

ESSAYS

A Third Policy Avenue to Address Environmental Justice: Civil Rights and Environmental Quality and the Relevance of Social Capital Policy

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I. INTRODUCTION

More than thirty states have established authorities or undertaken initiatives over the past ten years to address the issue of “environmental justice”¹ or “environmental equity.”² Most of these state efforts have

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1. Many definitions exist for the terms “environmental justice” and “environmental equity.” For a survey of definitions, see U.S. ENVTL. PROT. AGENCY, ENVIRONMENTAL JUSTICE (Sept. 2002), at <http://www.epa.gov/compliance/environmentaljustice/index.html>. In general, the terms include concepts relating to a clean and healthy environment, eradication of disproportionate environmental impacts across race and income lines, and meaningful public involvement in the decision-making process. See, e.g., Principles of Environmental Justice, Proceedings of the First National People of Color Environmental Leadership Summit (Oct. 24-27, 1991).

2. See MORGAN, LEWIS & BOCKUS, AMERICAN CHEMISTRY COUNCIL, ENVIRONMENTAL JUSTICE PROGRAMS: 50-STATE SURVEY (2001); Memorandum from Hillary Gross, Hannah Shafsky, and Kara Brown, Environmental Justice: A Review of State Responses (Dec. 2000); Cumulative 50-State Survey (on file with author).

addressed environmental justice through the lens of environmental³ or civil rights⁴ policy. These frameworks respond to important goals relating to environmental disparities based on race, income, ethnicity, and the need of all people for a healthy, sustainable environment.⁵ As the issue of environmental justice continues to enter the mainstream, however, it is important to ensure that the important and early recognized core value of community empowerment, and the closely allied concept of “social capital,”⁶ are addressed in state initiatives and policies.

3. A majority of states that have adopted environmental justice policies or enacted statutes have followed an environmental policy approach. Maryland Governor Parris Glendening, for example, established the Commission on Environmental Justice and Sustainable Communities, on January 1, 2001, to enhance the quality of life in all of Maryland’s communities and for all residents. Maryland Governor Parris H. Glendening, Environmental Justice Announcement, Remarks at Wagner’s Point (Mar. 9, 2001), *available at* <http://www.gov.state.md.us/gov/speech/2002/html/envirojustice.html>; *see also* State of Maryland, Exec. Order No. 01.01.2001.01 (2000), *available at* <http://www.gov.state.md.us/gov/execords/2001/html/0101eo.html>. Similarly, the State of North Carolina’s “Environmental Equity Initiative supports the DENR’s [Department of Environment and Natural Resource] mission of protecting our state’s precious human and natural resources. We do this by ensuring clean air, clean water, and proper and safe disposal of pollutants in a manner consistent with sustainable development.” N.C. DEP’T OF ENV’T AND NATURAL RES., ENVIRONMENTAL EQUITY INITIATIVE 1 (2000), *available at* <http://www.admin.enr.state.nc.us/admin/pdf/Envequin.pdf>. At the federal level, agencies also frequently adopt an environmental policy approach. *See* Memorandum from Gary S. Guzy, General Counsel, Office of General Counsel, U.S. EPA, to Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assistance; Robert Perciasepe, Assistant Administrator, Office of Air and Radiation; Timothy Fields, Jr., Assistant Administrator, Office of Solid Waste and Emergency Response; J. Charles Fox, Assistant Administrator, Office of Water (Dec. 1, 2000) (describing the EPA’s statutory and regulatory authorities under which environmental justice issues may be addressed in permitting); *see also* Richard J. Lazarus & Stephanie Tai, *Integrating Environmental Justice into EPA Permitting Authority*, 26 *ECOLOGY L.Q.* 617, 677 (1999) (reviewing the EPA’s authority to consider environmental justice concerns).

4. *See* Ellen M. Peter, *Implementing Environmental Justice: The New Agenda for California State Agencies*, 31 *GOLDEN GATE U. L. REV.* 529, 531 (2001) (“The environmental justice movement grew out of the civil rights movement. Thus, the environmental justice legal challenges are founded on civil rights authorities, including Title VI of the Civil Rights Act of 1964.”).

5. *See* Gary C. Bryner, *Assessing Claims of Environmental Justice: A Conceptual Framework*, in *JUSTICE AND NATURAL RESOURCES: CONCEPTS, STRATEGIES, AND APPLICATIONS* 31-55 (Kathryn M. Mutz et al. eds., 2002) (identifying sustainability as closely aligned with environmental justice).

6. The term “social capital” was used by Jane Jacobs in her book, *The Death and Life of Great American Cities*, and was more recently popularized by Harvard Sociologist Robert D. Putnam in his book, *Making Democracy Work: Civic Traditions in Modern Italy*. As defined by Professor Putnam, and as used in this Essay, social capital includes those features of social organization such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit. ROBERT D. PUTNAM ET AL., *MAKING DEMOCRACY WORK: CIVIL TRADITIONS IN MODERN ITALY* 167 (1993). While it is difficult to quantify social capital stocks directly, proxy indicators for social capital include civic engagement, voting in municipal or off-year elections, and membership in social, service, or religious organizations. *See generally* JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 143-238 (1961).

II. SOCIAL CAPITAL AND ITS RELEVANCE TO ENVIRONMENTAL JUSTICE

Social capital policy approaches focus on that portion of environmental justice pertaining to the ability of communities to shape and bring into existence community aspirational goals, and to address collective community issues.⁷ Although not inconsistent with the civil rights and environmental policy frameworks used to address environmental justice, social capital oriented policies differ from these approaches in important ways.⁸ Social capital policies are community focused and involve government entities primarily to: (1) help build capacity within communities (whether by themselves or with other partners) to identify and address local issues and goals and (2) provide greater and more meaningful access to government decision-making processes.⁹

While the civil rights, environmental, and social capital policy frameworks illuminate different facets of environmental justice, they are also positively reinforcing and dynamically related. Using indicators, such as voter turn-out, as a measure of social capital, the following indicators strongly suggest the importance of community social capital in achieving the environmental policy and civil rights aspects of environmental justice:

- Communities that have high rates of voter turn-out in general elections (normalized for race, income, and education factors) have a higher rate of Toxic Release Inventory (TRI) chemical reduction than communities with lower voter turn-out;¹⁰
- The level of clean-up and funds expended, on a risk of cancer basis, is greater in communities with higher voter turn-out.¹¹ Researchers have found that the correlation between voter turn-out and level of clean-up was most

It must also be noted that social capital may take on a malignant, exclusionary form, wherein certain attributes bind individuals together, and the absence of that attribute creates cause for exclusion. An example of such forms of social capital includes associations that form to advance racism.

7. See MANUEL PASTOR, BUILDING SOCIAL CAPITAL TO PROTECT NATURAL CAPITAL: THE QUEST FOR ENVIRONMENTAL JUSTICE (Political Econ. Research Inst., Working Paper No. 11, 2001).

8. See *id.* at 16.

9. See *id.* at 11-16.

10. James T. Hamilton, *Exercising Property Rights to Pollute: Do Cancer Risks and Politics Affect Plant Emission Reductions?*, 18 J. RISK & UNCERTAINTY 105, 120 (1999).

11. See *id.*

significant at the least cost-effective site clean-ups and the lowest risk sites;¹²

- A survey of 200 corporate counsels found that the overwhelming majority of attorneys said that they were more likely to recommend reducing their facilities' emissions if a community group could make a credible threat to take political or legal action against the facility;¹³
- The best predictor for the location of new TRI facilities in Los Angeles is not race or income, but the rate of a community's ethnic change (ethnic churning), an indicator of social capital;¹⁴ and
- The occurrence of urban restoration projects (community gardens, reclamation of vacant lots, etc.) in New Haven, Connecticut, correlates with a sense of "being part of a solid community."¹⁵

Community social capital is, therefore, a critical asset both for community-led efforts to halt unwanted projects¹⁶ and those community-led efforts that seek to work collaboratively with other stakeholders (e.g., government at all levels, industry, environmentalists, etc.) to achieve mutually consistent goals.¹⁷

12. See W. KIP VISCUSI & JAMES T. HAMILTON, ARE RISK REGULATORS RATIONAL? EVIDENCE FROM HAZARDOUS WASTE CLEANUP DECISIONS 14-22 (AEI-Brookings Joint Ctr. for Regulatory Studies, Working Paper No. 99-02, 1999).

13. Marianne Lavelle, *Environmental Vise: Law, Compliance*, NAT'L L.J., Aug. 30, 1993, at S1-S9.

14. Manuel Pastor, Jr. et al., *Which Came First? Toxic Facilities, Minority Move-in, and Environmental Justice*, 23 J. URB. AFF. 1, 19 (2001).

15. ALEXIS DINNO, HEALTH AND COMMUNITY BASED RESIDENTIAL RESTORATION: AN INVESTIGATION IN THE UTILITY OF THE TRADITIONAL EPIDEMIOLOGICAL APPROACH (Yale Univ. Urban Res. Inst., Working Paper No. 97, 2000).

16. Luke W. Cole, *Environmental Justice Litigation: Another Stone in David's Sling*, 21 FORDHAM URB. L.J. 523, 541 (1994) ("Environmental justice lawsuits must be brought in recognition of their political nature, in order to lift a community's morale, strengthen the community group, raise the profile of the group, and build the political momentum necessary to win such struggles."); see also Derrick A. Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 513 (1976) ("Litigation can and should serve lawyer and client as a community-organizing tool, an educational forum, a means of obtaining data, a method of exercising political leverage, and a rallying point for public support.").

17. For example, the ability of industry, communities, and government to collectively redevelop brownfields requires social capital. First, a community must be able to identify its collective vision and needs, an example of "bonding social capital." Then, the community, having aligned goals, must be able to attract and work together, an example of "bridging social capital." See PASTOR, *supra* note 7.

III. SOCIAL CAPITAL PROMOTING POLICIES

In addition to those already developed, new policy directions may well be needed to achieve the multiple goals of environmental justice. Recent state environmental justice policies and new interpretations or applications of laws have created mechanisms for individuals to oppose permits (e.g., opposition to a locally unwanted land use)¹⁸ or to help mitigate impacts once permits are in place. However, with some exceptions, most environmental justice initiatives are not pro-active, and tend not to be expressly designed to increase the capacity of communities, collectively, to identify and address community needs and aspirational goals.¹⁹ By not taking into account the social capital dimension of environmental justice, these new initiatives miss opportunities to strengthen or utilize existing social capital networks to address local environmental concerns.²⁰

State and federal governments have engaged in, or supported, community social capital approaches to environmental protection in recent years, but they have not necessarily oriented these efforts toward low-income and/or minority communities.²¹ Some of these social capital-based activities have included:

18. See, e.g., *In re Am. Marine Rail, LLC*, No. 2-6007-00251/00001, 2000 WL 1299571, at *1 (N.Y. Dep't Env'tl. Conserv., Aug. 25, 2000) (remanding permit, under the State of New York's environmental review statute, for, among other reasons, failure to consider environmental justice issues).

19. DINNO, *supra* note 15.

20. See Luke W. Cole, *Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy*, 14 VA. ENVTL. L.J. 687, 705 (1995) (arguing that actions that do not empower the community directly are “[l]ike applying a Band-Aid to skin cancer, this style of advocacy does not change the status quo—the symptom may be covered up, but the malady lingers on. Communities are typically chosen for noxious land uses because they are politically and economically powerless. Thus, the noxious land use is merely a symptom of the larger problem of powerlessness.”); see also Craig Anthony Arnold, *Planning Milagros: Environmental Justice and Land Use Regulation*, 76 DENV. U. L. REV. 1, 28-30 (1998) (describing criticism of existing environmental regulatory regimes from the perspective of environmental justice advocates).

21. It is important to note that the application of social capital policy does not necessarily imply that a program is directed at environmental justice issues. For example, recently the EPA has placed substantial technical information resources, and frequently posts meetings, projects, and grant opportunities (pertinent to the neighborhood level) on the Internet. The decreased cost in obtaining this information can help communities identify issues of collective concerns, community assets, and threats thereto, etc., thereby facilitating the use and generation of social capital. However, the use of new technologies may not benefit all communities evenly. The increased availability of information to only technology savvy communities may have a negative effect on low-income and minority communities, where the digital divide is greatest. As the EPA recognizes,

[e]ven as these advances create new opportunities to obtain information and data for those with access to the technology, many communities have neither the equipment nor

- Community Based Environmental Protection Initiative (CBEP)
- Support of Community-based Urban Gardens
- Implementation of Resource Advisory Councils
- Community-based Planning Initiatives
- Technical Assistance Grants (TAG grants)
- Sponsorship of neighborhood-based conservation initiatives
- Community based stewardship projects
- Public involvement in development of Supplemental Environmental Projects
- Testimony drawn from affected community/individuals in enforcement proceedings
- Development of an easy to use, accessible Geographical Information System
- Community-based projects to generate marketable Emission Reduction Credits
- Support of sweat equity programs
- Public-Private/Community Brownfields initiatives
- Use of third-party neutrals
- Encouragement of fence-line committees
- Toll free enforcement tip-lines
- Use of Federal Advisory Committees

While many of the initiatives listed above are not expressly oriented toward minority and/or low-income communities, they have proven effective in supporting the community empowerment goal of environmental justice.²² This success suggests value in broad application of social capital principles when developing initiatives to address environmental justice.

the training to take advantage of it. Unless EPA, in conjunction with other federal, state and private sector partners, takes proactive steps to increase access . . . , these communities will fall further behind in the capacity to participate in decision-making processes just as others become more fully involved. The “digital divide” that separates those with Internet access from those without it could widen, and environmental and health consequences could follow.

EPA, *ENGAGING THE AMERICAN PEOPLE, A REVIEW OF EPA’S PUBLIC PARTICIPATION POLICY AND REGULATIONS WITH RECOMMENDATIONS FOR ACTIONS 1, 3* (2000). This recognition, however, also demonstrates the awareness of the connection between community social capital and environmental justice within the EPA and points toward areas of future productive work.

22. See PASTOR, *supra* note 7, at 2-3.

IV. CONCLUSION

The fact that more than thirty states have implemented environmental justice authorities or initiatives demonstrates the existence of an underlying, shared societal expectation that environmental decisions will be made to protect all communities, including low-income and minority communities. Moreover, it suggests a common understanding that all communities should have a meaningful role in how those decisions are made.

Social capital policy, as used to promote environmental justice, is consistent with the goals of civil rights and environmental policy. All three focus on the equitable application of state and federal laws and initiatives. Community social capital policy, however, particularly emphasizes the role of the community to identify needs and achieve specific aspirational goals. Attention to issues of social capital will give all stakeholders another avenue of understanding and addressing environmental justice concerns.