ report found that these sites tended to be in communities showing a much higher proportion of “racial and ethnic” residents.²⁰ Race was found to be the most significant explanatory variable, with socio-economic factors ranking second. The report went as far as arguing that an increased concentration of minority residents tends to augment the probability of the existence of some form of hazardous waste activity.²¹ This report, combined with a history of racial separation in the United States has prompted a number of writers to analyse environmental justice problems mainly in terms of race.²² Robert Bullard talks of environmental racism defining it as the deliberate or unintentional targeting of coloured communities for toxic waste facilities and the official sanctioning of life-threatening presence of poisons and pollutants in these communities.²³

Economic Disparities

Environmental discrimination has also been linked to the economic status of minority communities. Host communities of landfills have, for instance been found to be disproportionately poor in many cases.²⁴ Communities with higher than average unemployment rates are more likely to accept the siting of a waste facility if it offers employment opportunities and may underplay the possible environmental consequences.²⁵ The provision of employment opportunities to local residents may thus procure their silent approval and seems to act as an informal compensatory mechanism.²⁶ Other benefits include increased tax revenues and improved infrastructure.²⁷

Political Clout

It has been argued that as a result of discriminatory laws and attitudes over a long period of time, racial minorities find themselves with less power in political forums. This seems to increase the likelihood of minority communities bearing a disproportionate share of the burden of environmental protection. The capacity to refuse the siting of any given facility is directly linked to the political clout of the community at stake and its traditional involvement in environmental affairs.²⁸ The failure of traditional environmental law to address issues relevant to the impoverished communities and communities of colour has alienated these groups from the development of environmental law.

C. American Responses to Environmental Justice Issues

Despite increased adjudication and regulation to deal with environmental justice issues, political activism by communities at the grassroots level remains one of the most popular avenues pursued.

Political Movements

The growth of the environmental justice movement was precipitated by the failure of mainstream environmental law to cater for the needs of certain local communities. The movement manifested itself in the proliferation of grass-roots initiatives to oppose proposed locations of waste dumps in minority neighbourhoods. These took the form of protests, civil disobedience and campaigns challenging the decisions to site the dumps that have been associated with the Not-In-My-BackYard (NIMBY) and Locally-Undesirable-Land-Use (LULU) movements.²⁹ These movements pose a major obstacle to the location of waste landfills.³⁰

Litigation

Legal instruments used to challenge environmental injustice include environmental statutes,³¹ the Equal Protection Clause,³² and more recently Title VI of the Civil Rights Act. The United States Commission on Civil Rights took issue with EPA for failing to take into account the implications of its policies on minorities, the impoverished and communities of colour.³³ They addressed the issue of environmental justice as one of contravention of the equal protection clause of the Constitution and the applicable civil rights statutes. Actions brought under the Equal Protection Clause seek to achieve equal application of environmental law to all communities in the United States, assuring them undifferentiated protection.³⁴ The plaintiffs in these cases have to establish the presence of discriminatory intent in the location of waste sites or in the application of environmental standards.

However, the environmental justice literature does not emphasise the existence of citizen suits provisions that are found in most environmental statutes and which can play a significant role in bringing about some of the changes sought. Starting with the Clean Air Act of 1970,³⁵ most federal environmental laws have included provisions granting private citizens aggrieved by acts of environmental regulatory bodies the right to bring suits to have their grievances redressed. In most cases environmental organisations take up the cause on behalf

of private citizens.

Citizen suits provisions firstly allow any citizen to sue any person, including the United States Government who violates the relevant statute. Dozens of cases have been brought under this head and constitute an integral part of the enforcement system of environmental laws in the United States.³⁶ Especially noteworthy is the provision authorising the courts to award attorneys' fees to prevailing parties, thus allowing private citizens to recover their costs when they successfully sue.³⁷

In the last decade, courts have acted in ways that seem to restrict the purview of these provisions. While in *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, the Supreme Court ruled that damages could be not sought for entirely past violations,³⁸ in *Lujan v. Defenders of Wildlife*, the Supreme Court restricted the standing provision in citizen suits by requesting that plaintiffs show an injury in fact to establish their standing.³⁹ The latter judgment has been interpreted as a serious blow to environmental citizen suits since it restricts the possibility to act on behalf on the environment for its own sake.⁴⁰

Despite recent limitations, citizen suits appear to be very relevant to some environmental justice concerns. They can be used to transform environmental law by ingraining in it the concerns of all communities.

Executive Action

Despite the difficulty encountered by advocates of environmental justice in pushing their claims for equality, the signing of the Executive Order on Environmental Justice in 1994 may signal a turning point in environmental regulation in the United States.⁴¹ The three basic goals of this instrument are to focus federal attention on the environmental and human health conditions in minority communities and low-income communities, to foster non-discrimination in federal programs that substantially affect human health or the environment and to give minorities and low-income communities greater opportunities for public participation.⁴² The Order charges the EPA with the task of developing guidelines and criteria for identifying disproportionately high and adverse human health effects and environmental effects on the affected populations and to coordinate federal agencies in the development of environmental justice strategies to ensure consistent implementation of the order.

III. A Broader Perception

A. Critique of the Current Approach

Mainstream environmentalism in the western world focuses on two broad issues: the preservation of wilderness areas, as exemplified in the establishment of national parks where most human activities are banned and environmental improvements as they relate to resource conservation and pollution prevention. The main assumptions have been firstly that nature must be preserved from people and secondly that the side effects of industrialisation need to be minimised.

The environmental justice movement takes the concerns of mainstream environmentalism further by focusing on people and their experience of their home and work environment. However, it has remained entangled in the framework drawn over the last two decades by the environmental movement. Its basic assumptions are not very different in that they concentrate their efforts on remedying problems created by industrialisation but do not question the validity of the underlying economic model. This piecemeal approach seeking to empower people of colour so as to enable them to fight NIMBY struggles on equal terms with other communities may not succeed.

Both mainstream environmentalism and the environmental justice movement cater for the needs of narrowly defined constituencies. Their conceptual frameworks do not encapsulate the broader concerns for sustainable development that seek to fulfil the essential needs of all human beings in an ecologically sound manner. The consensus among environmental movements in developed countries seems to be not to question the trade-offs between economic growth and sustainable development. They also fail to recognise that sustainable development cannot be subsumed within sustainable economic growth.

Beyond the Race Factor

The emphasis on the racial factor seems unwarranted or overplayed. While race acts as an independent factor in a number of instances and is an effective political and legal platform to act upon, it may further neither the cause of the minorities nor the environment. Following the civil rights movement in the 1960s, the political left has since devoted a lot of attention to defining the identity of the various groups that compose the American society and to draw barriers between them. This concentration on the differences as opposed to similarities seems to have been increasing some latent centrifugal forces instead of breeding more cohesion.⁴³ It might be that the emphasis on differences coupled with a declining economic conjuncture has been one important reason for the strong focus on racial problems in the context of environmental justice.

Besides, the Indian experience with positive discrimination shows clearly that singling out a community defined by “racial” traits with the aim of giving them better access to economic resources such as education and jobs does not constitute the right answer to a real problem. Whereas there was a good correlation between caste and income level when reservation was instituted, this has now been blurred by a number of factors such as the accession of many “outcastes” to a higher income bracket level. However, schemes that were designed to help the poorest are still available to those who have succeeded and are not granted to people of other castes that might need economic support, the eventual outcome being to polarise the society more than before.⁴⁴ Even though there are powerful political reasons to emphasise the “ethnic” factor in both India and America, such a distinction does not seem to yield satisfactory outcomes in the long term.⁴⁵

NIMBY Issues

In one sense, the environmental justice debate does not go beyond conventional NIMBY. It utilises a moral argument to ground a claim that facilities should not be placed in certain communities. However, the failure to address the broader issues conditioning NIMBY makes it impossible to consider taking such decisions at a higher level. Since it can be assumed that there are benefits to be gained from the generation of wastes, and the overall economic policy is deemed to benefit all citizens, environmental policies should take into account the need to avoid NIMBY problems while containing the problem within national boundaries.

What is being fought against are not the industrial facilities that produce the waste but waste treatment facilities which contribute to solving environmental problems caused in some other part of the economy. They were first seen as the response of an industrial society to environmental problems caused by industrialisation. Today, part of the problem to be dealt with relates to waste that was previously dumped and still constitutes a health hazard. Moreover, the necessity to create more waste treatment facilities stems mainly from the growth of the economy and this has been largely overlooked in the environmental justice discussions.⁴⁶

Environmental Costs and Benefits

So far, the environmental justice movement has put a strong normative emphasis on the redistribution of costs accruing from environmental conservation. Redistribution of the “costs” of environmental protection involving the siting of more Superfund facilities in “non-ethnic” communities has for instance been recommended.⁴⁷

Environmental benefits have not been emphasised at all, whereas they constitute an important part of environmental policies. Very few studies have examined whether environmental benefits accruing from environmental measures have been distributed in such a way as to favour people having a low quality of life.⁴⁸

B. Towards the recognition of Multiple Actors for Sustainable Development

The concerns articulated in the environmental justice movement have also attracted attention at the international level in the realms of environmental, development and human rights law. While international environmental and development law have concentrated on relationships between states, human rights law focuses on the rights of individuals vis-à-vis states. Communities as such have only received fleeting attention in international law.

At the heart of the concept of sustainable development is the fulfilment of the basic needs of the world's poor without compromising the capacity of the environment to provide similar benefits for future generations. International instruments have concentrated mainly on the economic dimension of sustainable development. In legal terms, the concept of sustainable development has in many cases been equated with sustained economic growth.⁴⁹ The human dimension has been neglected while the environmental aspect has been tailored to fit within the economic paradigm. Further, human rights that constitute an integral part of the realisation of sustainable development have hardly been considered in this context. This is notwithstanding the fact that there are human rights principles which are relevant and would be useful.

Developments in inter-state relations

International law is premised on the notion of the sovereign equality of states that calls for similar treatment of all members of the international community. However, widespread economic inequalities and the existence of global environmental problems have led to the adoption of measures that take into account differences between states. In this regard, the special needs and situation of developing countries have been considered and preferential treatment has been granted in a number of cases. Such treatment constitutes a manifestation of equity concerns in international law.⁵⁰ In this way, the concept of sustainable development has informed relations between rich and poor states.

The principle of common but differentiated responsibility has emerged as the legal basis for differentiation in environmental instruments at both the normative and implementation levels. Most recent environmental agreements include provisions whereby developing and developed countries take on different obligations. Further, these instruments provide for implementation aid to help towards the realisation of their aims.⁵¹

Developments in Human Rights

International human rights constitute claims by individuals against states and include civil, political, economic and social rights whose purview is wide enough to encompass tenets of sustainable development. Thus, the realisation of the rights to life and health depends to a large extent upon the quality of the environment in which individuals live.⁵²

More specifically, the proposed human right to environment is premised on the link between the realisation of human rights and environmental protection.⁵³ It focuses on the people-environment relationship which is not always taken into account in environmental conservation. Further, economic and social rights have been linked to development concerns. The existence and content of a human right to development however remain very controversial despite its codification in a UN General Assembly Resolution.⁵⁴ The basic substance of both the rights to environment and development is covered in existing human rights treaties. In this sense, human rights already include the basic tenets of a right to sustainable development.

However, it is significant that the enforcement of human rights is only at the level of individuals. Communities do not ordinarily have standing in international human rights judicial bodies.

The Missing Dimension: Rights of Communities

Human rights and sustainable development have emphasised the roles of states and individuals as pointed out above but the emerging concern for the rights of communities has not been fully recognised. Their rights need to be taken into account for a meaningful realisation of the objectives of sustainable development. In the last decade, there have been developments towards recognising the role and rights of communities in international instruments. In this respect, indigenous peoples' rights to land and natural resources, and rights to decision making, both at the local and national levels have been recognized.⁵⁵ However, the only significant instrument, the ILO Convention 169, has not been widely ratified.⁵⁶ Besides, the focus has primarily been on indigenous peoples and not local communities. These developments constitute a step in the right direction by broadening the range of actors in environmental management recognized by the international community. However, more attention needs to be given to diverse local communities who play crucial roles in natural resource management and constitute a much broader segment of the population directly dependent on their surrounding environment.

Human rights contribution can have a significant impact at the implementation level in giving communities the possibility to vindicate their claims internationally. To this date, collective action for the redress of violations of human rights has only been accepted in a few cases, the most notable of which being the recently established World Bank inspection panel whereby communities that are affected by Bank-funded projects can have the Bank's compliance with its own regulations reviewed.⁵⁷

By recognising the importance of local communities in environmental management, the environmental justice movement has important lessons for the framing of a right to sustainable development that encompasses a broad range of actors. This, in effect moves beyond current attempts at international law to mainstream local communities in environmental management.

V. Conclusion

The discussion of environmental justice concerns at both the international and domestic levels elicits a multiplicity of dimensions from which the issues it raises can be tackled. Over-emphasising race and waste at the domestic level masks other potent elements that must be incorporated into any comprehensive analysis. Only after considering such elements can one conclusively assign responsibilities for environmental inequities.

The overview of a few of the possible dimensions of an environmental justice debate on the international level have demonstrated that there are varied and multifaceted aspects of relevance to the problems environmental justice. The racial aspect is by no means a predominant factor of all the links that can be found. In environmental law, the international community has in some ways gone beyond the US in experimenting with ways to accommodate legal regimes with the realisation that countries do not all have the same capacity to implement treaties and do not all have the necessary resources to include implementation of environmental treaties among their own priorities.

Besides, environmental justice concerns relate very closely to issues that have been widely studied at the international level of the relationship between human rights and the environment. Here again, the discrimination side is only one of a host of human rights issues that may be relevant to the environmental debate.

Footnotes

- ¹ Richard Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U.L. REV. 101 (1993).
- ² Robert D. Bullard, *Introduction*, in CONFRONTING ENVIRONMENTAL RACISM - VOICES FROM THE GRASSROOTS 7 (Robert D. Bullard ed., 1993).
- ³ Dorceta Taylor, *Attracting and Maintaining the Support of Minorities*, in RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS 28 (Bunyan Bryant & Paul Mohai, eds., 1992).
- ⁴ Charles J. McDermott, *Balancing the Scales of Environmental Justice*, 21 FORDHAM URB. L.J. 689 (1995).
- ⁵ Gerald Torres, *Changing the Government Views Environmental Justice*, C981 A.L.I.-A.B.A. 561 (1995).
- ⁶ E.g., COMMISSION FOR RACIAL JUSTICE UNITED CHURCH OF CHRIST (Dr. Benjamin F. Chavis Jr., Executive Director), TOXIC WASTES AND RACE IN THE UNITED STATES - A NATIONAL REPORT ON THE RACIAL AND SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES (1987).
- ⁷ E.g., ROBERT BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY (1990).
- ⁸ U.S. General Accounting Office, *Siting of Hazardous Waste Landfills and their Correlation with Racial and Economic Status of Surrounding Communities*, GAO Pub. No. B-2111461, (1983).
- ⁹ See COMMISSION FOR RACIAL JUSTICE UNITED CHURCH OF CHRIST, *supra* note 6.
- ¹⁰ See also ROBERT D. BULLARD, INVISIBLE HOUSTON: THE BLACK EXPERIENCE IN BOOM AND BUST (1987).
- ¹¹ See Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, NAT'L L.J. S1 (Sept. 21, 1992).
- ¹² See e.g. Michael Fisher, *Environmental Racism Claims Brought Under Title VI of the Civil Rights Act*, 25 ENVTL. L. 285 noting that it takes 20% more time for a minority neighbourhood to be put on the National Priorities List than it does a white neighbourhood and that while in white areas treatment of waste is chosen to deal with the problem, containment is chosen in most cases involving minority neighbourhoods.
- ¹³ In this sense, it might come some way towards meeting the critique of Gadgil and Guha who see environmentalism in the United States as by-product of affluence and a concern of wealthy middle classes. See Madhav Gadgil & Ramachandra Guha, *Ecological Conflicts and the Environmental Movement in India*, in DEVELOPMENT AND ENVIRONMENT - SUSTAINING PEOPLE AND NATURE 101, 130-1 (Dharam Ghai ed., 1994).
- ¹⁴ Adil Khan, *Sustainable Development: The Key Concepts, Issues and Implications*, 3/2 SUSTAINABLE DEV. 63-69 (1995).
- ¹⁵ PERCIVAL, R.V. ET AL. ENVIRONMENTAL REGULATION - LAW SCIENCE, AND POLICY - 1995 SUPPLEMENT 4 (1995).
- ¹⁶ Hugh J. Marbury, *Hazardous Waste Exportation : The Global Manifestation of Environmental Racism*, 28 VAND. J. TRANSNAT'L L.251 (1995).
- ¹⁷ See Barton H. Thompson, Jr. *Foreword*, 15 STAN. ENVTL. L.J. viii (1996).
- ¹⁸ A. Dan Tarlock, *City Versus Countryside: Environmental Equity in Context*, 21 FORDHAM URB. L.J. 461 (1994).
- ¹⁹ Neil Popovic, *Pursuing Environmental Justice With International Human Rights and State Constitutions*, 15 STAN. ENVTL. L.J. 338, 345 (1996).
- ²⁰ COMMISSION FOR RACIAL JUSTICE UNITED CHURCH OF CHRIST, *supra* note 6.

- 21 *Id.* at 17.
- 22 *See e.g.*, Fisher, *supra* note 12, at 293 and Marianne Lavelle & Marcia Coyle, *supra* note 11.
- 23 Hearings Before the House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 103d Cong., 1st Sess. (Statement of Robert Bullard, Mar. 3, 1993) at 46.
- 24 Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 YALE L.J. 1383, 1395 (1994).
- 25 COMMISSION FOR RACIAL JUSTICE UNITED CHURCH OF CHRIST, *supra* note 6, at 7.
- 26 As some instances show, it is not even certain that waste treatment facilities will draw most of their workforce from the host communities. Thus, in the case of a Westinghouse facility in Chester City, Pennsylvania, only 38% of the maintenance jobs and 20% of the management jobs were held by residents, *see* 56 OCCUPATIONAL HAZARDS 4, 48 (1994).
- 27 Eleanor N. Metzger, *Driving the Environmental Justice Movement Forward: The Need for a Paternalistic Approach*, 45 CASE W. RES. L. REV. 379 (1994).
- 28 Dorceta E. Taylor, *Environmentalism and the Politics of Inclusion*, in CONFRONTING ENVIRONMENTAL RACISM - VOICES FROM THE GRASSROOTS 53, 55 (Robert D. Bullard ed., 1993). Lazarus, *supra* note 1, at 808, 822.
- 29 Also known as NIMBY and LULU. *See, e.g.*, Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 YALE L.J. 1383 (1994).
- 30 BARRY G. RABE, BEYOND NIMBY: HAZARDOUS WASTE SITING IN CANADA AND THE UNITED STATES (1994).
- 31 The Clean Water Act 33 U.S.C. §§ 1251-1387 (1987), the Clean Air Act 42 U.S.C. §§ 7401 et seq. (1988), Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9657 (1988) [hereinafter CERCLA] and Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992 (1988) are some of the environmental law statutes used to challenge environmental injustice. *See* the case of *Bean v. South Western Waste Management Corporation*, 482F. Supp. 673 (S.D. Tex. 1979).
- 32 U. S. CONST. amend. XIV, § 1.
- 33 *See* Marbury, *supra* note 16.
- 34 *See* *Washington v. Davis* 426 U.S. 229 (1976) and *Arlington Heights v. Metropolitan Housing Development Corporation* 429 U.S. (1977).
- 35 42 U.S.C. §7604(a). On these issues, *see* ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION - LAW SCIENCE, AND POLICY 666-73 (1992).
- 36 *See* Beverly McQueary Smith, *Recent Developments in Citizens' Suits Under Selected Federal Environmental Statutes*, C981 A.L.I.-A.B.A. 701 (1995).
- 37 *E.g.*, 42 U.S.C. §7604(d).
- 38 484 U.S. 49 (1987). On this point, *see* Robert Wiygul, *Gwaltney Eight Years Later: Proving Jurisdiction and Article III Standing in Clean Water Act Citizen Suits*, 8 TUL. ENVTL. L.J. 435 (1995).
- 39 112 S.Ct. 2130 (1992).
- 40 *See* Harold Feld, *Saving the Citizen Suit: The Effect of Lujan v. Defenders of Wildlife and the Role of Citizens Suits in Environmental Enforcement*, 19 COLUM. J. ENVTL. L. 141 (1994).
- 41 *But see* Michael W. Steinberg & Tim A. Pohle, *Environmental Justice and RCRA Permits: Nothing is quite What it Seems*, 26/22 ENVIRON REPORT-BNA 1025 (4) (6 Oct. 1995).

- 42 Federal Actions to Address Environmental Justice and Minority Populations in Low-Income Populations, Executive Order No. 12,898, 59 Fed. Reg. 7629 (1994).
- 43 Todd Gitlin, *La droite américaine manipule le sentiment national*, 500 LE MONDE DIPLOMATIQUE 6 (Nov. 1995).
- 44 On reservation issues in India, see S. KHANNA, RESERVATION AND ITS IMPLICATIONS (1994) and JULIO FAUNDEZ, AFFIRMATIVE ACTION - INTERNATIONAL PERSPECTIVES (1994). On communalism, see e.g., P. H. Rohini, *Struggle Against Communalism - Defining a Positive Alternative*, XXVIII/43 ECON. & POL. WLKY. 2239-44 (23 Oct. 1993).
- 45 The comparison between African-Americans and Harijans has been undertaken before in the context of political participation, during the years of the civil rights movement. See SIDNEY VERBA ET AL., CASTE, RACE AND POLITICS - A COMPARATIVE STUDY OF INDIA AND THE UNITED STATES (1971).
- 46 Kent E. Portney, *Environmental Justice and Sustainability: Is There a Critical Nexus in the Case of Waste Disposal or Treatment Facility Siting?* 21 FORDHAM URB. L.J. 827, 833 (1994).
- 47 On risk redistribution as opposed to risk elimination, see Eileen Gauna, *Federal Environmental Citizen Provisions: Obstacles and Incentives on the Road to Environmental Justice*, 22/1 ECOLOGY L.Q. 1, 29 (1995).
- 48 Lazarus, *supra* note 1 at 796-806.
- 49 Marc Pallemerts, *International Environmental Law From Stockholm to Rio: Back to the Future?*, in GREENING INTERNATIONAL LAW 1 (Philippe Sands ed., 1993).
- 50 See generally THOMAS M. FRANCK, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS (1995).
- 51 On the principle of Common but Differentiated Responsibility, See, e.g., PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW I - FRAMEWORKS, STANDARDS AND IMPLEMENTATION (1995).
- 52 See Article 12 of the International Covenant on Economic, Social and Cultural Rights - Done at New York, 16 Dec. 1966, reprinted in 6 I.L.M. 360 (1967) and Article 6 of the United Nations: International Covenant on Civil and Political Rights, 16 Dec. 1966, reprinted in 6 I.L.M. 368 (1967).
- 53 See *Human Rights and the Environment - Final Report Prepared by Mrs Fatma Zohra Ksentini, Special Rapporteur*, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-sixth Session, 1994, UN Doc. E/CN.4/Sub.2/1994/9.
- 54 See General Assembly Resolution 41/128, *Declaration on the Right to Development*, 4 Dec. 1986, Resolutions and Decisions Adopted by the General Assembly During its 41th Session, 16 Sept. - 19 Dec. 1986, GAOR 41th Sess., Supp.53 (A/41/53).
- 55 See Russel Lawrence Barsh, *Indigenous Peoples in the 1990s: From Object to Subject of International Law?*, 7 HARV. HUM. RTS. J. 33, 43 (1994).
- 56 International Labour Organization (1989) Convention Concerning Indigenous and Tribal Peoples in Independent Countries - Adopted by the General Conference, June 27, 1989, reprinted in 28 I.L.M. 1382.
- 57 See, e.g., IBRAHIM F.I. SHIHATA, THE WORLD BANK INSPECTION PANEL (1994).

