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ENVIRONMENTAL JUSTICE, STRUCTURAL ECONOMIC THEORY, AND COMMUNITY ECONOMIC EMPOWERMENT

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Until very recently, two separate and distinct environmental movements have existed in the United States. One, usually identified by the media as "the environmental movement," bases itself in Washington or other centers of power, and consists primarily of policy analysts, lawyers, scientists, and other professionals.¹ Its governing ideology may be summed up as the principle that we should have the toughest environmental laws possible, given the current organization of the economy. This movement seeks a cleaner environment, but it is unwilling to question our faith in the belief that continuing economic growth is not only possible and generally desirable, but will, coupled with imagined new technologies, solve most of our problems, environmental or otherwise. This environmental movement is represented as being "reasonable" and "responsible"; it understands how politics works; it seeks obtainable reform; and it is willing to compromise.

But in recent years, we have increasingly heard from another environmental movement in the United States, a movement commonly referred to as "grassroots."² This movement comprises a number of discrete and mostly unaffiliated groups whose identity

* Kutak Rock, Atlanta, Georgia. I want to thank the partners of Kutak Rock for their support for my non-billable endeavors. Thanks also go to Ted Becker and Tom Orlando for research assistance. Special thanks to Hester Leone Purrey Taibi for editorial assistance.

¹ See Mary Lee Kerr & Charles Lee, *From Conquistadors to Coalitions*, S. EXPOSURE, Winter 1993, at 9, 17-18. The major environmental organizations have also been largely White. *Id.* In 1988, only six people of color sat on the boards of the eleven largest national environmental groups, including the National Wildlife Federation, Audubon Society, Sierra Club, and Environmental Defense Fund. *Id.* In addition, fewer than two percent of the professional staff were people of color. *Id.*

² JIM SLEEPER, *THE CLOSEST OF STRANGERS* 155 (1990). Reverend Johnny Ray Youngblood, an East Brooklyn congregation's Pastor and the subject of a recent book about the Black church, stated in an address: "We are not a 'grass-roots' organization. Grass roots grow in smooth soil! Grass roots are *shallow* roots! Our roots are *deep* roots!" *Id.* See generally SAMUEL G. FREEDMAN, *UPON THIS ROCK: THE MIRACLES OF A BLACK CHURCH* *passim* (1993) (biography of Youngblood).

and membership largely center on a particular location or issue. These groups are led by and draw their ranks not from educated professionals but from the more typically politically alienated lower middle class. Their commitment to environmentalism comes less from abstract beliefs and more from seeing themselves, their families and their communities poisoned and contaminated. They do not believe in the gradual improvement of life through legal action; rather, they typically see the passage of more laws as a futile diversion.³ Without much in the way of financial or institutional resources, and without a coherent body of doctrine or analysis, these groups are nonetheless changing the way we do business, and changing the thinking of policymakers. Although often derided by policymaking elites as irrational, unthinking folk standing in the way of progress and needed jobs, grassroots environmental groups have won many successes in preventing the siting of toxic facilities in their communities and in the cleanup of existing sites; and their emerging power threatens to derail the plans of many more.⁴

Grassroots groups often begin with a single issue and purely local concerns—usually the concern that a possibly hazardous activity not be sited in the group's community. This is known as the "NIMBY"—"Not In My Back Yard"—approach, so vexatious to the planning of businesses and governments. Increasingly, however, many of these organizations have moved beyond their parochial horizons and have linked their local problems to a wider, structural critique. For many groups, the cry has shifted from the narrow, "Not In My Back Yard," to the global, "Not In Anybody's Back Yard," a position that seriously challenges "business as usual."

In addition to the economic class distinctions that separate "mainstream" environmentalists from grassroots activists, as is so often the case in America, racial distinctions play a role as well. Many leaders from communities of color have noted that since environmental degradation often has a distinctly racist aspect, the

³ See WILLIAM GREIDER, *WHO WILL TELL THE PEOPLE: THE BETRAYAL OF AMERICAN DEMOCRACY* 214-16 (1992). Greider explains: "They are not running for political office or even thinking about doing it. For them, democracy means building their own political organizations, drawing people together in a relationship that leads to real power. In a sense, they are reinventing democracy from the ground up, starting in their own neighborhoods." *Id.* at 222.

⁴ See generally *Toxic Struggles*, S. EXPOSURE, Winter 1993, at 22-29 (detailing variety of grassroots struggles).

ideals of the Civil Rights Movement are appropriate rallying points in an organized fight for environmental justice. In October 1991, the First National People of Color Environmental Leadership Summit met in Washington, D.C., bringing together more than 600 grassroots leaders.⁵ Delegates at the Summit drafted seventeen Principles of Environmental Justice ("Principles") that represent a radical departure from traditional views. The Principles define the environment as "wherever we live, work, and play," and expand the concept of environmental hazards to include unsafe jobs, unemployment, inadequate housing, poor health care and education, unresponsive government, police brutality, and crime. This environmental justice movement argues that widespread environmental degradation is an inevitable outcome of our current mode of economic production, and that until we adopt different ways of meeting our material needs we will make little headway in reducing toxic contamination. Thus, environmental justice activists seek to create a future that is both economically viable and environmentally sustainable. Such activists place community-based economic development at the center of their work as they seek to strengthen the capacity of communities of color to develop meaningful economic alternatives to polluting industries and waste facilities.⁶

⁵ See Isaiah Madison & Mary Lee Kerr, *Clean Dream*, S. EXPOSURE, Winter 1993, at 7.

⁶ *Id.*; *The Principles*, S. EXPOSURE, Winter 1993, at 19. As released by the Summit, the seventeen principles were articulated as follows:

We the People of Color, gathered together at this multinational People of Color Environmental Leadership Summit, to begin to build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities, do hereby re-establish our spiritual interdependence to the sacredness of our Mother Earth; to respect and celebrate each of our cultures, languages and beliefs about the natural world and our roles in healing ourselves; to insure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and, to secure our political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and land and the genocide of our peoples, do affirm and adopt these Principles of Environmental Justice:

1. Environmental justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
2. Environmental justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination and bias.
3. Environmental justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living beings.
4. Environmental justice calls for universal protection from nuclear testing and the extraction, production and disposal of toxic/hazardous wastes and poisons that threaten the fundamental right to clean air, land, water and food.

Lately, the concerns of environmental justice have been moving from the margins to the mainstream of American politics. The President,⁷ Congress,⁸ state legislatures,⁹ and the media¹⁰ have

5. Environmental justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.

6. Environmental justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.

7. Environmental justice demands the right to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement, and evaluation.

8. Environmental justice affirms the right of all workers to a safe and healthy work environment, without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.

9. Environmental justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.

10. Environmental justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration on Human Rights, and the United Nations Convention on Genocide.

11. Environmental justice must recognize a special legal and natural relationship of the Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.

12. Environmental justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and providing fair access for all to the full range of resources.

13. Environmental justice calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.

14. Environmental justice opposes the destructive operations of multi-national corporations.

15. Environmental justice opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms.

16. Environmental justice calls for the education of present and future generations which emphasize social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.

17. Environmental justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to insure the health of the natural world for present and future generations.

Id.

⁷ See Exec. Order No. 12,898, 59 Fed. Reg. 7629 (1994). The Order establishes the broad policy that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing . . . disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States . . ." *Id.* To effectuate this policy, the Order establishes an Interagency Working Group ("IWG") headed by the Administrator of the Environmental Protection Agency and composed of the heads of various other executive agencies. *Id.* The IWG is directed to coordinate and supervise the efforts of Federal agencies to comply with the Order. *Id.* Furthermore, each Federal agency is required to "finalize its environmental justice strategy" within 12 months of the date of the Order. *Id.*

The exact contours of "environmental justice" are not, however, clear. While agencies are required to conduct programs which "substantially affect human health or the environment" in such a way that the programs do not "exclud[e] persons . . . from participation . . . , deny[] persons . . . benefits . . . , or subject[] persons . . . to discrimination . . . because of

their race, color, or national origin[.]" agencies are given no direction on what qualifies as "discrimination." *Id.* Agencies are, however, required to collect data on the racial and economic demographics of areas surrounding "facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations . . ." *Id.* Analysis of this data may provide a more concrete foundation on which to base a finding of discrimination against minority or economically disadvantaged communities.

The immediate public response to President Clinton's Executive Order was mixed. The Administrator of the EPA was booed at a speech given to environmental justice activists shortly after the release of the Order because they expected the Administration to provide more specific programs for addressing environmental justice issues. See Gary Lee, *EPA—Clinton Executive Order Gives Boost to Mission*, WASH. POST, Feb. 17, 1994, at A21. A spokesman for the Lawyers' Committee on Civil Rights, on the other hand, viewed the Order as going "a long way to galvanize the Federal bureaucracy to address the environmental problems in the communities of low-income people and people of color." *Id.* Whether the Clinton Administration's actions live up to its rhetoric remains to be seen.

⁸ The premier example of congressional concern with environmental racism is expressed in the as yet unenacted Environmental Justice Act of 1993. S. 1161, 103d Cong., 1st Sess. (1993). The bill would require the Environmental Protection Agency to identify which areas of the country have the highest exposure to toxic pollutants, inspect all toxic chemical facilities within those heavily exposed areas within two years and every two years thereafter, remedy any significant adverse health effects of exposure to toxic chemicals within those areas, and limit the construction of new toxic chemical facilities within heavily exposed communities. *Id.*; see also 139 CONG. REC. S8110 (daily ed. June 24, 1993) (statement of Sen. Mosley-Braun) (while Environmental Justice Act "will not eliminate unhealthy environments in minority communities, . . . it is a strong first step").

For another illustration of congressional bills attempting to resolve various discriminatory practices associated with environmental justice, see Public Health Equity Act of 1994. S. 1841, 103d Cong., 2d Sess. (1994) (prohibiting discrimination on basis of race, color, or national origin in application of federally financed programs which either protect public from or expose public to toxic chemicals); see also 140 CONG. REC. S1286 (daily ed. Feb. 9, 1994) (statement of Sen. Wellstone) (Public Health Equity Act is intended to remedy fact that "greatest risk of exposure to hazardous pesticides and industrial pollutants falls on poor and minority workers stuck with the so-called dirty jobs").

⁹ Numerous state legislators have introduced bills designed to remedy environmental discrimination. See, e.g., Fla. S.B. 1442, 13th Leg., 2d Reg. Sess. (1994); Ga. H.B. 1758, 142d Leg., Reg. Sess. (1994); Minn. S.F. 2233, 78th Leg., Reg. Sess. (1994); S.C. H.B. 3824, Statewide Sess. (1993). These bills, however, have met with limited success. For example, South Carolina State Representative Ralph Canty, proponent on the South Carolina bill, believes that the bill has stalled in a subcommittee because other legislators consider it "a 'Black bill.'" *Toxic Struggles*, S. EXPOSURE, Winter 1993, at 22, 24.

Other legislative attempts to address environmental racism have been more successful, albeit limited in scope. See, e.g., LA. REV. STAT. ANN. § 30:2011(D)(5) (West 1994) (as amended by 1993 La. Acts 767) (requiring Department of Environmental Quality to hold public hearings throughout Louisiana to "investigate issues concerning economic equity" regarding minority groups lacking effective economic clout to make concerns heard).

¹⁰ Issues surrounding environmental racism have received increasing attention in the pages of many major American newspapers. See e.g., Benjamin F. Chavis et al., *Perspective of the Superfund: Bring Fair Play to Toxic Cleanup*, L.A. TIMES, Feb. 9, 1994, at B7 (Chavis, former head of NAACP, argues some of money allocated to Superfund should be used to train members of minority communities to clean up their own neighborhoods); William Claiborne, *More Nonwhites Are Living Near Toxic Waste Sites: Racial Disparities Have Grown Despite National Focus on Issue*, WASH. POST, Aug. 25, 1994, at A17 (discussing study sponsored jointly by Center for Policy Alternatives, United Church of Christ, and NAACP which updates landmark environmental demography report issued in 1987); Frank Clifford, *Plant Siting Raises Issue of Environmental Justice*, L.A. TIMES, Aug. 1, 1994, at A1 (addressing environmental discriminatory effects upon Latino farmers from siting of Pure-Etch recycling plant in Salinas, California); Nekesa M. Moody, *New York Accused of Racism on Incinerator Site*, L.A. TIMES, Mar. 6, 1994, at A4 (discussing environmental racism in context of garbage incinerator located in Black community in Albany,

begun to address the connections between environmental degradation and matters of race and civil rights. This symposium is part of the effort to focus the attention of the public and of policy-makers on environmental justice, and I salute St. John's School of Law for intervening in that process. Administrative agencies, business decisionmakers, and mainstream environmental groups can no longer ignore the racial impact of their decisions and priorities. Nevertheless, the larger questions raised by the environmental justice movement about the economic and social structure remain off the political agenda.¹¹ Although I am pleased by the shift in mainstream political consciousness, I want to spend the rest of this essay underscoring the imperative that the struggle against environmental racism continue on the high road of a structural critique and politics based on a vision of community economic empowerment, and not allow itself to be limited to narrow, legalistic racial reform. I emphasize this because I am concerned that in the process of gaining mainstream respectability, the environmental justice movement may lose its critical economic bite, and settle for overly compromised reform.¹² Within a society

New York); Richard Perez-Pena, *Settlement in Harlem Suit Over Odors*, N.Y. TIMES, Jan. 5, 1994, at B1 (detailing \$1.1 million payment made by New York City into trust fund designed to address environmental and health concerns of predominantly Black and Latino neighborhoods located near sewage treatment plant); *Pollution Remedy is Hotly Debated*, N.Y. TIMES, Oct. 10, 1993, at A28 (identifying problems with Environmental Protection Agency's plan to build portable incinerator with which to burn contaminated soil found in working-class immigrant neighborhood).

¹¹ See generally AL GORE, *EARTH IN THE BALANCE passim* (1992). Although Gore recognizes the problem of environmental racism, see *id.* at 179 (calling attention to environmental racism and associating that problem with lack of political voice), and does suggest that it is a global problem that will require the contribution from wealthy to poor nations in a "Global Marshall Plan," see *id.* at 295-360 (suggesting wealthy nations allocate money for transfer of environmentally helpful technologies to Third World and "to help impoverished nations achieve a stable population and a new pattern of sustainable economic progress"), he nevertheless argues that environmental progress is to be achieved within the context of globally integrated markets, democratic capitalism, and continuing economic growth coupled with new technologies. *Id.* at 298 (arguing free markets and global civilization are positive choices).

¹² See generally ANTONIO GRAMSCI, *SELECTIONS FROM THE PRISON NOTEBOOKS passim* (Quintin Hoare & Geoffrey Nowell Smith trans., International Publishers 1989). A central preoccupation of Gramsci's work is the conservative nature of established institutions, no matter what their particular character. Even when a social movement is successful in placing its demands on the public agenda, only the change necessary to re-legitimate status quo arrangements is likely to occur. Thus the question becomes how can a group or interest "win," "dominate," or achieve lasting social transformation if we understand the social body as constantly in process, yet holding stable through entrenched structures of power which subsume questions of culture and consent?

As Gramsci sees it, there is no society apart from the State; likewise coercion and consent are related, not opposed. "Civil society resists *before* the frontal assault on the state." *Id.* at 207. Even "new ruling groups have never been able . . . to ignore tradition or established

whose main priority is competition for global markets, the environment can never be much more than an aesthetic or charitable afterthought.

My concern derives primarily from two analytic observations. First, in mainstream political discourse we often use race in a way that obscures issues more completely understood within the context of economic class. I agree with Kim Crenshaw and others that we must not simply "collapse issues of race into issues of class."¹³ However, a purely racial account fails to see that racism can mean many different things, manifest itself in varying ways, with divergent material effects according to institutional setting and structural conditions. Thus, I take issue with the title of this panel: "Racism or Economics?". This is not an "either/or" question, but rather a "both/and" issue. Analytic frameworks that focus on just race or just class obscure as much as they illuminate. My second and related concern derives from the observation that we engage in many debates about equality without ever asking, "equal to what?". We assume that with modest reform, business as usual can provide equality of opportunity and middle class consumption patterns for all. A focus solely on "equality" may mask the decrease in opportunity and the environmental unsustainability of this assumption. What we need is a mode of analysis that will allow us to understand and critique simultaneously racial and economic relations.

Allow me to posit a hypothetical example to illustrate my point that single issue forms of analysis are inadequate. A company makes an entirely economically rational, race-blind decision to locate a hazardous facility where land costs are cheapest. In a particular region, land costs are cheapest in the area in which Black people are most concentrated, due to the fact that there is little demand for the land by the majority of people in the region be-

interests . . . who already existed and had been constituted before they came to power." *Id.* at 186. Thus, "when a struggle can be resolved legally, it is certainly not dangerous." *Id.* at 256-57. What follows from this is that the dominant elements of a society hold their power to a significant degree through control over the various codes of that society, constantly recuperating even contradictory information into existing structures so that people accept arrangements as "natural" which may be actively opposed to their best interests. For explorations of how Gramsci's ideas apply to racial ideology and anti-discrimination law, see Kim Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimization in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Anthony Taibi, *Capitalism, Multiculturalism and Community Empowerment: A Critique of Civil Rights Consciousness*, 1995 DUKE L.J. (forthcoming).

¹³ Crenshaw, *supra* note 12, at 1364.

cause of racial attitudes and beliefs.¹⁴ The company locates its facility in the Black community. Is this a racist or economic decision?

Allow me another example, this one not hypothetical. The United States government collects statistics about mortality rates and causes of death by race, gender, and region, but not by economic class. The overwhelming majority of developed countries do collect mortality statistics by class, and there is considerable debate in the Western World about growing class mortality differentials. Most western European countries have made the reduction of class mortality differentials a major objective of government policy, but the United States is absent from this international debate.¹⁵ Although I do not wish to minimize the importance of our debate and struggles over racial mortality differentials, substantial evidence indicates that the intersection of racial and environmental problems is more completely understood and resolved within its larger structural economic context. Such issues can only be analyzed, and appropriate public policies carried out, within a multidimensional, structural framework.

The kind of analysis I am calling for here also calls into question notions of "community" embraced by mainstream liberals and conservatives alike. Modern industrial society and a globally organized economy necessarily promote geographic mobility, thereby lessening individuals' attachment to and concern for particular places. Such social and economic organization also creates competitive pressures which ensure that the environmental inputs of local economic activity are not used on a sustainable scale appropriate to each bioregional setting. Constantly on the move, we treat places disrespectfully; every place is economic raw material for development, extraction, or markets. As Tim Luke has observed, "building a community in a particular location, accepting it on its own terms, working to adapt a sustainable way of life, cherishing it for its unique differences are foreign notions" to our

¹⁴ For a literary exposition of this theme, see TONI MORRISON, *SULA* 3-6 (1973).

¹⁵ See Vicente Navarro, *Class and Race: Life and Death Situations*, MONTHLY REV., Sept. 1991, at 1-2. Indeed, the two major American medical journals, *The New England Journal of Medicine* and *The Journal of the American Medical Association* ("JAMA"), carry many articles on race and gender mortality differentials—JAMA has even published special issues on Blacks, Latinos and women—but issues of class are entirely absent. In contrast, the *Lancet*, the most prestigious medical journal in Europe, does carry such articles. *Id.* at 6-7.

mainstream common sense.¹⁶ One of the outstanding contributions of environmentalism more generally to our public discourse is that it has reintroduced both a moral and a material challenge to our practice of subordinating the rest of our social imperatives to economic growth (and a narrowly defined economic growth at that). Our way of life, in production and consumption, is environmentally unsustainable. The creation of real opportunity and the avoidance of environmental catastrophe require us to reconnect the economies of our communities to their supporting ecoregions.¹⁷

In advocating community empowerment and local, environmentally sustainable economic development, I am not simply being a Luddite or indulging in nostalgia for a mythic past that never was and cannot be. I am a product of New York City, and I have no desire to "go back to nature." What I am arguing, however, is that our stock image, our collective common sense, of the process of modernity and of progress as natural, unilinear and irreversible, is false. The evolution of society from primitive local communities to a complex, technological, mobile, globally integrated society is not the product of natural forces like the tide; rather, it is the product of political choices made in particular historical circumstances. We *can* choose to alter the structures that erode community life and environmental well-being.

The belief we Americans hold in never ending economic growth is becoming increasingly indefensible. The promise it holds out, a widespread high standard of living and economic security, has not and cannot be kept. Although possessed of a few more toys than their ancestors, most people do not enjoy a particularly high standard of living, and, moreover, the conditions necessary for security and a meaningful, moral life are increasingly undermined. With more local control over politics and markets, many communities might become more vital.¹⁸ Mainstream thinking calls for communities and individuals to "think globally and act locally" to shore

¹⁶ Tim Luke, *Community and Ecology*, in *THE GRAY WOLF ANNUAL TEN: CHANGING COMMUNITY* 207, 214-15 (Scott Walker ed., 1993).

¹⁷ *Id.* at 215. "Unless and until most communities reconnect their economies with their immediate supporting ecoregions, they will be subject both to" economic colonization and "environmental collapse." *Id.*

¹⁸ *Id.* at 216. Luke writes: "Communities may do better by determining their own ecologically appropriate ethos, redefining their own standards of life, and setting their own moral criteria." *Id.*

up our weakening power in the emerging global system. A trans-racial, environmentally conscious politics of community empowerment needs communities and individuals who can "think locally and act globally."¹⁹ Rooted in local experiences, we must develop alternatives to the existing practices and institutions of community, property, consumption, and production.

This approach also requires working toward several radical shifts in the structure of society. First, we must work to create more opportunities for small producers, the ownership of real property, and the acquisition of skills. Local ownership and control would help counteract unsustainable production and consumption because "not only the benefits, but also the costs of production would then be immediately evident at the local level rather than only in distant environmental 'sacrifice zones.'"²⁰ It is worth noting here that this goal, far from being an unrealizable Utopian scheme, *could* be reached in small, incremental steps using resources already available. Lawyers and legal thinkers have an important role to play in creating such a shift. An important place for us to start would be to salvage antitrust law from the so-called consumer welfare ideologies of Robert Bork²¹ and the Chicago School,²² which in practice serve the interests of big business,

¹⁹ *Id.* Evidence that the environmental justice movement is moving toward global action based on local thinking can be found in the participation of many grassroots groups in anti-North American Free Trade Agreement ("NAFTA") protests. Understanding that NAFTA will strengthen the bargaining power of pollution-producing transnational corporations, many grassroots environmental justice organizations forged broad cross-border coalitions to oppose NAFTA. Although unsuccessful, the broadening of horizons occasioned in that struggle may provide the ground work for future collective action. See Rich Held, *Crossing the Line: Corporations are Exporting Environmental Racism to Mexico, Dumping Dangerous Jobs and Toxic Waste on Communities of Color*, S. EXPOSURE, Winter 1993, at 20-21.

²⁰ Luke, *supra* note 16, at 217.

²¹ See ROBERT BORK, *THE ANTITRUST PARADOX* 51 (1978) ("The only legitimate goal of American antitrust law is the maximization of consumer welfare."); see *id.* at 164 ("[T]he law should never attack . . . [concentrated market] structures, since they embody the proper balance of forces for consumer welfare."); *id.* at xi ("The judge must not weigh against consumer welfare any other goal, such as the supposed social benefits of preserving small businesses against superior efficiency.") (1993 *Introduction*).

²² See Richard A. Posner, *The Chicago School of Antitrust Analysis*, 127 U. PA. L. REV. 925, 945 (1979). The Chicago School posits the following apologia for the existence of concentrated markets in arguing against antitrust enforcement:

If the leading firms in . . . [concentrated] industries are able, by virtue of concentration, to obtain supracompetitive profits, these profits should act as a magnet to other firms in the economy and their entry will deconcentrate the industry Persistent concentration implies either that the market in question simply does not have the room for many firms (economies of scale) or that some firms are able persistently to obtain abnormal profits by cost reductions or product improvements that competitors and new entrants are unable to duplicate. Neither case is an attractive one for public intervention designed to change the market structure.

and make antitrust law instead serve the interest of local businesses.²³ From banking²⁴ and trade regulation, to land use and local government law,²⁵ there is much work for legal practitioners and thinkers in promoting environmentally sustainable community empowerment and local market economic development.

The second radical shift I have in mind is that we contest the idea that the good life consists of leisure and obsessive consumerism. We need to redefine our culture so that "hard work, frugality, ecological responsibility, humility, and skill perfection" are rein-

Id.; see also BORK, *supra* note 21; RICHARD A. POSNER, *ANTITRUST LAW* (1976); WALTER ADAMS & JAMES W. BROCK, *ANTITRUST ECONOMICS ON TRIAL: A DIALOGUE ON THE NEW LAISSEZ-FAIRE* (1991).

²³ The influence of the Chicago School has restricted all discussions of antitrust to the rhetoric of compensation and efficiency. See Rudolph J. Peritz, *Frontiers of Legal Thought I: A Counter-History of Antitrust Law*, 1990 DUKE L.J. 263, 264. But "[a]ntitrust law embodies other values of produc[ing] and ratify[ing] not only competitive but also distributive and socio-political effects." *Id.* at 319. This was recognized in *Brown Shoe Co. v. United States*, where Chief Justice Warren wrote:

[W]e cannot fail to recognize Congress' desire to promote competition through the protection of viable, small, locally owned businesses. Congress appreciated that occasional higher costs and prices might result from the maintenance of fragmented industries and markets. It resolved these competing considerations in favor of decentralization. 370 U.S. 294, 344 (1962) (discussing legislative history of Celler-Kefauver Amendment to section 7 of Clayton Act). Senator Kefauver had stated in the floor debates to the amendment:

I think that we are approaching a point where a fundamental decision must be made in regard to this problem of economic concentration. Shall we permit the economy of the country to gravitate into the hands of a few corporations . . . ? Or on the other hand are we going to preserve small business, local operations and free enterprise? 96 CONG. REC. 16,450 (1950). Justice Brandeis spoke eloquently of this alternative vision of antitrust when he expounded on industrial democracy:

We must also remember that we are working here in America upon the problem of democracy, and we cannot successfully grapple with the problem of democracy if we confine our efforts to political democracy. American development can come on the lines on which we seek it, and the ideals which we have can be attained, only if side by side with political democracy comes industrial democracy.

LOUIS D. BRANDEIS, *THE CURSE OF BIGNESS* 140-41 (Osmond K. Fraenkel ed. 1934). Justice Brandeis also noted:

[Without industrial democracy] must not this mean that the American who is brought up with the idea of political liberty must surrender what every citizen deems far more important, his industrial liberty? Can this contradiction—our grand political liberty and this industrial slavery—long coexist? Either political liberty will be extinguished or industrial liberty must be restored.

Id. at 39; see also ADAMS & BROCK, *supra* note 22, at 125 ("a decentralized power structure is at the very root of America's political democracy and the American brand of free enterprise economics"). Adams and Brock expound on this notion in WALTER ADAMS & JAMES W. BROCK, *THE BIGNESS COMPLEX* 87-103 (1986).

²⁴ See Anthony Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 HARV. L. REV. 1463, 1466 (1994).

²⁵ See generally Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059 (1980) (critiquing relative powerlessness of governmental entities intermediate between state and individual, and arguing their empowerment would enhance democratic values and economic opportunity through decentralization).

corporated into our ideas about human fulfillment and progress.²⁶ The stories and images with which we tell ourselves who we are and what we want to be play an integral role in determining what we are willing to live with and what we will fight for.²⁷ Taking control of television and the information superhighway away from the promoters of individualist consumption and irresponsibility might be a good place to start such a project.

Finally, if increased local responsibility is to be successful, we must work to diminish the power of paternalistic central government bureaucracies, as well as transregional corporations. Clearly the scheme I have laid out just now contains some troubling possibilities.²⁸ I believe that empowering communities and localizing markets will have mostly good outcomes, but dependency is a habit hard lost, and freedom and autonomy would entail the possibility of failures.

Working toward the appropriate relationship between the local and larger centers of power, both governmental and market, is complex and multidimensional. In economic matters, we must resist blindly accepting the notion that the globalization of markets is inevitable and for the best; rather, we must work to discover what mix of local, regional, and global markets best meets our needs and aspirations, including our environmental needs. In governmental matters, we need to work toward figuring out how to foster local autonomy in a way that maximizes the probability of local success. In creating a new Federalism we also need to be mindful of the danger of reviving "traditional" modes of racism.²⁹

In conclusion, racism, economic oppression, and the political, social and cultural constitution of our communities are all linked dynamically. Although reforms may lead to some marginal improvements, the problem of environmental racism is inseparable from larger structural imperatives deeply embedded in the fabric of our society. The promise of the movement for environmental justice is that it points to this larger reality. As we assimilate its more immediate concerns into our common consciousness, I hope we also remember its larger vision.

²⁶ Luke, *supra* note 16, at 217.

²⁷ I am indebted to Lee Furey Taibi for this observation.

²⁸ Luke, *supra* note 16, at 218.

²⁹ *Id.*