

Journal of Civil Rights and Economic Development

Volume 9
Issue 2 *Volume 9, Spring 1994, Issue 2*

Article 3

March 1994

The Legacy of American Apartheid and Environmental Racism

Robert D. Bullard

Follow this and additional works at: <https://scholarship.law.stjohns.edu/jcred>

Recommended Citation

Bullard, Robert D. (1994) "The Legacy of American Apartheid and Environmental Racism," *Journal of Civil Rights and Economic Development*: Vol. 9 : Iss. 2 , Article 3.

Available at: <https://scholarship.law.stjohns.edu/jcred/vol9/iss2/3>

This Symposium is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Journal of Civil Rights and Economic Development by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

THE LEGACY OF AMERICAN APARTHEID AND ENVIRONMENTAL RACISM

DR. ROBERT D. BULLARD*

In the real world, some communities are located on the “wrong side of the tracks” and, as a result, receive different treatment. Where one lives can affect one’s educational opportunity, quality of life, access to health care, and exposure to environmental threats. Discrimination is a chief cause of social, economic, and environmental inequities that exist in the larger society. Moreover, racial discrimination limits mobility, reduces neighborhood and residential options, diminishes job opportunities, and subjects millions of Americans to environmental and health threats.¹

This article examines the impact of housing discrimination and residential patterns, land use practices, and environmental decision making on the quality of life in communities of color.

I. APARTHEID AMERICAN STYLE

Residential apartheid is the dominant housing pattern for most African Americans—the most racially segregated group in the United States—and other people of color. Nowhere is this separate-society contrast more apparent than in the nation’s large metropolitan areas. Residential apartheid did not result from some impersonal super-structural process. White racism created American apartheid. Historically, racism has been and continues to be a “conspicuous part of the American sociopolitical system, and as a result, black people in particular, and ethnic and racial minority groups of color, find themselves at a disadvantage in contemporary society.”² Racial patterns of cities were “caused” by an array of actors—white slaveholders, merchants, and shippers of

* Robert D. Bullard is the Ware Professor of Sociology and Director of the Environmental Justice Resource Center at Clark Atlanta University. His most recent book is *Unequal Protection: Environmental Justice and Communities of Color* (1994).

¹ See Robert D. Bullard & Joe R. Feagin, *Racism and the City*, in *URBAN LIFE IN TRANSITION* 55-76 (Mark Gottdiener & Chris G. Pickvance eds., 1991).

² *The Concept of Racism and Its Changing Reality*, in *IMPACT OF RACISM ON WHITE AMERICANS* 47 (J.M. Jones ed., 1981).

the early period; and the white business elites, politicians, and workers in the periods since slavery.

White racism serves the interests of the group endorsing it.³ In 1968, the National Advisory Commission on Civil Disorders implicated white racism in creating and maintaining the black ghetto and the drift toward two "separate and unequal societies."⁴ These same conditions exist today. The nation's ghettos, barrios, and reservations, are kept isolated and contained from the larger white society through well-defined institutional practices, private actions, and government policies.⁵

The legacy of institutional racism lowers the nation's gross national product by almost two percent a year, roughly \$104 billion in 1989.⁶ A large share of this loss is a result of housing discrimination. The "roots of discrimination are deep" and have been difficult to eliminate.⁷ White real estate agents, brokers, and lenders cater to the racism of their white clients and, in effect, determine the racial composition of communities and neighborhoods. Few whites are willing to accept even minimal black presence—12 or 13% reflects the overall national proportion.⁸ Law Professor Derrick Bell summarized the "racial schizophrenia" exhibited by whites who discriminate against African Americans:

When whites perceive that it will be profitable or at least cost-free to serve, hire, admit, or otherwise deal with blacks on a nondiscriminatory basis, they do. When they fear—accurately or not—that they may be at a loss, inconvenienced, or upset to themselves or other whites, discriminatory conduct usually follows.⁹

White prejudice is reinforced by direct discrimination. Many whites see nothing wrong with these practices and most deny

³ CHRISTOPHER BATES DOOB, *RACISM: AN AMERICAN CAULDRON* 6 (1993).

⁴ NATIONAL ADVISORY COMM'N ON CIVIL DISORDERS, *REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS* (1968) [hereinafter *NATIONAL ADVISORY COMM'N ON CIVIL DISORDERS*].

⁵ See DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID AND THE MAKING OF THE UNDERCLASS* 10 (1993); *RESIDENTIAL APARTHEID: THE AMERICAN LEGACY* (Robert D. Bullard et al. eds., forthcoming 1994).

⁶ Walter L. Updegrade, *Race and Money*, 18 *MONEY* 152-172 (1989).

⁷ FRANKLIN J. JAMES ET AL., *MINORITIES IN THE SUNBELT* 138 (1984).

⁸ ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* 36 (1992); Robert D. Bullard, *Urban Infrastructure: Social, Environmental, and Health Risks to African Americans*, in *THE STATE OF BLACK AMERICA* 183-96 (Billy J. Tidwell ed., 1992).

⁹ DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 7 (1992).

their existence. Moreover, most whites in this country do not believe that housing discrimination exists. The results from a 1990 national survey revealed that 75% of whites felt that blacks had as good a chance as whites to housing they could afford. Meanwhile, only 47% of blacks in the survey felt this way.¹⁰

Contrary to popular belief, housing discrimination and many other manifestations of institutionalized racism were not eradicated with civil rights legislation in the 1960s. Housing discrimination denies a substantial segment of the African American community a basic form of wealth accumulation and investment through home ownership. The number of African American homeowners would probably be higher in the absence of discrimination by lending institutions.¹¹ Only about 59% of the nation's middle-class African Americans own their homes, compared to 74% of whites.

Studies over the past twenty-five years have clearly documented the relationship between redlining and disinvestment decisions and neighborhood decline. Redlining accelerates the flight of full-service banks, food stores, restaurants, and shopping centers in African American and Latino neighborhoods.¹² In their place, inner-city neighborhoods are left with check-cashing stations, pawn shops, storefront grocery stores, liquor stores, and fast-food operations—all well buttoned up with wire mesh and bullet-proof glass.

From Boston to Los Angeles, people of color still do not have full access to lending by banks and saving institutions as their white counterparts. A 1991 report by the Federal Reserve Board found that African Americans were rejected for home loans more than twice as often as Anglos.¹³ After studying lending practices at 9,300 United States financial institutions and more than 6.4 million loan applications, the federal study uncovered that rejection rates for conventional home mortgages were 33.9% for African Americans, 21.4% of Latinos, 22.4% for American Indians, 14.4% for Anglos, and 12.9% for Asians.

¹⁰ George Gallup, Jr. & Larry Hugick, *Racial Tolerance Grows, Progress on Racial Equality Less Evident*, GALLUP POLL MONTHLY, June 1990, at 23-32.

¹¹ See Joe T. Darden, *The Status of Urban Blacks 25 Years After the Civil Rights Act of 1964*, 73 SOCIOLOGY & SOC. RES. 160 *passim* (1989).

¹² See GARY DYMSKI ET AL., *TAKING IT TO THE BANK: POVERTY, RACE, AND CREDIT IN LOS ANGELES* 9-10 (1991).

¹³ See Robert A. Rosenblatt & James Bates, *High Minority Mortgage Denial Rates Found*, L.A. TIMES, Oct. 22, 1991, at A1, A25.

Discriminatory lending practices subsidize the physical destruction of communities of color. The federal government recognized this problem when it passed the Community Reinvestment Act ("CRA")—a 1977 law designed to combat discriminatory practices in poor and minority neighborhoods. The CRA requires banks and thrifts to lend within the areas where their depositors live. The CRA has been used in conjunction with the Home Mortgage Disclosure Act, a law that requires banks and thrifts to disclose their mortgage lending by census tracts.¹⁴

The nation's apartheid-type policies have meant community displacement, gentrification, limited mobility, reduced housing options and residential packages, decreased environmental choices, and diminished job opportunities for households that live in cities, while good jobs often move to the suburbs. Residential segregation decreases for most racial and ethnic groups with additional education, income, and occupational status. However, this scenario does not hold true for African Americans.¹⁵

Institutional barriers such as housing discrimination, redlining, and residential segregation make it difficult for millions of African Americans to buy their way out of health-threatening physical environments. An African American household, for example, that has an income of \$50,000 is as residentially segregated as an African American household that has an income of \$5,000 or an African American household that is on welfare.¹⁶

II. RACE, PLACE, AND LAND USE

Racism created this nation's "dark ghettos" and segregated neighborhoods. Noted sociologist W.E.B. Du Bois chronicled the separate and unequal status of the African American community nearly a century ago. His monumental 1899 work, *The Philadelphia Negro*, was the first empirical study to systematically ex-

¹⁴ See Dean Foust, *Leaning on Banks to Lend to the Poor*, BUS. WEEK, Mar. 2, 1987, at 76; Catherine Yang et al., *The "Blackmail" Making Banks Better Neighbors*, BUS. WEEK, Aug. 15, 1988, at 101.

¹⁵ See MASSEY & DENTON, *supra* note 5, at 84-88.

¹⁶ See GERALD JAYNES & ROBIN WILLIAMS, *A COMMON DESTINY: BLACKS AND THE AMERICAN SOCIETY* 144-45 (1989); Bullard, *supra* note 1, at 55-76; Nancy Denton & Douglas Massey, *Residential Segregation of Blacks, Hispanics, and Asians by Socioeconomic Status and Generation*, 69 SOC. SCI. Q. 797 *passim* (1988).

amine the segregated living conditions, neighborhood structure, culture and institutions of African Americans in a large city.¹⁷

Some five decades later, Swedish sociologist Gunnar Myrdal's classic 1944 *An American Dilemma* exposed the contradiction between the nation's "creed" and "deed" when it came to African Americans.¹⁸ Myrdal summed up the ill effects of segregation on African Americans: "Because Negro people do not live near white people, they cannot . . . associate with each other in many activities founded on common neighborhood. Residential segregation . . . becomes reflected in uni-racial schools, hospitals, and other institutions."¹⁹ Racism creates an "artificial city . . . that permits any prejudice on the part of public officials to be freely vented on Negroes without hurting whites."²⁰

A year after *An American Dilemma*, Horace Cayton and St. Clair Drake wrote *Black Metropolis*, which revealed similar problems suffered by African Americans in Chicago's highly segregated African American neighborhoods.²¹ Nearly three decades ago, psychologist Kenneth Clark observed:

The dark ghetto's invisible walls have been erected by white society who have power both to confine those who have *no* power and to perpetuate their powerlessness. The dark ghettos are social, political, educational, and—above all—economic colonies. Their inhabitants are subject people, victims of the greed, cruelty, insensitivity, guilt and fear of their masters.²²

Institutional racism influences local land use, enforcement of environmental regulations, industrial facility siting, and, where people of color live, work, and play. Racial and ethnic inequality is perpetuated and reinforced by local governments in conjunction with urban-based corporations. In general, "at a certain point in community development . . . trajectories of economic growth and quality of life converge."²³

¹⁷ W.E.B. DU BOIS, *THE PHILADELPHIA NEGRO: A SOCIAL STUDY* (1973) (reissued from 1899 study).

¹⁸ GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM IN AMERICA passim* (1944).

¹⁹ *Id.* at 618.

²⁰ *Id.*

²¹ HORACE CAYTON & ST. CLAIR DRAKE, *BLACK METROPOLIS: A STUDY NEGRO LIFE IN A NORTHERN CITY* (1945).

²² KENNETH B. CLARK, *DARK GHETTO: DILEMMAS OF SOCIAL POWER* 11 (1965).

²³ MARK GOTTDIENER, *THE SOCIAL PRODUCTION OF URBAN SPACE* 172 (1988).

Race continues to be a potent variable in explaining urban land use, streets and highway configuration, commercial and industrial development, and industrial facility siting.²⁴ Moreover, the question of "who gets what, where, and why" often pits one community against another. Competition intensifies for the residential amenities and infrastructure improvements that are not always equitably distributed. Some residential areas and their inhabitants are at a greater risk than the larger society from unregulated growth, ineffective regulation of industrial toxins, and public policy decisions authorizing industrial facilities that favor those with political and economic clout.

Zoning is probably the most widely applied mechanism to regulate urban land use in the United States.²⁵ Zoning laws broadly define land for residential, commercial, or industrial uses, and may impose narrower land-use restrictions (e.g., minimum and maximum lot size, number of dwellings per acre, square feet and height of buildings, etc.).

Zoning ordinances, deed restrictions, and other land-use mechanisms have been widely used as a "Not in My Backyard" ("NIMBY") tool, operating through exclusionary practices. On the other hand, incompatible zoning is often superimposed on communities of color. The practice of "expulsive zoning" (i.e., residential land uses replacing commercial or industrial uses) threatens the integrity of the neighborhoods and safety of its residents.²⁶

Exclusionary zoning has been used to "simply zone against something rather than for something."²⁷ Exclusionary zoning is "one of the most subtle forms of using government authority and power to foster and perpetuate discriminatory practices."²⁸ With or without zoning, deed restrictions or other devices, various groups are "unequally able to protect their environmental inter-

²⁴ See ROBERT D. BULLARD, *INVISIBLE HOUSTON: THE BLACK EXPERIENCE IN BOOM AND BUST* 60-75 (1987).

²⁵ SIDNEY PLOTKIN, *KEEP OUT: THE STRUGGLE FOR LAND USE CONTROL* 75-110 (1987); E.D. Kelly, *Zoning*, in *THE PRACTICE OF LOCAL GOVERNMENT PLANNING* 251-84 (Frank S. So & Judith Getzels eds., 2d ed. 1988).

²⁶ See Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 *MINN. L. REV.* 739, 742 (1993); Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid*, in *ZONING AND THE AMERICAN DREAM* (Charles M. Haar & Jerold S. Kayden eds., 1989).

²⁷ Patrick G. Marshall, *Not in My Back Yard*, 1 *EDITORIAL RES. REPS.* 312, 313 (1989).

²⁸ *Id.*

ests."²⁹ More often than not, African Americans and other people of color get shortchanged in the neighborhood protection game.

III. THE LEGACY OF ENVIRONMENTAL RACISM

Environmental racism is real. It is just as real as the racism found in housing, education, employment, and the political arena. Environmental racism refers to any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color.³⁰ Environmental racism combines with public policies and industry practices to provide *benefits* for whites while shifting *costs* to people of color.³¹ Environmental racism is reinforced by government, legal, economic, political, and military institutions.

Many environmental decisions distribute the costs in a regressive pattern, while providing disproportionate benefits for individuals who fall at the upper end of the socioeconomic spectrum.³² In the United States, race has been found to be independent of class in the exposure to lead,³³ harmful pesticides,³⁴ location of municipi-

²⁹ JOHN LOGAN & HARVEY MOLOTCH, *URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE* 158 (1987).

³⁰ CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 60-75 (Robert D. Bullard ed., 1993) [hereinafter CONFRONTING ENVIRONMENTAL RACISM].

³¹ See *id.*; UNITED CHURCH OF CHRIST, COMMISSION FOR RACIAL JUSTICE, TOXIC WASTES AND RACE IN THE UNITED STATES: A NATIONAL REPORT ON THE RACIAL AND SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES (1987) [hereinafter UNITED CHURCH OF CHRIST]; Regina Austin & Michael Schill, *Black, Brown, Poor and Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice*, 1 KAN. J.L. & PUB. POL'Y 69 *passim* (1991); Bunyan Bryant & Paul Mohai, *Environmental Racism: Reviewing the Evidence, in RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS* 163-76 (Bunyan Bryant & Paul Mohai eds., 1992); Robert D. Bullard, *The Threat of Environmental Racism*, 7 NAT. RESOURCES & ENVT. 23 *passim* (1993); Kelly C. Colquette & Elizabeth A. Henry Robertson, *Environmental Racism: The Causes, Consequences, and Commendations*, 5 TUL. ENVT. L.J. 153, 153-61 (1991); Rachel D. Godsil, *Remedying Environmental Racism*, 90 MICH. L. REV. 394 *passim* (1991).

³² See Robert D. Bullard, *In Our Backyards: Minority Communities Get Most of the Dumps*, EPA J., Mar./Apr. 1992, at 11-12; Eric Mann, *L.A.'s Lethal Air: New Strategies for Policy, Organizing, and Action* (Labor/Community Strategy Center 1991); Dick Russell, *Environmental Racism*, 11 AMICUS J. 22 *passim* (1989); UNITED CHURCH OF CHRIST, *supra* note 31; D. R. Wernette & L. A. Nieves, *Breathing Polluted Air: Minorities are Disproportionately Exposed*, EPA J., Mar./Apr. 1992, at 16-17.

³³ AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, *THE NATURE AND EXTENT OF LEAD POISONING IN THE UNITED STATES: A REPORT TO CONGRESS* (Centers for Disease Control 1988).

³⁴ Marion Moses, *Farmworkers and Pesticides*, in CONFRONTING ENVIRONMENTAL RACISM 179-194 (Robert D. Bullard ed., 1993).

pal landfills and incinerators,³⁵ abandoned toxic waste dumps,³⁶ and environmental protection and cleanup of Superfund sites.³⁷

Virtually all studies of the exposure to outdoor air pollution have found significant differences in exposure by income and race. African Americans and Latinos are more likely to live in areas with reduced air quality than are whites. For example, National Argonne Laboratory researchers Wernette and Nieves found that over

57 percent of whites, 65 percent of African Americans, and 80 percent of Hispanics live in 437 counties with substandard air quality. . . . A total of 33 percent of whites, 50 percent of African Americans, and 60 percent of Hispanics live in the 136 counties in which two or more air pollutants exceed standards. The percentage living in the 29 counties designated as nonattainment areas for three or more pollutants are 12 percent of whites, 20 percent of African Americans, and 31 percent of Hispanics.³⁸

A 1992 study by staff writers from the *National Law Journal* uncovered glaring inequities in the way the federal EPA enforces its laws. For example, "white communities see faster action, better results and stiffer penalties than communities where blacks, Hispanics and other minorities live. This unequal protection often occurs whether the community is wealthy or poor."³⁹

Numerous researchers have found the race correlation to be considerably stronger than the class correlation. Lead poisoning is a prime example where race is a better indicator than other sociodemographic variables. The Third National Health and Nutrition Examination Survey ("NHAMES III") revealed that 1.7 million children (8.9 percent of children aged 1-9) are lead-poisoned, having blood lead levels equal to or above 10 micrograms/deciliter.⁴⁰ The survey, which included data collected be-

³⁵ SEE BULLARD, *supra* note 24; Robert D. Bullard, *Environmental Racism and Land Use*, 2 LAND USE FORUM: A JOURNAL OF LAW, POLICY & PRACTICE 6-11 (1993).

³⁶ SEE UNITED CHURCH OF CHRIST, *supra* note 31; Bryant & Mohai, *supra* note 31, at 163-76.

³⁷ SEE Marianne Lavelle & Marcia Coyle, *Unequal Protection—The Racial Divide in Environmental Law*, NAT'L L.J., Sept. 21, 1992, at S1-S2.

³⁸ Wernette & Nieves, *supra* note 32.

³⁹ Lavelle & Coyle, *supra* note 37.

⁴⁰ Debra J. Brody et al., *Blood Lead Levels in the U.S. Population: Phase I of the Third National Health and Nutrition Examination Survey (NHANES III, 1988 to 1991)*, 272 JAMA 277, 277-91 (1994).

tween 1988 and 1991, found that "race/ethnicity was the only variable that significantly predicted blood lead levels in all of the age-specific models."⁴¹ Rates were highest among African American children at every income level. Over 28.4 percent of all low-income African American children were lead poisoned, compared to 9.8 percent of low-income white children.⁴²

Lead poisoning is an even greater problem for African American children who live in cities with populations of more than one million. More than 36.7 suffer from lead poisoning.⁴³ Between NHANES II (1976-1980) and NHANES III, the prevalence of lead poisoning among white children dropped from 85 percent to 5.5 percent, while among African American children, it dropped from 97.7 percent to 20.6 percent.⁴⁴

Furthermore, a recent National Wildlife Foundation report reviewed sixty-four studies of environmental disparities where race and income were included as variables. All but one of the sixty-four studies found environmental disparities by either race or income. Racial disparities were found more frequently than income disparities. When race and income were compared for significance, "race proved more important in nearly three-quarters of the tests (22 out of 30)."⁴⁵

Environmental inequities are especially acute in the southern United States—this nation's "Third World," where people of color, low-income, and working-class communities have become the "dumping grounds." The findings in *Dumping in Dixie: Race, Class, and Environmental Quality* demonstrate that African American communities in the southern states have borne a disparate health and environmental burden in the siting of hazardous waste landfills, incinerators, lead smelters, chemical plants, and a host of other noxious facilities.⁴⁶ All of the African American communities examined in *Dumping in Dixie* were established before the noxious facilities were sited.

⁴¹ *Id.* at 280.

⁴² *Id.*

⁴³ Data on white inner city children was insufficient for comparison.

⁴⁴ *Id.*

⁴⁵ BENJAMIN GOLDMAN, NOT JUST PROSPERITY: ACHIEVING SUSTAINABILITY WITH ENVIRONMENTAL JUSTICE 8 (1994).

⁴⁶ ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS AND ENVIRONMENTAL QUALITY 25-44 (1990); Robert D. Bullard, *Ecological Inequities and the New South: Black Communities under Siege*, 17 J. ETHNIC STUD. 101 *passim* (1990).

Several recent government studies report similar findings as that discovered in *Dumping in Dixie*. A 1993 EPA study of Toxic Release Inventory ("TRI") data from Louisiana's petrochemical corridor found that "populations within two miles of facilities releasing 90% of total industrial corridor air releases feature a higher proportion of minorities than the state average; facilities releasing 88% have a higher proportion than the Industrial Corridor parishes' average."⁴⁷ Similarly, the United States Civil Rights Commission, in September of 1994, issued a report entitled *The Battle for Environmental Justice in Louisiana Government, Industry, and the People*. This report confirmed what most people who live in "Cancer Alley" (the 85-mile stretch along the Mississippi River from Baton Rouge to New Orleans) already knew: African American communities along the Mississippi River bear disproportionate health burdens from industrial pollution.⁴⁸

Environmental racism is not limited to African Americans or to Dixie. Native Americans have to contend with some of the worst pollution in the United States.⁴⁹ Because of their quasi-sovereign status (lands not subject to federal or state jurisdiction), Native American nations have become prime targets for waste trading.⁵⁰

More than three dozen Indian reservations have been targeted for landfills, incinerators, and other waste facilities.⁵¹ The vast majority of these waste proposals have been defeated by grassroots groups on the reservations. However, "radioactive colonialism" (a term coined by Native Americans Ward Churchill and Winona LaDuke) is alive and well.⁵²

Radioactive colonialism operates in energy production (mining of uranium) and disposal of wastes on Indian lands. The legacy of institutional racism has left many sovereign Indian nations with-

⁴⁷ U.S. ENVTL. PROTECTION AGENCY, TOXIC RELEASE INVENTORY & EMISSION REDUCTION 1987-1990 IN THE LOWER MISSISSIPPI RIVER INDUSTRIAL CORRIDOR 25 (1993).

⁴⁸ See LOUISIANA ADVISORY COMM. TO THE U.S. COMM'N ON CIVIL RIGHTS, *THE BATTLE FOR ENVIRONMENTAL JUSTICE IN LOUISIANA GOVERNMENT, INDUSTRY, AND THE PEOPLE passim* (1993).

⁴⁹ See Robert Tomsho, *Dumping Grounds: Indian Tribes Contend with Some of the Worst of America's Pollution*, WALL ST. J., Nov. 29, 1990, at A1.

⁵⁰ See Conger Beasley, *Of Pollution and Poverty: Deadly Threat on Native Lands*, BUZZWORM, Sept./Oct. 1990, at 39-45. See generally BRADLEY ANGEL, *THE TOXIC THREAT TO INDIAN LANDS: A GREENPEACE REPORT passim* (1992).

⁵¹ See Jane Kay, *Indian Lands Targeted for Waste Disposal Sites*, S.F. EXAMINER, Apr. 10, 1991, at A10.

⁵² See Ward Churchill & Winona LaDuke, *Native America: The Political Economy of Radioactive Colonialism*, 13 INSURGENT SOC. 51 *passim* (1983).

out an economic infrastructure to address poverty, unemployment, inadequate education and health care, and a host of other social problems.

Some industry and governmental agencies have exploited the economic vulnerability of Indian nations.⁵³ For example, of the twenty-one applicants for the United States Department of Energy's ("DOE") Monitored Retrievable Storage ("MRS") grants, sixteen were Indian tribes.⁵⁴ The sixteen tribes lined up for \$100,000 grants from DOE to study the prospect of "temporarily" storing nuclear waste for a half century under its "monitored retrievable storage" ("MRS") program. The vast majority of the sixteen Indian tribes are now reconsidering the MRS proposals and some are exploring the creation of "nuclear free zones" on the reservations.⁵⁵

IV. INVISIBLE NEIGHBORHOODS

Neighborhood studies date back nearly a century. Du Bois' *The Philadelphia Negro* and Cayton and Drake's *The Black Metropolis* were carried out before there were census tracts or postal zip codes. Similarly, racially identifiable neighborhoods such as New York's Harlem,⁵⁶ Houston's Freedmen's Town/Fourth Ward, Atlanta's Butter Milk Bottom, Birmingham's Tuxedo Junction, Tampa's "The Scrub," and New Orleans' Seventh Ward existed before census tracts were adopted by the U.S. Census Bureau in 1950.⁵⁷

Although African American neighborhoods are racially identifiable, their inhabitants are "invisible." Ralph Ellison described his existence in Harlem when he wrote his 1947 autobiography *Invisible Man*:

I am an invisible man. No, I am not a spook like those who haunted Edgar Allan Poe; nor am I one of your Hollywood-movie ectoplasm. I am a man of substance, of flesh and bone, fiber and liquids—and I might even be said to possess a mind.

⁵³ See Gail Small, *War Stories: Environmental Justice in Indian Country*, 16 AMICUS J. 38 *passim* (1994).

⁵⁴ See Valerie Taliman, *Stuck Holding the Nation's Nuclear Waste, RACE, POVERTY & THE ENVIRONMENT*, Fall 1992, at 6-9.

⁵⁵ *Id.*

⁵⁶ See RALPH ELLISON, *INVISIBLE MAN* 3 (1947).

⁵⁷ See ROBERT D. BULLARD, *IN SEARCH OF THE NEW SOUTH: THE BLACK URBAN EXPERIENCE IN THE 1970S AND 1980S* (1991) [hereinafter *THE NEW SOUTH*].

I am invisible, understood, simply because people refuse to see me. Like the bodiless heads you see sometimes in circus sideshows, it is as though I have been surrounded by mirrors of hard, distorting glass. When they approach me they see only my surroundings, themselves, or figments of their imagination—indeed, everything and anything except me.⁵⁸

To many whites, African Americans and their neighborhoods are still invisible or nonexistent. However, any rational and reasonable person knows Harlem existed in the 1930s. Claude Brown described Harlem in his 1965 autobiography *Manchild in the Promised Land*: "Harlem was getting fucked by everyone, the politicians, the police, the businessman. . . . We'd laugh about when the big snowstorm came, they'd have snowplows out downtown as soon as it stopped, but they'd let it pile up for weeks in Harlem."⁵⁹

In their now-classic works on the African American experience, Du Bois, Cayton and Drake, Ellison, and Brown were not describing census tracts or zip codes; rather, they were detailing life in African American neighborhoods. Neighborhoods are spatial units where people have social and cultural attachments.⁶⁰ These attachments may cross geographic and political boundaries of census tracts and zip codes.

Census tracts and zip code are not perfect stand-ins or proxies for neighborhoods. For example, in an attempt to quell the 1917 Tulsa Riot, police dropped bombs from the air on the city's "Black Wall Street." Their target was not a census tract, but an African American neighborhood and its business corridor. In the end, whites burned to the ground one of the most prosperous African American business corridors in the nation.⁶¹

Residents often define and defend their neighborhood along racial, ethnic, religious background, cultural landmarks, schools, and physical boundaries such as streets, railroad tracks, bayous, parks, and "natural" areas. For many African Americans and other people of color, "a neighborhood is where, when you go out of it, you get beat up."⁶²

⁵⁸ ELLISON, *supra* note 56, at 3.

⁵⁹ CLAUDE BROWN, *MANCHILD IN THE PROMISED LAND* 193 (1965).

⁶⁰ See Albert Hunter, *Urban Neighborhoods: Its Analysis and Social Contexts*, 14 *URB. AFF. Q.* 270 (1979).

⁶¹ See NATIONAL ADVISORY COMM'N ON CIVIL DISORDERS, *supra* note 4.

⁶² INTERNATIONAL THESAURUS OF QUOTATIONS 84 (Rhoda Thomas Tripp ed., 1970).

Sociologist James Blackwell defined African American neighborhoods as a "highly diversified set of interrelated structures and aggregates of people who are held together by forces of white oppression and racism."⁶³ In a similar vein, sociologist Henry Allen Bullock described the dynamics of Houston's African American neighborhoods in the 1950s. Bullock described them as "more than mere geographical locations They are places where Negroes live, symbolizing the complexity of feelings aroused by association connected with the location people call home."⁶⁴

Houston's Freedmen's Town/Fourth Ward neighborhood was founded by former slaves in the 1860s. This same neighborhood was the site of the August 23, 1917 Houston race riot that left a death toll of twenty-five white policemen, two white soldiers, four black soldiers, one Latino, and eight white civilians.⁶⁵ The neighborhood was dubbed "Little Harlem" in the 1930s.⁶⁶ During the 1920s and 1930s, the Freedmen's Town/Fourth Ward neighborhood was also the site of a city-owned garbage dump and incinerator.⁶⁷ Jefferson Davis Hospital, a charity hospital that is part of the Harris County Hospital District, was constructed on part of the landfill in 1937-1938. The city-owned land adjacent to the old waste site is currently used by Houston's Public Works Department.

In 1994, the residential section of Houston's Freedmen's Town/Fourth Ward neighborhood has been reduced to a single census tract. The bulk of the neighborhood was taken over by high-rise office buildings, parking ramps, and elevated freeways that criss-cross the area. One of Houston's most famous African American landmarks, Antioch Missionary Baptist Church (founded in 1866 by former slaves) is now located outside the census tract where most of the Freedmen's Town/Fourth Ward residents live. Nevertheless, Antioch Missionary Baptist Church is still part of the Freedmen's Town/Fourth Ward neighborhood.⁶⁸ This historical

⁶³ JAMES E. BLACKWELL, *THE BLACK COMMUNITY: DIVERSITY AND UNITY* xiii (1989).

⁶⁴ HENRY ALLEN BULLOCK, *PATHWAYS TO THE HOUSTON NEGRO MARKET* 64 (1957).

⁶⁵ See Edgar Schuler, *The Houston Negro Riot*, 13 *J. NEGRO EDUC.* 300 *passim* (1944). See generally ROBERT V. HAYNES, *A NIGHT OF VIOLENCE: THE HOUSTON RIOT OF 1917* (1976).

⁶⁶ See BULLARD, *supra* note 24, at 14-18.

⁶⁷ See *id.* at 72.

⁶⁸ *Id.* at 15-17.

landmark is a reminder that the neighborhood extended into what is now the western edge of Houston's central business district.

From the beginning, black residential enclaves developed on the periphery of Houston's city limits. These neighborhoods, such as Riceville, Settegast, Pleasantville, Galena Manor, and Carvercrest, share a history of neglect by county and city government. Nevertheless, residents developed strong loyalties to these neighborhoods.⁶⁹

Environmental racism turned many of Houston's well-established African American neighborhoods into the dumping ground for household garbage.⁷⁰ Houston has the distinction of being the only major American city without zoning. Nevertheless, from the mid-1920s to the late-1970s, a form of *de facto* zoning contributed to all five, or 100% of the city-owned municipal landfills being located in well-established African American neighborhoods: Freedmen's Town/Fourth Ward, Sunnyside, Trinity Gardens, and Acres Homes.⁷¹

The Sunnyside neighborhood was home to two city-owned landfills. The 1967 riot at predominately black Texas Southern University was precipitated by a death at the city's Holmes Road Dump. The National Advisory Commission on Civil Disorders described the incidents leading up to the riot: "On May 16, two separate Negro protests were taking place in Houston. One group was picketing a garbage dump (Holmes Road Dump) in a Negro residential neighborhood, where a Negro child had drowned. Another was demonstrating at a junior high school on the grounds that Negro students were disciplined more harshly than whites."⁷²

The Sunnyside neighborhood developed as a self-contained, segregated community in the 1940s. Ironically, much of the neighborhood developed along Holmes Road—a landfill was later placed on this major thoroughfare. The Sunnyside Elementary School was located across the street from the landfill. A city park was located next to the landfill. Similarly, another city-owned landfill was sited on Reed Road, the major business corridor in the neighborhood.

⁶⁹ BULLOCK, *supra* note 64, at 62-64.

⁷⁰ *Id.* at 60-75.

⁷¹ *Id.* at 70-75.

⁷² NATIONAL ADVISORY COMM'N ON CIVIL DISORDERS, *supra* note 4, at 40-41.

The Kirkpatrick landfill, in the mostly African American Trinity Gardens neighborhood, operated during 1970 and 1971. Residents organized marches and demonstrations against the landfill. The Kirkpatrick landfill was the first issue to be dealt with by the newly elected African American city councilman, Judson Robinson, Jr.—the first African American to be elected to the Houston city council. He intervened to quell the near-riot condition. The facility operated only for a short period of time as a concession to neighborhood residents.

The West Donovan landfill site is located off Ella Boulevard and is often referred to as the Acres Homes dump. Acres Homes, an African American neighborhood in the mostly white northwest quadrant of the city, has a long history of uncontrolled dump sites. The landscape is replete with illegally dumped material along the roadways, in the heavily wooded areas, and at the now-closed city-owned landfill site.

Houston operated eight garbage incinerators (five large incinerators and three mini units). All five of the large city-owned garbage incinerators were located in African American and Latino neighborhoods. Four of the facilities were built in African American neighborhoods (Freedmen's Town/Fourth Ward, West End-Cottage Grove, Kashmere Gardens, and Sunnyside). The fifth large city-owned garbage incinerator was located in Segundo Barrio (Second Ward) the mostly Latino, Navigation Road neighborhood.

The city contracted with Houston Natural Gas to conduct a pilot mini-incinerator project. Three mini-incinerators were built. One facility was located near the mostly white Larchmont neighborhoods, the other two facilities were located in the mostly African American Kashmere Gardens and Carverdale (named after the famous African American scientist George Washington Carver) neighborhoods.

The city closed its waste disposal facilities in the early 1970s and contracted out waste disposal services with private firms. During Houston's booming years, from the early 1970s to the late 1970s, four privately-owned sanitary landfills were used to dispose of Houston's solid waste. Three of these facilities were located in mostly African American neighborhoods (i.e., two sites were located in the Almeda Plaza neighborhood and one site in the Northwood Manor neighborhood), although African Americans

made up just one-fourth of the city's population. The private waste disposal industry followed the discriminatory waste facility siting pattern that had been established by the all-white Houston city council.

Concentrating landfills, incinerators, and garbage dumps in Houston's African American neighborhoods, lowered residents' property values, accelerated physical deterioration, and increased disinvestment practices. Moreover, the discriminatory siting of landfills and incinerators stigmatized the neighborhoods as "dumping ground" for a host of other unwanted facilities, including salvage yards, recycling operations, and automobile repair shops.⁷³

V. RACISM OR MARKET DYNAMICS?

What role did "market dynamics" play in the sorting of land use practices in Houston?⁷⁴ The historical record is clear, Black Houstonians did not follow the garbage dumps and incinerators—the waste facilities moved into established African American neighborhoods.⁷⁵ The racial character of Houston's African American neighborhoods (Fourth Ward/Freedmen's Town, West End-Cottage Grove, Kashmere Gardens, Sunnyside, Carverdale, Trinity Gardens, Acre Homes, Almeda Plaza, and Northwood Manor) was established *before* the waste facilities were sited.

White racism created Houston's racially-segregated African American neighborhoods. White racism was also the major determinant in distributing the city's waste sites in Houston's African American neighborhoods—not the so-called race-neutral market dynamics of cheap land, cheap housing, objective land use practices, and proximity to the source or generator of wastes.

In an effort to obtain a historical record of waste facility siting in Houston, the neighborhood was selected as the unit of analysis for three basic reasons: (1) many of Houston's African American neighborhoods were established before 1950; (2) many of Hous-

⁷³ *Id.* at 62-63.

⁷⁴ See Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, Resources for the Future Public Policy Lecture Series, Washington, DC (Nov. 4, 1993). New York University law professor Vicki Been has contended that market dynamics has been ignored in environmental justice research. *Id.* She suggested that African Americans moved into areas with waste sites where the housing was affordable and land cheaper. *Id.*

⁷⁵ See BULLARD, *supra* note 24, at 62-63.

ton's waste facilities were sited before the invention of census tracts; and (3) facility siting disparities in Houston predate 1950. However, census tract data and block statistics were used for the appropriate post-1950 years in determining the racial composition of the neighborhoods at the time the waste facilities opened.⁷⁶

Some of Houston's post-1950 neighborhoods are imbedded inside a single census tract; others comprise a single census tract, parts of multiple tracts, and entire multiple tracts. The Almeda Plaza neighborhood consists of block groups inside census tract 332. In 1970, the census tract consisted of a white majority. However, the block groups that comprised the Almeda Plaza neighborhood (the only neighborhood adjacent the two permitted Holmes Road landfill sites) had an African American majority population. By 1980, the entire census tract was mostly African American.

Similarly, Houston's Northwood Manor neighborhood, the neighborhood where the Whispering Pines landfill was built in 1978, is part of census tract 224. In 1980, the federal government divided the tract into four subparts. Subpart 224.03 of the census tract conforms to the Northwood Manor neighborhood, which was 82.6% African American in 1980. African Americans comprised 67.6% of the entire census tract in 1980.⁷⁷

Many of the neighborhoods used in the Houston waste study conform to the city-designated Community Development Block Grant ("CDBG") program "target" neighborhoods—areas selected by the city officials according to poverty level, housing quality, crowding, and minority concentration.⁷⁸ Houston has twenty-five of these CDBG target neighborhoods. The federally-funded CDBG

⁷⁶ See Robert D. Bullard, *Solid Waste Sites and the Black Houston Community*, 53 Soc. INQUIRY 273 *passim* (1983); see also BULLARD, *supra* note 24, at 71. The case study of Houston's municipal solid waste disposal system was developed from in-depth interviews in 1982 with personnel from Houston's Solid Waste Management Department and the Houston Air Quality Control Board. Initial contacts were made by telephone with both city departments, and personal interviews were undertaken with key administrative personnel. Field notes were taken during these interviews. On-site visits were made to the disposal facilities or the location where facilities once operated to verify the data obtained from the interviews. Interviews were also conducted with neighborhood "opinion leaders," Houston Independent School District personnel, and personnel in the city's Planning Department and Community Development Block Grant ("CDBG") program, the two city agencies responsible for designating "target neighborhoods" for federal anti-poverty funds.

⁷⁷ HOUSTON CHAMBER OF COMMERCE, 1980 HOUSTON REGION CENSUS DATA PART 1 at 3.7 (1981).

⁷⁸ The Table below has been adapted from Table 6.6 in BULLARD, *supra* note 24, at 71. The following represents the City of Houston Municipal Solid Waste Facilities and Neighborhoods Dropped from Been's Waste Study:

program provided job training, home repair loans, street repair and health services in multi-purpose centers. Of the thirteen neighborhoods where city-owned waste facilities were sited, twelve were CDBG target neighborhoods.⁷⁹

Recently, New York University law professor Vicki Been attempted to explain waste facility siting disparities by an "extension" of the Houston waste site study.⁸⁰ Professor Been contends that "market dynamics has been all but ignored by the current research on environmental justice."⁸¹ While she uses "neighborhoods" in the title of her paper, her analysis is not a study of Houston neighborhoods—social and spatial units whose residents have assigned names as opposed to census tract numbers.

Professor Been's study is not a replication of the Houston waste study.⁸² Her waste site study differs in four major areas: (1) her unit of analysis is the census tract; (2) a single census tract is defined as a proxy for neighborhood; (3) her study is limited to Houston waste facilities that were sited post-1950; and (4) she drops ten city-owned waste facilities that were included in the original study. Professor Been explains the rationale for using only a subgroup of the Houston waste sites:

The extension eliminates data about Houston's unpermitted municipal landfills and incinerators from the sample. Those landfills and incinerators were sited as long ago as 1920, and all had ceased to operate by the 1970s. Because census tracts were quite large during the early decades of the century, it is

Neighborhood	Ethnicity	CDBG Area*	Large Landfill	Incinerator
Freedmen's Town/Fourth Ward	Black	Yes	1	1
West End/Cottage Grove	Black	Yes	-	1
Kashmere Gardens	Black	Yes	-	1
Sunnyside	Black	Yes	2	1
Trinity Gardens	Black	Yes	1	-
Navigation/Segundo Barrio	Latino	Yes	-	1
Acres Homes	Black	Yes	1	-

* Community Development Block Grant ("CDBG") target neighborhoods are designated by the city of Houston and funded by the U.S. Department of Housing and Urban Development ("HUD") to upgrade housing, streets, infrastructure, health and human services, and employment in the neighborhoods.

⁷⁹ See BULLARD, *supra* note 24, at 73-74.

⁸⁰ See Been, *supra* note 74, at 27.

⁸¹ See *id.* at 17.

⁸² See BULLARD, *supra* note 24; Bullard, *Solid Waste Sites and the Black Houston Community*, *supra* note 76, at 273-88.

impossible to evaluate the racial and class characteristics of communities chosen to host locally undesirable land uses ("LULUs") that long ago in any meaningful way.⁸³

The use of census tracts as a proxy for neighborhoods omits a large slice of Houston's waste-facility siting history—a history that is steeped in differential treatment of African Americans and their neighborhoods. It is unlikely that this history can be gleaned from census tract data and maps. Use of the census tract as the unit of analysis makes "invisible" the pre-1950 siting disparities. It also fails to provide a historical backdrop for the post-1950 siting disparities.

It is not a small or insignificant point that the ten city-owned waste facilities dropped by Professor Been's study were all built in people of color neighborhoods: nine were built in African American neighborhoods and one site was built in a Latino neighborhood. Moreover, all of the facilities Professor Been dropped were not sited prior to 1950 or cease to operate in the 1970s. For example, the city-owned Holmes Road incinerator and Kirkpatrick landfill operated in the early 1970s.⁸⁴

Contrary to Professor Been's assertion, it is possible to evaluate the racial composition of pre-1950 neighborhoods in Houston. It is possible to determine with a great deal of certainty the racial composition of the slave "quarters" (a proxy for neighborhoods) at George Washington's Mount Vernon and Thomas Jefferson's Monticello plantations during the time they operated. The lingering effect of "Jim Crow," created the "quarters," "bottom," and "flats," all separate and distinct African American neighborhoods. White racism also created separate schools, libraries, parks and playgrounds, and business corridors for African Americans in Houston and elsewhere.⁸⁵

Professor Been describes the sub-group of Houston waste sites she used in her study and the rationale for selecting them:

Of the ten sites used in the revision, all the mini-incinerators, and four of the landfills were sited in the early 1970s, so the 1970 census data is most relevant for those sites. Two adjacent landfills were sited in the early and mid 1950's; for those

⁸³ Been, *supra* note 74, at 32.

⁸⁴ See BULLARD, *supra* note 24, at 72-73.

⁸⁵ See *id.* at 1-59.

sites, 1960 data also was analyzed (the tract in which the landfill was located was so large in 1950 that the 1950 data is not comparable to the later data). The remaining landfill was permitted in 1978; because it is likely that the siting decision was made after 1975, the 1980 census data is most relevant for that site.⁸⁶

It is important to note which sites Professor Been left in and which she left out of her Houston waste study. For example, she includes two waste facilities that were sited in 1953 and 1956—both sites are located on Ruffino Road in what is now Southwest Houston. She uses 1960 data for describing the racial composition of the census tract even though one waste facility was sited in 1953. Using her own criteria when analyzing the census tract data for the year that comes closest to the year in which the site opened would require her to use 1950 census tract data, not 1960.

Professor Been, explaining her reasons for using 1960 data instead of 1950, writes: “[T]he tract in which the landfill was located was so large in 1950 that the 1950 data is not comparable to the later data.”⁸⁷ Does this mean that there was no comparable neighborhood in the tract in 1950? The reason why the tract was so large in 1950 is because it was mainly a sparsely populated rural area. As the tract population density increased between 1950 and 1960, the tract configuration changed and the land area became smaller.

Professor Been’s reasoning for not using the 1950 census tract was the very reason why census tracts were not used to approximate neighborhoods in the original Houston waste study. The two Ruffino Road landfill sites which appeared in the original Houston waste study were subsequently dropped from the revised study that appeared in *Invisible Houston*.⁸⁸ This revised Houston waste study was limited only to waste facilities that received Houston municipal solid waste. Neither of the two Ruffino Road landfills accepted Houston household garbage since they were owned by the cities of Bellaire and West University Place.

The two Ruffino Road landfills had long been associated with the Riceville community, an African American community in Southwest Houston. Riceville was founded by Leonard Rice and

⁸⁶ Been, *supra* note 74, at 37.

⁸⁷ *Id.*

⁸⁸ BULLARD, *supra* note 24.

dates back to the 1850s when it was developed as an insular, rural farm community. For over 100 years the Riceville community co-existed with the few whites who lived in the sparsely populated Southwest Harris County area.

The all-black Riceville community extended into what would later become three predominately white Houston-Harris County census tracts (tracts 433, 434, and 426). The two Ruffino Road landfills are located within census tract 434. Riceville residents lived on both sides of South Gessner (the street's name was changed from Riceville School Road), which is the boundary between present-day census tracts 434 and 433. Part of the Riceville community, the original site of the Riceville Mount Olive Baptist Church and adjacent residents housing, was located north of Brays Bayou in present-day census tract 426. Brays Bayou is the boundary between census tracts 433 and 426.

Riceville Mount Olive Baptist Church was founded in 1889 by the Reverend John Lily. The original site was located just north of Keegans Bayou on White Chapel Road (census tract 426), and the two Ruffino Road landfills are located south of Keegans Bayou in census tract 434. Key demographic changes in this community and the surrounding area can be traced to the mid-fifties when subdivisions were developed nearby for whites. African Americans were excluded from these new subdivisions by "white-only" marketing and sales practices. White subdivision development accelerated during the sixties, and black land-ownership in the area began to decline.

By the mid-sixties, the Riceville Mount Olive Baptist Church, its cemetery, and community residents had been surrounded by development and cut off from the portion of the Riceville community that survived. Vandalism became an increasing problem at the church, appearing to coincide with the buildup of white neighborhoods across Keegans Bayou. The church was plagued with broken windows, and gravestones in the church cemetery were moved on several occasions. A fire of suspicious origin destroyed the church in the late sixties, but the Riceville Mount Olive Baptist Church was rebuilt in 1971 at its present location on South Gessner near West Bellfort.⁸⁹

⁸⁹ Interview with Anna Sonier & L. Rice, (June 1983) (discussing experiences of longtime residents of Riceville community); see also BULLARD, *supra* note 24, at 19-21.

The present Riceville community is located near South Gessner, South Braeswood, and West Bellfort streets. However, in the 1950s, before the major streets and Southwest Freeway or U.S. 59 were completed, South Gessner (Riceville School Road), West Bellfort (which extended through to Ruffino Road), and Old Richmond Road were the major streets to access the Riceville community and the two landfills on Ruffino Road. Garbage trucks from the all-white cities of Bellaire and West University Place rolled through the mostly African American Riceville community in order to dump their load.

Riceville School Road gets its name from what was the only school in the community during the pre-1960 era. There were no schools or churches for whites in the area—even with the buildup of a white subdivision in the 1950s. Brays Bayou Elementary School was an all-black segregated school operated by Harris County until 1913; the Houston independent School District acquired the “Jim Crow” school and operated it from 1914 until 1967. Brays Bayou Elementary School was condemned in 1967 because of increased pressures from the federal courts to dismantle the dual public school system and the overt disparities between black and white Houston schools. As a result, the Riceville children were transferred to the all-black Sunnyside Elementary School.

Riceville was annexed by Houston in the sixties. However, the community still did not have many city services as late as 1982. Public water facilities did not serve the Riceville community; city sanitary sewers were not provided; and storm drainage and runoff water flowed along roadside ditches to open drainage ditches. Streets in the neighborhood are gravel-topped roads riddled with potholes.⁹⁰ Riceville has dwindled to less than three hundred inhabitants. Most of the housing in the neighborhood, much of it built between 1940 and 1954, is deteriorating. The future of Riceville is uncertain as many of the younger residents have left the community.

⁹⁰ See Houston Community Development Division, Survey of the Riceville Area of Activity, Dec. 3, 1980, at 3. This windshield survey was conducted for the specific purpose of documenting the physical conditions of the Riceville neighborhood for inclusion in the city's Community Development Block Grant Program.

VI. TOXIC WASTES AND RACE REVISITED

A recent attempt was made to recast the 1987 Commission for Racial Justice ("CRJ") *Toxic Wastes and Race* study. The 1994 University of Massachusetts' examination of Treatment, Storage, and Disposal Facilities ("TSDFs") was funded by Chemical Waste Management or ChemWaste, the world's largest waste disposal company.⁹¹ The ChemWaste-funded study, however, is not a replication of the CRJ study. The ChemWaste-funded study used census tracts as the unit of analysis and the CRJ study used postal zip codes. The researchers explain their reasoning for selecting census tracts as the unit of analysis: "Because census tracts come closest to conforming to the definition of neighborhood communities, cover the places most likely to be candidates for TSDF locations, and can be aggregated, we used census tracts as basic areal units."⁹²

The ChemWaste-funded study has some severe limitations in its coverage. First, any waste study that uses pre-1990 census tracts as the unit of analysis as a stand-in for "neighborhoods" will be limited to examining only facilities in Standard Metropolitan Statistical Areas ("SMSA"). An SMSA consists of a city that has a population of 50,000 or more and its surrounding counties or urbanized areas. Therefore, many rural areas, small cities, and towns are omitted.

By focusing only on TSDFs located in SMSAs, the study misses about 15% of the sites—sites located outside SMSAs where there are no census tracts.⁹³ On the surface, this 15% may appear to be an insignificant figure. The researchers failed to explain the share of the total TSDFs capacity accounted for by the site left out of the study. The research strategy employed in the study failed to include two of the largest hazardous waste disposal facilities in the country—the landfills in Emelle, Alabama and Kettleman City, California. Both facilities are located in rural counties or nonmetropolitan areas, and owned by ChemWaste. The Emelle facility is the largest in the nation and is located in a community that is over 90% African American. The Emelle facility alone accounted

⁹¹ Douglas L. Anderton et al., *Hazardous Waste Facilities: "Environmental Equity" Issues in Metropolitan Areas*, 18 EVALUATION REV. 123, 123 (1994).

⁹² *Id.* at 128.

⁹³ *Id.*

for nearly one-fourth of the nation's hazardous waste landfill capacity in 1987. The Kettleman City facility, which is 95% Latino, is the largest hazardous waste landfill west of the Mississippi River.

In EPA Region IV, 100% (2 out of 2) of the offsite commercial hazardous waste landfills are located in rural, nonmetropolitan areas, Emelle, Alabama and Pinewood, South Carolina. The Pinewood site is also located in a mostly African American community. Neither facilities are picked up by using census tracts in the ChemWaste-funded study. This pattern is not limited to the South where over half of all African American reside.⁹⁴ Siting disparities also exist in California. All three of the commercial hazardous waste facilities in California are located in mostly Latino communities—Kettleman City, Button Willow, and Westmoreland. All three sites are located outside metropolitan areas.

The ChemWaste-funded study does not breakout the different types of TSDFs. The study design operates as if all TSDFs are the same, yet landfills and incinerators are very different from storage facilities. Specifically, no data is provided on the siting of hazardous waste incinerators. ChemWaste, the sponsor of the UMass study, operated or had under development five hazardous waste incinerators. All five of these facilities, or proposed sites, are located in or near African American and Latino neighborhoods. ChemWaste operates or operated hazardous waste incinerators in three predominately African American neighborhoods in Southside Chicago, Sauget, Illinois, and Port Arthur, Texas. It had proposals under development in the mostly African American Emelle, Alabama and mostly Latino Kettleman City, California.

The UMass researchers are on target when they conclude that changing the unit of analysis can change study results.⁹⁵ Nevertheless, the study failed to provide any definitive answers to the issue of TSDFs siting disparities that were found in the regions of United States where people of color are overrepresented, African Americans in the South (EPA Region 4) and Latinos in the Southwest (EPA Region 9). They write: "Higher percentages of blacks and Hispanics are each found in TSDF tracts of a single region (i.e., South Atlantic and Southwest, respectively) where they are

⁹⁴ THE NEW SOUTH, *supra* note 57, at 1-15.

⁹⁵ Anderton et al., *supra* note 91, at 136.

most highly represented in the general population.”⁹⁶ African Americans, for example, are clearly overrepresented in the EPA’s Region 4—eight southern states. They comprise 20% of the region compared with 12% nationally.

One would not expect to find siting disparities in African American neighborhoods in Maine, Vermont, New Hampshire, Utah, Idaho or Montana—where there are few African American neighborhoods. Just as waste sites are not randomly distributed across the landscape, neither are people of color neighborhoods. The researchers speculate that “market dynamics” may operate as a possible “rational motivation” to locate TSDFs near other industrial facilities or markets.⁹⁷

The Umass researchers, their research methodology, and their market dynamics hypotheses cannot explain Emelle, Pinewood, Kettleman City, Button Willow, and Westmoreland, which are all are rural communities located outside SMSAs. These communities are not near other industrial facilities or industrial markets, nor do they have large numbers of industrial workers.

The Umass study failed to address some important questions left open by its methodology. What level of disposal capacity is represented by the 15% of TSDFs located outside of SMSAs? Are all TSDFs created equal? Are certain types of TSDFs more likely to be located in people of color neighborhoods versus white neighborhoods? Can research on environmental justice be “just” if the selection of the unit of analysis has the disparate effect of making certain communities “invisible”?

VII. THE CASE OF CLAIBORNE PARISH, LOUISIANA

The Louisiana Energy Services (“LES”) proposal to build the nation’s first privately-owned uranium enrichment plant is another example of a people of color community made invisible by a facility siting plan. According to a 1993 Nuclear Regulatory Commission’s draft environmental impact statement (“DEIS”), the facility is proposed for Claiborne Parish, Louisiana—a parish that has a per capita earning of only \$5,800 per year (45 percent of the national average), compared to a national average of almost

⁹⁶ *Id.* at 133.

⁹⁷ *Id.* at 136.

\$12,800.⁹⁸ The proposed plant would produce about 17% of the estimated United States requirement for enrichment services in the year 2000.

The enrichment plant would be located just one-quarter mile from the mostly African American community of Center Springs (founded in 1910) and one and one-quarter mile from Forest Grove (founded just after slavery). The socioeconomic and community characteristics of Homer (a community located five miles from the proposed plant), not Center Springs or Forest Grove, were described in the DEIS. Homer's population is slightly over half white. As far as the DEIS is concerned, the communities of Center Spring and Forest Grove do not exist—they are “invisible” communities.

The enrichment plant is proposed in a parish where the percentage of African Americans is nearly four times greater than the percentage of African Americans in the entire nation and nearly two and one-half times greater than the percentage of African Americans in the state of Louisiana. African Americans comprised 12% of the United States population and 29% of Louisiana's population in 1990. The racial composition of Claiborne Parish is 53.43% white, 46.09% African American, 0.16% American Indian, 0.07% Asian, 0.23% Hispanic, and 0.01% “other.”

Existing Claiborne Parish residents will receive fewer economic benefits (high paying jobs, home construction, and increase tax base) than those who relocate to the area or commute to the proposed facility. Plant staff is expected to buy homes outside of the parish area. On the other hand, local parish residents are expected to take jobs at the lower-end of the skill and pay scale. The NRC predicts that an increasing number of migrants will take the jobs at the higher-end.⁹⁹

Ultimately, the social costs of the proposed uranium enrichment plant are localized to nearby residents. Social costs include noise, public safety, mental stress, physical health, land use, and transportation impacts on nearby residents. On the other hand, the benefits (jobs and other economic benefits) are more dispersed. Clearly, the two host communities of Forest Grove and Center

⁹⁸ NUCLEAR REGULATORY COMM'N, DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE CONSTRUCTION AND OPERATION OF CLAIBORNE ENRICHMENT CENTER, HOMER, LOUISIANA 3-108 (1993).

⁹⁹ *Id.* at 4-33.

Springs, the communities closest to the proposed site, did not give their consent to host the enrichment plant. These communities will receive few, if any, economic benefits by their close proximity to the proposed plant. A biracial coalition of grassroots groups, Citizens Against Nuclear Trash ("CANT"), has been formed to resist the nation's first privately-owned uranium enrichment plant planned for Claiborne Parish.

VIII. GOVERNMENT RESPONSE TO ENVIRONMENTAL INJUSTICE

Environmental justice groups have succeeded in getting Congress and the President to act on the problem of unequal environmental protection—an issue that has been buried for more than three decades. A number of bills have been introduced to Congress that address some aspects of environmental justice:

(1) The Environmental Justice Act of 1993¹⁰⁰ would provide the federal government with the statistical documentation and ranking of the top 100 "environmental high impact areas" that warrant attention.

(2) The Environmental Equal Rights Act of 1993¹⁰¹ seeks to amend the Solid Waste Act and would prevent waste facilities from being built in "environmentally disadvantaged communities."

(3) The Environmental Health Equity Information Act of 1993¹⁰² seeks to amend the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 to require the Agency for Toxic Substances and Disease Registry (ATSDR) to collect and maintain information on race, age, gender, ethnic origin, income level, and educational level of persons living in communities adjacent to toxic substance contamination.

(4) The Waste Export and Import Prohibition Act¹⁰³ would ban wastes to non-OECD (Organization for Economic Cooperation and Development) countries beginning July 1, 1994; the bill would also ban exports to or imports from OECD countries beginning January 1, 1999.

Likewise, environmental justice concerns are beginning to be addressed by the states. Arkansas and Louisiana were the first

¹⁰⁰ H.R. 2105, 103d Cong., 1st Sess. (1993).

¹⁰¹ H.R. 1924, 103d Cong., 1st Sess. (1993).

¹⁰² H.R. 1925, 103d Cong., 1st Sess. (1993).

¹⁰³ H.R. 3706, 103d Cong., 1st Sess. (1993).

two states to pass environmental justice laws. Virginia passed a legislative resolution on environmental justice. Several other states (California, Georgia, New York, North Carolina, and South Carolina) have pending legislation to address environmental disparities.

On February 11, 1994, President Clinton signed an Executive Order on Environmental Justice. This new Executive Order reinforces what has been law since the passage of the 1964 Civil Rights Act, which prohibits discriminatory practices in programs receiving federal financial assistance. The Executive Order also focuses on the National Environmental Policy Act of 1970 ("NEPA"),¹⁰⁴ which establishes national policy goals for the protection, maintenance, and enhancement of the environment. The expressed goal of NEPA is to ensure for all Americans a safe, healthful, productive, and aesthetically and culturally pleasing environment.

NEPA requires federal agencies to prepare detailed statements on the environmental effects of proposed federal actions significantly affecting the quality of human health. Environmental impact statements prepared under NEPA have routinely downplayed "social impacts" of federal projects on racial and ethnic minorities, and low-income groups. Federal agencies and other institutions that receive federal monies have a year to implement a plan under the Executive Order. If they are to be effective, agencies must move away from the decide, announce, and defend ("DAD") model.

The U.S. Environmental Protection Agency cannot address all of the environmental injustices alone, but must work in concert with other stakeholders such as state and local government and private industry. A new inter-agency approach might include the following elements:

- (1) Grassroots environmental justice groups and their networks must become full partners, not silent or junior partners, in planning the implementation the Executive Order.
- (2) Include broad-based stakeholders from the relevant governmental agencies, environmental justice, civil rights, legal, labor, and public health groups to advise on implementation strategy.

¹⁰⁴ 42 U.S.C. §§ 4321-4370 (1988 & Supp. II 1990).

- (3) Hold state and regional education, training, and outreach forums and workshops on implementing the Executive Order.
- (4) The Executive Order will need to become part of the agenda of national conferences and meetings of elected officials, civil rights and environmental groups, public health and medical groups, educators, and other professional organizations.

On April 12, 1994, the federal EPA announced the names of the members of the first Environmental Justice Federal Advisory Council. The twenty-two member Council includes representatives from community-based groups, industry and business, federal, state, Tribal local government organizations, academic and educational institutions, and non-governmental and environmental groups. In a press release, John Kasper, the EPA's director of press services, described the Councils mandate:

The Council created by EPA in January 1993 under the Federal Advisory Act ("FACA"), will provide advise and information on broad, cross-cutting domestic environmental justice policies and issues to the EPA Administrator. The Council will also focus on creating mutually supportive partnerships and increasing communication among all levels of government, the business and industry community and academic institutions to improve the effectiveness of federal and non-federal resources directed at solving environmental justice problems.¹⁰⁵

The Executive Order, Environmental Justice Federal Advisory Council, and other government initiatives come at an important juncture in our nation's history when few communities are willing to become the dumping grounds for other people's garbage, toxic waste, industrial pollution, and other locally unwanted land uses ("LULUs"). In the real world, however, if a community happens to be poor and inhabited by persons of color, it is likely to suffer from a "double whammy" of unequal protection and elevated health threats. This is unfair, unjust, and illegal.

Finally, the civil rights and environmental laws of the land must be enforced even if it means loss of a few jobs. This argument was a sound one in the 1860s when the 13th Amendment to

¹⁰⁵ John Kasper, Director of Press Services Division, EPA Press Release, Tuesday, Apr., 12, 1994, at 1.

the Constitution, which freed the African slaves in the United States, was passed over the opposition of pro-slavery advocates who posited that the new law would create unemployment (slaves had a zero unemployment rate), drive up wages, and inflict an undue hardship on the plantation economy.