1994

City versus Countryside: Environmental Equity in Context

A. Dan Tarlock

Recommended Citation

A. Dan Tarlock, *City versus Countryside: Environmental Equity in Context*, 21 Fordham Urb. L.J. 461 (1994).
Available at: https://ir.lawnet.fordham.edu/ulj/vol21/iss3/3

CITY VERSUS COUNTRYSIDE: ENVIRONMENTAL EQUITY IN CONTEXT

A. Dan Tarlock†

I. Introduction: Environmental Equity and Environmentalism: Separate Movements in Need of Reconciliation

Using environmental regulation to promote social equity is not a high priority of the United States environmental policy.[1] Our environmental policy has sought to achieve two objectives, pollution risk minimization and biodiversity protection through regulatory strategies which move toward allocative efficiency, although efficiency has ·often been subordinated to moral imperatives.[2] Risk minimization and, to a lesser extent, biodiversity protection, have been pursued through uniform, centrally administered pollution standards and natural area protection programs. The specific loca-

1. There is a long history of intersection between efforts to preserve the natural environment and efforts to mitigate the averse social and health impacts of industrialization and urbanization through programs which promote public health in the name of social equity. During the progressive era, both conservationists and social reformers shared faith in scientific analysis and rational planning. After World War II, however, "mainstream" environmentalism distanced itself from grassroots social action and "had become thoroughly linked to the environmental policy system, a system designed to manage and control pollution rather than reduce or restructure the sources of pollution and other environmental ills." ROBERT GOTTLIEB, FORCING THE SPRING: THE TRANSFORMATION OF THE AMERICAN ENVIRONMENTAL MOVEMENT 316 (1993). The legacy of subordinating social equity to resource management to enhance natural areas can be seen in the complex way in which the California Environmental Quality Act (CEQA) attempts to reconcile environmental protection and affordable housing. CEQA was amended in 1979 to conform to state housing quality goals which declare that every Californian should be able to enjoy a decent home and a satisfying living environment. Agencies must balance this goal against the earlier goal of assuring a high quality, healthful, and aesthetically pleasing environment. PUB. RES. CODE §§ 21000 (b), (g) & 21001 (d). The balance may still be struck in favor of traditional environmental values because the legislation prohibits an agency from reducing the number of housing units in a proposed project as a mitigation measure only if another measure would provide a comparable level of mitigation. *Id.* § 21085.

2. Mark Sagoff, *Principles of Pollution Control*, 71 MINN. L. REV. 19 (1990).

FORDHAM URBAN LAW JOURNAL [Vol. XXI

tion of pollution sources and natural areas was of secondary concern because the primary justification for most of these programs was the national rather than the regional or local benefits that they produced.[3] Thus, it has been easy to assume that the benefits of these programs were equally distributed across the population. For this reason, the environmental movement paid comparatively little attention to the distributional effects of environmental protection.[4] Often when redistribution was considered, the effects of an environmental policy were assumed to be positive rather than negative. When negative distributional effects were considered, the focus was on the unfairness to low-income people who were forced to bear a disproportionate share of the high costs of environmental protection beyond levels justified by a cost-benefit analysis.[5]

Recently, the distributional focus of environmentalism has been broadened to include the disproportionate costs to poor and minorities who are allegedly insufficiently protected by environmental regulation. In the 1960s, municipal service disparities between wealthy and poor areas[6] led to equal protection suits to equalize urban services within local governments. This effort to empower

---

3. *See, e.g.,* COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY: THE FOURTH ANNUAL REPORT OF THE COUNCIL OF ENVIRONMENTAL QUALITY 111 (1973) (raising the question of whether environmental policy should promote geographical equity and concluding that "[q]uite to the contrary, environmental programs are an unlikely and probably inefficient mechanism for pursuing such goals.")

4. During the formative years of the environmental movement, 1968-1973, the issue was addressed in some important early studies, *see infra* notes 21-23, and then dropped except by a few land use scholars. *E.g.,* DANIEL R. MANDELKER, ENVIRONMENT AND EQUITY: A REGULATORY CHALLENGE (1981). The late Richard Babcock, one of the foremost land use attorneys and critics of the system from the 1950s to the 1980s, consistently urged the incorporation of social equity into environmental land use regimes. As he once wrote of growth control advocates, "their strident protests against urban sprawl may come just when the middle class blacks find opportunities to buy one of those offensive detached single-family lots in suburbia. The backyard barbecue is embarrassing only if one can afford a condominium on the East side as well as a second home in Vermont." RICHARD F. BABCOCK, BILLBOARDS, GLASS HOUSES AND THE LAW 139 (1977).

5. Historically, both in the United States and in developing countries, the poor and minorities have used equity as a defense to the adoption of or compliance with high environmental standards. *See* Daniel B. Magraw, *Legal Treatment of Developing Countries: Differential, Contextual, and Absolute Norms,* 1 COLO. J. INT'L ENVTL. & POL'Y 69 (1990). An early example of this occurred in Houston, Texas where there was a persistent refusal to adopt a comprehensive zoning ordinance. In 1962, African-American residents of Houston voted heavily against zoning, in part, because of fears that zoning might prohibit the ancillary use of residences for commercial purposes. RICHARD L. BABCOCK, THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES 27 (1966).

6. *See* CHARLES M. HAAR & DANIEL W. FESSLER, THE WRONG SIDE OF THE TRACKS (1986).

neglected neighborhoods to improve the quality of their lives[7] is the immediate root of a newer movement[8] directed primarily at alleged toxic pollutant sources. The movement to extend the perceived benefits of toxic pollutant control laws to the poor and minorities is variously described as the promotion of environmental equity, environmental justice, or anti-environmental racism.[9] This Article uses the term environmental equity to describe the movement because, at base, it is an effort to redistribute resources, not simply to vindicate existing entitlements.[10]

Environmental equity advocates argue that the pollution control laws against factories and waste dumps located in poor areas are under-enforced, and therefore unreasonably expose the poor and minorities to serious, immediate, and disproportionate health risks.[11] Market forces, land use laws, and the politics of urban and

---

7. For an early insightful political and historical study of the early empowerment efforts, see ALAN A. ALTSHULER, COMMUNITY CONTROL: THE BLACK DEMAND FOR PARTICIPATION IN LARGE AMERICAN CITIES (1970).

8. *See* Robert D. Bullard, *Solid Waste Sites and the Houston Black Community*, 53 Soc. INQUIRY 273 (1983).

9. There is considerable confusion over the name of the movement. Much of the theoretical and empirical underpinning of the movement is found in the work of the black sociologist Robert Bullard. His major work is ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY (1990). His major thesis is that "people of color . . . bear a disproportionate burden of this nation's air, water, and waste problems," and thus he defines the issue as environmental racism. Robert D. Bullard, *The Threat of Environmental Racism*, 7 NAT. RESOURCES & ENV'T. 23 (1993). Bullard has recently written, "Much of this activism is centered on securing environmental justice for disenfranchised communities. Environmental racism is seen as a major barrier to achieving equitable distribution of 'healthy' physical environments . . . ." Robert D. Bullard, *Environmental Equity: Examining the Evidence of Environmental Racism*, 2 LAND USE FORUM 6, 11 (1993). The confusion of objectives is an example of the philosophical tension between equal and just but unequal distributions, which can be traced to Plato. For a recent treatment of this tension, see Gregory Vlastos, *Justice and Equality, in* THEORIES OF RIGHTS 41 (Jeremy Waldron ed., 1984).

10. The term environmental justice can be justified as an application of Aristotle's conception of distributive as opposed to corrective justice. My colleague Richard W. Wright has lucidly explored the differences between these concepts. Richard W. Wright, *Substantive Corrective Justice*, 77 IOWA L. REV. 625, 691-702 (1992). Professor Vicki Been has observed that "[c]alls for environmental justice are essentially calls for 'equality' . . . . Advocates of environmental justice have wisely chosen to advance general concepts of equality, rather than endanger their coalition by attempting to specify the precise content of 'justice,' 'equity' or 'fairness.' " Vicki Been, *What's Fairness Got To Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001, 1006 (1993).

11. The gist of the empirical research on which the environmental equity movement depends is that more waste disposal sites and incinerators are located in poor and minority communities than in wealthier and non-minority communities. This alone does not support the argument that the poor and minorities are exposed to a

industrial development encouraged the selection of these areas for pollution sources. Environmental equity is primarily but not exclusively an urban movement. It is concerned with racial and economic discrimination wherever it is found, large cities, poor rural communities, and Indian reservations. However, the major focus is on urban environmental issues because the movement's primary objective is to achieve "an equitable distribution of 'healthy' physical environments and equal protection against the ravages of industrial pollution."[12]

Environmental equity is not currently integrated into mainstream environmentalism. Despite common concern with pollution and toxic chemical exposure reduction, there are significant fundamental differences between mainstream environmentalism and environmental equity.[13] The latter comes exclusively out of the civil rights tradition.[14] The former comes primarily out of the conservation tradition, and has evolved into a global resource allocation movement much more comfortable with uncertainty, the pursuit of long term biodiversity benefits in the name of intergenerational equity, and the application of cost-benefit analysis, comparative risk assessment and management, and market incentives to decide acceptable pollution levels.[15] Environmental equity rests on the constitutional argument that the present application and enforcement of environmental laws violate the equal protection rights of those exposed to pollution.[16] In contrast, mainstream

---

disproportionate share of short and long term public health risks. There are serious problems linking this data both to intentional racism or to demonstrable health or welfare effects. *See* Been, *supra* note 10, at 1009-26.

12. Bullard, *supra* note 8, at 11.

13. *But see* Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619, 636 (1992) (describing the environmental equity movement as the third wave of environmental activism after the conservation movement and the legal-scientific "mainstream" movement that developed in the 1970s).

14. The efforts of the residents of Warren County, North Carolina, a predominately Afro-American county, to stop a PCB landfill led to the now seminal United Church of Christ study, COMMISSION ON RACIAL JUSTICE, UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE IN THE UNITED STATES (1987).

15. This evolution is traced in PHILIP SHABECOFF, A FIERCE GREEN FIRE: THE AMERICAN ENVIRONMENTAL MOVEMENT (1993).

16. The theories are laid out in Rachel D. Godsil, *Remedying Environmental Racism*, 90 MICH. L. REV. 394 (1991). Professor Richard J. Lazarus has explained why equal protection suits have not succeeded. "[C]ourts seem far less willing to invoke the equal protection clause to dictate to local governments how harms such as environmental risks must be redistributed in a community, perhaps because the redistribution would so directly implicate the quality of the environment enjoyed by those in the community wielding great political and economic influence." Richard J. Lazarus,

environmentalism rests on the New Deal vision of the Constitution as a broad source of affirmative government regulatory power with few judicially enforceable limitations on this power.

This Article takes an approach to the problem of environmental equity that is different from the remedies advocated by the leaders of the environmental equity movement. The plea that the benefits of environmental protection be extended to all groups in society is, of course, a legitimate one, but the movement is too narrowly focused and its aims are too modest. I dissent from the two central premises held by environmental equity advocates. First, the movement assumes that judicially recognized and enforced rights will lead to improved public health.   Second, the movement asserts that disadvantaged communities should adopt a "Not in My Backyard" (NIMBY) strategy.[17] In contrast, I argue that the current focus of the environmental equity movement, important as it is, is too narrow because the legal strategy of the civil rights movement is largely inapplicable to environmental issues. Environmental protection is not a rights-based movement. Thus, the judiciary's role in promoting environmental quality is limited compared to its role in promoting racial justice through the recognition and enforcement of constitutionally-based civil rights.[18]

In addition, I argue that the NIMBY strategy is equally short-sighted. Environmental equity takes current environmental protection strategies as a given at a time when the science and ethics of environmental protection are undergoing a profound re-evaluation. For example, mainstream environmental protection is moving toward more rational risk assessment and management, pollution source reduction, and ecosystem protection strategies, each of which potentially undercuts the environmental equity movement's focus on the status quo. More broadly, the emphasis on applying NIMBY tactics to local communities adopts the envi-

---

Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection, 87 Nw. U. L. Rev. 787, 834 (1993); *see also* Peter L. Reich, *Greening the Ghetto: A Theory of Environmental Race Discrimination*, 41 U. KAN. L. REV. 271 (1992) (state laws that permit assessment of environmental impacts of communities offer more promising relief compared to federal equal protection law).

17. NIMBY is an acronym used by environmental groups to oppose Locally Undesirable Land Uses (LULUS). *See* Frank Popper, *The Environmentalist and the LULU, in* RESOLVING LOCATIONAL CONFLICT 1 (Robert W. Lake ed., 1987).

18. The extent to which environmental protection does not fit within the enlightenment paradigm of human rights is explored at greater length in A. Dan Tarlock, *Environmental Law, But Not Environmental Protection, in* NATURAL RESOURCES POLICY AND LAW: TRENDS AND DIRECTIONS 163, 167-70 (Lawrence J. McDonnell & Sarah Bates eds., 1993).

ronmental movement's strategy of just saying no to all potential forms of pollution at a time when this reflexive response is being rejected as an unfair and inadequate response to balancing the need for a wide range of human activities and host community interests.[19]

Ultimately, the two movements must join together, but it will not be easy to integrate them because each has fundamentally different value structures. The current environmental equity movement is only the latest in a series of twentieth century encounters between advocates of environmental quality and social justice. Historically, these encounters have arisen in experimental contexts using different land use forms to draw a line between the city and the countryside. These experiments are at the root of the environmental equity movement because they are the product of a long and complex intellectual and practical tradition of segregating the urban from the rural, to protect the latter from the former. Contrasting views of the city are at the heart of the deep division between the two movements. Environmentalists see cities as parasites on the landscape.[20] This view reflects an Arcadian preference which has diverted attention from the unnatural city to the natural environment.[21] In contrast, environmental equity advocates seek to improve the city, if for no other reason than this is the only viable option to ameliorate the condition of those exposed to pollutants.

---

19. *E.g.*, Peter Margulies, *Building Communities of Virtue: Political Theory and Land Use Policy, And The Not in My Backyard Syndrome*, 43 SYRACUSE L. REV. 945 (1993) (using modern civic republican and feminist theory to balance community acceptance of LULUs with the recognition that there are legitimate over-concentration fears).

20. This view can be traced to an influential book, LEWIS MUMFORD, THE CITY IN HISTORY (1961).

21. In one of the major Congressional documents that influenced the National Environmental Policy Act and other legislation, the "crises of the cities" and the "crisis of the natural and rural environments" were identified as a function of "a disregard for man's relationship to his environment." *A National Policy for the Environment 1968: Hearing Before the Senate Comm. on Interior and Insular Affairs and the House Comm. on Science and Astronautics*, 90th Cong., 2d Sess. 8 (1968). However, environmental policy was viewed as a different problem which needed to be placed on equal footing with then existing efforts to improve the urban condition. This deeply rooted distinction between the built or human environment, and the natural environment has now been eroded by the source from which it was taken—ecology. In recent years, the idea that there is much natural environment has been challenged. *See, e.g.*, DANIEL BOTKIN, DISCORDANT HARMONIES (1990). This idea poses a new challenge for mainstream environmentalism because it collapses the distinction between the natural (pristine), and disturbed (used by humans), environments. The implications of this scientific paradigm shift are discussed *infra* at part II.

The gulf between advocates of protecting the countryside and advocates of improving the lives of poor and minorities is great, but there is a long history of efforts to confront and address this gulf which is relevant to current efforts. As a social action movement, environmentalism has never been totally indifferent to equity and racial issues, despite its anti-urban bias or at least its indifference to cities. This is the root cause of the tension between mainstream environmentalism and environmental equity; one which must be forthrightly addressed if the two movements are to coalesce. At the beginning of the movement, thoughtful participants recognized the social and economic consequences of anti-urbanism and potential racism of elite environmentalism,[22] but mainstream environmentalism did not develop a strong concern for social equity until the developing countries demanded it as the price for a future environmental protection dialogue. My approach to the effort to reconcile mainstream environmentalism and environmental equity is both historical and analytical.

Mainstream environmentalism's history explains much of the current gap between the two movements. Modern environmentalism fuses the rational conservation and the aesthetic-based preservation movements, major strains of the elite progressive movement, and the multi-level activism born of the Civil Rights and Anti-War 1960s. Environmentalism reached its first peak of political power between 1968 and 1972 when it moved beyond the progressive conservation vision to a more holistic theory of social and economic order.

In the drive to develop environmentalism as a complete theory of social and economic organization, a few efforts were made to reconcile environmentalism with the urban reform agenda and to assess frankly the movement's potential to justify racial discrimination in housing.[23] However, the efforts to reconcile the two move-

---

22. The literature on the hostility between the elite environmental movement and the working class is documented in Frederick H. Buttel & William L. Flinn, *Social Class and Mass Environmental Beliefs*, 10 ENV'T. & BEHAVIOR 433 (1978) (suggesting that place of residence may be a better predictor of environmental awareness than social class).

23. In 1972, the Conservation Foundation held a three-day conference on Environmental Quality. The proceedings were published as ENVIRONMENTAL QUALITY AND SOCIAL JUSTICE IN URBAN AMERICA (James Noel Smith ed., 1974). The chapter, *The Coming of Age of Environmentalism in American Society*, surveyed the critics of environmentalism, which included both proponents of racial justice and conservative proponents of traditional economic development, and observed that perhaps the most critical fault of the movement was the inability "to see itself in respect to the larger social system, and to accommodate its own agenda to other competing social priori-

ments made little progress in the 1970s, in part because environmentalism crowded out the War on Poverty from the social agenda. For two major reasons, environmentalists were able to ignore the argument that a conflict existed. First, many of the "equity" attacks came from conservatives opposed to the basic idea of environmental protection.[24] The perception was that equity was being used to mask a broad anti-regulatory, anti-welfare agenda. Second, air, water, and toxic waste pollution control programs were justified as consistent with equity because supposedly all segments of the population benefited equally.[25] In the 1980s, the environmental movement's energies were directed to counter the Reagan administration's efforts to roll back environmental protection, and the Civil Rights Movement fought similar battles. Thus, mainstream environmentalism was not able to use the major twentieth century city planning theories which sought to integrate the city and countryside in ways that can be classified as promoting both environmental and social equity values.

This Article first examines the impacts of these efforts to reconcile protecting nature with improving our urban areas on our natural and built landscapes, and then offers a conceptual framework to integrate the two movements. Next, Part II examines three environmental-social equity visions of the city. These visions have been used to integrate what we now call environmental protection and social equity. Both have influenced social equity and land use policies. These efforts have largely failed by both environmental and social equity standards, but there are some lessons to be learned for the future. Parts III, IV, and V describe three applications of

---

ties." *Id.* at 1, 8. Peter Marcuse of the UCLA Department of Architecture and Urban Planning began his presentation by remarking that "it might be said that the conservation movement has come to a concern for inner-city problems late in life, reluctantly, and only under pressure from outside circumstances." *Id.* at 17.

24. *See* WILLIAM TUCKER, PROGRESS AND PRIVILEGE: AMERICA IN THE AGE OF ENVIRONMENTALISM (1982).

25. E. Donald Elliot, Jr., *A Cabin on the Mountain: Reflections on the Distributional Consequences of Environmental Programs*, 1 KAN. J.L. & PUB. POL'Y 4 (1991). What little empirical data there is suggests that environmental quality, like most other government actions, has economically perverse distribution consequences: wealthier individuals benefit more from regulatory programs more than do poorer ones. See Lazarus, *supra* note 16, at 796-806 for a review of the literature. This data does not in and of itself support the environmental equity movement. Hard evidence on the disproportionate health effects of exposure is lacking, as it is for all pollutants. In addition, the structure of existing programs may not be responsive to equity concerns. For example, in the early 1980s lawyers tried to supplement Superfund with an elaborate victims compensation scheme, while community activists representing potential victims wanted a more modest but accessible medical monitoring program.

these ideas. Part III examines the failure of the two visions that led to classic "slum clearance" urban renewal and modern state capitalism urban renewal, as well as the antidote to urban renewal, "historic" neighborhood organic renewal. Part IV examines the unresolved tension between open space and environmental protection, suburban land use controls, and the exclusion of minorities from the suburbs. Part V discusses the equity issues that arise from applying technology-forcing to solve the problem of the automobile and urban air pollution.

Part VI concludes by arguing that if environmental equity is to make a lasting contribution to environmental protection, it must be integrated into current domestic and international efforts to promote sustainable development. This concept attempts to bridge the gap between environmental protection and the need for developing countries to expand their economies.[26] We must develop a vision of sustainable cities.

If the environmental equity movement is to achieve its objectives, it must coalesce with mainstream environmentalism for two reasons. First, environmental equity advocates need the support of mainstream environmentalism. Mainstream environmentalism's continuing emphasis on administrative discretion limits the power of courts to police the distributional consequences of the regulatory programs enacted to promote environmental quality. Relief must come from existing administrative programs, not the courts. Second, most ecologists now support the non-equilibrium paradigm which sees humans and natural forces continuously interacting within the landscape.[27] To maintain its future legitimacy, environmental law must put all humans back into the landscape.

II. Environmental Visions of the City

Three major twentieth century city planning theories have influenced both urban public policy and the private market. Each of these theories has tried to reconcile environmental quality and social equity, but too often their application has produced the opposite result. They have been applied to acerbate the difference between the city and countryside by reenforcing the Arcadian anti-urban bias of the environmental movement. Pollution concentra-

---

26. *See infra* text accompanying notes 104-19 for further discussion.

27. *See* BOTKIN, *supra* note 21. The consequences of the shift from an equilibrium to a non-equilibrium paradigm will be discussed in a forthcoming symposium in the Chicago-Kent Law Review. *See also* A. Dan Tarlock, *The Non-Equilibrium Paradigm and the Partial Unraveling of Environmental Law,* 27 LOY. L.A. L. REV. (1994).

tion in older urban areas and in rural "targets of opportunity" is a legacy of the land use patterns established in nineteenth century industrial cities acerbated by racism[28] and poverty.

Our current pattern of "green" commuter suburbs in the inner metropolitan rings and edge cities further out has buffered many people from the pollution concentrations that the environmental equity movement seeks to eliminate. Many law suits seek to abate waste sites and industrial pollution concentrated in non-suburban poor and minority urban and rural areas which were politically unable to buffer themselves from pollution sources. These communities have basically been invisible in national pollution standards because we measure regional average rather than specific community levels. Although the environmental movement is not primarily responsible for this land use pattern, it results from market responses to the preference for autonomy and mobility. However, this pattern has been reenforced by applying and adapting three "environmental" theories of the city: (1) the monumental or beautiful city, (2) the Garden City, and (3) Le Corbusier's Ville Radieuse, along with its American cousin Frank Lloyd Wright's Broadacre City.

A. The Arcadian Tradition in Science and History

Even though the glory of cities is the great story of western civilization, environmentalists generally do not like them: cities disrupt the natural landscape and contain people who pollute. Environmentalists' dislike of the city is a sub-set of a long anti-urban intellectual tradition in this country[29] which can be traced to early reactions against the industrial revolution. Arcadian nostalgia has been a profound influence on environmental science and environ-

---

28. For a recent examination of the persistence of racial segregation both in older cities and in middle class suburbs around older cities see Symposium, *The Urban Crisis: The Kerner Commission Report Revisited*, 71 N.C. L. REV. 1283 (1993). In particular, see John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-The Future Essay*, 71 N.C. L. REV. 1487, and John C. Borger, *Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction*, 71 N.C. L. REV. 1573.

29. MORTON & LUCIA WHITE, THE INTELLECTUAL VERSUS THE CITY: FROM THOMAS JEFFERSON TO FRANK LLOYD WRIGHT (1962), remains the leading exposition of the anti-urban bias in American culture. The Whites identify the romantic writers such as Emerson and Thoreau rather than Jefferson as the originators of the philosophical basis for preferring rural to urban life. *See infra* text accompanying notes 57-58 (discussing 19th century anti-urban thinking on Frank Lloyd Wright and suburban planners).

mentalism.[30] The treatment of the urban ecosystem in ecological science literature illustrates the Arcadian, environmental view of cities. Environmentalists think of ecosystems in terms of Aldo Leopold's southern Wisconsin Prairie,[31] a wetland, an exotic coral reef, or tropical rain forest. These supposedly represent "good" ecosystems because they perform life regulating and pollution prevention functions in contrast to the city which is a "bad" or "unbalanced" ecosystem.

The presentation of the urban ecosystem in ecology illustrates its traditional "marginalization" of the city. Eugene Odum's classic ecology text[32] classifies cities as heterotrophic (other nourishing) ecosystems and describes them as "a parasite of the rural environment" because "[a]s currently managed, the city consumes vast quantities of resources but produces little or no food or other organic materials, purifies no air and recycles little or no water or inorganic materials,"[33] and produces a number of toxic and other wastes. This view of the urban ecosystem was legally reflected in several early outrageous National Environmental Policy Act (NEPA) suits which in effect categorized the potential movement of minorities into white neighborhoods as a form of pollution which needed to be addressed in an environmental impact statement.[34]

The Arcadian tradition exerted a powerful influence on post-World War II urban planning, and the environmental movement

---

30. The Arcadian tradition, which is usually traced to Virgil, asserts the superiority of the pastoral over the urban landscape. *See* LEO MARX, THE MACHINE IN THE GARDEN (1964).

31. *See, e.g.*, Eric T. Freyfogle, *The Land Ethic and Pilgrim Leopold*, 61 U. COLO. L. REV. 217 (1990) (advocating Leopold's view).

32. EUGENE P. ODUM, BASIC ECOLOGY (4th ed. 1983).

33. *Id.* at 78.

34. Trinity Episcopal Sch. Corp. v. Romney, 387 F. Supp. 1044 (S.D.N.Y. 1974); Nucleus of Chicago Homeowners Ass'n v. Lynn, 372 F. Supp. 147 (N.D. Ill. 1973); *see also* MARY E. BROOKS, HOUSING EQUITY AND ENVIRONMENTAL PROTECTION: THE NEEDLESS CONFLICT (1976) (environmental arguments to justify exclusionary land use practices). The view of minorities as pollution or externality generators continues in the economic literature. *E.g.*, William Fischel, *Equity and Efficiency Aspects of Zoning Reform*, 27 PUBLIC POL'Y 301 (1979) (removing zoning barriers will impose additional costs on suburbs). Happily, state environmental quality assessment acts have rejected the invitation to use environmental assessment to further racial and economic exclusion. *E.g.*, San Franciscans for Reasonable Growth v. City and County of San Francisco, 209 Cal. App. 3d 1502 (Ct. of App. 1989) (need for child care from development an economic and quality of life but not physical environmental impact); San Jose Country Club Apartments v. County of Santa Clara, 137 Cal. App. 3d 948 (Ct. of App. 1982) (adopting anti-discrimination ordinance does not require EIS).

absorbed this influence in the late 1960s. Urban living has long been the reality for most Americans, but it has been an ideal for far fewer of us. Affluent urban dwellers have supported environmentalism, but their political energies and financial resources were often devoted to protecting and enhancing the suburbs and rural areas, not our cities. Samuel P. Hays, the leading historian of the environmental movement's emergence after World War II, has observed, "[t]he . . . contrast between the city and the land beyond it lay behind much of the environmental movement."[35] It is only now that we are coming to see the city as an ecosystem worth caring about.

Hays explains the modern American environmental movement as the result of the post-World War II suburbanization and the greater use of rural areas for recreation.[36] Wealthy people first began to flee urban pollution to arcadian retreats after the street car and inter-urban railroads made the modern suburb possible.[37] These early suburbs were closely linked to central cities, but the new "edge cities" of the past twenty years have created independent urban concentrations around major metropolitan urban areas.[38] Post-war affluence allowed many people to indulge their tastes, deeply rooted in the American experience, for "clean" rural living or leisure, and it brought them in closer contact with governmental efforts to alter these areas. Battles over dams in scenic areas and interstate highway locations trained the first generation of environmental activists and enshrined undisturbed nature as the ideal of environmental protection at all levels of government and at all geographic scales; a 100 unit subdivision is as much a threat as the degradation of the Greater Yellowstone ecosystem.

B. Beautifully Green, Socially Equitable Cities:. A Failed Vision

One of our most profound students of the city, the late city planner Kevin Lynch, identified three forms of cities that have emerged

---

35. SAMUEL P. HAYS & BARBARA D. HAYS, BEAUTY, HEALTH, AND PERMANENCE: ENVIRONMENTAL POLICIES IN THE UNITED STATES, 1955-1985, at 72-73 (1987).

36. *See id.* The leading history on suburbanization is KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES (1985); *see also* MARY HOMMANN, CITY PLANNING IN AMERICA: BETWEEN HOPE AND DESPAIR (1993).

37. GEORGE DOUGLAS, ALL ABOARD: THE RAILROADS IN AMERICAN LIFE 225-57 (1992) (tracing the impact of the railroads in influencing work and living habits from before the Civil War to the heyday of the railroad era, 1880-1917).

38. *See* JOEL GARREAU, EDGE CITY: LIFE ON THE NEW FRONTIER (1991) (defending these new patterns of urbanization).

from the interplay between evolutionary forces and the human imagination: (1) the cosmic or magical city, (2) the standard form or machine city, and (3) the organic city.[39] This classification reflects both ideal forms advocated by architects, planners, and utopian reformers, and the practice of urban development by governments and the market. The three theories are pre-environmental in the modern sense because they focused on the landscape as an aesthetic resource, in contrast to the current more complex scientific conception.[40] Each of these theories has influenced urban settlement patterns in this country and throughout the world. In their utopian forms, each addresses the issue of social equity, sometimes perversely, and each can be described as environmental.[41] Each was formulated or used to counter the reality of the industrial revolution by tying the countryside to the city, but each contributed to widening the gap between country and city and to the current demand for environmental equity.

The theories can be classified as "environmental" because each posited a definite relationship between the city and nature. The phrase "environmental theory of a city" is ambiguous because it means different things to environmentalists and to urban planners, and each definition leads to substantial and often contradictory policies.[42] Environmentalists define "environment" as the natural environment, and focus on its destruction by urbanization. Urban planners have a much broader definition of the environment; the concept encompasses "not just the physical but the social, cultural, and economic environment."[43] I use environment not only in the sense that environmentalists use it, the optimum physical land-

---

39. KEVIN LYNCH, A THEORY OF GOOD CITY FORM (1981).

40. *See* Denise Scott Brown, *Wright in the Rear-View Mirror,* N.Y. TIMES, Sept. 12, 1993, at 56.

41. The link between the natural environment and city form was central to the work of the great Scottish renaissance naturalist and city planner, Patrick Geddes, whose theories influenced the leading American anti-urban city planning scholar, Lewis Mumford. PHILLIP BOARDMAN, PATRICK GEDDES: MAKER OF THE FUTURE (1944).

42. In a survey of post-World War II urbanization in Athens, Greece, Thomas Maloutas of the National Centre for Social Research in Athens notes that as upper class city dwellers migrated to the suburbs, the environment was "preserved . . . at the expense of rising housing costs and intensive social segregation." Thomas Maloutas, *Housing Solutions/Environmental Problems, in* THE IMPROVEMENT OF THE BUILT ENVIRONMENT AND SOCIAL INTEGRATION IN CITIES: SELECTED PAPERS AND CONCLUSIONS 177, 184 (1991)[hereinafter IMPROVEMENT].

43. *See* Sandra Walklate, *Conclusions, Recommendations of the Working Group on Preventing and Fighting Crime/Delinquency and the Urban Environment, in* IMPROVEMENT, *supra* note 42, at 151.

scape, but also the way urban planners use it, who shall occupy the landscape.[44]

1. *The City Beautiful Movement: America's Cosmic Cities*

The cosmic city is the oldest historical form, but it continues to exert a powerful influence on city planning. Beijing in the Ming and Qing dynasties or Xi'an (Chang'an) in the T'ang dynasty are examples of the cosmic city.[45] One would think that cosmic forms, associated with autocratic empires, would be ill-suited to a democratic, technological society. Ironically, however, the imperial city, in its Roman manifestation, provided the inspiration for The City Beautiful movement in the United States as our first effort to tame the new industrial-commercial city built on a standard grid form.[46] This movement was an effort to replace the polluted city that spread from the exponential and largely unregulated post-Civil War boom with a clean, functional, and stately city to compete with the grandeur of Europe.[47]

We do not conventionally think of The City Beautiful movement as an environmental theory; it did not attempt to integrate the city and nature in a harmonious way. In fact, in the cold light of modern reappraisal, the environmental and social equity impacts of American imperial cities is overwhelmingly negative. As William Cronon recently demonstrated in his prize-winning *Nature's Metropolis: Chicago and the Great West*,[48] Chicago's wealth ability converted the crops and animals raised in the midwest, as well as the land itself, into abstract commodities. Also, as Cronon has written about the White City constructed for the 1893 Columbian exposition, it presented a vision of urban life at its noblest and most civilized "by segregating urban and rural utopias from the economy and environment that sustained them."[49]

---

44. The same confusion exists in environmental law. For example, the National Environmental Policy Act of 1969 refers to the "human environment," 42 U.S.C. § 4332(c), but the California Environmental Quality Act has been interpreted to be "more focused on physical changes than is NEPA." SHARON DUGGAN ET AL., GUIDE TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) 10 (1992).

45. *See* CARL E. SCHORSKE, FIN-DE-SIECLE VIENNA: POLITICS AND CULTURE (1980) (discussing that city's conscious effort to change the city from an autocratic ceremonial one to a liberal democratic one through architecture).

46. *See* MEL SCOTT, AMERICAN CITY PLANNING 47-109 (1969) (containing the best treatment of the irony and influence of The City Beautiful movement).

47. WILLIAM H. WILSON, THE CITY BEAUTIFUL MOVEMENT 64 (1989).

48. WILLIAM CRONON, NATURE'S METROPOLIS CHICAGO AND THE GREAT WEST (1991).

49. *Id.* at 349.

The City Beautiful has been equally criticized for its insensitivity to social equity. This is a fair but ironic criticism. The City Beautiful movement was an integral part of the progressive era's search for the balance between market-driven industrial production, the 18th century Jeffersonian democratic ideal, and social justice.[50] In the end, however, The City Beautiful movement either ignored the urban poor[51] or worse, subordinated social equity to aesthetics. For example, urban planers have celebrated and damned Chicago's partial implementation of the 1909 Burnham Plan because it relied on a veneer of Parisian tree-lined boulevards and parks to ameliorate the reality of unsanitary urban life.[52]

2. The Grid

The standard form city is, of course, characteristic of the grid pattern of American urban development.[53] From an environmental standpoint, the form is basically negative because it is designed to accept the land use patterns dictated by the market. It feeds the endless decentralization decried by environmentalists. From a social equity standpoint, the form can be neutral; it is positive because it can encourage social or racial segregation to accept integration, but it is also negative because it separates jobs from housing. However, as the discussion in Section V indicates, the plasticity of this form makes it adaptable for sustainability as well. The most interesting environmental feature of the grid pattern is that dissatisfaction with the form stimulated efforts to replace it with theories which more sharply defined the city and countryside in order to preserve the countryside.

3. An English Village or Garden for Everyone

The preference for the cosmic or monumental city and the monotony of the standard form city has long troubled planners because it seemed to reenforce the worst environmental and social costs of the industrial era. Planners explicitly sought an alternative which integrated urban concentrations with the countryside in a

---

50. *See* SCOTT, supra note 46, at 95-96.

51. *See* JAMES GILBERT, PERFECT CITIES: CHICAGO'S UTOPIAS OF 1893, at 96 (1991)(account of the governors of the 1893 Columbian Exposition, which did much to establish the city beautiful as the ideal urban form, to exclude Black participation in the fair).

52. *See generally* DANIEL M. BLUESTONE, CONSTRUCTING CHICAGO (1991).

53. JOHN REPS, TOWN PLANNING IN FRONTIER AMERICA 13-24 (1965) (tracing the European origins of the grid pattern towns which characterize American cities from Spanish colonization to the present).

vain attempt to foster universal individual autonomy and happiness. The results were various organic theories of the city.[54] The modern origin of the organic theory of the city, which had a great influence on city planning in the 1920s and 30s, is the Garden City movement in England.[55]

The Garden City movement sought to advance social justice by using the English village model surrounded by common fields to construct new towns for industry. New town planning had a brief run during the 1930s and again in the 1960s, but the Garden City movement's most powerful influence was on suburban development. American planners have been attracted to the organic theory of the city because it replicated the New England village, and they have tried to impose this model on suburban development. The Garden City idea of row or townhouses connected to common open space became the philosophical underpinning for Planned United Developments which began to flourish in this country in the late 1960s.[56]

The organic theory of the city has also been the basis for feeble attempts to incorporate social equity into environmental preservation through a utopian craft alternative to mass production. The rival American theory to the Garden City is Frank Lloyd Wright's prairie technological American alternative, the high rise in the countryside. Wright envisioned his Broadacre City as an economically and socially diverse city where democratic values would flourish. The basic idea was to build slender towers surrounded by low density housing and farms. The vision was environmental: "city building in the new city will stand there free in its own greenery or lie long, flowing lazily and low on prairie levels . . . . At one with environment."[57] Broadacre City is now widely claimed as the model for the modern edge city, although the mass, scale, and social segregation of these cities is the opposite of what Wright sought to achieve.

---

54. The leading American proponent of organic theories was Lewis Mumford. *See* MUMFORD, *supra* note 20.

55. *See* EBENEZER HOWARD, GARDEN CITIES OF TO-MORROW (1965). This book has remained the Bible of the Garden City and new town movement throughout the world.

56. *See, e.g.,* S. TOMIOKA & E. TOMIOKA, PLANNED UNIT DEVELOPMENTS: DESIGN AND REGIONAL IMPACT (1984); Krasnowiecki, *Legal Aspects of Planned Unit Development, in* THEORY AND PRACTICE OF PLANNED UNIT DEVELOPMENT 99, 101-02 (R. Burchell ed., 1973).

57. FRANK LLOYD WRIGHT, THE LIVING CITY 102 (1958).

This discussion demonstrates that the modern environmental movement is not the first point of contact between what we now characterize as environmental quality and efforts to promote social justice. In fact, the current equity movement has deep roots in the late nineteenth and twentieth century efforts of urban planners to reconcile the industrial city with nature through ideal visions of the urban form which promoted social equity. Unfortunately, as these planning visions were adopted by the market, social equity concerns were filtered out, and the resulting population deconcentration acerbated many environmental equity issues. These efforts are important reminders that there is a long history of the search for a sustainable urbanism as well as important object lessons on how not to design urban settlements. At a minimum, this history reminds us that we need a vision of a just and sustainable city to inform the many public policy choices that we make about environmental protection and social equity in an urban environment.

III. Urban renewal: A Failure of Both Equity and Efficiency

Post-World War II urban renewal in the United States and Europe is a classic illustration of the adverse environmental and social consequences of using a flawed aesthetic and philosophical theory for urban development. Urban renewal was the major New and post-New Deal effort to combine the monumental city with social equity. From the Housing Act of 1933 through the 1970s, the United States engaged in a massive effort to subsidize the renewal of the core of the nation's cities, both large and small. The government replaced "slums" with new high rises and plazas in the name of urban aesthetics and of social equity.[58] In both Europe and the United States, urban renewal is now widely regarded as a failure of both vision and implementation. Projects have been denounced as socially inequitable, economically inefficient, aesthetically dehumanizing, and politically undemocratic. This is a much told story,[59] and I want only to touch on the most important lessons of the failure for future efforts to develop sustainable cities.

---

58. *See generally* URBAN RENEWAL: PEOPLE, POLITICS AND PLANNING (Jewel Bellush & Murray Hausknecht eds., 1967) (a collection of essays on the history, theory and practice of urban renewal).

59. *See generally* MARTIN ANDERSON, THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949-1962 (1964); JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES (1961); SCOTT GREER, URBAN RENEWAL AND AMERICAN CITIES: THE DILEMMA OF DEMOCRATIC INTERVENTION (1965); KEVIN LYNCH, THE IMAGE OF THE CITY (1960) (leading classic criticisms).

Urban renewal began as a slum clearance and housing program, but it was soon transformed into a federal and state subsidy program to allow large and small central cities to fight back against suburbanization. Using state capitalism to promote private growth was first applied during the New Deal to redress the regional imbalances between the rich East and Middle West and poor South and West during the New Deal, and then was applied to cities after World War II.[60] The legal mechanism for urban renewal was public assembly of land followed by resale to private developers, primarily to prevent "holdouts" from jeopardizing the planned new development. In retrospect, urban renewal illustrates two major failures endemic to our legal and political institutions. First, urban renewal subsidies intended for low and moderate income groups have a tendency to migrate upward not downward. Urban "elites" were quick students of the benefits of state capitalism, and saw that public money could be marshalled for largely private gain.[61] Second, it is difficult to counter this migration through constitutional adjudication or legislation.

In the 1930s, the French architect Le Corbusier articulated the philosophical and aesthetic basis for urban renewal. Le Corbusier used the machine theory form to promote communitarian ends, and the machine theory reached its zenith with Le Corbusier's Ville Radieuse. In the 1930s Le Corbusier's architectural ideas attempted to produce a new synthesis between the city and nature; his high density, high rise cities surrounded by open space were designed to bring nature into the city.[62] Corbusier's ideas have had

---

60. *See* JORDAN A. SCHWARTZ, THE NEW DEALERS: POWER POLITICS IN THE AGE OF ROOSEVELT (1993).

61. The California Planning and Development Reporter recently nominated the city of Indian Wells, California, located near Palm Springs, for the 1993 "Creative Misuse of Public Purpose" award for its diversion of $10,000,000 in tax increment funds to a private golf course. Tax increment is a modern form of urban renewal subsidy developed to replace direct federal subsidies which were phased out in the 1970s. Tax increment financing freezes the property tax base for a new project but collects the taxes added by the value of the project and places them in a trust fund to finance the public infrastructure to support the new development. In Indian Wells, the city built two golf courses with tax increments funds to attract major resorts, but then abandoned the step of public financing and allowed a luxury homes developer to keep the $10,000,000.00 that would be collected through tax increment financing and use it to build a golf course for "The Reserve." Morris Newman, *More Gold Courses for Indian Wells*, CAL. PLAN. & DEV. REP., Oct. 1993, at 12. Tax increment standards, as urban renewal, have progressed from a required finding of blight to any public purpose, e.g. enhancement of the economy. Indian Wells defends its tax increment financing on the grounds that it creates jobs, including a club house pro.

62. *See* THE IDEAS OF LE CORBUSIER ON ARCHITECTURE AND URBAN PLANNING (Jacques Guiton ed., 1981).

a great influence in the United States and, according to many, have contributed to the decline of American cities. Ironically, La Ville Radieuse was adopted as an environmental idea. "[T]he Radiant City appealed to all the latent Arcadian yearnings in our culture. It was an old romantic idea—going back to William Penn—of combining the urban and rural, of living close to nature, of creating a city of buildings in a park."[63]

Justice William O. Douglas incorporated Le Corbusier's vision into Fifth Amendment jurisprudence, but unlike civil rights, the Court declined to monitor its implementation through public and market forces. The constitutional theory of urban renewal shows that courts can validate efforts to improve the physical and social environment, but can exercise little control over the way that the programs are implemented. Urban renewal's constitutionality was heavily debated because much of the land would ultimately be returned to private ownership, thus violating the Fifth Amendment limitation that property could only be condemned for a public use, which was understood to target property owned by a public entity or a regulated utility. The law, along with the then supporting architectural theory, merged in Justice Douglas's opinion in *Berman v. Parker,* [64] which upheld urban renewal's constitutionality. His expansive, much praised, and cited language echoes Le Corbusier's vision of the modern city: "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."[65]

In retrospect, these words are hollow because the opposite occurred. The urban renewal projects of the 1950s and 1960s created urban wastelands; too many empty, unsafe public spaces, and many projects of dubious social utility. More profoundly, the urban renewal experience shows the law's limited role, especially constitutional law, in policing programs. Land use and environmental law have basically served to implement the different visions of the city and country produced by the interplay between the market and the political process because no counter vision is contained within either constitutional or common law. Courts have rejected all ar-

---

63. JAMES H. KUNSTLER, THE GEOGRAPHY OF NOWHERE: THE RISE AND DE-CLINE OF AMERICA'S MAN-MADE LANDSCAPE 79 (1993).

64. 348 U.S. 26 (1954).

65. *Id.* at 33.

guments to police state capitalism.[66] In addition, the problem of judicial control over environmental programs regardless of their social equity impacts is even greater because the values sought to be furthered by environmental and land use law are outside the western legal tradition, which has steadily expanded the concept of human dignity, but not the protection of the natural environment. For this reason, the laws that control both the natural and the built environment are positive rather than rooted in a constitutional or common law tradition. They are the product of specific legislative efforts to implement an idea to remedy a perceived problem, and courts are basically limited to three roles in this process. Courts can, as they often have, validate a legislative vision, hold that vision unconstitutional, usually under the Fifth Amendment, or police the decisionmaking process. Courts cannot do much to counter the perversion of an idea.

As urban renewal projects mounted, so did the criticisms. Ultimately, these criticisms ended federal subsidies, but not urban renewal generally. Sociologists discovered that many slums were actually cohesive neighborhoods, that these neighborhoods or communities were generally not recreated when the residents were relocated, and that the islands of plazas and high rises that urban renewal produced were unsafe and inhumane spaces. Economists criticized many projects as both inefficient and inequitable subsidies, and as ineffectual attempts to stem the decentralization of urban areas.[67] Urban renewal has now largely been rejected both in the United States and Europe as "disastrous"[68] because the dismal housing blocks that now ring European cities broke the crucial cognitive ability of people "to recognize and understand the structure of their urban environments."[69] A few sunbelt cities and other places such as Indianapolis, which assembled private and public capital, kept the tradition alive in the 1980s. However, these efforts have been criticized as state socialism, because the subsidies continue to benefit the powerful and wealthy, although they can equally be characterized as the latest chapter in the long tradition

---

66. Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229 (1984)(middle class housing); City of Oakland v. Oakland Raiders, 646 P.2d 835 (Cal. 1982)(professional football team).

67. *E.g.*, ANDERSON, *supra* note 59; EDWARD C. BANFIELD, THE UNHEAVENLY CITY: THE NATURE AND FUTURE OF OUR URBAN CRISIS (1968); GREER, *supra* note 59.

68. Sandro Giulianelli, *Opening Address in* IMPROVEMENT, *supra* note 42, at 13.

69. *Philip Potter, Reconceptualising Housing Quality, in* IMPROVEMENT, *supra* note 42, at 173.

of blurring the line between public and private in times of rapid social change.[70]

The urban development strategy which replaced Corbusian urban renewal in many cities illustrates the lack of an effective basis of judicial control over the use of urban space.   Urban renewal generated an organic reaction which can be described as environmental, but the antidote has done little to promote social equity.[71] In the 1960s, Congress strengthened the relocation process in an effort to help those displaced by urban renewal. Ultimately, the fierce protests against the destruction of older buildings turned historic preservation from a small movement focused on individual sites of historic events and small, architecturally unique neighborhoods, to a major economic force. Federal tax subsidies encouraged renovating older buildings, and older, relatively well-constructed, and safe areas around the center of many cities began to experience "gentrification." This promoted sustainability but continues to draw sharp criticism from social equity proponents.[72]

---

70. Professor Robin Paul Malloy has written a fascinating account of state capitalism in Indianapolis, Indiana. ROBIN PAUL MALLOY, PLANNING FOR SERFDOM: LEGAL ECONOMIC DISCOURSE AND DOWNTOWN DEVELOPMENT (1991), represents his outrage with Indianapolis's efforts to transform itself from a generic midwestern city to a sports mecca. Professor Malloy's criticism is primarily ideological. He argues that the process of private-public urban renewal is a closed rather than an open one and thus sacrifices individual rights and counter-voices. This argument has some merit, but it does not respond to the basic issue of how older cities based on manufacturing and regional distribution survive in the face of powerful demographic, economic, and social forces. In the nineteenth and early twentieth centuries, city involvement in the economy was kept at modest levels to maximize the accumulation of private wealth. SAM BASS WARNER, THE PRIVATE CITY: PHILADELPHIA IN THREE PERIODS OF GROWTH (1968). However, public-private center city partnerships are now necessary to preserve the economic base of older cities, and cannot, as Professor Malloy states, be condemned solely on moral grounds. *See* PUBLIC-PRIVATE PARTNERSHIPS: IMPROVING URBAN LIFE (Perry Davis ed., 1986). Nor does Professor Malloy's book adequately realize the extent to which state capitalism is now an engrained feature of post-New Deal America. *See* SCHWARTZ, *supra* note 60; Denis J. Brion, *The Meaning of the City: Human Redevelopment and Loss of Community*, 25 IND. L. REV. 685 (1992) (criticizing state capitalism); William F. Harvey, *If Ye Are Privy to Thy Country's Fate, Oh Speak: An Answer From Robin Paul Malloy's Planning for Serfdom and Classical Liberalism in the Tradition of the Scottish Enlightenment*, 25 IND. L. REV. 633 (1992).

71. COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY: THE FOURTH ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 1-41 (1973) contains a discussion of the early efforts to balance gentrification with preventing the dislocation of existing middle and lower-middle class residents.

72. The leading academic legal critic of gentrification is Professor Henry McGee of the University of California, Los Angeles. *See* Henry McGee, *Afro-American Resistance to Gentrification and the Demise of Integration Ideology in the United States*, 23 URB. LAW. 25 (1991); Donald C. Bryant & Henry W. McGee, *Gentrification*

Ironically, historical preservation applies ecological principles to the urban environment because it views the eclectic architectural mix of styles produced by the nineteenth and early twentieth century market as a "natural successional climax" which should be sustained by public regulation and subsidies just as we try to maintain natural ecosystems against human-caused stress. However, proponents of social equity read the story of historic preservation as yet another example of Arcadian urban theories to produce economic and racial discrimination:

> [S]hifts in the aesthetic ideology of urban planners of the 1970s and 1980s helped produce the devastating phenomena of abandonment, gentrification, and displacement in urban areas of the U.S. The aesthetic and economic revaluation of "historical ambiance" had extremely negative consequences for poor residents of urban neighborhoods, as much wealthier and better educated residents began desiring neighborhoods with proper "historical ambiance." Ambiance-seekers drove prices upward in these neighborhoods, unleashing the twin scourges of speculation and abandonment on these areas. . . .
>
> The privatization rhetoric of the Reagan era valorized gentrification as a free-market solution to urban decay. It celebrated trickle-down economics and supply-side theory allowing policymakers to feel that they were helping low-income urban residents by supporting the creation of new luxury housing in the suburbs. At the same time, many of these policymakers were busy dismantling the foundations of low-income housing policy on federal, state, and local levels.[73]

IV. From the Worker's Village to Edge Cities and Gated Communities

Open space preservation exposes the sharpest tension between social equity proponents, including the environmental equity movement and environmental quality proponents. Open space has shaped the American experience, first as a terrifying obstacle to be civilized, and then as an ideal state of nature to be preserved. This open space ideal spurred our widely emulated programs in national park and forest management and was carried over into post-World War II suburban land use policy. There is, however, a less attrac-

---

and the Law: Combatting Urban Displacement, 25 WASH. U. J. URB. & CONTEMP. L. 43 (1983).

73. Keith Aoki, *Race Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning and Gentrification,* 20 FORDHAM URB. L.J. 699, 825 (1993).

tive side to open space preservation. It has served to exclude poor and minorities from preexisting land uses[74] and to limit housing opportunities in the suburbs. Roughly speaking, the monumental spaces created through urban renewal scattered the poor and minorities within cities. As a result, the pursuit of suburban open space made access to the suburbs more difficult for them and many others further up the economic and social scale, regardless of race.

The organic city sought to deal with the problematic relationships among housing density, social justice, and environmental protection by creating modern urban villages surrounded by green belts. The idea of environmental harmony in the organic city—be it Garden or Broadacre City—provided powerful moral and legal rationales for open space preservation, despite arguments that many land use policies designed to further this goal frustrated social equity. Too often, however, the results subordinated social equity to dubious environmental values. Open space can be too broad a concept to control its use by suburban communities.

Traditionally, open space in Europe has had a more defined meaning as there is a careful delineation between cities and the surrounding countryside.[75] In contrast, in the United States the concept applies to everything from terraces in a planned unit development "open space" calculation to urban greenbelts, and all forms are pursued with equal vigor. This vague concept has resulted in promoting low-density suburban development. It has provided the basis for an unsuccessful social equity attack on suburban zoning, which is one of the forerunners of the current environmental equity movement.

In the 1960s, large lot suburban zoning was attacked as unconstitutional because it excluded the poor and minorities from the suburbs. After the Supreme Court held that wealth is not a suspect

---

74. *See* SUZANNE FOREST, THE PRESERVATION OF VILLAGE: NEW MEXICO'S HISPANICS AND THE NEW DEAL 17-24 (1989) (discussing how federal public land policy confined Hispanics and Indians in northern New Mexico to an inadequate land base).

75. In yet another ironic example of the tangled relationship between environmentalism and city planning, E.A. GUTKIND, URBAN DEVELOPMENT IN CENTRAL EUROPE (1964), traces the development of German cities from the late Middle Ages to the nineteenth century and concludes that the confining influences of the medieval Renaissance and Baroque cities were abandoned under the influence of the Romantic movement. "The Romantic movement fundamentally changed the relationship between nature and the general layout of the town . . . The spread of modern towns over the countryside had begun-although with devastating results." *Id.* at 219. Still, European cities have done a better job compared to the United States in preserving a balance between city and countryside. *See* GEORGE LEFCOE, LAND DEVELOPMENT IN CROWDED PLACES: LESSONS FROM ABROAD 39-65 (1979).

class and housing is not a fundamental right,[76] the federal constitutional attack withered.[77] In response, a few state courts developed state anti-exclusionary doctrines. Suburbs countered these actions with growth control ordinances and advanced many environmental justifications for preserving open space. Environmentalists quickly realized that the "withdrawal" of land from the market could drive up regional housing prices, a connection which has now been well documented,[78] and hoped to counter this by constructing high-density low- and moderate-income townhouse developments.[79] Instead, we have modern medieval fortified villages walled off from both nature and humanity.

Environmental justifications help to insulate many low density zoning regimes from attack. For example, in *Mt. Laurel II*, the New Jersey Supreme Court held that communities do not need to meet their fair share obligations in areas designated for environmental protection.[80] Similarly, emerging biodiversity preservation efforts in many areas of the country are a new and more powerful rationale for open space preservation.[81] To reconcile development with the mandates of the Endangered Species Act, communities are formulating habitat conservation plans which have the potential to withdraw large amounts of land from development. As with exclusionary zoning, to date courts have brushed off arguments

---

76. San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973); Lindsey v. Normet, 405 U.S. 56 (1972).

77. See ROBERT C. ELLICKSON & A. DAN TARLOCK, LAND-USE CONTROLS: CASES AND MATERIALS 822-27 (1981) (analyzing the rise of constitutional and quasi-constitutional anti-exclusionary doctrines).

78. Lawrence Katz & Kenneth T. Rosen, *The Interjurisdictional Effects of Growth Controls on Housing Prices*, 30 J.L. & ECON. 149 (1987); STANFORD ENVTL. LAW SOC'Y, LAND USE AND HOUSING ON THE SAN FRANCISCO PENINSULA (1983).

79. *See* THE USE OF LAND: A CITIZENS' POLICY GUIDE TO URBAN GROWTH (A Task Force Report Sponsored by the Rockefeller Brothers Fund, William K. Reilly ed., 1973). Transferrable development rights regimes are central to this strategy. *See* Daniel R. Mandelker, *The Conflict Between Environmental Land Use Regulation and Housing Affordability*, 15 ZON. & PLAN. L. REP. 1 (1992) (discussing land use regulation to promote both environmental quality and social equity).

80. South Burlington County NAACP v. Mount Laurel, 456 A.2d 390 (N.J. Sup. Ct. 1983).

81. *See generally* A. Dan Tarlock, *Local Government Protection of Biodiversity: What is Its Niche?*, 60 U. CHI. L. REV. 555 (1993)(examining the problems and opportunities of local governments face in using regulatory authority to protect biodiversity).

that such programs violate state constitutional or statutory affordable housing duties.[82]

Pursuing open space preservation continues to be a problematic objective from both social equity and environmental perspectives. Open space preservation remains central to biodiversity protection as a core environmental value, as well as to most urban planning visions. However, existing open space efforts illustrate the relative inability of the organic or Garden City vision of the landscape to shape regional growth patterns. Cities have pursued a variety of growth management programs to either control the rate of growth or to confine it within tightly drawn boundaries. These programs have often increased the cost of housing and encouraged leap-frog developments.[83]

V.   The Automobile and Air Pollution: Environmental Quality and Social Equity in Conflict?

One of America's greatest global exports has been the automobile culture. Automobiles have become the preferred method of transportation in North America and Europe[84] as well as in urban areas in developing countries. In the United States, the car triumphed over rail transportation before World War II because it was more responsive to consumer demand,[85] and automobile travel[86] was generously subsidized by the federal and state governments. The automobile's meaning and its proper role in modern

---

82. *See* Craig Anthony Arnold, *Conserving Habitats and Building Habitats: The Emerging Impact of the Endangered Species Act on Land Use Development*, 10 STAN. ENVTL. L.J. 1 (1991).

83. The most recent literature assessment on this subject concludes that programs not implemented through strong state or regional entities are problematic. ERIC D. KELLY, MANAGING COMMUNITY GROWTH: POLICIES, TECHNIQUES, AND IMPACTS (1993).

84. Laurie Pickup, *Transport, Environment, and Social Integration in Cities*, in IM-PROVEMENT, *supra* note 42, at 51.

85. This argument runs counter to the thesis popularized in the movie, *Who Killed Roger Rabbit* that the major automobile manufacturers conspired with cities to destroy urban rail systems. In his study of transportation in southern California, SCOTT L. BOTTLES, LOS ANGELES AND THE AUTOMOBILE: THE MAKING OF THE MODERN CITY (1987), Mr. Bottles argues that the public turned against the streetcar industry because it failed to implement its promise to open up the suburbs to development. This led to the distrust of regulated public utilities and blocked efforts during the 1930s to the 1950s to develop a viable public transportation system.

86. The top three federal programs that influenced the suburbanization of America are (1) federal housing policies such as the deduction of mortgage interest and mortgage guarantee programs, (2) federal highway construction program, and (3) the former Title II program of the Clean Water Act, which subsidized suburban sewer systems and thus lowered development costs of growth areas. *See* ROGER J.

FORDHAM URBAN LAW JOURNAL   [Vol. XXI

society is the subject of intense debate among students of urban life.[87]

In brief, the benefits of personal mobility and autonomy must be balanced against the environmental, energy, and social equity costs. In the twentieth century, the automobile's positive aspects, flexibility and autonomy, were considered to outweigh the negative ones. On the other hand, for environmentalists, the costs outweigh the benefits. Throughout this century, the United States, in contrast to Europe and Japan, has pursued an energy policy designed to make energy as cheap as possible. The concern with urban air pollution and then the OPEC-generated energy crisis forced us to reevaluate the benefits of our reliance on the automobile for the bulk of urban and regional transportation. However, the preference for automobile travel is too deeply embedded in our culture to attempt to fundamentally change its position in the transportation hierarchy.[88] As Stewart Udall, Secretary of the Interior in the Kennedy-Johnson administrations and a founder of the modern environmental movement, has observed, "[p]erhaps one of the most fateful domestic environmental and social problems in the next decade . . . is the circumstance that this country's automobile culture, as it exists, today is not sustainable."[89] We have tried to make cars less polluting and more fuel efficient,[90] laudable objectives in and of themselves, but we have just begun to confront the social equity and deeper environmental problems with this strategy.

Three environmental solutions to the automobile have been attempted. We have tried to (1) replace it with public transportation, (2) tame it through the urban form, and (3) mandate cleaner engines through technology-forcing, with modest driving reduction strategies as a back-up. The first two failed both by their own terms and by the broader criteria of social equity. The success of

---

VAUGHAN & MARY E. VOGEL, THE URBAN IMPACTS OF FEDERAL POLICIES, POPU-LATION AND RESIDENTIAL LOCATION (1979).

87. THE CAR AND THE CITY: THE AUTOMOBILE, THE BUILT ENVIRONMENT, AND DAILY URBAN LIFE (Martin Wachs & Margaret Crawford eds., 1992) (a recent collection of automobile scholarship) [hereinafter THE CAR AND THE CITY].

88. *See, e.g.*, NATIONAL ACADEMY OF ENGINEERING, CITIES AND THEIR VITAL SYSTEMS: INFRASTRUCTURE PAST, PRESENT, AND FUTURE (1988) (a review of urban infrastructures that draws no normative conclusions and does not consider the implications of many of the useful models of urban growth and saturation discussed in the various papers).

89. STEWART L. UDALL, THE NEXT GENERATION 266 (1988).

90. See Theodore L. Garrett & Sonya D. Winner, *A Clean Air Act Primer: Part II, Chapter 9*, 22 Envtl. L. Rep. (Envtl. L. Inst.) 10, 301 (1992) (describing Title II of the Clean Air Act).

the third is also problematic. Moreover, there is a basic tension between the current environmental equity movement and proponents of sustainable urbanism. The urban poor and minorities are victimized by both our automobile culture and our efforts to make it sustainable. To reduce vehicular air pollution, cities are building new, linear public transportation lines and considering high technology solutions to reduce the number of work-related vehicular trips. Unfortunately, these neither promote environmental sustainability nor social equity.

Public transportation is not a solution to air pollution. Studies show that costly public transportation systems only produce marginal improvements in air quality.[91] These systems do not respond to the needs of the poor and minorities who are often the most automobile dependent, except in a few large cities with comprehensive public transit systems.[92] Public transportation often continues the pattern of connecting middle and upper middle class people with the city. For example, a center city people mover built in order to revive downtown Detroit, has hurt inner city residents. To pay the mounting operating deficits, inner city bus service has been cut. Thus, it is not surprising that representatives of the poor and minorities have been among the most vocal opponents of controlling air pollution by reducing vehicular use.

Town planners have long seen the car as incompatible with ideal—European—city forms. In an early effort to limit automobile use, pre-environmentalists planned suburban towns that separated people and cars. Clarence Stein and Henry Wright's partially built Garden city in Radburn, New Jersey attempted to harmonize people and the car using under and overpasses and cul de sacs that deposited cars at the rear of houses or superblocks; the front entrance faced on common greens. Radburn has been hailed as a model community,[93] and it has been widely emulated in diluted

---

91. 3 METROPOLITAN TRANSP. COMM'N, TRANSPORTATION IMPROVEMENT PROGRAM FOR THE NINE-COUNTY SAN FRANCISCO BAY AREA, PART B: AIR QUALITY ASSESSMENT (1993). This recent study of the air quality benefits of additional highway and mass transit investment in the San Francisco Bay Area concluded that an "$11 billion investment overwhelmingly concentrated in new HOV facilities on existing freeways . . ., new transit and local arterial improvements resulted in a modelled reduction in pollutants of less than 1% . . . ." *Id.* at 3. Similar studies in developed regions show the same marginal improvement in air quality.

92. Melvin M. Webber, *The Joys of Automobility, in* THE CAR AND THE CITY, *supra* note 88, at 274, 279 (1992).

93. *See* CLARENCE S. STEIN, TOWARDS NEW TOWNS FOR AMERICA 67 (1957) (arguing that the community's failure to become a Garden City was not a failure but "essentially it was a great success. It was a splendid adventure: a voyage of discovery

form. However, a critic has recently characterized it as "basically a last-ditch effort to protect the Victorian suburban community from destruction by the automobile."[94] Radburn's idea, however, continues to live in California. The hottest idea in California's perpetual urbanization is the neo-traditional transit oriented community. Settled by adventurous and freezing midwesterners, who created an indigenous, Spanish-Roman culture and architecture,[95] developers in California are now building Midwestern cities with houses facing the street, front porches and garages in the alleys.[96]

Because urban planning has been unable to cope with the industrial revolution's separation of home and work, we have relied on technology-forcing strategies to reduce air pollution. Our major air pollution strategy has been to mandate less polluting engines and to wean people from commuting in single occupant vehicles. The federal Clean Air Act has consistently followed a strategy of mandating technology-forcing solutions with Congressional waivers. Automobile air pollution was one of the first major environmental problems to be identified, and it has been at the heart of modern environmental regulation since the Clean Air Act in 1970. It took until 1957 to identify conclusively internal combustion as a major source of urban air pollution.[97] At a time when engineers dominated the environmental agenda, the remedy was straight-forward; improve engine technology. Documented evidence that the industry suppressed air pollution technology strengthened Congress's resolve to solve major air pollution through technology-forcing standards.

Technology-forcing remains the major remedy for automotive air pollution because the compliance costs are distributed among all purchasers in a highly competitive global industry. As the Montreal Protocol on Protection of the Ozone Layer indicates, it is easier to regulate a concentrated, technologically sophisticated industry than to modify human behavior, which would require sac-

---

in search of a new and practical form of urban environment to meet the actual requirements of today.").

94. Drummond Buckley, *A Garage in the House, in* THE CAR AND THE CITY, *supra* note 87, at 124, 135.

95. *See* KEVIN STARR, MATERIAL DREAMS: SOUTHERN CALIFORNIA THROUGH THE 1920s (1990); KEVIN STARR, INVENTING THE DREAM: CALIFORNIA THROUGH THE PROGRESSIVE ERA (1986).

96. William Fulton, *California Neotraditional Plans, Projects,* L.A. TIMES, Aug. 23, 1993, at 6.

97. *See* JAMES E. KRIER & EDMUND URSIN, POLLUTION & POLICY: A CASE ESSAY ON CALIFORNIA AND THE FEDERAL EXPERIENCE WITH MOTOR VEHICLE AIR POLLUTION, 1940-1975, at 77-101 (1977).

rificing individual autonomy.[98] The Clean Air Act's evolution illustrates this bias in favor of technology-forcing *alone*.

Air pollution is a combination of mobile and stationary source pollution. Subject to EPA oversight, Congress has delegated to individual states the power to decide how stationary sources will comply with the Clean Air Act and, more importantly, how much behavior modification is necessary in addition to new technology. Transportation controls have always been part of the Clean Air Act, but the political controversies that immediately surrounded their implementation led Congress to restrict their use.[99]

The Clean Air Act's treatment of the automobile has evolved from an effort to apply technology to eliminate a problem to an endless process for deciding how much air pollution will be eliminated and when, if ever, this should occur. Congress has basically set stringent engine emission reduction limitations, but has delayed their implementation.[100] The 1990 Clean Air Act Amendments continued this pattern. Congress established a detailed control scheme to attain the primary air quality standard for ozone,[101] a secondary pollutant formed by the reaction of automotive and stationary-source volatile organic compounds and nitrogen oxides.[102]

The technology-forcing provisions have produced tangible improvements in urban air quality,[103] but a recent review of Los Angeles' efforts to control air pollution reveal that our current

98. *See* CHRISTOPHER D. STONE, THE GNAT IS OLDER THAN MAN: GLOBAL EN-VIRONMENT AND HUMAN AGENDA 80-83 (1993) (discussing the difference between the politics of global climate and ozone depletion regulation).

99. *See* Eli Chernow, *Implementing the Clean Air Act in Los Angeles: The Duty to Achieve the Impossible*, 4 ECOLOGY L.Q. 537 (1975).

100. The political explanation for this strategy is the influence of Congressman John Dingell of Detroit, Chairman of the House Energy and Commerce Committee. *See* ROBERT V. PERCIVAL ET AL, ENVIRONMENTAL REGULATION: LAW, SCIENCE AND POLICY 765 (1992).

101. Five nonattainment areas are specified, and all major metropolitan areas are placed in a category. State reduction requirements increase with the severity of the problem. Only Los Angeles is an extreme nonattainment area, but seven large metropolitan areas and Muskegon, Michigan are classified as severe. Various controls are phased in over a time period that can last up to 15 years for severe areas and 20 years for Los Angeles.

102. *See* JOHN-MARK STENSVAAG, CLEAN AIR ACT 1990 AMENDMENTS LAW AND PRACTICE § 5.2 (1991).

103. Between 1955 and 1992 the peak level of ozone declined from 680 parts per billion to 300 parts per billion as the population increased from 5 to 14 million and the number of motor vehicles increased from about 2.3 to 10.6 million. Three hundred parts per billion is classified as an extreme nonattainment area under the 1990 Clean Air Act amendments.

approach is neither fair nor sustainable.[104] Still, in 1991, federal standards for one or more pollutants were exceeded in the Los Angeles basin on 184 days, and documented evidence of increased respiratory disease and cancer risk continues to accrue.[105] A glance at a map comparing ozone reduction in the basin shows that the greatest gains occurred in affluent coastal areas, and that the worst concentrations are in inland areas where the poor and minorities are concentrated, although many wealthy suburbs close to the San Gabriel Mountains are located in this area. California's ambitious public transportation efforts can only prevent air pollution from getting worse.[106]

As we reach the limits of feasible improvements in the internal-combustion engine, technology-forcing strategies are being augmented by transportation control management. Since 1970, Congress has used this strategy to back-stop tailpipe and fuel standards. Transportation control management means putting fewer cars on the road and putting more people in a single vehicle or on public transportation. In major urban areas, the political controversies surrounding efforts to reduce automobile use have stymied EPA's efforts to meet air quality standards. In 1990, Congress responded to two decades of marginal implementation of transportation control measures (TCMs)[107] by increasing their role in meeting urban carbon monoxide and ozone standards.

The 1990 Clean Air Act Amendments give the EPA wide discretion in suggesting transportation planning processes and providing "information" about a wide variety of methods to reduce vehicular use.[108] Congress went further than it has in the past in confronting the issue of personal mobility by requiring that by the end of 1993, employers in severe and extreme ozone nonattainment areas (Los Angeles) are required to implement programs to reduce the number of vehicle-related work trips.[109] However, existing evidence shows that ride reduction programs have marginal effects on air quality, and that stepped up vehicle maintenance and the subsi-

---

104. James M. Lents & William J. Kelly, *Clearing the Air in Los Angeles*, SCIENTIFIC AMER., Oct. 1993, at 32.

105. *Id.* at 38.

106. Mary Beth Barber, *Transportation in California*, 24 CAL. J. 7, 10 (1993). The same problem has long existed in other large urban areas. *See* COUNCIL ON ENVTL. QUALITY, ENVIRONMENTAL QUALITY: THE SECOND ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 189-95 (1971).

107. See LAW OF ENVIRONMENTAL PROTECTION § 11.08 (Sheldon M. Novick et al. eds., 1993) (describing the failures of EPA's TCM programs in the 1970s).

108. 42 U.S.C. § 7408 (e)-(f) (1988).

109. *Id.* § 7511a (Supp. 1991).

dized replacement of older cars are the most cost-effective strategies available for reducing air pollution.

The future of urban air pollution control efforts is uncertain. In places such as Los Angeles, there is intense opposition to paying the costs of additional controls.[110] This may relax some of the existing tension between social equity and environmental quality, but it merely continues the status quo. However, efforts to freeze existing air pollution control efforts only pass on to future generations both the increasing costs of airshed degradation and the social equity problems of urban deconcentration without an adequate transportation policy.

VI.   Sustainable Cities: The Future Ideological and Legal Challenges

The history of efforts to promote both environmental protection and social equity offers few positive lessons for the future. To end on a more optimistic note, however, international environmental law does provide a useful approach to this issue. The tension between environmental protection and social equity has been faced more squarely in international environmental law. Nation-state sovereignty has allowed developing nations to assert a right to develop to counter arguments that developing nations owe both present and future generations strong environmental protection duties.[111] To ease this north-south tension, many nations have embraced the concept of sustainable development.

Sustainable development is a political-economic idea that is designed to accomplish two objectives related to the goals of both the environmental equity and mainstream environmental movements.[112] This principle attempts to bridge the north-south debate about the role of environmental protection in developing economies by linking environmental protection and the elimination of poverty. In short, it places humans back into the environment. The influential 1987 Bruntland Commission report concluded, "A world in which poverty and inequity are endemic will always be prone to environmental and other crises. Sustainable development

110. Robert Reinhold, *Hard Times Dilute Enthusiasm for Clean-Air Laws*, N.Y. TIMES, Nov. 26, 1993, at A1.

111. For a recent summary of this debate, see INTERNATIONAL LAW ANTHOLOGY ch. 10 (Anthony D'Amato ed., 1994).

112. *See* A. Dan Tarlock, *Environmental Protection: The Potential Misfit Between Equity and Efficiency*, 63 U. COLO. L. REV. 871 (1992) (discussing the origins of this concept and the problems that must be overcome before it can be applied to environmental protection).

FORDHAM URBAN LAW JOURNAL	[Vol. XXI

requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life."[113] The major problem with developing countries is that almost all incentives are biased toward rapid, low-cost, natural resource exploitation. In contrast, sustainable development attempts to correct the biases against traditional ideas of efficiency in present consumption by replacing those ideas with an ethic of long run efficiency.[114]

Sustainable development can be adapted to the environmental equity movement because it marries the idea of social equity with a broader idea of environmental quality. Recent environmental equity advocates express a similar idea when they argue that the movement must aim beyond the unequal service, equal protection model. The revitalization or "recivilization" of cities has emerged as a primary focus of the movement.[115] For the environmental equity movement, adopting sustainable development as a goal— open-ended and contradictory as the concept currently is—has the advantage of creating a conceptual parity between human-dominated ecosystems, cities, and "natural" systems. This is a fundamental ideological shift for environmentalism because it follows that cities should be integrated into the countryside, not isolated from it. Thus, humans must be recognized as integral landscape actors rather than unfortunate aberrations.

There are, however, at least three different conceptions of the urban-environmental relationship embedded in the theory of sustainable urbanism which must be carefully delineated because only one is useful for the future. The three theories are (1) the romantic environmental, (2) the global environmental, and (3) the technological adjustment. The first is the traditional mainstream environmental response and, as I have previously discussed, has generally sought to confine the city to save the countryside. The second is a much newer response and seeks to promote sustainable development by moderating urban demand in the north for southern commodities such as tropical hardwoods, and by linking municipal policies to global environmental ones. The third refers to a cluster of utopian planning theories that functioned into the 1960s which

---

113. WORLD COMM'N ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 43-44 (1987).

114. *See generally* DAVID PEARCE ET AL., SUSTAINABLE DEVELOPMENT: ECONOMICS AND ENVIRONMENT IN THE THIRD WORLD (1990).

115. *See* Bunyan Bryant & Paul Mohai, *Summary, in* RACE AND THE INCIDENTS OF ENVIRONMENTAL HAZARDS 215, 219 (Bunyan Bryant & Paul Mohai eds., 1992)(proceedings of a conference held at the University of Michigan School of Natural Resources).

sought to remedy the dehumanizing aspects of the industrial revolution through ideal cities.

The second theory, the global environmental, has the most promise for the future because it can be integrated with sustainable development, which recognizes that promoting social equity is part of the cost of environmental protection. Sustainable development is an ideological challenge for both environmental equity and mainstream environmental proponents. Each must give up cherished political and legal objectives and deeply held prejudices. In addition, each must confront issues that are in the immediate scope of both movements. Proponents of environmental equity must give up the idea of a primarily constitutional reform movement and must become active participants in all environmental policy debates, not just those dealing with the reduction of exposure to toxic chemicals. Similarly, the mainstream environmental movement must, as modern ecology is doing,[116] abandon the distinction between human dominated and natural ecosystems. The collapse of the human and non-human ecosystem is not, of course, a substitute for on-going efforts to promote racial equality and social equity, but it does remove an impediment to achieving these objectives.

Both movements must confront the uncertain relationship between the industrial urban form and post-industrial cities. The model of an urban manufacturing center influencing smaller urban and rural regions around it has broken down.[117] Sustainable urbanism is a much more complex and multi-faceted theory than other urban theories because the focus is much broader than the city's physical form and the social consequences of that form. There are few existing models to follow. Urban sustainable development principles are being developed within the European Community. Current cities are not sustainable because they stress global resource stocks and contribute to the degradation of global commons. To become environmentally sustainable, cities must link their transportation, resource consumption, and waste manage-

---

116. *See generally* BOTKIN, *supra* note 21.

117. The late Jane Jacobs first suggested this when she speculated what the change from mass to specialized production would have on the urban form. *See generally* JANE JACOBS, THE ECONOMY OF CITIES (1969). Modern urban analysis must start from the fact that capital is now a global commodity largely uncontrolled by traditional sovereignty exercises of political power. This fact explains the intense job-creation and edifice construction competition among cities, but we have not yet begun to debate how to create sustainable cities in the face of this reality. *See* Paul H. Brietzke, *Urban Development and Human Development*, 25 IND. L. REV. 741, 745-51 (1992).

ment policies to global concerns, such as ozone depletion and climate change.

Urban environmental sustainability requires measures such as (1) a reduction in the level of consumption of energy and other resources such as tropical hardwoods, (2) a transportation strategy that recognizes that the automobile will be the dominant form of transportation for the foreseeable future and that job access, therefore, must be linked to vehicle rather than public transit access, (3) the reduction of toxic and other waste streams at the source rather than at the point of discharge,[118] and (4) the continuing scrutiny of gentrification, open space, and biodiversity protection programs to make sure that they are not used to foreclose low and moderate income housing opportunities.

The issues addressed in this Article may seem far from the immediate efforts to ensure that minorities and low income people are not exposed to a disproportionate share of the risk of exposure to toxic chemicals and other pollutants, but I believe that they are central to future efforts to integrate environmental equity and mainstream environmentalism. Both movements need each other. Mainstream environmentalism must give greater weight to the human condition if it is to succeed as a major societal organizing force, and the environmental equity movement needs a longer term and more comprehensive perspective in order to achieve its objectives.

---

118. Tjeerd Deelstra, *Introduction, in* CITIES AND THE GLOBAL ENVIRONMENT: PROCEEDINGS OF A EUROPEAN WORKSHOP (The Hague, Dec. 5-7, 1990).