

# Race and Environmental Justice in the United States

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I. RACISM AND ENVIRONMENTAL INEQUITY . . . . .	319
II. THE NATION'S DUMPING GROUNDS . . . . .	324
III. THE ENVIRONMENTAL JUSTICE MOVEMENT . . . . .	327
A. <i>The Environmental And Civil Rights Movements</i> . . . . .	327
B. <i>Case study: Los Angeles</i> . . . . .	329
C. <i>Case Study: Dallas</i> . . . . .	332
IV. CONCLUSION . . . . .	334

No segment of American society should have a monopoly on a clean environment. Nevertheless, some communities are forced to bear the brunt of this nation's pollution problem. Industrial toxins, polluted air and drinking water, and the siting of municipal landfills, lead smelters, incinerators, and hazardous waste facilities have had a disproportionate impact upon people of color, working class communities, and the poor.<sup>1</sup>

Ecological inequities in the United States result from a number of factors, including the distribution of wealth, housing and real estate practices, and land use planning.<sup>2</sup> Taken together, these factors give rise to what can be called "environmental racism": practices that place African Americans, Latinos, and Native Americans at greater health and environmental risk than the rest of society. This paper analyzes the causes and impacts of environmental inequities in the United States. Part I examines the links between institutional racism and ecological disparities. Part II focuses on how institutional racism affects government practices in the siting of municipal and hazardous waste disposal facilities. Part III surveys the efforts of people of color to achieve environmental justice in the United States.

## I. RACISM AND ENVIRONMENTAL INEQUITY

Despite attempts made by the U.S. government to level the playing field, African American, Latino, and Native American communities have borne a disproportionate share of environmental and health risks. While both class and

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1. See ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* 1-24 (1990) [hereinafter *DUMPING IN DIXIE*].

2. ROBERT D. BULLARD, *INVISIBLE HOUSTON: THE BLACK EXPERIENCE IN BOOM AND BUST 60-75* (1987) [hereinafter *INVISIBLE HOUSTON*].

race determine the distribution of environmental hazards, racial minorities are more likely to be exposed to environmental threats than are whites of the same social class.<sup>3</sup> Race is a powerful predictor of many environmental hazards, including the distribution of air pollution,<sup>4</sup> the location of municipal solid waste facilities,<sup>5</sup> the location of abandoned toxic waste sites,<sup>6</sup> toxic fish consumption,<sup>7</sup> and lead poisoning in children.<sup>8</sup>

Lead poisoning, for example, affects between three and four million children, most of whom are African Americans and Latinos living in urban areas. A 1988 study by the federal Agency for Toxic Substances and Disease Registry found that among children five years old and younger living in urban areas of more than one million people, the percentage of African Americans with excessive levels of lead in their blood far exceeds the percentage of whites with excessive levels.<sup>9</sup> In families earning less than \$6,000 per year, 68% of African American children have lead poisoning, compared with 36% of white children. In families with annual incomes exceeding \$15,000, more than 38% of African American children suffer from lead poisoning, compared with 12% of white children.<sup>10</sup> Thus, even when income is held constant, African American children are two to three times more likely than white children to suffer from lead poisoning.

Lead poisoning is a preventable disease that then Secretary of Health and Human Services Louis Sullivan has called the "number one environmental threat to the health of children in the United States."<sup>11</sup> Yet very little has been done to eliminate this preventable disease because the groups most affected by it are underrepresented in the public and private institutions best

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3. For an in-depth discussion of studies that explore race and class as alternative causalities of environmental pollution see RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE (Bunyan Bryant & Paul Mohai eds., 1992) [hereinafter RACE AND INCIDENCE].

4. A. Myrick Freeman III, *Distribution of Environmental Quality*, in ENVIRONMENTAL QUALITY ANALYSIS 243, 264 (Allen V. Kneese & Blair T. Bower eds., 1972); Michel Gelobter, *The Distribution of Air Pollution by Income and Race* (June 1988) (paper presented at the Second Symposium on Social Science in Resource Management, Urbana, Ill., on file with author). Cf. Leonard Gianessi et al., *The Distributional Effects of Uniform Air Pollution Policy in the United States*, 93 Q.J. ECON. 281, 296 (1979) (finding U.S. air pollution regulations disproportionately benefit nonwhites).

5. INVISIBLE HOUSTON, *supra* note 2, at 60-75; Robert D. Bullard, *Solid Waste Sites and the Black Houston Community*, 53 SOC. INQUIRY 273 (1983) [hereinafter Bullard, *Solid Waste Sites*].

6. UNITED CHURCH OF CHRIST COMM'N FOR RACIAL JUSTICE, TOXIC WASTES AND RACE IN THE UNITED STATES xiii-xiv (1987).

7. Patrick C. West et al., *Minority Anglers and Toxic Fish Consumption: Evidence from a State Wide Survey of Michigan*, in RACE AND INCIDENCE *supra* note 3, at 100.

8. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, U.S. DEP'T OF HEALTH AND HUMAN SERV., *THE NATURE AND EXTENT OF LEAD POISONING IN CHILDREN IN THE UNITED STATES: A REPORT TO CONGRESS* (1988).

9. *Id.* at I-12.

10. *Id.* at V-7.

11. Louis Sullivan, Remarks at the First Annual Conference on Childhood Lead Poisoning (Oct. 7, 1991), in ALLIANCE TO END CHILDHOOD LEAD POISONING, PREVENTING CHILD LEAD POISONING: FINAL REPORT, at A-2 (1991) (emphasis deleted).

positioned to address the problem. The underrepresentation of people of color in government, law, and business is partially a manifestation of deeply rooted institutional racism.<sup>12</sup> Racism has long been a "conspicuous part of the American sociopolitical system and, as a result, black people in particular, and ethnic and racial minority groups of color, find themselves at a disadvantage in contemporary society."<sup>13</sup> This continues to be the case. Because a range of environmental decisions — from the prevention of lead poisoning to the siting of waste facilities — involve complex interactions among governmental, legal, and commercial actors, institutional racism leads to environmental racism. As a result, whites have maintained their quality of life at the expense of people of color. Minorities remain vulnerable to decisions that adversely affect the economic vitality of their neighborhoods, the quality of their schools, and the likelihood of exposure to environmental toxins.

Communities of color have been systematically targeted for the siting of noxious facilities such as sewer treatment plants, garbage dumps, landfills, incinerators, hazardous waste disposal sites, lead smelters, and other risky technologies, thereby exacerbating existing inequities. African Americans are especially hard hit by environmental racism, as they are by other forms of institutionalized discrimination.<sup>14</sup> No matter what their education, occupation, or income level, African Americans suffer from less effective educational systems, lower quality housing, more dilapidated neighborhoods, increased mortality rates, and greater environmental threats than do whites.<sup>15</sup> African American communities have long struggled to get paved streets, sidewalks, running water and sewer lines, street lights, and fire and police stations. They have also protested inadequate garbage collection and the construction of freeways through their neighborhoods. Nevertheless, many such protests have gone unheeded because African Americans are underrepresented in key decision-making positions.

The environmental problems facing communities of color are exacerbated by other institutional barriers, such as housing discrimination and de facto

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12. See JOE R. FEAGIN & CLAIRECE B. FEAGIN, *DISCRIMINATION AMERICAN STYLE: INSTITUTIONAL RACISM AND SEXISM* (1978); FRANKLIN J. JAMES ET AL., *MINORITIES IN THE SUNBELT* 138 (1984); Robert D. Bullard & Joe R. Feagin, *Racism and the City*, in *URBAN LIFE IN TRANSITION* 55 (Mark Gottdiener & Chris G. Pickvance eds., 1991).

13. James M. Jones, *The Concept of Racism and Its Changing Reality*, in *IMPACTS OF RACISM ON WHITE AMERICANS* 27, 47 (Benjamin P. Bowser & Raymond G. Hunt eds., 1981).

14. FEAGIN & FEAGIN, *supra* note 12, at 1-18; Bullard & Feagin, *supra* note 12, at 55-76.

15. DUMPING IN DIXIE, *supra* note 1, at 1-24; Robert D. Bullard, *Endangered Environs: The Price of Unplanned Growth in Boomtown Houston*, 7 *CAL. SOCIOLOGIST* 85, 85 (1984); Robert D. Bullard & Beverly H. Wright, *The Politics of Pollution: Implications for the Black Community*, 47 *PHYLON* 71 (1986); Robert D. Bullard & Beverly H. Wright, *Blacks and the Environment*, 14 *HUMBOLDT J. SOC. REL.* 165 (1986); Douglas S. Massey & Nancy A. Denton, *Trends in the Residential Segregation of Blacks, Hispanics, and Asians: 1970-1980*, 52 *AM. SOC. REV.* 802 (1987).

residential segregation, that make it difficult for African Americans and Latinos to buy their way out of health-threatening physical environments. Government policies and the practices of the banking and housing industries have created communities that segregate African Americans, and to a lesser extent, Latinos and other minorities, from whites.<sup>16</sup>

Millions of African Americans and Latinos today live in geographically isolated, economically depressed, and polluted urban neighborhoods.<sup>17</sup> In the heavily populated South Coast air basin of Los Angeles, "71% of African Americans and 50% of Latinos reside in the areas with the most polluted air, while only 34% of . . . whites do."<sup>18</sup> Similarly, most of Richmond, California's African Americans live next to the city's petrochemical corridor — a cluster of some 350 industrial facilities that handle hazardous waste. Although only half of the city's 80,000 people are African Americans, African Americans make up 72-94% of the population in the fourteen Richmond neighborhoods closest to this corridor.<sup>19</sup>

In short, all communities are not created equal. Housing and development policies limit social mobility, diminish job opportunities, and decrease environmental choices for millions of Americans.<sup>20</sup> As one scholar has put it, these policies create an American apartheid that, "while lacking overt legal sanction, comes closest to the system even now being reformed in the land of its invention."<sup>21</sup>

Why do some communities get dumped on while others do not? Although waste generation correlates directly with per capita income, few garbage

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16. JAMES A. KUSHNER, APARTHEID IN AMERICA 130 (1980); Massey & Denton, *supra* note 15, at 823.

17. INVISIBLE HOUSTON, *supra* note 2, at 60-75; JOHN R. LOGAN & HARVEY L. MOLOTCH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 158 (1987); SUE POLLACK & JOANN GROZUCZAK, REAGAN, TOXICS, AND MINORITIES 20 (1984); Robert D. Bullard, *Ecological Inequities and the New South: Black Communities Under Siege*, 17 J. ETHNIC STUD. 101 (1990); Robert D. Bullard & Beverly H. Wright, *Toxic Waste and the African American Community*, 13 URB. LEAGUE REV. 67 (1990).

18. Paul Ong & Evelyn Blumenberg, Race and Environmentalism 9 (Mar. 14, 1990) (unpublished manuscript on file at Graduate School of Architecture and Urban Planning, UCLA) (based on evaluation of areas with most polluted air conducted by Southern California Air Quality Management District); see also ERIC MANN, L.A.'s LETHAL AIR: NEW STRATEGIES FOR POLICY, ORGANIZING, AND ACTION 31 (1991).

19. CITIZENS FOR A BETTER ENV'T, RICHMOND AT RISK: COMMUNITY DEMOGRAPHICS AND TOXIC HAZARDS FROM INDUSTRIAL POLLUTION 121 (1989). Richmond's industrial facilities generate over 800,000 pounds of toxic air contaminants, nearly 18,000 pounds of toxic pollutants in waste water, and about 179,000 tons of hazardous waste each year. *Id.* at 1. The five largest industrial polluters in the city include the Chevron oil refinery, Chevron Ortho pesticide plant, Witco Chemical, Airco Industrial Gases, and the ICI (formerly Stauffer Chemical) pesticide plant. Chevron's Ortho pesticide plant generates over 40% of the total hazardous waste in Richmond. It incinerates the bulk of this waste on site.

20. See generally, IN SEARCH OF THE NEW SOUTH: THE BLACK URBAN EXPERIENCE IN THE 1970S AND 1980S (Robert D. Bullard ed., 1989); JOE R. FEAGIN, FREE ENTERPRISE CITY: HOUSTON IN POLITICAL AND ECONOMIC PERSPECTIVE (1987); Bullard, *Solid Waste Sites*, *supra* note 5; Joe T. Darden, *The Status of Urban Blacks 25 Years after the Civil Rights Act of 1964*, 73 SOC'Y. AND SOC. RES. 160 (1989).

21. ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL 4 (1992).

dumps and toxic waste facilities are actually built in the suburbs. Following the NIMBY principle — "not in my backyard" — white homeowners have repeatedly mobilized against and defeated proposed sitings of so-called "locally unwanted land uses" (LULUs) — such as garbage dumps, landfills, incinerators, sewer treatment plants, garbage transfer stations, and recycling centers — in their neighborhoods. Many have used the same approach to defeat proposed sitings of prisons, drug treatment units, low-income public housing, and homeless shelters in their communities.<sup>22</sup> By contrast, it has been difficult for millions of African Americans in segregated neighborhoods to say "not in my backyard" when they do not even own backyards.<sup>23</sup> Whereas two-thirds of all Americans own their homes, only about 44% of African Americans do.<sup>24</sup> And while 74% of middle-class whites own their own homes, only about 59% of middle-class African Americans do.<sup>25</sup>

An individual's ability to leave a health-threatening physical environment is usually directly correlated with affluence. However, racial barriers, such as the prejudice of sellers, impede the ability of affluent African Americans to leave environmentally hazardous neighborhoods. Affluent African Americans (those with incomes of \$50,000 or more) are as residentially segregated as African Americans on welfare.<sup>26</sup> Blacks and whites do not have the same opportunities to vote with their feet and escape unhealthy physical environments.<sup>27</sup> When coupled with the fact that federal, state, and local policies on economic development and the environment rarely reflect equity concerns, the inability to escape environmental hazards often leaves minority communities unprotected.<sup>28</sup>

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22. Bullard & Feagin, *supra* note 12, at 85-95; Sam Roberts, *In My Backyard? Where New York City Puts Its Problems*, NEW YORK TIMES, Dec. 6, 1992, § 1, at 54.

23. Robert D. Bullard, *Environmentalism, Economic Blackmail, and Civil Rights: Competing Agendas Within the Black Community*, in COMMUNITIES IN ECONOMIC CRISIS 190-99 (John Gaventa et al. eds., 1989); Robert D. Bullard & Beverly H. Wright, *Environmentalism and the Politics of Equity: Emergent Trends in the Black Community*, MID-AM. REV. OF SOC., Winter 1987, at 21.

24. Robert D. Bullard, *Blacks and the American Dream of Housing*, in RACE, ETHNICITY, AND HOUSING IN THE UNITED STATES 53-68 (Jamshid A. Momeni ed., 1986); Darden, *supra* note 20, at 160-173.

25. Consulting firms advising cities on the location of incinerator sites have recognized that some communities are more likely than others to mobilize against LULUs. *See, e.g.*, Cerrell Associates, *Political Difficulties Facing Waste-to-Energy Conversion Plant Siting* 65 (1984) (report prepared for California Waste Management Board advising it to site incinerators in "neighborhoods least likely to express opposition — older, conservative, and lower socioeconomic neighborhoods").

26. *See* Nancy A. Denton & Douglas S. Massey, *Residential Segregation of Blacks, Hispanics, and Asians by Socioeconomic Status and Generation*, 69 SOC. SCI. Q. 797 (1988).

27. DUMPING IN DIXIE, *supra* note 1, at 7; A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY 144-45 (Gerald D. Jaynes & Robin M. Williams eds., 1989).

28. *See* DUMPING IN DIXIE, *supra* note 1, at 33; LOGAN & MOLOTCH, *supra* note 17, at 95-96.

## II. THE NATION'S DUMPING GROUNDS

Few national studies have focused on the socio-demographic characteristics of populations living near toxic waste sites. The first such private study was conducted by the United Church of Christ Commission for Racial Justice, a church-based civil rights organization.<sup>29</sup> Its report, *Toxic Wastes and Race*, identified race as a more accurate predictor than income, home ownership rates, and property values of the location of abandoned toxic waste sites.<sup>30</sup> The study also found that: (1) 60% of African Americans live in communities with at least one abandoned toxic waste site; (2) of the five largest commercial hazardous waste landfills, three, which by themselves account for 40% of the nation's total estimated landfill capacity, are located in predominately African American or Latino communities; and (3) African Americans are heavily overrepresented in the populations of those cities with the largest number of abandoned toxic waste sites — Memphis, St. Louis, Houston, Cleveland, Chicago, and Atlanta.<sup>31</sup>

Like landfills, hazardous waste incinerators tend to be located in communities with large minority populations, low incomes, and low property values. A 1990 Greenpeace report, *Playing with Fire*, found that (1) the minority portion of the population in communities with existing incinerators is 89% higher than the national average; (2) communities where incinerators are proposed have minority populations 60% higher than the national average; (3) average income in communities with existing incinerators is 15% below the national average, (4) property values in communities with incinerators are 38% lower than the national average; and (5) average property values in communities where incinerators are proposed are 35% lower than the national average.<sup>32</sup>

Environmental inequities are particularly acute in areas with strained race relations. In the southern United States, pro-business attitudes, lax enforcement of environmental regulations, and discriminatory industrial practices have combined to create exploitative development policies.<sup>33</sup> Waste facility siting in Houston provides one disturbing illustration of these trends. Known as the "golden buckle of the Sunbelt,"<sup>34</sup> Houston experienced unparalleled economic and population growth in the 1970s. That growth resulted in a garbage crisis, and the city's African American neighborhoods suffered the

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29. COMM'N FOR RACIAL JUSTICE, *supra* note 6. The EPA, silent on this issue for the first two decades of its existence, finally commissioned a study that was published in June, 1992. See ENVIRONMENTAL EQUITY, *infra* note 55.

30. *Id.* at xiii-xiv.

31. *Id.* at 18-19.

32. PAT COSTNER & JOE THORNTON, *PLAYING WITH FIRE* 48-49 (1990).

33. See DUMPING IN DIXIE, *supra* note 1, at 17-21.

34. INVISIBLE HOUSTON, *supra* note 2, at 7.

consequences of Houston's increased demand for municipal solid waste facilities.<sup>35</sup> From the early 1920s to the late 1970s, all five of Houston's city-owned municipal landfills and six of its eight garbage incinerators were located in black neighborhoods. Of the remaining facilities, one was located in a Latino neighborhood and another in an industrial park near a predominantly white neighborhood. No city-owned landfill was sited in a low- or middle-income white Houston neighborhood during this period.

From 1970 to 1978, three of the four privately-owned landfills used to dispose of Houston's garbage were located in two African American neighborhoods, Almeda Plaza and Northwood Manor. The fourth privately-owned landfill was located in an industrial area south of the racially mixed Chattwood subdivision. A large industrial park served as a buffer between the landfill and the residential area. Since the landfill site opened, the sector of Houston in which the Chattwood subdivision lies has undergone a dramatic racial transformation: between 1970 and 1980, its African American population grew from 40% to 70%.<sup>36</sup> Overall, although African Americans made up only 28% of Houston's population during these years, 82% of the public and private municipal landfill sites were located in black neighborhoods.<sup>37</sup>

Nevertheless, some minority communities have challenged attempts to site garbage dumps in their neighborhoods.<sup>38</sup> In the early 1970s, for example, demonstrations by local residents pressured city officials to close a garbage dump in Trinity Gardens, a predominantly black neighborhood in Houston. In 1979, residents of Northwood Manor challenged local city officials, the state, and the waste disposal giant Browning-Ferris Industries (a company headquartered in Houston) for selecting their community to host a municipal landfill. The residents cited significant statistical evidence that indicated a history of locating municipal waste disposal facilities in Houston's African American neighborhoods. They also formed the Northeast Community Action Group (NECAG) and filed one of the first class action lawsuits challenging the siting of a waste facility as a violation of civil rights. In this case, *Bean v. Southwestern Waste Management Corp.*, a federal judge failed to find discrimination.<sup>39</sup>

The *Bean* case is not unique. As recently as 1991, a biracial community group known as Residents Involved in Saving the Environment (RISE) charged the King and Queen County (Virginia) Board of Supervisors with racial discrimination in its selection of a primarily African American

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35. *Id.* at 70-75.

36. INVISIBLE HOUSTON, *supra* note 2, at 74.

37. *Id.*

38. See part III *infra* for a discussion of successes in Los Angeles and Dallas.

39. 482 F. Supp 673 (S.D. Tex. 1979), *aff'd*, 782 F.2d 1038 (5th Cir. 1986).

community as the site of a 420-acre regional landfill. In June 1991, a U.S. district judge for the Eastern District of Virginia ruled in *R.I.S.E. v. Kay* that the siting did not violate the equal protection clause of the Fourteenth Amendment, even though the county had placed all three of its landfills in predominantly black communities.<sup>40</sup> While acknowledging that the placement of landfills in the county — which is 50% black and 50% white — from 1969 to 1991 had a disproportionate impact on black residents, the court found no constitutional violation.<sup>41</sup>

African Americans are not the only group affected by environmental racism. Latinos and Native Americans are harmed as well. For example, Chemical Waste Management, Inc., the world's largest waste disposal company, selected Kettleman City, California, as a site for a proposed hazardous waste incinerator. Kettleman City is a small farmworker community of nearly 1,200 residents, 40% of whom speak only Spanish. Yet Kings County, where Kettleman City is located, conducted public hearings and prepared environmental impact reports and other written materials in English only. In 1991, local residents filed a class action lawsuit challenging the impact report, the exclusive use of English to communicate risks to local residents, and Chemical Waste Management's operation of hazardous waste incinerators in predominantly minority communities.<sup>42</sup> In January 1992, a California Superior Court judge overturned the Kings County Board of Supervisors' approval of the incinerator because of its impact on air quality in the agriculture-rich Central Valley.<sup>43</sup> The judge ruled that the county's environmental impact report was inadequate and that the county had not involved local residents in the decision because it had failed to provide Spanish translations of material about the project.<sup>44</sup>

Native American lands pose a special case for environmental protection.<sup>45</sup> Few reservations have environmental regulations or waste management infrastructures equivalent to those of the state or federal governments. As federal and state environmental regulations have become more stringent in recent years, Native American reservations have become prime targets of

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40. 768 F. Supp. 1141 (E.D. Va. 1991).

41. *Id.* at 1144.

42. All three of Chemical Waste Management's currently operating incinerators are located in communities with high concentrations of minorities: on Chicago's Southeast side (72% black and 11% Latino); in Sauget, Illinois (73% black); and in Port Arthur, Texas (40% black and 6% Latino). The company has two incinerators under development — also in communities with high concentrations of minority populations: in Emelle, Alabama (90% black), and in Kettleman City, California (95% Latino). For a detailed account of this dispute, see Miles Corwin, *Unusual Allies Fight Waste Incinerator*, L.A. TIMES, Feb. 24, 1991, at A3, A36; Julia Flynn Siler, *'Environmental Racism?' It Could Be a Messy Fight*, BUS. WK., May 20, 1991, at 116.

43. *El Pueblo Para el Aire y Agua Limpio (People for Clean Air and Water) v. County of Kings*, Civ. No. 366045 (Cal. Super. Ct., Sacramento Cty. Jan. 1992).

44. *Judge Overturns Approval of Commercial Waste Incinerator*, L.A. TIMES, Jan. 1, 1992, at A24.

45. Marjane Ambler, *The Lands the Feds Forgot*, SIERRA, May-June 1989, at 44-48.

waste disposal firms. The special quasi-sovereign status of Indian nations, which are subject to federal but not most state regulations, affords disposal companies an opportunity to skirt many state-level environmental regulations. As a result, Native American lands from New York to California are threatened environmentally.<sup>46</sup> More than three dozen reservations have been targeted for landfills and incinerators. Economic conditions on reservations — such as poverty, high unemployment, and few business development opportunities — make reservations especially vulnerable to garbage imperialism, particularly when government and industry promote the construction of a waste facility as economic development. This particular tactic succeeded in southern California where the Campo Indians agreed in 1990 to host a hazardous waste facility.<sup>47</sup>

Other Native American communities have had greater success in blocking garbage imperialism. By now, nearly all of the proposals for siting waste facilities on Native American lands have been defeated or are under review. In 1991, the Choctaws in Philadelphia, Mississippi defeated a plan to locate a 466-acre hazardous waste landfill on their lands.<sup>48</sup> In the same year, a Connecticut company that had never before operated a municipal landfill proposed building a 6,000 acre landfill on Sioux lands in South Dakota. The project, later attacked in an article entitled *Dances with Garbage*,<sup>49</sup> was thwarted by a grassroots group known as the Good Road Coalition, which led to a recall election of the Tribal Council government and the proposal's rejection.

### III. THE ENVIRONMENTAL JUSTICE MOVEMENT

#### A. *The Environmental And Civil Rights Movements*

The resistance of communities to environmental inequities is not a new development. However, while earlier protests were largely ignored by policymakers, environmentalists, and the media, present-day efforts have been legitimized by the convergence of the environmental and social justice movements.

Much early activism took place before the first Earth Day in 1970. In

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46. Conger Beasley, Jr., *Of Pollution and Poverty: Deadly Threat on Native Lands*, BUZZWORM, Sept-Oct. 1990, at 39-45; Ward Churchill & Winona LaDuke, *Native America: The Political Economy of Radioactive Colonialism*, INSURGENT SOCIOLOGIST, Spring 1986, at 51-58; Robert Tomsho, *Dumping Grounds: Indian Tribes Contend with Some of Worst of America's Pollution*, WALL ST. J., Nov. 29, 1990, at A1, A6.

47. Len Hall, *Ranchers Protest Planned Landfill on Indian Reservation*, L.A. TIMES, Aug. 25, 1992, at B1.

48. Adam Nossiter, *Proposed Toxic Waste Dump Divides Choctaws, Alarms Environmentalists*, ATLANTA J.-CONST., Feb. 5, 1991, at A2.

49. Thomas A. Daschle, *Dances with Garbage*, CHRISTIAN SCI. MON., Feb. 14, 1991, at 18.

1967, for example, the drowning of an eight-year-old African American girl at a garbage dump — located next door to an elementary school in the middle of an African American neighborhood — triggered a campus riot at the predominantly African American Texas Southern University. The student protest escalated into a serious disorder, in which students hurled rocks and bottles at police.<sup>50</sup> Gunshots were fired and a police officer was killed by a ricocheting bullet. Nearly 500 students were cleared from the dormitories, and many of the protest's leaders were arrested.<sup>51</sup> This incident was one of the first instances when civil rights activists, perhaps inadvertently, protested against environmental racism.

Despite such events, it was not until the early 1980s that a national movement for environmental justice developed in several mainstream civil rights organizations. A series of protests in 1982 in Warren County, North Carolina, a rural, predominantly African American county selected as the burial site for 30,000 cubic yards of soil contaminated with highly toxic PCBs (polychlorinated biphenyls), provided the catalyst for that development.

A number of national African American civil rights groups, including the United Church of Christ Commission for Racial Justice, the Southern Christian Leadership Conference, and the Congressional Black Caucus, led the protest in Warren. Civil rights activists, government officials, religious leaders, and local residents marched in protest against "Hunt's Dump," a PCB landfill nicknamed for then Governor Jim Hunt. More than 500 protesters were jailed.<sup>52</sup> Although the demonstrations were unsuccessful in halting the landfill construction, the protests marked the first time African Americans mobilized in such broad opposition to what they defined as environmental racism.

The demonstrations also prompted District of Columbia Delegate Walter Fauntroy, who was chairman of the Congressional Black Caucus and an active participant in the protests, to initiate the 1983 U.S. General Accounting Office (GAO) study of hazardous waste landfill siting in EPA Region IV, which includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.<sup>53</sup> The GAO study found a strong correlation between the location of offsite hazardous waste landfills and the racial and socioeconomic makeup of surrounding communities. African Americans made up the majority of the population in three of the four communities in Region IV that the study identified as containing offsite hazardous waste landfills.<sup>54</sup>

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50. INVISIBLE HOUSTON, *supra* note 2, at 110-11.

51. NATIONAL ADVISORY COMM'N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 40-41 (1968).

52. Ken Geiser & Gerry Waneck, *PCBs and Warren County*, SCIENCE FOR THE PEOPLE, July-Aug., 1983, at 13, 16.

53. U.S. GEN. ACCOUNTING OFFICE, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES 1 (1983).

54. The four sites included Chemical Waste Management (Sumter County, Ala.), SCA Services

Although African Americans made up only one-fifth of the region's total population, they represented three-fourths of the population in communities with offsite landfills. Nearly a decade later, these ecological imbalances have not been reversed. African Americans still make up about one-fifth of the population in Region IV, but the two operating offsite hazardous waste landfills in the region are located in zip codes where African Americans make up the majority of the population.

Pressure from grassroots groups, academicians, and environmental justice activists regarding environmental issues ranging from lead pollution to the siting of landfills and incinerators also prompted the EPA to take several positive steps in addressing the equity question. The agency established an internal Work Group on Environmental Equity, which issued a two-volume final report in June 1992,<sup>55</sup> and created an Office of Environmental Equity and an Environmental Equity Cluster. However, grassroots groups have not waited for the EPA or local governments to solve environmental problems in their communities. Many groups, like those in Los Angeles and Dallas, have succeeded in forcing changes in government policy. The following sections examine these efforts.

#### B. *Case study: Los Angeles*

With a population of 3.5 million, Los Angeles is the nation's second largest city. It is one of the most culturally and ethnically diverse cities in the United States. Latinos, Asians, and Pacific Islanders, African Americans, and Native Americans now constitute 63% of its population.

Eight of ten African Americans in Los Angeles and about half of the city's Latinos live in segregated neighborhoods. One such neighborhood, South Central Los Angeles, is over 52% African American and 44% Latino and suffers from years of systematic neglect, infrastructure decay, high unemployment, and poverty. A recent article in the *San Francisco Examiner* described the zip code in which South Central Los Angeles lies as the "dirtiest in the state."<sup>56</sup> The one-square-mile area is saturated with abandoned toxic waste sites, freeways, smokestacks, and waste-water pipes from polluting industries. In 1989 alone, some 18 industrial firms discharged more than 33 million pounds of waste chemicals into its environment.

Los Angeles' growing population has created a mounting waste problem.

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(Sumter County, S.C.), Industrial Chemical Company (Chester County, S.C.), and the Warren County PCB landfill (Warren County, N.C.). *Id.* at 2.

55. U.S. ENVTL. PROTECTION AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISK FOR ALL COMMUNITIES (1992).

56. Jane Kay, *Fighting Toxic Racism: L.A.'s Minority Neighborhood is the 'Dirtiest' in the State*, S.F. EXAMINER, Apr. 7, 1991, at A1 (basing description on toxic release inventory data).

In 1979, under a grant from the EPA, the city developed a plan to build three waste-to-energy incinerators.<sup>57</sup> The mayor and city council appointed several advisory councils and committees between 1981 and 1984 to coordinate the project, known as the Los Angeles City Energy Recovery project or LANCER.

The city council selected South Central Los Angeles as the site for the first of the three incinerators, LANCER 1, designed to handle 1600 tons of waste per day. Proponents of LANCER 1 attempted to hasten the project's implementation in order to help ensure that the other two proposed incinerators, LANCER 2 and 3, would also be authorized. LANCER 2 and 3 were planned for the wealthier and mostly white neighborhoods of Westside and San Fernando Valley; thus, proponents felt that if LANCER 1 were up and running, officials would be hard-pressed to justify canceling plans for LANCER 2 and 3 on health and environmental grounds without encountering charges of racism.<sup>58</sup> The city involved residents in the decision-making process on LANCER 1 only after the city council had approved the final environmental impact report. Although LANCER 1 had been in the works for more than six years, neighborhood residents were not informed about the city-sponsored project until August 1985.

After discovering that the incinerator was to be constructed in their community, six African American women organized community residents into a group called Concerned Citizens of South Central Los Angeles. Concerned Citizens successfully formed a coalition against LANCER 1 that included several national and grassroots environmental groups. Greenpeace was the first national environmental group to join Concerned Citizens; other groups that later joined the fight included Citizens for a Better Environment, National Health Law Program, and the Center for Law in Public Interest. Concerned Citizens also forged alliances with two "slow-growth" groups from Westside: Not Yet New York, a coalition of environmentalists and homeowners, and an anti-incineration group called California Alliance in Defense of Residential Environments (CADRE). Concerned Citizens and its allies conducted an intense campaign to persuade Mayor Tom Bradley to reconsider his support for the LANCER project. In 1987, Mayor Bradley and the Los Angeles City Council killed the project, on which the city had already spent \$12 million dollars.<sup>59</sup>

Just as the city council targeted Los Angeles's largest African American

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57. For a detailed discussion of LANCER, see LOUIS BLUMBERG & ROBERT GOTTLIEB, *WAR ON WASTE: CAN AMERICA WIN ITS BATTLE WITH GARBAGE?* 155-88 (1989); Dick Russell, *Environmental Racism*, *AMICUS J.*, Spring 1989, at 22-32.

58. BLUMBERG & GOTTLIEB, *supra* note 57, at 168; Russell, *supra* note 57, at 22-32; Jesus Sanchez, *The Environment: Whose Movement*, *CAL. TOMORROW*, Fall 1988, at 11-17.

59. Russell, *supra* note 57, at 28-29. The total cost of the project was supposed to be \$170 million. *Incineration Plan Is Garbage — And Worse*, *L.A. TIMES*, Nov. 30, 1986, at pt. 5, p. 5.

neighborhood for the LANCER 1 project, Security Environmental Systems planned to site a hazardous waste incinerator in Vernon, an industrial suburb of 96,000 people located within a mile of East Los Angeles, the city's largest Latino community. Projected to burn about 225,000 tons of hazardous waste per year,<sup>60</sup> the Vernon incinerator was intended as the "vanguard of the entire state program for the disposal of hazardous waste."<sup>61</sup> Residents thought the selection of Vernon was yet another attempt by industry to dump on the Latino community.<sup>62</sup> Mothers of East Los Angeles (MELA), a group of Latino women that had previously fought proposals to locate a prison and an oil pipeline in East Los Angeles, led the fight against the incinerator. The group formed a close alliance with Concerned Citizens and succeeded in obtaining support in the form of technical advice, expert testimony, lobbying, research, and reports from national environmental groups such as Greenpeace, Natural Resources Defense Council, Environmental Defense Fund, Environmental Policy Institute, Citizens Clearinghouse for Hazardous Waste, and National Toxic Campaign. The Western Center on Law and Poverty provided the group with legal assistance.

MELA and its allies targeted three agencies responsible for permitting the Vernon incinerator, the South Coast Air Quality Management District (AQMD), the California Department of Health Services (DHS), and the U.S. Environmental Protection Agency (EPA). The opponents of the incinerator questioned a 1988 DHS decision that allowed the company that had proposed the incinerator, California Thermal Treatment Services (CTTS), to proceed with the project without conducting an environmental impact report. Although the City of Los Angeles, MELA, and their allies filed a lawsuit,<sup>63</sup> the EPA approved the permit for the incinerator, again without an environmental impact report. However, lobbying by MELA, Concerned Citizens, and their allies prompted the California legislature to pass a law requiring permit applicants to conduct environmental impact reports before the construction of toxic waste incinerators.<sup>64</sup> In December 1988, as CTTS was about to start construction on the project, the AQMD instructed the firm to conduct an environmental study and to redesign its original plans because of the new, more stringent California clean air regulations. This decision indicated that political pressure was beginning to cause officials at AQMD to rethink the health risks the facility would pose for nearby East Los Angeles residents. The company challenged AQMD's decision up to the California Supreme Court and lost.<sup>65</sup> In May, 1991, CTTS abandoned the project because

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60. *Id.*

61. Maura Dolan, *Toxic Waste Incinerator Bid Abandoned*, L.A. TIMES, May 24, 1991, at A1, A36.

62. Rick Holguin, *Plan to Build Waste Plant Abandoned*, L.A. TIMES, Oct. 31, 1991, at B3.

63. *Mothers of East Los Angeles v. Kizer*, Civ. No. 701203 (Cal. Super. Ct., Los Angeles 1988).

64. CAL. PUB. RES. CODE § 21151.1 (West 1986 & Supp. 1993).

65. *Security Env'tl. Sys., Inc. v. South Coast Air Quality Mgmt. Dist.*, 229 Cal. App. 3d 110, 280

lawsuits threatened to drive costs well above the \$4 million the company had already spent.<sup>66</sup>

### C. Case Study: Dallas

With just under one million people, 30% of whom are African Americans, Dallas is the seventh-largest city in the United States. Over the years, the city's minority neighborhoods have suffered the consequences of lead smelters operating in their communities. All three of the lead smelters in Dallas are located in predominantly African American and Latino neighborhoods.<sup>67</sup>

One of the city's oldest lead smelters, located in the West Dallas neighborhood, dates back to the 1930s. Of West Dallas's 13,161 residents, more than 85% are African Americans.<sup>68</sup> The lead smelter is located next door to an elementary school and across the street from the West Dallas Boys' Club. A 3,500-unit public housing project is located just 50 feet downwind from the lead smelter's property line.

During the peak period of its operation in the mid-1960s, the plant employed more than 400 people, few of whom lived in the West Dallas neighborhood. The smelter pumped more than 269 tons of lead particles into the West Dallas air each year; these particles were blown by prevailing winds through the doors and windows of nearby residents, and onto West Dallas's streets, ballparks, and playgrounds.<sup>69</sup>

Dallas officials knew as early as 1972 that lead was finding its way into the bloodstreams of children living in two predominantly African American and Latino neighborhoods containing lead smelters, West Dallas and East Oak Cliff.<sup>70</sup> On average, these children suffered a 36% increase in blood lead level. Residents of the neighborhood and environmental groups urged the city to restrict lead emissions and to conduct a large-scale screening program to determine the extent of the public health problem, but the city failed to take immediate action. In 1981, after nearly five decades of complaining to city officials, local residents formed the West Dallas Neighborhood Committee on Lead Contamination. Staff from Common Ground Community Economic Development Corporation, a grassroots self-help and anti-discrimination group, assisted the West Dallas residents in voicing their concerns by testifying at hearings, producing reports, and providing general technical assistance. The city finally took action after a series of articles on lead

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Cal. Rptr. 108 (1991).

66. *Id.*

67. See DUMPING IN DIXIE, *supra* note 1, at 54, 60.

68. *Id.* at 54.

69. *Id.* at 55.

70. *Id.* at 56.

appeared in the local Dallas newspapers.<sup>71</sup> The articles triggered public outrage, several class-action lawsuits, and legal action by the Texas attorney general. Public pressure forced the city to appoint a task force to study the lead problem, angering West Dallas residents who had demanded more immediate action.

In June 1983 the West Dallas plaintiffs — 40 property owners and 370 children, most of whom were poor black residents of the West Dallas public housing project — reached an out-of-court settlement for over \$45 million. The agreement was one of the largest community lead contamination settlements ever negotiated. RSR Corporation, which operated the lead smelter, agreed to institute a soil cleanup program in West Dallas, a blood-testing program for children and pregnant women, and to install new anti-pollution equipment. However, the settlement did not require the smelter to close.

RSR never installed the pollution control equipment at the smelter. In May 1984, the Dallas Board of Adjustments, a city agency responsible for monitoring land-use violations, requested that the city attorney order the smelter permanently closed, charging that the facility violated the city's zoning code. Four months later, the Board succeeded in closing the smelter permanently. RSR completed a superficial cleanup of the area in 1984. Ultimately, it was discovered that the lead smelter had operated for almost fifty years without the necessary use permits. Despite repeated health citations, fines, and citizen complaints against the smelter, Dallas was clearly lax in its enforcement of health and land use regulations in the African American community that had involuntarily hosted the smelter.

A comprehensive cleanup of the West Dallas neighborhood finally began in December 1991, nearly twenty years after the first documentation of the lead problem in the neighborhood. An estimated 30,000 to 40,000 cubic yards of lead-tainted soil will eventually be removed from several West Dallas sites, including school property, the West Dallas Boys Club, and the yards of 140 private homes. The cleanup will cost the U.S. EPA about \$4 million. However, the threat to communities of color is not over. One proposal considered by city officials called for dumping the lead-tainted soil at a landfill in Monroe, Louisiana, a community that is 60% African American.

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71. See, e.g., Richard Dunham, *Lead Poisoning Victim Tells Legislators Her Story*, DALLAS TIMES-HERALD, May 4, 1983, at 1; D.W. Nauss, *EPA Official: Dallas Lead Study Misleading*, DALLAS TIMES-HERALD, Mar. 20, 1983, at 1; D.W. Nauss, *The People vs. The Lead Smelter*, DALLAS TIMES-HERALD, July 17, 1983, at 18-26; D.W. Nauss, *Study Finds EPA Understated Lead Problem*, DALLAS TIMES-HERALD, May 9, 1983, at 1; David Pasztor, *Poisoned Path*, DALLAS TIMES-HERALD, May 10, 1983, at 1.

## IV. CONCLUSION

The burdens of industrial expansion are not shared equally by all members of U.S. society. Low-income and minority communities have borne a disproportionate share of the nation's environmental problems. These communities have had little success in blocking unwanted waste facilities and other polluting industries. Since the early 1980s, however, an environmental justice movement linking environmental groups and civil rights activists has gained strength. These alliances have successfully defeated several government initiatives that would have placed a disproportionate burden on communities of color. In addition, the environmental justice movement has had limited success in broader attacks upon environmental inequities. For example, the Commission for Racial Justice was a major force behind the Environmental Justice Act, a legislative initiative introduced by Congressman John Lewis and Senator Albert Gore in 1992 that will have to be reintroduced since its Senate sponsor has become Vice-President.

Still, legal challenges to environmental injustices have not yet achieved the desired outcome — the elimination of environmental decisions, policies, and practices that have a disparate impact on low-income and minority communities. Although waste facility siting practices that disproportionately affect minority communities may be insensitive and unjust, they are not illegal. This makes the task of grassroots groups that continue to challenge siting disparities all the more difficult.

Communities that suffer from the worst pollution also suffer from acute unemployment, poverty, and business disinvestment. Federal, state, and local governments can address these problems by providing small and minority businesses with incentives to explore the pollution prevention and hazard abatement field as a form of economic development. Lead abatement is one area in which training and jobs could be offered to communities threatened by both poverty and pollution.

Because of the inherent inequities associated with waste facility siting, the federal government should place a moratorium on the construction of new commercial, municipal, and hazardous waste incinerators in communities already saturated with environmental problems. State and federal permitting strategies must be altered to reflect equity concerns. Clearly, current environmental regulations and protectionist devices such as zoning, deed restrictions, and other land-use controls have not had the same impact on all segments of society. To correct this problem, governments should supplement standard technical requirements with fair share plans that take into account the sociodemographic, economic, and cultural factors of impacted communities.

The EPA must take the lead in assuring the protection of all Americans. No segment of society should become a dumping ground because of the race,

ethnicity, or economic vulnerability of its members. Legislative initiatives are needed at local, state, national, and international levels to assure the integration of social concerns into all environmental regulations. All communities — black or white, rich or poor — deserve protection from environmental degradation. If the United States is to achieve environmental equity, the environment in urban ghettos, barrios, reservations, and rural poverty pockets must receive the same protection as the environment in suburban regions. Moreover, the domestic policy of dumping on the poor and communities of color in the United States should not be exported abroad by dumping on the poor and communities of color in Third World nations.

