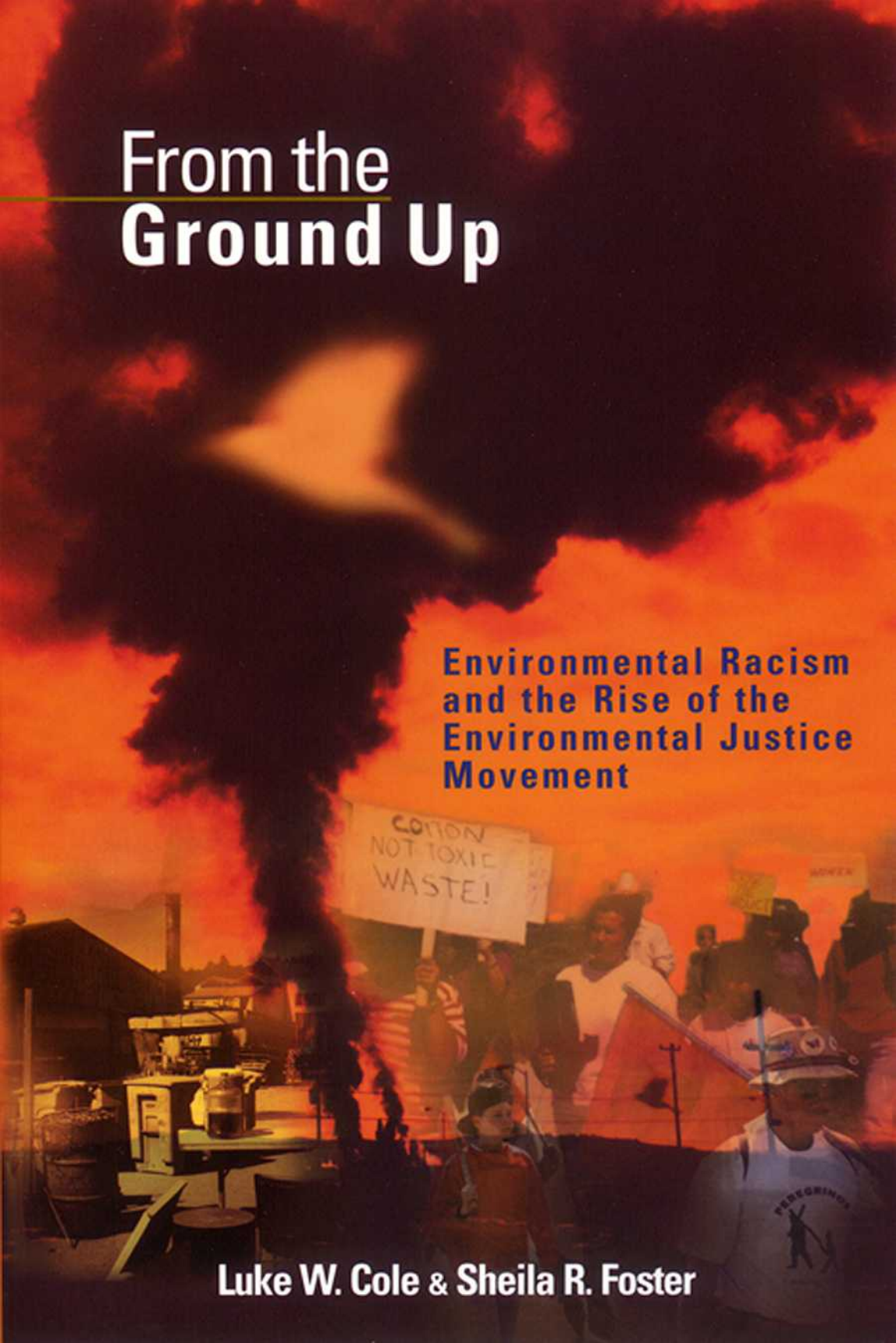
From the Ground Up

Environmental Racism and the Rise of the Environmental Justice Movement



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Environmental Racism

Beyond the Distributive Paradigm

The pattern of siting a disproportionate number of waste facilities in places like Chester, established empirically by national and regional studies, has provided substance to claims of environmental racism. But, as the Chester case study illustrates, the empirical studies and their important conclusions are part of a much larger picture. Chester is not unique as magnet for toxic waste facilities; it shares a social, political, and economic history with other communities that are experiencing a proliferation of unwanted toxic waste sites. Like them, it is a former industrial town now populated by low-income people of color after the flight of businesses and its white, middle-class population. Distributional outcomes are thus produced by, and within, an institutional context and a particular social structure. To understand fully the phenomenon of environmental racism, one must understand the structural processes that underlie the well-documented distributive outcomes. In this sense, unequal distribution is not the sine qua non of environmental racism. Instead, it is a crucial entry point for exploring the social and institutional processes underlying distributional patterns.

The Unequal Distribution of Environmental Hazards

Since the 1960s, researchers have analyzed the distribution of numerous environmental hazards: garbage dumps, air pollution, lead poisoning, toxic waste production and disposal, pesticide poisoning, noise pollution, occupational hazards, and rat bites. Their overwhelming conclusion is that these environmental hazards are inequitably distributed by

income or race. In studies that looked at distribution of these hazards by income *and* race, race was most often found to be the better predictor of exposure to environmental dangers. Later studies have in large part confirmed these conclusions.

Appendix A contains an annotated bibliography of studies and articles that document the disproportionate impact of environmental hazards by race and, to a lesser extent, by income. These studies are best taken as a starting point, however: the inequitable distribution of environmental hazards should mandate closer, site-specific analyses of the underlying social processes that continue to produce such outcomes in the most disenfranchised communities.

Because waste facility siting is the focus of this book, our starting point is the seminal study that documents disproportionate distribution of toxic waste sites on a national level. The 1987 study *Toxic Waste and Race in the United States*, performed by the United Church of Christ's Commission for Racial Justice (CRJ), measured the demographic patterns associated with commercial hazardous waste facilities and uncontrolled toxic sites.[1] The CRJ study found that race was the most significant variable in determining the location of commercial hazardous waste facilities; communities with the greatest number of commercial hazardous waste facilities had the highest percentage of nonwhite residents. The CRJ's study of uncontrolled waste sites produced similar findings: three out of every five African American and Latino residents lived in communities with uncontrolled toxic waste sites. Furthermore, African Americans were heavily overrepresented in the populations of metropolitan areas with the largest number of such sites.[2]

More recent national studies, with a handful of exceptions, continue to document the persistence of racial disparities in the location of waste facilities; some studies report that results vary by ethnic group.[3] Most notably, in 1994, the CRJ updated its 1987 study. Based on its assessment of 530 commercial hazardous waste sites, the CRJ found even greater racial disparities in the demographics of people who live around such facilities. In particular, it found that from 1980 to 1993 the concentration of people of color (defined as the total population less non-Hispanic whites) in all zip codes with toxic waste sites increased from 25 percent to 31 percent. Similarly, in 1993, as in 1980, the percentage of people of color in a community increased as commercial hazardous waste

management activity increased. The 1994 CRJ study found the increases statistically significant and concluded that there was little probability that the increase could be attributed to merely random fluctuation.[4] The CRJ was careful to note that the study had measured only the outcomes of environmental hazard distribution and did not determine "the root causes of this pattern."[5] Regardless of the causes, the report advocates toxic use reduction as a solution to disproportionate environmental impacts.

Researchers at the Social and Demographic Research Institute (SADRI) of the University of Massachusetts challenged the findings of the 1987 CRJ study. The SADRI study found that there was *not* a statistically significant pattern of racial or ethnic disparity in the distribution of commercial hazardous waste sites.[6] Though the SADRI study analyzed data similar to those used in the recent CRJ study, its methodology was significantly different. For example, the SADRI study used census tracts from 1980 and 1990, instead of zip codes, as the geographic unit of analysis. The SADRI researchers also used data from only metropolitan or rural counties, not from the entire United States, as their comparison group (nonhost tracts), possibly understating the relationship among race, ethnicity, and siting choices.[7] Moreover, the study looked only at African American and Latino populations and did not measure the proximity of other racial groups, such as Asians and Native Americans, to existing toxic waste sites. Hence, the researchers' conclusions leave out a not-insignificant percentage of the people of color population in the United States and possibly understate racial and ethnic disparities.

The most recent study, by Professor Vicki Been, supports the conclusions of both the 1987 and the 1994 CRJ studies, though it uses census tract data as in the SADRI study.[8] Like the previous studies, Been measured the location of commercial hazardous waste facilities and the demographics of people who live near those facilities. In particular, Been set out to analyze how the demographics of neighborhoods that host toxic waste facilities have changed over time. To do this, she used census data from the past three decades (1970, 1980, and 1990). Unlike the researchers in the SADRI study, who used a limited pool of nonhost tracts, Been compared the demographics of host tracts to those of *all* nonhost tracts. However, similar to that in the SADRI study, her analysis seems to have included only disparities that involved African Americans and

Latinos, not those that involved members of other racial groups as defined by the census, such as Native Americans and Asians.

Been's study found that toxic waste sites were disproportionately located near African American and Latino populations. In particular, Been's analysis demonstrated that the percentage of African Americans or Latinos in a census tract in 1990 is a significant predictor of whether or not that tract hosted a toxic waste facility. Been attributed the current inequitable distribution of toxic waste sites in African American neighborhoods to the existence of facilities sited before 1970. On the other hand, she attributed the current inequitable distribution of toxic waste sites in Latino neighborhoods to facilities that were sited after 1970. As to class disparities, Been's study indicated that high poverty rates were "negatively correlated" with the location of toxic waste facilities. Instead, the study concluded, it was working-class and lower-middle-income neighborhoods that contained a disproportionate share of facilities. The study did not measure the effect of the intersection of race and class (e.g., poor African American neighborhoods) on the probability that the tract hosts a facility.

Studies also document the government's unequal enforcement of environmental laws in the waste siting context. A 1992 study by the *National Law Journal* confirmed what environmental justice activists have known for years, that people of color are not protected as vigorously by enforcement of environmental laws as whites. The *National Law Journal* study found that "[t]here 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."[9] The Journal's study found that penalties applied under hazardous waste laws at sites in white communities were about 500 percent higher than were penalties applied at similar sites in communities of color; that for all violations of pollution laws, penalties in white communities were about 46 percent higher than in communities of color; and that under Superfund, the law designed to clean up toxic sites, it took communities of color 20 percent longer to be listed as priority clean-up sites than white communities. The disproportionately greater exposure in communities

of color to environmental hazards is undoubtedly exacerbated by unequal enforcement of environmental laws in such communities.

Taken together, the national studies conducted to date provide evidence that people of color bear a disproportionate burden of environmental hazards, particularly toxic waste sites. Numerous local studies, with some exceptions, have, on the basis of their assessment of particular cities, counties or regions, similarly concluded that racial disparities exist in the location of toxic waste facilities. Though researchers will continue to study the distribution of environmental hazards, including toxic waste sites, there is already ample evidence to warrant a closer look at the factors that might lead to the outcomes thus far documented.

The Problem of Causation: Naming the Outcomes as Racism

As with most statistical research, studies that chart the disproportionate distribution of waste facilities simply establish *correlations*, not *causation*. Some commentators therefore question whether the maldistribution of environmental hazards is appropriately attributed to racism or other injustice or to a more benign explanation. Among the alternative explanations offered to explain the racial disparities are (1) that the social status or lifestyle choices of certain racial and ethnic groups result in maldistribution and (2) that maldistribution is a result of the operation of the "free market." What both explanations have in common is their description of existing social practices and social structure as a cause of current distributions. By accepting the existing social structure and practices as the "baseline" for causal analysis, these explanations tend to obscure the injustice of current distributions and dangerously suggest that the inequitable outcomes are a natural and inevitable feature of social and economic life.[10]

"Lifestyle" as Causation

The first explanation, what we call the "lifestyle" explanation, invokes a description of a social situation or status as the causal element explaining the distribution of hazardous wastes and other toxics. The United States Environmental Protection Agency's Environmental

Equity Workgroup, for example, after reviewing much of the evidence then available on the disproportionate impact of environmental hazards on people of color, concluded in 1992 that a "person's activity" is the main determinant of how much environmental exposure she bears.[11] The Workgroup further concluded that racially disparate environmental hazard exposure results from the fact that "a large proportion of racial minorities reside in metropolitan areas" and "are more likely to live near a commercial or uncontrolled waste site," that higher levels of certain pesticides in Latinos results from the fact that "racial and ethnic minorities comprise the majority of the documented and undocumented farm work force," and that racial disparities in exposure to contaminated fish result from the fact that some racial groups "consume more fish than the average population."

There is no doubt that certain groups of people, such as recent immigrants with poor English language skills, are concentrated in the most dangerous sectors of our workforce, agriculture and heavy industry. These same people are, not surprisingly, more likely than others to have multiple exposures to environmental dangers; they face more severe hazards on the job, in the home, in the air they breathe, in the water they drink, in the food they eat. Nor is there any dispute that many poor people and people of color are relegated to urban areas; as we explain later, their residential choices are limited by their poverty and by various forms of discrimination. Moreover, while they live with the greatest dangers, poor people and people of color have the least access to health care and often can not get it at all.[12]

That the current social location of certain people overexposes them to contaminated environments raises, rather than answers, important questions about the injustice that underlies environmental distributions. *Why* are African Americans disproportionately segregated in cities and thus overexposed to a variety of pollutants? *Why* are farm-workers disproportionately poor and Latino? *Why* do current environmental laws leave farm-workers unprotected? Why are certain racial groups forced to rely on subsistence fishing or on poisoned fish stocks? Without a further causal analysis of the social processes that constitute the current situatedness of various groups, the tautological "lifestyle" explanation amounts to little more than "blaming the victim."[13] The "lifestyle" approach plays an important social role in naturalizing the unequal

distribution of environmental hazards, however, by describing disproportionate exposure as a choice those exposed have made, a decision that could, presumably, be changed. It allows the observer to acknowledge the unequal environmental protection of certain groups and, at the same time, to keep a safe distance from the social context and structural dynamics that produce those outcomes. It also relieves the observer of any culpability for, or responsibility for changing, the unjust situation.

"Market Dynamics" as Causation

The second explanation—"market dynamics"—is by far the most common, and important, causation objection to the empirical evidence of disproportionate impact. Market dynamics adherents ask the question "Which came first, the environmental hazard or the racial/class makeup of the neighborhood?" The suspicion underlying this question is that researchers have failed to compare the demographics of the neighborhoods at the time the facilities were sited and at the time measured by the study. This failure "leaves open the possibility that [the facilities] were not disparately sited in poor and minority neighborhoods" but that the "dynamics of the housing and job markets" led people of color and the poor to "come to the nuisance"—for example, to move to areas that surround waste facilities because those neighborhoods offered the cheapest available housing.[14] A waste facility, for instance, may "cause those who can afford to move to become dissatisfied and leave the neighborhood," or it may "decrease the value of the neighborhood's property, making the housing more available to lower income households and less attractive to higher income households."[15]

Again, the explanation is volitional: people, as rational economic actors, are *choosing* to live in neighborhoods that host dangerous facilities.[16] There is inconclusive empirical support to date for the "market dynamics" explanation for racial or economic disparities in the distribution of hazardous waste facilities.[17] Nevertheless, the market dynamics explanation is continually invoked to account for the racial disparities in environmental hazard distribution, as an alternative to the assumption that racially biased practices account for the disparities. As one commentator sums up, "by failing to address how [facilities] have affected the demographics of their host communities, the current research has ignored the

possibility that the correlation between the location of [facilities] and the socio-economic characteristics of neighborhoods may be a function of aspects of our *free market* system."[18] The implications of this alternative causal account is that where market dynamics produce current distributions, this fact renders the outcomes somehow more benign. This implication stands on its own terms, however, only if the market is unaffected by racial discrimination and other unjust processes.

"Free market" explanations, however, are notoriously incomplete. As others have persuasively argued, markets are social institutions shaped by various levels of state and private control. Choices and preferences made in the "market" domain are, as Cass Sunstein explains, "endogenous rather than exogenous"—a function of current information, consumption patterns, existing legal rules, social norms, and culture.[19] For instance, the historical and present reality of race discrimination in the housing market inevitably affects individual preferences and mobility in the housing arena. Given this history and present reality, the "free" nature of market choices must be called into question.

Proponents of the "market dynamics" theory of hazardous waste distribution do acknowledge the influence of well-documented housing discrimination on individual preferences and mobility in the market. Such racial discrimination in the sale and rental of housing, one proponent notes, "relegates people of color (especially African Americans) to the least desirable neighborhoods, regardless of their income level."[20] Moreover, even after a neighborhood becomes predominantly composed of people of color, market dynamics proponents recognize that "racial discrimination in the promulgation and enforcement of zoning and environmental protection laws, the provision of municipal services, and the lending practices of banks, may cause neighborhood quality to decline further" and that the "additional decline . . . will induce those who can leave the neighborhood—the least poor and those least subject to discrimination—to do so."[21] Nevertheless, by continuing to describe the forces that underlie racially disparate environmental distributions as "free market" dynamics, the explanation tends to subsume social practices of racial discrimination into rational economic processes and choices. The collapse of social practices of racial discrimination into economic processes subtly expands the domain of the "free market" to include, and hence to obscure, racially biased social practices.

The "market dynamics" explanation, like the "lifestyle" explanation, thus rests on a descriptive, rather than a normative, causal account of the racial disparities in environmental justice research. It is important not to confuse the two accounts. Undoubtedly the dynamics of the housing market, broadly construed to include discriminatory practices, can theoretically explain some of the racially disparate outcomes in environmental hazard distribution. As Regina Austin and Michael Schill have pointed out, given the combination of poverty and racially discriminatory practices, there might be a number of developmental patterns that would result in poor people of color either moving to, or being trapped in, neighborhoods with a disproportionate number of hazardous waste sites.[22] For instance, in one pattern, communities where poor people of color now live may have originally been homes to whites who "worked in the facilities that generate toxic emissions." In those communities, Austin and Schill explain, the housing and industry may have "sprang up roughly simultaneously," and whites may have "vacated the housing (but not necessarily the jobs) for better shelter as their socioeconomic status improved." In turn, poorer Latinos and African Americans "who enjoy much less residential mobility" may have taken their place. In another pattern, housing for African Americans and Latinos may have been built in the vicinity of existing industrial operations because "the land was cheap and the people were poor." In still another pattern, sources of toxic pollution may have been placed in existing minority communities. Determining the various factors that contribute to the distributive outcomes is indeed an important epistemological inquiry.

The "chicken-or-egg" question posed by commentators does not, however, answer the more fundamental inquiry posed by environmental justice research. The question underlying environmental justice research is normative; it asks, "What do we mean when we call an outcome racist or evidence of injustice?" The chicken-or-egg inquiry posed by these commentators is empirical; it asks, "Which came first, the waste facilities or the poor people of color?" Answering the second question does not necessarily answer the first. That is, the normative claim embedded in environmental justice research is not answered simply by a descriptive analysis of the forces that underlie a particular distributional pattern. Uncovering the patterns and processes underlying the distributive outcomes

is an important first step; a normative evaluation of these patterns and processes is the next crucial step.

The post-siting market dynamics analysis employed is certainly useful in determining whether it is more descriptively correct to attribute environmental disparities to one set of social and/or economic processes than to another. However, even if one could establish that "market dynamics," and not the siting process itself, produce racially disparate outcomes, this would not tell us whether such market forces are just or illicit. Similarly, even if "lifestyle" factors accurately describe the forces that underlie exposure to a particular environmental hazard, further analysis is needed to evaluate whether those forces themselves are attributable to unjust social practices or norms or to some other benign explanation.

Structural Racism versus Judicially Constructed "Racism"

As Gerald Torres reminds us, in order to make sense of the term "environmental racism," one "must have a clear idea of what it means to call a particular activity racist."[23] Similarly, in order to determine whether the processes underlying particular distributions are racist, we must be clear on what that term means. On the one hand, as Torres explains, "the term racism draws its contemporary moral strength by being clearly identified with the history of the structural oppression of African Americans and other people of color in this society." On the other hand, judicial constructions of racism have severely narrowed the concept in recent years. The disparate impact of governmental or private action on a historically oppressed group, such as African Americans, is no longer sufficient to establish an actionable claim of race discrimination under the U.S. Constitution and most civil rights laws. Since 1976, the U.S. Supreme Court has construed "race discrimination" to mean intentional or purposeful conduct on the basis of race, or at least some consciousness of race as a factor motivating conduct.[24] This construction requires that the intent be attached to an individual actor. Hence, labeling the outcomes that correlate race and exposure to environmental hazards as "racist" invites the demand for evidence of an overt race-conscious impetus and a "single bad actor."[25]

Not surprisingly, claims of environmental racism have not fit into the existing judicial construction of racism. The invariable judicial response has been to reject environmental racism claims for failure to prove the requisite discriminatory intent attached to an identifiable perpetrator, notwithstanding demonstrations of disparate impact and discriminatory outcomes. For example, in *R.I.S.E., Inc. v. Kay,* a federal district court found no discrimination in the siting of a landfill in a predominantly African American area of a county despite evidence that, during the past twenty years, the County Board of Supervisors had approved three other landfills that were placed within one mile of neighborhoods that were respectively 100 percent, 95 percent, and 100 percent African American.[26] The proposed landfill in *R.I.S.E.* would have been placed within half a mile of a population that was 64 percent African American and 36 percent white. The population of the County was 50 percent African American and 50 percent white. Moreover, in the one instance where the County Board of Supervisors had opposed a landfill in the County, the surrounding community was predominantly white.

The *R.I.S.E.* court reasoned that, although the placement of the proposed facility would have a disproportionate impact on African American residents, "the Equal Protection Clause does not impose an affirmative duty to equalize the impact of official decisions on different racial groups." Instead, the clause "merely prohibits government officials from intentionally discriminating on the basis of race." The plaintiffs, in spite of the facts of the case, failed to meet their burden of proving intentional discrimination. The Court accepted, instead, the County's facially neutral explanation that it was motivated not by racial bias but by other factors. Despite the fact that residents opposed the facility, the Court found that the County Board had been motivated by the economic, environmental, and cultural needs of the African American community.[27]

This prevailing understanding of "racism," molded by judicial constructions, is myopic in its failure to accommodate for the fact that the nature of racism has become appreciably more subtle and structural. Historically, disparate racial treatment and impacts were easily traceable to overt, racially motivated actions. However, partly as a result of laws that punish and forbid such overt behavior, decision makers rarely openly and intentionally seek a discriminatory outcome. As Charles Lawrence argues, requiring conscious intent before characterizing an outcome as

racist ignores "the fact that decisions about racial matters are influenced in large part by factors that can be characterized as neither intentional—in the sense that certain outcomes are self-consciously sought—nor unintentional—in the sense that outcomes are random, fortuitous, and uninfluenced by the decision maker's beliefs, desires and wishes."[28] Understanding racism thus requires a broader analysis, beyond legal understandings of this complex social phenomenon.

Judicial notions of "racism" may be necessary for various jurisprudential reasons—for instance, an intent requirement arguably reinforces the separation of powers between courts and political branches by making it difficult for courts to intervene in more democratic processes.[29] However, our definitions of racism and injustice need not be confined to juridical notions. As we have written elsewhere, and as illustrated by the Chester case study, the struggle for environmental justice is primarily a political and economic struggle, with law one facet of that struggle.[30] Understanding environmental racism thus requires a conceptual framework that (1) retains a structural view of economic and social forces as they influence discriminatory outcomes, (2) isolates the dynamics within environmental decision-making processes that further contribute to such outcomes, and (3) normatively evaluates social forces and environmental decision-making processes which contribute to disparities in environmental hazard distribution.[31]

The Social Structure of Environmental Racism: The Role of Race and Space

Let us assume that the current physical distribution of hazardous waste facilities could be attributed to the location of older facilities in neighborhoods that subsequently became populated by poor people of color—that "market dynamics" produced the racially disparate outcomes found in some communities. Even accepting that the siting process is not responsible for all racially disparate outcomes in environmental hazard distribution and that instead the demographics of a given community with a waste facility have changed over time, it is not easy to dismiss the notion that racism or injustice produced the results. If existing racially discriminatory processes in the housing market, for example, contribute to the distribution of environmental hazards, or of people of color, then

it is entirely appropriate to call such outcomes unjust, and even racist.[32] In this sense, "environmental racism" is not a separate phenomenon at all. Environmental outcomes are instead a manifestation of racially discriminatory practices that continue to exist in our society.

The inequitable distribution of environmental hazards, particularly commercial waste facilities, can be traced historically to the patterns of residential segregation and its resulting structural inequalities. Spatial segregation and isolation are key features of racial inequality in our society. Racial segregation, in turn, shapes how groups are viewed and what type of resources they get. This spatial inequality creates a vicious, self-perpetuating circle of causation, resulting in uniquely disadvantaged communities. A brief look at the history of spatial segregation confirms that the construction of racial space, and its mechanisms, have had profound consequences in the distribution of social goods. Given this history, it is not difficult to conclude that the physical distribution of hazardous waste facilities is linked to the historical organization of racially identified space and its precipitating social processes and mechanisms—namely, discriminatory zoning, housing, and real estate practices.

In their book *American Apartheid: Segregation and the Making of the Underclass*, Douglas Massey and Nancy Denton chart the course of racially segregated space, beginning in the nineteenth century.[33] As they persuasively argue, residential segregation did not always exist, nor did it come about naturally. Segregation did not result from the "desires" of African Americans and other people of color (the "lifestyle" explanation), "impersonal market forces" (the "market dynamics" explanation), or as "a chance by-product of other socioeconomic processes," explain Massey and Denton. Before 1900, for instance, "blacks and whites lived side by side in American cities" in the north—in places like as Chicago, Detroit, and Philadelphia—as well as in the south in cities like Charleston, New Orleans, and Savannah. However, at critical points between the end of the Civil War in 1865 and the passage of the Fair Housing Act in 1968, "white America chose to strengthen the walls of the ghetto." During this time period, residential segregation was constructed and imposed through various public and private processes—discriminatory real estate practices, exclusionary and expulsive zoning, redlining, and white flight, among others—that both contained growing urban black populations and limited the mobility of blacks and other

people of color. Some of these actions and decisions were individual, some were collective, and others reflected "the powers and prerogatives of government"; together, these practices effectively constructed and maintained the residential color line well into the twentieth century and up to the present.

Even if society were to purge itself of racism and become color-blind, and people were to behave purely as rational economic actors in their choices of mobility and residential location, racially segregated space would still persist today absent affirmative efforts to dismantle the vestiges of historical racism. As Richard Ford explains, "race-neutral policy could be expected to entrench segregation and socio-economic stratification in a society with a history of racism."[34] His conclusion rests on the fact that leaving historical residential segregation intact would affect virtually every aspect of social status, including employment opportunities and residential mobility. For instance, because the education system is financed through local taxes, segregated localities would inevitably offer vastly different levels of educational opportunity: "the poor, black cities would have poorer education facilities than the wealthy, white cities." In turn, "whites would be better equipped to obtain high-income employment than would blacks." Whites' increased economic status would likewise translate into an increased ability to buy into economically superior neighborhoods and would mean that the market value of white homes on average would be significantly higher than that of black homes. Thus, "blacks attempting to move into white neighborhoods would, on average, have less collateral with which to obtain new mortgages, or less equity to convert into cash."

Residential segregation would also result in closed social networks, which "form the basis of the ties and the communities of trust that open the doors of opportunity in the business world," and thus would decrease the likelihood that crucial social connections would be formed between members of different races. Without some intervention to dismantle historical racial segregation, racial stratification on all levels of society would likely perpetuate itself, explains Ford, even in the absence of current racism. Although "there is no racist actor or racist policy in this model," racially defined communities "perform the 'work' of segregation silently." Racially stratified space thus, as Ford concludes, becomes "the inert context in which individuals make rational choices" and "a

controlling structure in which seemingly innocuous actions lead to racially detrimental consequences."

Unfortunately, we don't live in a color-blind world, nor one in which legal rules and social action have eliminated either the vestiges of historical racism or even all of the current manifestations of racism. Adding racist actors and current racism to historical patterns, Ford explains, further exacerbates the dynamic of racial stratification and makes possible a number of public activities and private practices that continue to entrench racial inequality. As Massey and Denton document, the systematic segregation and isolation of racial groups continues to this day as a result of exclusionary real estate practices, racial and cultural bias, and pervasive discrimination. Surveys indicate that whites continue to be very apprehensive about racial mixing, fearing declines in property values and other deleterious effect on neighborhood qualities. To a large extent, these fears are based on racial stereotypes about African Americans and other groups.[35] Nevertheless, for whatever reason, white demand decreases for neighborhoods that African Americans and Latinos, in particular, begin to integrate.[36]

Moreover, the cultural differences and socialization resulting from the history of racism and from racial segregation have produced a fear and distrust of whites, particularly by African Americans, who fear white hostility, rejection and/or violence, studies show. As a result, many of them are reluctant to live in white neighborhoods in the absence of a significant number of other African Americans. Thus, even when African Americans *are* able to move into white neighborhoods, "contemporary society imposes significant costs" on integration.[37] "The additional amenities and lower taxes of the white neighborhood [are] often outweighed by the intangible but real costs of living as an isolated minority in an alien and sometimes hostile environment."[38] These costs make it even more difficult for African Americans, and members of other racial groups, to move to predominantly white neighborhoods, regardless of class.

The attitudes and fears of both whites and people of color would not in and of themselves perpetuate racial segregation without discriminatory mechanisms to enforce them. As Massey and Denton have shown, the "segmentation of black and white housing demand" is encouraged and supported by pervasive discrimination in the housing and lending markets. Empirical evidence demonstrates that real estate agents often

limit the likelihood of black entry into white neighborhoods "through a series of exclusionary tactics" and "channel black demand for housing into areas that are within or near existing ghettos." This discrimination by realtors is further enforced by the "allocation of mortgages and home improvement loans, which systematically channel money away from integrated areas." In essence, race remains the "dominant organizing principle" for housing and residential patterns in spite of the Fair Housing Act and other civil rights reforms.[39]

In addition to discriminatory real estate and lending practices and "white flight," a variety of facially neutral rules and decisions add to the creation and maintenance of racially identified, and subordinate, neighborhoods. For instance, the MIT economist Yale Rabin has demonstrated that, in communities across the country, many residential neighborhoods composed of people of color have been re-zoned as industrial by white planning boards, a process Rabin calls "expulsive zoning." While these zoning decisions are not made with reference to race, their impact, given racial segregation, has profound racial implications. As Rabin explains, "[b]ecause it appears that [the re-zoned] areas were mainly black, and because whites who may have been similarly displaced were not subject to racially determined limitations in seeking alternative housing, the adverse impacts of expulsive zoning on blacks were far more severe and included, in addition to accelerated blight, increases in overcrowding and racial segregation." These types of zoning decisions allowed heavy industry to locate in African American residential neighborhoods and also led banks to stop loaning money for home improvement and maintenance because of improper zoning.[40] As we saw in Chester, one of the common attributes of communities that are experiencing a disproportionate influx of waste facilities is their status as former industrial towns, now abandoned by industry and desperate for new economic development. Indeed, as we shall see, waste facility developers affirmatively select sites in heavy industrial areas that have little or no commercial activity.

Physical segregation and isolation thus have intense political and economic consequences, particularly for poor African Americans and Latinos living in inner cities. Segregation not only concentrates poverty but also economically dislocates people.[41] This racialization of space "reaches to the societal processes in which people participate and to the structures

and institutions that people produce."[42] Residential location, for instance, is seen as an indication of the attitudes, values, and behavioral inclinations of the types of people who are assumed to live there.[43] Segregated communities are isolated not only geographically and economically, but also socially and culturally; this isolation, in turn, leads to political marginalization.[44] Accordingly, the concerns of such communities are rarely taken seriously in the political process, and are often ignored altogether by decision makers.[45] This observation is borne out graphically in the experiences of the residents of Kettleman City and Chester, chronicled in previous chapters, and those of Buttonwillow residents, detailed in chapter 4.

Social Structure and the Siting Process

The preceding assessment of post-siting market dynamics is still an incomplete causal account of environmental injustice in communities such as Chester. Post-siting market dynamics may explain how communities like Chester became predominantly poor and/or of color *after* the influx of older industrial and waste facilities. Post-siting market dynamics does not, however, explain the *current* siting pattern in Chester, nor the wave of environmental disputes arising in many communities across the country. Empirical studies continue to document that new waste facilities are disproportionately sited in low-income communities of color. Moreover, anecdotal accounts of current siting disputes paint a troublesome picture of disproportionate siting patterns in poor communities of color. The Chester experience illustrates one such account. The *R.I.S.E.* case, discussed earlier, illustrates another. There are countless other examples across the country.

Examining the structured inequalities embedded in post-siting "market dynamics" does help one understand and evaluate current siting processes within their social context. Although the siting process does not produce the structured inequalities created in part by racially discriminatory processes, as we have detailed, it is heavily dependent upon them. Conventional industry wisdom counsels private companies to target sites that are in neighborhoods "least likely to express opposition"—those with poorly educated residents of low socioeconomic status. Not surprisingly, many communities that host toxic waste sites possess these

characteristics. State permitting laws remain neutral, or blind, toward these inequalities; they therefore perpetuate, and indeed exacerbate, distributional inequalities.[46]

In most states, the hazardous waste siting process begins when the private sector chooses a site for the location of a proposed facility. Because the proposed location of a hazardous waste facility near, particularly, a neighborhood of white people of high socioeconomic status often faces strong public opposition, there is a limited supply of land on which to site such facilities.[47] Inevitably, the siting process focuses on industrial, or rural, communities, many of which are populated predominantly by people of color. Because land values are lower in heavily industrial and rural communities than in white suburbs, these areas are attractive to industries that are seeking to reduce the cost of doing business.[48] Furthermore, these communities are presumed to pose little threat of political resistance because of their subordinate socioeconomic, and often racial, status.[49]

Rarely does a "smoking gun"—explicit racial criteria or motivation—exist behind the decision to locate a toxic waste facility in a community of color. The reasons frequently given by companies for siting facilities are that such communities have low-cost land, sparse populations, and desirable geological attributes.[50] Notably, however, there is evidence that portions of the waste industry target neighborhoods that possess the attributes of many poor communities of color, using "race-neutral criteria." In 1984, the California Waste Management Board commissioned a study on how to site waste incinerators. The report, written by the political consulting firm Cerrell Associates of Los Angeles and entitled *Political Difficulties Facing Waste-to-Energy Conversion Plant Siting* (popularly known as the Cerrell Report), set out "to assist in selecting a site that offers the least potential of generating public opposition."[51] The report acknowledged that "since the 1970s, political criteria have become every bit as important in determining the outcome of a project as engineering factors." The Cerrell Report suggests that companies target small, rural communities whose residents are low income, older people, or people with a high school education or less; communities with a high proportion of Catholic residents; and communities whose residents are engaged in resource extractive industries such as agriculture, mining, and forestry. Ideally, the report states, "officials and companies should look

for lower socioeconomic neighborhoods that are also in a heavy industrial area with little, if any, commercial activity."

While corporations were quick to disavow the use of the study, this community profile just happens to fit all three of the California communities that host the state's commercial toxic waste dumps—Buttonwillow (chronicled in chapter 4), Kettleman City (chronicled in the Preface) and Westmorland. Each of these small, rural communities has a high percentage of residents who live below the poverty line. Each community is predominantly Latino and Catholic, with many farm-workers, and most residents have few years of formal education. Additionally, the Cerrell profile fits another community profiled in this book: Chester, Pennsylvania, is a heavy-industrial inner city with little commercial activity, populated predominantly by working-class and poor people of color.

Likewise, even the "race-neutral" criteria used by government and industry for siting waste facilities—such as the presence of cheap land values, appropriate zoning, low population densities, proximity to transportation routes, and the absence of proximity to institutions such as hospitals and schools—turn out not to be "race neutral" after all, when seen in their social and historical context. Race potentially plays a factor in almost every "neutral" siting criterion used. "Cheap land values" is, understandably, a key siting criteria for the waste industry and other developers. However, because of historical segregation and racism, land values in the United States are integrally tied to race. In urban areas across the United States, this is starkly clear: an acre of land in the San Fernando Valley of Los Angeles has roughly the same physical characteristics as an acre of land in South Central Los Angeles, but people are willing to pay a premium to live in all-white neighborhoods. In rural areas, the pattern is similar: low land values tend to be found in poor areas, and people of color are overrepresented among the rural poverty population.

The land value cycle is vicious, too: once a neighborhood becomes host to industry, land values typically fall or do not increase as quickly as those in purely residential neighborhoods. Thus, a community that initially has low land values because it is home to people of color becomes a community that has low land values because it has a preponderance of industry, which in turn attracts more industry, creating a cumulative effect on land values. As we noted earlier, calling these changes "market driven" naturalizes the underlying racism in the valuation of the land.

Thus, when a company makes a siting decision on the basis of land values in urban areas, far from being "race neutral," it is focusing on land more likely to be in proximity to people of color.

Zoning is inextricably linked with race, as well. As we noted earlier, Yale Rabin's studies of historical zoning decisions have documented numerous instances where stable African American residential communities were "down-zoned" to industrial status by biased decision makers, allowing inappropriate land uses near residents and ruining the social fabric of the neighborhoods. Rabin found that local zoning bodies in the early part of the century routinely zoned as "industrial" many residential African American communities, even as they zoned as "residential" similar white areas. These zoning practices permitted the intrusion of disruptive, incompatible uses and generally undermined the character, quality, and stability of the black residential areas. Such "expulsive zoning," as Rabin calls it, permanently alters the character of a neighborhood, often depressing property values and causing community blight.[52] The lower property values and the zoning status are then easily invoked as "neutral" criteria upon which siting decisions are made.

"Low population density" translates to the siting of facilities in rural areas. In a major region of the country—the U.S. South—rural areas have populations that are disproportionately African American because of the historical influence of slavery on population settlement and distribution patterns.[53] In fact, a study of Mississippi discovered that population density was inversely correlated with race; that is, the less dense the population was, the more African American it became.[54] In other areas such as Texas and California, where historical settlement patterns and the current agricultural economy result in a rural population that is increasingly Latino, low population densities lead to the siting of facilities near farm-worker communities.

Proximity to major transportation routes may also skew the siting process toward communities of color, as freeways appear to be disproportionately sited in such communities.[55] Similarly, locational criteria—prohibitions against the siting of waste facilities near neighborhood amenities like hospitals and schools—skew the process toward underdeveloped communities of color, since such communities are less likely to have hospitals and schools. Hence, siting criteria that prohibit the

siting of waste facilities close to such facilities perpetuate the historical lack of such amenities in these communities.

The sociologist Robert Bullard documented this underlying racial discrimination in an otherwise "neutral" siting process. Bullard's documentation was recognized in a 1997 decision by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board, which overturned a facility's permit. In an administrative appeal to block the siting of a uranium enrichment facility in a poor and African American area of Louisiana, Professor Bullard successfully argued that racism more than likely played a significant part in the selection process. Bullard demonstrated (through a statistical analysis) that at each progressively narrower stage of the company's site selection process, the level of poverty and African Americans in the local population rose dramatically until it culminated in the selection of a site whose a local population is extremely poor and 97 percent African American. The race-neutral siting criteria—including the criteria of low population and the need to site the facility five miles from institutions such as schools, hospitals, and nursing homes—operated in conjunction with the current racial segregation and the resulting inferior infrastructure (e.g., lack of adequate schools, road paving, water supply) to ensure that the location selected would be a poor community of color. The NRC's licensing board, on the basis of Bullard's evidence, overturned the facility's permit and directed the NRC staff to conduct a "thorough and in-depth investigation" of the site selection process and to determine whether "the selection process was tainted by racial bias." In doing so, it ordered the staff to "lift some rocks and look under them" because racial discrimination is "rarely, if ever, admitted" and is "often rationalized under some other seemingly racially neutral guise, making it difficult to ferret out," and "direct evidence of racial discrimination is rarely found."[56]

The Structure of State Environmental Decision Making: Waste Permitting Processes

Permitting laws and policies both mediate and legitimize the dependence of private decision makers on structural inequalities in choosing facility sites. An important starting point for understanding the structure of environmental decision making with regard to siting waste facilities is

the respective roles of the federal and state governments. Simply put, the federal government has relinquished the siting of waste facilities to the states. The Resource Conservation and Recovery Act (RCRA) comprehensively regulates solid and hazardous wastes from "cradle to grave"—from waste creation through disposal—but essentially delegates responsibilities for locating and permitting waste processing facilities to state environmental agencies.[57] The United States Environmental Protection Agency has provided some guidance to states in constructing permitting and siting programs. The EPA counsels states to execute a technical evaluation of proposed sites before any single site is selected, to select sites through a process that provides for public participation, and to ensure that site selection processes are not encumbered by blanket local vetoes, which would permit local governments to outlaw the siting of any unwanted facility within their jurisdictions.[58] On the whole, state programs follow this broad outline in permitting waste facilities. Aside from these guidelines, however, states are free to regulate siting, including the permitting of waste facilities, as they please. State permitting processes vary widely.

Though state siting regulations vary, some common themes illustrate the complicit role of these laws in inequitably distributing toxic waste facilities. Even though private decision makers must seek permits from official decision makers, such as state agencies, there are often no formal criteria that take into account the siting processes' reliance on structural inequalities; indeed, too often state agencies passively acquiesce to industry siting decisions. Aside from technical siting criteria and (often weak) public notice requirements, the permitting decision is almost entirely in the discretion of administrative agencies. Unfortunately, these agencies, in determining a proposed facility's "suitability" for a community, rarely look beyond the geological and environmental characteristics of the proposed site. Most agencies would argue that current permitting laws do not allow them to do so. This is true. Permitting laws generally do not specify evaluation criteria that allow for a formal assessment of the demographics, health problems, quality of life, and infrastructure of the surrounding community, or of the cumulative environmental or health effects of other facilities in the area.

There are two main ways states regulate or take part in waste facility siting, which we call the *passive* and *active* approaches.[59] Most states take

a passive or *ad hoc* approach to siting, allowing private companies to initiate the process by seeking a permit to construct a facility at a specific location chosen by the private entity. Far fewer states take an active or *"advance site designation"* approach, in which a state siting committee initiates the siting process by identifying suitable sites around the state for future waste facilities. The state then solicits private-sector proposals for developing facilities on those sites or simply maintains the inventory of sites until project proposals are submitted by developers.

Under the majority, passive, approach to siting, private developers identify the sites for waste facilities, using a variety of criteria, including land values, zoning, access to major transportation routes, political considerations, and other characteristics of the host community. Although most of these criteria appear neutral on their face, as we have explained, many actually have profound racial implications, being based on historical racially based decisions and thus perpetuating the disproportionate siting of waste facilities in communities of color. Land values and zoning, for example, as explained earlier, may be based on racially premised historical land use patterns and expulsive zoning. Political considerations, such as the degree of expected community opposition, also lead to racially biased outcomes.

After the prospective waste facility developer initiates the process by choosing a potential site location, it applies for a permit from the state environmental agency. The agency evaluates the application, then approves or rejects the permit application according to whether the applicant has met all the legal criteria for receiving a permit. In assessing the suitability of a proposed waste facility site, decision makers rely primarily on technical criteria and an environmental assessment of the facility. Decision makers generally do not consider the cumulative impact of the new facility and the preexisting facilities or land uses, the potential for disproportionate location of facilities in the host community, or the demographics of the targeted community. Instead, each permit is considered in a vacuum, requiring only that the individual facility at issue comply with applicable environmental regulations and other environmental assessments (e.g., avoiding a certain degree of proximity to wells, surface waters, residences, recreational areas, wetlands, and endangered species habitat).[60]

There are exceptions to this socioeconomic myopia in assessing the suitability of a facility in a particular community. Some states have incorporated "soft criteria" into their site suitability assessment, considering such nonenvironmental factors as the demographics of the community, community perceptions and opposition, psychological costs, the potential for change in property values, the presence of other facilities in the community, and the cumulative health risks presented by other sources in the host community.[61] Some states mandate a formal environmental impact statement for hazardous waste facilities, often requiring the consideration of the social and economic impacts resulting from the proposed facilities.[62] Still other states control the distribution of waste facilities by prohibiting them in areas already burdened by the presence of one or more facilities.[63]

Nevertheless, despite the increasing use of "soft" environmental assessment criteria, it is not clear how much weight socioeconomic factors are given in the decision-making process. State administrators retain considerable discretion in applying nontechnical criteria, allowing for the possibility that these criteria will ultimately be ignored in the final decision. Likewise, even where state law mandates an environmental impact report that analyzes socioeconomic impacts, there is no assurance that the environmental assessment will acknowledge severely disadvantaged communities, let alone study them for potential impact; even if an impact is *recognized,* few states require that it be mitigated before a project is approved.[64]

Some socioeconomic studies determine that a community will benefit from the proposed facility, on the theory that the development will bring jobs or tax revenues to the area. However, developers' proffers of increased employment opportunities and host fees are often called "environmental extortion" by residents faced with the trade-off between jobs and health.[65] Furthermore, the economic development promises are rarely realized. The reality is that industrial development of the sort challenged in environmental justice struggles such as those in Chester provides few, if any, jobs for the residents around a facility and in fact can cost the community jobs immediately and in the long term, as well as burden all residents with higher taxes.

Nowhere is this more apparent than in Cancer Alley, the industrial corridor along the Mississippi River between Baton Rouge and New Orleans, Louisiana.[66] Convent, Louisiana, a predominantly poor, African American community, is host to the largest number of industrial facilities of any town along Cancer Alley. Convent also has the highest unemployment rate of any community along Cancer Alley. The Shintech Corporation proposed to build yet another plant in the community and promised that the plant would foster economic development. But many community residents were rightly skeptical, contending that such jobs had been promised at nine other industrial facilities that were operating in Convent, yet those companies had hired few if any local residents. Had they done so, Convent would not have had the highest unemployment of all the towns in Cancer Alley. Instead, many community residents reasonably concluded that they would get only Shintech's toxic emissions, not its jobs. Eventually, corporate officials were forced to admit that almost none of the labor for the plant would come from the local community, because the educational background of local residents did not meet the company requirements.

One Michigan court recently recognized that there is often a gap between the promise and the reality of economic benefits in vulnerable communities that host waste facilities. In a case in which a community group challenged a waste incinerator, the Genesee Power Station in Flint, Michigan, the court took note of the fact that the newly constructed $80 million plant failed to employ one person of color in its construction. The court further noted that only one of thirty permanent positions at the plant was occupied by a person of color, and that person was hired at minimum wage. The court concluded, as have many communities, that "the people who will benefit from the profits of the plant do not reside in the neighborhood. However, those who will bear the brunt of the pollution cannot even obtain employment in the plant."[67] In Kettleman City, the revenues from the proposed waste incinerator were to go to the adjacent white community in the county, not to the Latino community in which the facility was to be located and its effects most intensely felt. Other communities, such as Chester, have seen enough waste facilities proliferate around them, and have observed often enough the resulting lack of economic development, to realize the hollowness of promises of economic "benefits."

Beyond the Distributive Paradigm

The studies that chart the disproportionate distribution of environmental hazards have been a wake up call for those in this country who care about social justice. However, in a sense, the studies are just a beginning in fully understanding the phenomenon of environmental injustice or racism. As we have demonstrated, focusing on distributional results alone obscures the social structure and institutional context in which environmental decisions are made. Absent a deeper focus on the processes that lead to racially disparate outcomes, the studies provide only an incomplete understanding of environmental racism.

This is not to say that distributive patterns are not crucial to the environmental justice inquiry, even when it focuses on environmental decision making. Distributional patterns and decision-making processes are intricately intertwined in important ways. As we have said, distributive patterns are a crucial entry point for exploring the justice of the social processes that underlie those patterns, including environmental decision-making processes. Evaluating decision-making processes, in turn, also requires an evaluation of distributions. For instance, a legitimate decision-making process often depends upon an adequate distribution of various social goods, or rights, that are crucial to participation in that process.[68] In the environmental justice context, for instance, some social groups approach environmental decision-making processes with fewer social goods (e.g., time, money, education, information, specialized knowledge, access, and influence) than more privileged groups. Not surprisingly, these same groups remain disadvantaged in the distribution of goods by those processes.

As we began to explore in this chapter, and will continue to explore in the next two chapters, environmental decision-making processes are a location of contestation by, and reform through, grassroots struggles. However, formal decision-making processes are not the only area where ordinary citizens are taking control of the decisions that affect their lives. Through direct protests, litigation, and other strategies, environmental justice advocates are questioning the justice of existing decision-making processes and at the same time creating their own organizations and networks to affect the way in which environmental decisions get made.

city solicitor, contending they usurped her powers to manage her own administration). Dan Hardy, *Council Coalition Keeps Chester Mayor on Outside*, Philadelphia Inquirer (April 30, 1992), at B4 (reporting that the City Council intensified its assault on the Democratic Mayor, stripping her of much of her staff and filling council vacancies with Republicans; this move was the latest in the escalating conflict between the Mayor and the City Council—struggle that virtually paralyzed city government).

63. Demonstrators described the protest as "unorthodox." According to its participants, the number of protesters never exceeded twenty individuals, and the demonstration was staged in an industrial park far from regular traffic. CRCQL and C4 members marched on the street in front of the Authority's offices, demanded a meeting with SWA to discuss waste shipments to Chester, and probably were noticed only by the Waste Authority personnel. Barely an hour passed before SWA officials met with the protesters. They agreed to meet later in the month to discuss the Chester residents' concerns. At this meeting, CRCQL presented SWA with a record of Westinghouse's emission violations. SWA expressed genuine surprise at the long list of transgressions, which included the emission of some pollutants at levels exceeding what is deemed safe for the surrounding community. See Andy Murray, *Chester Residents and Supporters Protest In Delaware* (November 9, 1997) <http://www.envirolink.org/orgs/seac13/c4/dswa.html> (C4 Web page) (on file with author); Green Delware, *Urgent Action! Delaware Solid Waste Authority Votes to Continue Burning Delaware Garbage In Chester, PA*, News Release (May 1, 1997), at 1–2.

64. Mendel-Reyes, Reclaiming Democracy, supra, at 158 (citation omitted).

Notes to Chapter 3

1. Commission for Racial Justice (United Church of Christ), Toxic Wastes and Race in the United States xii (1987). The UCC study defines "hazardous wastes" as the term is used by the EPA: as "by-products of industrial production which present particularly troublesome health and environmental problems." Id. The study goes on to explain that

> [n]ewly generated hazardous wastes must be managed in an approved "facility," which is defined by the EPA as any land structures thereon which are used for treating, storing or disposing of hazardous wastes (TSD facility). Such facilities may include landfills, surface impoundments or incinerators. A "commercial" facility is defined as any facility (public or private) which accepts hazardous wastes from a third party for a fee or other remuneration.

Id. The term "uncontrolled toxic waste sites" refers to closed and abandoned

sites on the EPA's list of sites that pose a present and potential threat to human health and the environment. As of 1985, the EPA inventoried approximately 200 uncontrolled toxic wastes sites across the nation. See id.

2. These areas included Memphis, Tenn. (173 sites), St. Louis, Mo. (160 sites), Houston, Tex. (152 sites), Cleveland, Ohio (106 sites), Chicago, Ill. (103 sites), and Atlanta, Ga. (91 sites). Id.

3. See, e.g., Vicki Been, *Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Justice Claims*, 24 Ecology Law Quarterly 1 (1997) (finding in a nationwide study that commercial hazardous waste treatment facilities sited between 1970 and 1990 were sited in areas disproportionately populated by lower-income Hispanics, but finding no evidence that these facilities were sited in disproportionately African American areas or in areas with high concentrations of the poor). Some regional studies also report results that vary by ethnic group. See, e.g., Brett Baden and Don Coursey, The Locality of Waste Sites within the City of Chicago: A Demographic, Social and Economic Analysis (Irving B. Harris Graduate School of Public Policy Studies Working Paper Series 97-2, 1997) (finding that, in 1990, waste sites tended to be located in low population density areas near commercial waterways and commercial highways, that more African Americans do appear to live in proximity to historical solid waste disposal sites, that there is no evidence that African Americans live in areas with higher concentrations of hazardous waste than whites or Hispanics, and that the percentage of Hispanics in an area is significant in describing the location of waste sites); Douglas L. Anderton et al., *Hazardous Waste Facilities: "Environmental Equity" Issues in Metropolitan Areas,* 18 Evaluation Review, 123–40 (April 1994) (finding no racial disparity in the location of commercial hazardous waste facilities, using the 1990 census). The Anderton study was funded by the world's largest waste management firm, WMX Technologies, Inc.

4. See, e.g., Benjamin A. Goldman and Laura Fitton, Toxic Waste and Race Revisited: An Update of the 1987 Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites I (Center for Policy Alternatives, NAACP, United Church of Christ Commission for Racial Justice, 1994). Id. at 2 (finding statistical significance at the 0.001 level, which means that the probability that the observed change is merely a random fluctuation is less than one in a thousand). No similar pronounced disparities by socioeconomic status were discovered, though the researchers indicated that the data were not examined with the same detail as in the original 1987 study. Id. at 5 (also noting that sixty-three out of sixty-four of most recent studies continue to document racial disparities in the location of noxious facilities, toxic releases and exposures, ambient levels of air pollution, and environmental health effects).

"People of color" includes the total population less non-Hispanic whites. The demographics of the zip code areas, including socioeconomic status, are taken from the 1990 census. Id.

5. Id. at 17 (but also noting that "no matter what the causes, the distribution of these facilities shows how some of the most hazardous inefficiencies of our economy can also pose significant social inequities").

6. Anderton et al., *Hazardous Waste Facilities,* supra; Douglas L. Anderton et al., *Environmental Equity: The Demographics of Dumping*, 31 Demography 229 (1994) (results using 1980 census data); Andy B. Anderson et al., *Environmental Equity: Evaluating TSDF Siting over the Past Two Decades,* Waste Age 83–100 (July 1994).

7. SADRI researchers reasoned that only tracts in the same metropolitan or rural county as a facility could serve as possible alternative sites for the same market. See Andy B. Anderson et al., *Evaluating TSDF Siting,* supra, at 92, 96, 100. For an effective rebuttal of this argument, see Vicki Been, *Analyzing Evidence of Environmental Justice,* 11 Journal of Land Use & Environmental Law 1, 12–13 (1995) (demonstrating that limiting analysis of census data to metropolitan areas or rural counties that have at least one facility reduces the differences in the ethnic and racial composition of host and nonhost tracts) and Been, *Coming to the Nuisance or Going to the Barrios?* supra, at 15–17 (arguing that the effect of SADRI's limitation reduced the differences between the racial and ethnic composition of host and nonhost tracts).

8. Been, *Coming to the Nuisance or Going to the Barrios?* supra. Been attributes her results, which differ compared to those of the SADRI study, to the fact that the SADRI study "did not control for density." Id. at 34.

9. See, e.g., Marianne Lavelle and Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law,* National Law Journal (September 21, 1992), at S1, S2 (concluding that there is a racial disparity in the way the U.S. government cleans up toxic waste sites and punishes polluters). The *National Law Journal* study is not without its critics. See Mary Bryant, *Unequal Justice? Lies, Damn Lies, and Statistics Revisited*, Sonreel (American Bar Association Section of Natural Resources, Energy, and Environmental Law) News (September–October 1993), at 3 (critiquing the NLJ study for not defining key terms, not disclosing sample sizes, not disclosing the size of studied communities, and not adjusting the data for time).

10. The concept of "baselines" belongs to Cass Sunstein. See Cass Sunstein, The Partial Constitution 3–4 (1993) (when the state chooses "status quo neutrality," in taking existing social practices and distributions as its baseline for being neutral toward public and private actors, it produces injustice).

11. See Environmental Equity Workgroup, U.S. Environmental Protection

Agency, EPA 230-R-92-008, Environmental Equity: Reducing Risk For All Communities, Workgroup Report to the Administrator 1 (1992).

12. When it is available to them, people of color have a more difficult time getting adequate medical care than do whites. U.S. General Accounting Office, GAO/PEMD-92-6, Hispanic Access to Health Care: Significant Gaps Exist 10 (1992) (reporting that 33 percent of Latinos had neither private nor public medical insurance in 1989, compared with 19 percent of blacks and 12 percent of whites); Cassandra Q. Butts, *The Color of Money: Barriers to Access to Private Health Care Facilities for African-Americans*, 26 Clearinghouse Review 159, 160 n. 5, 161–62 (1992); Marilyn Yaquinto, *Latinos Cited as Having Least Medical Coverage*, Los Angeles Times (February 19, 1992), at A5; Stephanie Pollack and JoAnn Grozuczak, Reagan, Toxics & Minorities 2 (1984) (Policy Report for the Urban Environment Conference, Inc.) (noting that one in six and one-half black families had trouble getting medical care in 1982, as compared to one in eleven white families). As Cassandra Butts notes, African Americans in both urban and rural areas are more likely than whites to face geographic barriers to health care and health care providers, and a disproportionate share of hospital closings affect African Americans, with "the likelihood of closures . . . directly related to the percentage of African-Americans in the population of a city." Butts, *The Color of Money*, supra. The problem is particularly acute for undocumented Latino farm-workers, who are concentrated in low-paying, high-risk jobs and who are prohibited by law from receiving most government health benefits. See Peter L. Reich, *Jurisprudential Tradition and Undocumented Alien Entitlements*, 6 Georgetown Immigration Law Journal 1 (1992); Peter L. Reich, *Public Benefits for Undocumented Aliens: State Law into the Breach Once More*, 21 New Mexico Law Review 219, 220–23 (1991); Susan B. Drake, *Immigrants' Right to Health Care*, 20 Clearinghouse Review 498, 503–4 (1986); U.S. General Accounting Office, GAO/HRD-92-46, Hired Farmworkers: Health and Well-Being at Risk 3, 24–25 (1992). Additionally, doctors who treat poor people, people of color, and rural residents also often have fewer resources at their disposal and therefore less to offer those patients. Diana B. Dutton, *Children's Health Care: The Myth of Equal Access,* in IV Better Health For Our Children: A National Strategy 375 (U.S. Department of Health & Human Services, ed., 1981).

13. See Beverly H. Wright, *Effects of Occupational Injury, Illness, and Disease on the Health Status of Black Americans: A Review*, in Race and the Incidence of Environmental Hazards: A Time for Discourse (Bunyan Bryant and Paul Mohai, eds., 1992), at 118 (explaining "victim blaming").

14. Vicki Been, *What's Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 Cornell Law Review 1001,

1016 (1993); see also Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics*, 103 Yale Law Journal 1383, 1389 (1994). See also Thomas Lambert and Christopher Boerner, *Environmental Inequity: Economic Causes, Economic Solutions*, 14 Yale Journal on Regulation 195, 202 (1997); Lynn Blais, *Environmental Racism Reconsidered*, 74 North Carolina Law Review 75, 93 (1996).

15. Been, *Locally Undesirable Land Uses*, supra, at 1388–89.

16. See also Lambert and Boerner, *Environmental Inequity*, supra, at 206, 212 (finding that their analysis supports the theory that "minority and poor [individuals] voluntarily move into areas surrounding industrial and waste sites" in St. Louis).

17. In fact, a chief proponent of such theories has proved the opposite proposition through her empirical research: that market dynamics do *not* lead people of color to "come to the nuisance." See, e.g., Been, *Coming to the Nuisance or Going to the Barrios?* supra (finding that the areas surrounding commercial hazardous waste treatment facilities currently are disproportionately populated by lower-income Hispanics, and finding no evidence that these communities became poorer or increased in minority population after the waste facilities were sited); Been, *Locally Undesirable Land Uses in Minority Neighborhoods,* supra, at 1398–1400 (finding that the southeastern waste sites studied by the U.S. General Accounting Office in 1983 were all in communities that originally had both high levels of poverty and predominantly African American populations; finding that these communities did not become poorer or increase in African American percentage of population after the waste facilities were sited). But see Been, *Locally Undesirable Land Uses in Minority Neighborhoods*, supra, at 1400–1406 (finding that Houston waste sites studied in 1983 by Professor Robert Bullard were originally sited in disproportionately in African American communities, but that the communities did not originally have disproportionately low incomes; however, the percentage of African Americans rose and incomes fell after the solid waste facilities were sited); Lambert and Boerner, *Environmental Inequity*, supra, at 206–7 (finding a disproportionate increase of poor and minority individuals around waste sites in St. Louis between 1970 and 1990); Anderton, et al., *Hazardous Waste Facilities*, supra, at 135 (finding evidence of economic decline in communities with commercial hazardous waste facilities but no evidence of "white flight").

18. Been, *Locally Undesirable Land Uses*, supra, at 1389 (emphasis added); see also Lambert and Boerner, *Environmental Inequity,* supra, at 200–202.

19. See, e.g., Cass Sunstein, Free Markets and Social Justice 13–31 (1997).

20. Been, *Locally Undesirable Land Uses*, supra, at 1389; Lambert and

Boerner, *Environmental Inequity*, supra, at 212 (finding that their analysis supports the theory that "minority and poor [individuals] voluntarily move into areas surrounding industrial and waste sites" in the St. Louis area but cautioning that "the conclusions drawn from this study may provide an incomplete picture of environmental justice" and that "other forms of racial discrimination may have been a factor influencing the subsequent migration of these residents to communities hosting polluting facilities"); Blais, *Environmental Racism*, supra, at 141. See also Douglas S. Massey and Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 114 (1993) (finding that "race is the dominant organizing principle" for "housing and residential patterns").

21. Been, *Locally Undesirable Land Uses*, supra, at 1389. See also Massey and Denton, American Apartheid, supra, at 114 (describing the various types of "exclusionary tactics" used by realtors to limit the likelihood of black entry into white neighborhoods and to channel black demand for housing into areas that are within or near existing ghettos; detailing the "white prejudice" that accompanies the movement of blacks into certain neighborhoods, making the area unattractive to further white settlement, and leading to "white flight"; and the pervasive discrimination in the allocation of mortgages and home improvement loans).

22. Regina Austin and Michael Schill, *Black, Brown, Poor and Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice*, 1 Kansas Journal of Law and Public Policy 69, 69–70 (1991).

23. Gerald Torres, *Understanding Environmental Racism*, 63 University of Colorado Law Review 839 (1992).

24. *Washington v. Davis*, 426 U.S. 229 (1976) (adopting intent/purpose requirement as a prerequisite to proving race discrimination in equal protection jurisprudence).

25. See Alan D. Freeman, *Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 63 Minnesota Law Review 1049, 1052–57 (1978); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stanford Law Review 317, 318–19 (1987); Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 Ecology Law Review 619, 642 (1992).

26. 768 F.Supp. 1144, 1149 (E.D. Va. 1991), *aff'd*, 977 F.2d 573 (4th Cir. 1992).

27. Id. at 1150. See also *Bean v. Southwestern Waste Management Corp.,* 482 F.Supp. 673 (S.D. Tex. 1979), *aff'd without op.*, 782 F.2d 1038 (5th Cir. 1986); (denying environmental racism claim for lack of discriminatory intent); *East Bibb*

Twiggs Neighborhood Assn. v. Macon-Bibb County Planning and Zoning Comm'n 706 F.Supp. 880 (M.D. Ga.), *aff'd* 896 F.2d 1264 (11th Cir.), *opinion replaced by* 846 F.2d 1264 (11th Cir. 1989) (same).

28. Lawrence, *The Id, the Ego, and Equal Protection,* supra at 322.

29. See Sheila Foster, *Intent and Incoherence*, 72 Tulane Law Review 1065 (1998).

30. Cole, *Empowerment as the Key to Environmental Protection,* supra at 648; Luke W. Cole, *Environmental Justice Litigation: Another Stone in David's Sling*, 21 Fordham Urban Law Journal 523, 524 (1994); Luke W. Cole, *Remedies for Environmental Racism: A View from the Field*, 90 Michigan Law Review 1991, 1997 (1992).

31. See, e.g., Michael Gelobter, *Toward a Model of "Environmental Discrimination,"* in Race and the Incidence of Environmental Hazards: A Time for Discourse (Bunyan Bryant and Paul Mohai, eds., 1992), at 76–80.

32. Presumably, market dynamics adherents would agree with this normative analysis. See Been, *Locally Undesirable Land Uses in Minority Neighborhoods*, supra, at 1391 n. 30 (noting that "[i]f market forces at issue are based on discrimination, i.e., if host neighborhoods became predominantly minority after the [facility] was sited because racial discrimination in the housing market relegated people of color to those neighborhoods, siting practices might have to change to account for persistent discrimination in the housing market").

33. Massey and Denton, American Apartheid, supra, at 1–16, 17–60.

34. Richard Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 Harvard Law Review 1841, 1847–54 (1994).

35. Massey and Denton, American Apartheid, supra, at 83–114.

36. According to one study, among neighborhoods located within five miles of an established black neighborhood, white population loss is extremely likely, and this loss becomes virtually certain as the percentage of blacks increase. This pattern holds true for suburbs as well as for central cities. The probability that a central city tract located within five miles of a black neighborhood would lose white residents was .85 when its black percentage was 0%–5%; it rose to .92 when the black percentage reached 30%–40%. Massey and Denton, American Apartheid, supra, at 80. See also id. at 74, 113–14 (comparing the segregation of Caribbean Latinos with that of blacks and concluding that the average level of segregation increases steadily as one moves from being identified as white Hispanics, to mixed-race Hispanic to black Hispanic, the last having an "index" of segregation comparable to that for African Americans).

37. Ford, *Boundaries of Race,* supra, at 1857.

38. Id. at 1854.

39. Massey and Denton, American Apartheid, supra, at 114, 96–109.

40. Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of* Euclid, in Zoning and the American Dream 101 (Charles M. Haar and Jerold S. Kayden, eds., 1990).

41. Massey and Denton, American Apartheid, supra, 118–30, Ford; *Boundaries of Race*, supra, at 1851–52.

42. John Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair*," 143 University of Pennsylvania Law Review 1233, 1235 (1995).

43. Susan J. Smith, *Residential Segregation and the Politics of Racialization*, in Racism, the City, and the State 128, 133 (Malcolm Cross and Michael Keith, eds., 1993).

44. William Julius Wilson, When Work Disappears: The World of the New Urban Poor 51–86 (1996). Wilson writes that social isolation deprives inner-city residents not only of conventional role models but also of the social resources provided by mainstream social networks that facilitate social and economic advancement in a modern industrial society; social isolation also contributes to the formation and crystallization of ghetto-related cultural traits and behaviors.

45. Margaret Weir, *From Equal Opportunity to the New Social Contract*, in Racism, the City, and the State (Malcolm Cross and Michael Keith, eds., 1993), 104; see also Wilson, When Work Disappears, supra, at 184–85 ("[t]he growing suburbanization of the population influences the extent to which national politicians will support increased federal aid to large cities and the poor . . . we can associate the sharp drop in federal support for basic urban programs since 1980 with the declining political influence of cities and the rising influence of electoral coalitions in the suburbs").

46. Sunstein, The Partial Constitution, supra, at 3–4 (when the state chooses "status quo neutrality," in taking existing social practices and distributions as its baseline for being neutral toward public and private actors, it produces injustice); see also Ford, *Boundaries of Race*, supra, at 1852 (making similar point in the context of housing segregation).

47. Public opposition, and often direct protest, is considered by industry to be the "greatest single obstacle to the successful siting of" hazardous facilities, with middle and upper socioeconomic groups possessing greater resources to effectuate their opposition. Cerrell Associates, Political Difficulties Facing Waste-to-Energy Conversion Plant Siting 43 (1984) (prepared for the California Waste Management Board) (counseling that "middle and higher socioeconomic strata neighborhoods should not fall within the one-mile and five-mile radius of the proposed site"); Richard Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 Northwestern

University Law Review 787, 806 (1993) (noting that few proposals survive the public review that often accompanies the announcement of the recommended siting of a hazardous waste facility).

48. Joan Bernstein, *The Siting of Commercial Waste Facilities: An Evolution of Community Land Use Decisions*, 1 Kansas Journal of Law & Public Policy 83 (1991)(waste companies look for cheap land); Michael B. Gerrard, Whose Backyard, Whose Risk: Fear and Fairness in Toxic Nuclear Waste Siting 47 (1994); Paul Mohai and Bunyan Bryant, *Race, Poverty, and the Distribution of Environmental Hazards: Reviewing the Evidence*, in Race, Poverty, and the Environment (Fall 1991–Winter 1992), at 24.

49. Cerrell Associates, Political Difficulties, supra, at 65 (noting that "older, conservative, and lower socioeconomic neighborhoods" are least likely to resist sitings).

50. Bernstein, *The Siting of Commercial Waste Facilities*, supra.

51. Cerrell Associates, Political Difficulties, supra, at 29.

52. See Rabin, *Expulsive Zoning,* supra, at 101–2. "Such patterns, once established, are difficult to alter. Locally Unwanted Land Uses (LULUs) result in depressed residential property values which, in turn, reduce the municipal tax base and discourage other upscale development which would help boost property values." Jason Wilson, *Environmental Inequity: Which Came First, Poverty or Pollution*, New Jersey Reporter 40 (March/April 1997).

53. Conner Bailey and Charles E. Faupel, *Environmentalism and Civil Rights in Sumter County, Alabama*, in Race and the Incidence of Environmental Hazards: A Time for Discourse 140 (Bunyan Bryant and Paul Mohai, eds., 1992) (noting that "among Alabama's 67 counties, the ten with the lowest population densities also have average per capita incomes well below the state average" and noting that blacks are a majority in six of ten Alabama counties with the lowest population densities and lower than average per capita income); Gerrard, Whose Backyard, Whose Risk, supra (noting that "most of the anecdotes and much of the data concerning discriminatory siting come from the southeastern United States . . . [and that] is a region where, for obvious historical reasons, rural areas have large black populations; in the northeast, where the rural areas are mostly white, most proposed sites have been in white areas").

54. *African Americans for Environmental Justice v. Mississippi Department of Environmental Quality*, No. 1R-93-R4 (filed Sept. 24, 1993) (study of Mississippi's siting process revealed that population density in Mississippi was directly inversely correlated with race so that the less dense, the more African American an area was, leading to siting in only black areas). See also Luke W. Cole, *Civil Rights, Environmental Justice, and the EPA: The Brief History of Administrative*

Complaints under Title VI of the Civil Rights Act of 1964, 9 Journal of Environmental Law and Litigation 309, 345 (1994).

55. See, e.g., *North Carolina Department of Transportation v. Crest Street Community Council, Inc.,* 479 U.S. 6 (1986) (freeway through African American neighborhood fought on civil rights grounds); *Coalition of Concerned Citizens against I-670 v. Damian,* 608 F.Supp. 110 (S.D. Ohio 1984) (same); *Clean Air Alternatives Coalition v. United States Department of Transportation,* No. C-93-0721-VRW (N.D. Cal. filed March 2, 1993) (same).

56. *In the Matter of Louisiana Energy Services, L.P.*, Decision of the Nuclear Regulatory Commission Atomic Safety and Licensing Board, LBP-97-8, 45 NRC 367, 390–92 (May 1, 1997). On appeal, NRC Commissioners reversed the Board's requirement of an inquiry into racial discrimination in the siting process. It based its reversal on the Board's failure to find that intentional racism had tainted the decisional process and the Board's failure to make clear the legal basis for its decision to order an investigation of possible racism in the section of the site. *In the Matter of Louisiana Energy Services*, Decision of the Nuclear Regulatory Commission, CLI-98-3 (April 3, 1998).

57. RCRA allows states to establish solid and hazardous waste programs that are more restrictive than the federal minimum. 42 U.S.C. 6902 (b), 6929. RCRA explicitly acknowledges that "the collection of solid wastes should continue to be primarily the function of State, regional and local agencies." Id. at 1002(a)(4). See also Celeste P. Duffy, *State Hazardous Waste Facility Siting: Easing the Process through Local Cooperation and Preemption*, 11 Boston College Environmental Affairs Law Review 755, 757–58, 766–67 (1984); Rodolfo Mata, *Hazardous Waste Facilities and Environmental Equity: A Proposed Siting Model*, 13 Virginia Environmental Law Review 375, 395–400 (1994).

58. U.S. Environmental Protection Agency, SW-865, Hazardous Waste Facility Siting: A Critical Problem 7 (1980).

59. See, e.g., Andrew Szasz, Ecopopulism: Toxic Waste and the Movement for Environmental Justice 183 n. 26 (1994) (describing as "passive" approach); Duffy, *State Hazardous Waste Facility Siting,* supra, 755, 766–769 (describing as "ad hoc" approach); see also Rachel D. Godsil, *Remedying Environmental Racism*, 90 Michigan Law Review 394, 403–4 (1991) (describing approach as "super review"). See generally Sheila Foster, *Impact Assessment,* in The Law Of Environmental Justice: Theories and Procedures to Address Disproportionate Risks 256, 285–89 (Michael B. Gerrard, ed., 1999) (reviewing state siting processes).

60. See generally A. Dan Tarlock, *State versus Local Control of Hazardous Waste Facility Siting: Who Decides in Whose Backyard?* in Resolving Locational Conflict 137, 148–50 (Robert W. Lake, ed., 1987).

61. See, e.g., Alabama Code § 22-30-5.1(d) (1990) (requiring selection committee to consider and include in its written report the "social and economic impacts of the proposed facility on the affected community, including changes in property values, community perception and other costs"); Kentucky Revised Statute Annotated § 244.855(1)(c) (Michie 1995) (requiring agency to consider "social and economic impacts of the proposed facility" on the "affected community," including "changes in property values, community perceptions and other psychic costs"); Maryland Environmental Code Annotated 7-402 (1997) (providing that hazardous waste facilities be subject to "due consideration" of the "equitable geographic distribution of sites" and that consideration be given to those "subdivisions that presently have sites" and avoiding "to the extent feasible" siting additional facilities "disproportionately in any one subdivision"); Mississippi Code Annotated 17-18-15 (1997) (requiring consideration of "socioeconomic factors," which include but are not limited to "impact on local land uses, property values and governmental services"); North Carolina General Statute § 160A-325 (a) (1996) (requiring considerations of "socioeconomic and demographic data" in selecting or approving a site for a new sanitary landfill that is located within one mile of an existing sanitary landfill). Some proposed legislation contains similar soft criteria. See also H.B. 518, 90th Leg., 1st Sess. § 15 (Ill. 1997) (requiring a community impact statement "written in plain language and limiting the use of technical terms" to provide information about, among other things, "the presence of any other existing toxic chemical facilities and hazardous waste sites in the affected community"); H.B. 2103, 1st Sess. § 7 (1997 Tex.) (requiring consideration of "cumulative risks," including the combined level of noise, odor, and other impacts, in an administrative proceeding involving the siting or expansion of operation of a facility in an area where other facilities are located).

62. See, e.g., California Public Resource Code § 21151.1 (1997) (specifically subjecting hazardous waste facility permits to environmental impact statement requirement) and California Code of Regulations § 15131 (1997) (requiring consideration of social and economic impacts); Louisiana Revised Statutes § 30:2018 (1998) (requiring environmental assessment statement for new permits; requiring consideration of social and economic benefits of the facility); Code Massachusetts § 11.25 (1997) (requiring environmental impact report for certain facilities); Minnesota Statute Annotated §§ 115A.194 (1997) (requiring environmental impact statement before issuing permit for hazardous waste facility) and 116D.04 (requiring analysis of economic, employment, and sociological impacts in environmental impact statement); New York Code of Rules and Regulations § 361.3 (requiring application for permit to contain a draft environmental impact statement).

63. See, e.g., Alabama Code Annotated 22-30-5.1 (providing that no more than one commercial hazardous waste facility or disposal site shall be situated within any one county of the state); Arkansas Code Annotated § 8-6-1501 (Michie 1993) (creating a rebuttable presumption against permitting a "high impact solid waste management facility" within twelve miles of any other existing "high impact solid waste management facility"); Georgia Code Annotated § 12-8-25.4 (Harrison 1996) (prohibiting the permitting of any solid waste handling facility within an area that already includes all or a portion of three or more landfills in a two-mile radius); Wisconsin Statute Annotated 289.29 (1997) (prohibiting siting of a solid waste facility in a "3rd class city" if two or more approved solid waste facilities are in operation in that city).

When choosing potential sites under the far less common active approach to siting, state regulations suffer from a similar myopia. Some states mandate consideration of equitable geographic distribution. See Maryland Environmental Code Annotated § 7-402 (1997) (providing for "due consideration" of the "equitable geographic distribution of sites" and that consideration be given to those "subdivisions that presently have sites" and avoiding "to the extent feasible" siting additional facilities "disproportionately in any one subdivision"). Other states proclaim a preference for locating hazardous waste sites in industrial areas, ensuring that high impact land uses are clustered in certain neighborhoods. Utah Code Annotated § 19-6-205 (1997).

64. While ostensibly designed to identify significant environmental impacts, the environmental review process is only as good as the government agency conducting it. Across the country, agencies have failed to consider certain impacts or communities as a result of incompetence or design. Luke W. Cole, *Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy,* 14 Virginia Environmental Law Journal 687, 701 (1995).

Sharon Carr Harrington notes the inaccuracy of the Environmental Impact Statement for a Louisiana Energy Services uranium enrichment facility located between two historical African American communities near Homer, Louisiana:

> The draft EIS failed to consider any impact of the facility on Forest Grove and Center Springs—the communities closest to the proposed site. In fact, neither of the communities appear on any of the numerous maps included in the 400-page document although more distant, predominantly white communities of similar size are noted.

Sharon Carr Harrington, *Fighting Toxics on the Bayou*, Race, Poverty & the Environment (Fall 1994–Winter 1995), at 48, 49. The plaintiffs made the same observation in *Residents of Sanborn Court, et al. v. California Department of Toxic Substances Control*, No. 95CS01074 (Sacramento Sup. Ct., May 5, 1995).

In this case, the State of California prepared environmental review documents for a toxic waste treatment facility just one block from a complex that housed Latino farm-workers and more than seventy children:

> Remarkably, the Initial Study failed to mention that there was a substantial concentration of people living very close to the proposed toxic facility. The site map included in the Initial Study showed the neighborhood surrounding the toxic plant, and conveniently stopped across the street from the Sanborn Court residential complex.

Plaintiffs' Memorandum of Points and Authorities in Support of Petition for Writ of Mandate.

65. For instance, Mississippi grants a volunteer host community $1 million after a commercial hazardous waste facility is permitted and construction has commenced. The community may also negotiate with the state environmental agency for a percentage of annual gross receipts from the facility, as well as a host of other incentives (e.g., education and outreach programs). Mississippi Code Annotated 17-18-37 (1997). But see Robert Bullard, *Environmental Blackmail in Minority Communities*, in Race and the Incidence of Environmental Hazards: A Time for Discourse 83–84 (Bunyan Bryant and Paul Mohai, eds., 1992) (explaining that minority communities are often vulnerable to economic inducements and may minimize their opposition to sitings whose risks might outweigh their benefits because these communities are beset by rising unemployment, extreme poverty, a shrinking tax base, and decaying business infrastructure).

66. The following material was drawn from many sources. For general information about Cancer Alley and the Shintech dispute, see M. Kirz, *Environment: The Color of Poison*, National Law Journal (July 11, 1998); OCR, EPA, Title VI Administrative Complaint Re: Louisiana Dep't of Env't Quality/Permit for Proposed Shintech Facility 20–21 (EPA File No. 4R-97-R6).

67. *NAACP v. Engler*, Case No. 95-38228-CV, Genesee County Circuit Court, May 29, 1997, at 45.

68. See Robert A. Dahl, Democracy and Its Critics 163–75 (1989) (arguing that certain rights, goods, and interests are integral to a legitimate democratic process).

Notes to Chapter 4

1. California Health & Safety Code §25199(a)(3).

2. See also Luke W. Cole, *Environmental Justice and the Three Great Myths of White Americana*, 3 Hastings West-Northwest Journal of Environmental Law and Policy 449, 450–54 (1996). The myth described by Solorio-Garcia,

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