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Environmental Justice/Racism/Equity: Can We Talk

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ENVIRONMENTAL JUSTICE/RACISM/EQUITY: CAN WE TALK?

MARC R. POIRIER*

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I. INTRODUCTION

In this essay, I suggest and discuss briefly three interrelated questions that come to mind as I study the burgeoning literature and political developments on environmental justice/racism/equity.¹ The first question, which I shall call the *historical* question, is how it came to pass that the topic was not generally recognized as a set of issues deserving attention and political action in its own right until some time in the 1980s. The second question, which I shall call the *contemporary* question, is whether the various contemporary strands of discussion and activism, which draw on various philosophical, political, and aca-

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1. The terms environmental justice, environmental racism, and environmental equity have slightly different implications and origins. In order to avoid privileging one of these perspectives, my practice here is to use all three terms whenever it is not unbearably awkward, and to shift the order randomly so that one of the three terms does not become the first, privileged descriptor. This plays out as a series of shifting abbreviations: EERJ, EEJR, EREJ, ERJE, EJER, and EJRE. My apologies to my editors.

democratic traditions, are even talking to one another—in terms of the phenomena they are describing, and more importantly, in terms of the issues they make central and the guideposts they use to propose solutions. The third question, which I shall call the *political* question, is a version of a question posed by Professor Robert Williams.² That question is, “Why should we trust you to discuss environmental racism?” More broadly, why should any of the disempowered groups that suffer from disproportionate allocation of environmental disamenities (waste treatment facilities, incinerators and so on), or from exclusion from environmental goods, or from exclusion from the environmental policymaking process, trust those outside their group to articulate the nature, goals, and solutions of a movement addressing environmental racism/equity/justice?

These questions have large resonances, and there is not room in a twenty-page essay to explore them fully. What I hope to suggest is that if environmental equity/justice/racism is to cohere as a political movement, or even to sustain a productive dialogue and debate, those who invoke it must be acutely aware of the multiple historical, intellectual, and cultural traditions that make it possible in the first place. These traditions also inevitably compete for attention, indeed for control of the rhetoric that guides the exercise of power. The silence that is the premise of the historical question is intimately linked to the confusion that is the basis of the contemporary question. Unless we pay attention to the rhetorical traditions underlying these debates, we will not talk to one another effectively, and political powerlessness and cooption will be the unfortunate result.

II. THE HISTORICAL QUESTION

It is one of the commonplaces of EERJ that the movement did not take hold until some time in the 1980s, and gained political prominence only in the 1990s.³ The precise dating is not relevant here. I

2. In a small group discussion session at this year's Association of American Law Schools' (AALS) mini-workshop, “Environmental Issues throughout the Curriculum,” held on January 6, 1994, in Orlando, Florida.

3. *E.g.*, Robert D. Bullard, *Race and Environmental Justice in the United States*, 18

am interested in starting with the following observation. *From the very beginning of the environmental movement*, in the early 1970s and even before, expressions of concern and scientific information about the disproportionate impact of various environmental stresses on racial minorities and the urban and rural poor were available.⁴ Yet in the 1970s, despite these kernels of information and concern, no movement comparable to the contemporary EJER movement formed.

YALE J. INT'L L. 319, 334 (1993). One commonly accepted watershed date is 1987, the date of UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, TOXIC WASTES AND RACE IN THE UNITED STATES (1987) (establishing a stronger correlation between race and hazardous facility siting than between economic status (class) and hazardous facility siting). An earlier date is 1983, when a General Accounting Office study established a correlation between race and hazardous facility siting in the eight Southern states comprising EPA Region IV. UNITED STATES GENERAL ACCOUNTING OFFICE, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES (1983). A still earlier date is 1979, when the Sierra Club worked with the Urban Environment Conference and the National Urban League to put on a conference on the urban environment. Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619, 637 n.58 (1992).

4. *E.g.*, Virginia Brodine, *A Special Burden*, 13 ENV'T 22 (March 1971) (reporting on studies presented at a 1970 American Medical Association conference, including a study showing that nonwhites and people from low socioeconomic groups suffered disproportionate exposure to potentially fatal pollution); BARRY COMMONER, *THE CLOSING CIRCLE: NATURE, MAN AND TECHNOLOGY* 207-09 (1971) (arguing that environmental protection is (1) not innocuous and (2) is related to issues of social justice); Paul P. Craig & Edward Berlin, *The Air of Poverty*, 13 ENV'T 2 (June 1971); DENNIS W. DUCSIK, *SHORELINE FOR THE PEOPLE* 46-47 (1974) (discussing "the problem of the inability of low income, less mobile groups to find suitable coastal recreational facilities anywhere but in the immediate vicinity of urban centers, where the pollution problems are most severe, and where fewer beaches are available and oftentimes inaccessible due to gross overcrowding."); A. Myrick Freeman III, *Distribution of Environmental Quality*, in ENVIRONMENTAL QUALITY ANALYSIS 253, 264 (Allen V. Kneese & Blair T. Bower eds., 1972) [hereinafter KNEESE & BOWER]; Sam Love, *Ecology and Social Justice: Is There a Conflict?*, ENVTL. ACTION, Aug. 5, 1972, at 3; Julian McCaull, *Discriminatory Air Pollution*, 18 ENV'T 26 (March 1976).

These observations also addressed the structure of the environmental movement itself. *E.g.*, W.R. Derrick Sewell & Timothy O'Riordan, *The Culture of Participation in Environmental Decisionmaking*, 16 NAT. RES. J. 1, 17 (1976) (stating that the "results of participatory innovations in environmental policymaking may not only fail to reduce political inequality, but may actually exacerbate the division between those who can exploit the political culture and those who cannot, thereby increasing the alienation and frustration that the whole participatory ideal is designed to eliminate.").

One type of explanation for this failure to congeal a movement around environmental justice issues in the 1970s begins with the attitudes or social group characteristics of the members of the environmental movement, on the one hand, and the civil rights movement, on the other. Environmentalists in the 1970s are described as typically white, middle-class, suburban, and concerned foremost about issues such as the preservation of wilderness, parks, and species.⁵ Less flatteringly, members of the environmental movement may have been intentionally racist,⁶ or agents of unconscious racism.⁷ The members of minority groups involved in civil rights in the 1960s and 1970s, on the other hand, have sometimes been described as not as interested in environmental issues.⁸ More likely, they were at least as concerned about environmental issues as middle-class whites.⁹ But they had a

5. See, e.g., Robert D. Bullard, *Anatomy of Environmental Racism and the Environmental Justice Movement* [hereinafter Bullard, *Anatomy*], in CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 15, 22 (Robert D. Bullard ed., 1993) [hereinafter GRASSROOTS]; Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787, 788-89 (1993) (summarizing sources); Peter L. Reich, *Greening the Ghetto: A Theory of Environmental Race Discrimination*, 41 KAN. L. REV. 271, 278 n.30 (1992) (cataloging the failure of environmental organizations to include people of color).

6. Cole, *supra* note 3, at 621 n.1, 638 n.59; Dorceta E. Taylor, *Blacks and the Environment: Toward an Explanation of the Concern and Action Gap Between Blacks and Whites*, 21 ENV'T & BEHAVIOR 175, 188-89 (1989). For a contemporary version of this charge, see Pat Bryant, *Toxics and Racial Justice*, 20 SOC. POL'Y 48 (Summer 1989) (arguing that racism within environmental organizations must be addressed); Philip Shabecoff, *Environmental Groups Told They are Racists in Hiring*, N.Y. TIMES, Feb. 1, 1990, at A20.

7. On the relationship of unconscious, or aversive, racism to environmental issues, see Edward Patrick Boyle, Note, *It's Not Easy Bein' Green: The Psychology of Racism, Environmental Discrimination, and the Argument for Modernizing Equal Protection Analysis*, 46 VAND. L. REV. 937, 939-40 (1993); Gerald Torres, *Introduction: Understanding Environmental Racism*, 63 U. COLO. L. REV. 839, 839-41 (1992). For a general account of different types of racism, see Charles R. Lawrence, III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

8. See, e.g., Lazarus, *supra* note 5, at 788 (summarizing sources); Taylor, *supra* note 6, at 176-80 (summarizing studies).

9. E.g., Paul Mohai, *Black Environmentalism*, 71 SOC. SCI. Q. 744 (1990) (arguing that blacks are as concerned about environmental issues as whites, but are not as likely to be environmental activists). Indeed, the environmental litigation around DDT began as advocacy on behalf of Mexican American farmworkers in 1969. Ralph S. Abascal, *California Rural Legal Assistance and Environmental Justice*, 14 CHICANO-LATINO L. REV. 44 (1994).

number of other more pressing issues into which to pour their energy and money—the issues of disparate opportunity in jobs, housing, education, public accommodations, and so on.¹⁰ Some authors have also asserted that structural barriers kept blacks from joining primarily middle-class white environmental organizations.¹¹

There is explanatory power in these sociological or psychological analyses of the group characteristics and predispositions of individual members of the environmental and civil rights movements of the 1970s. But other approaches can also shed light on what happened then, and what is happening now. I start from the idea that we do not approach and understand the world and the events around us free of social filters and conceptual schemes. Some of these are culture-wide. Some are learned in the course of becoming a professional or intellectual in one discipline or another. Some undergird and shape social movements.¹²

10. Bullard, *Anatomy*, *supra* note 5, at 22-23; Taylor, *supra* note 6, at 181-84 (summarizing studies); *id.* at 189, 200 (arguing that in the late 1960s and early 1970s, black political energies were basically involved in the civil rights struggle). *See generally* Paul Mohai, *Public Concern and Elite Involvement in Environmental-Conservation Issues*, 66 SOC. SCI. Q. 820 (1985) (arguing that all social classes share environmental concern but that the upper middle class is more involved because it has a greater access to resources and a greater sense of personal efficacy). *But see* Mohai, *supra* note 9, at 762-63.

11. *E.g.*, Mohai, *supra* note 9, at 762; Taylor, *supra* note 6, at 194-95.

12. *See, e.g.*, Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1250, 1280-81 (1992); Steven L. Winter, *For What It's Worth*, 20 LAW & SOC'Y REV. 789, 812-14 (1992). To be sure, Winter's approach is distinguished from much postmodern social theory by its focus on cognitive theory and its assertion that human rationality is generated in experience and the body. *Id.* at 814-17.

Recently there has been some acrimonious debate about whether maintaining a focus on the deconstructive aspect of social change is necessary to avoid reinscribing problematic concepts, power structures and social practices in movements for social change; or whether, on the other hand, insistence on social construction is decentering and disempowering, an academic fetish that distracts from the urgent matter at hand, reconstructing society with a new vision. *Contrast* Gary Peller, *The Discourse of Constitutional Degradation*, 81 GEO. L.J. 313 (1992), and Winter, *supra* note 12, with Joel Handler, *Postmodernism, Protest, and the New Social Movements*, 20 LAW & SOC'Y REV. 697 (1992) and Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 GEO. L.J. 251 (1992).

The rhetorics and traditions of the environmental and civil rights movements from the mid-1960s on, I submit, made it inevitable that they would not coalesce, in that time frame, into a common social movement.¹³ There is not space here to do this intellectual history work in detail. Let me suggest that neither of the two principal paradigms of environmentalism present in the 1970s put much value on discourse about inequitable distribution of resources.¹⁴ The more traditional of the two paradigms treated land and nature as possessing an almost mystical quality, but as embattled so that nature needed to be protected or at least managed.¹⁵ This rhetoric addressed man's responsibility for nature.¹⁶ No particular value within such a discourse was

13. Cf. Audrey R. Chapman, *Symposium Overview*, 18 YALE J. INT'L L. 215, 216-17 (1993) (despite similarity of many human rights and environmental protection goals, the movements have functioned separately, in part due to narrow conceptions and differences in the language used to describe their goals).

A focus on the social construction of resistance movements, to the exclusion of an examination of individual motivations and individual and organizational practices, might obscure questions of racism—in a broad sense of the word—as they could be addressed to the environmental movement at that time and to some extent still today. Obscuring racism is not my intent. But insistence on examining racism at some point should not serve as an excuse to ignore narrative analysis, which I think can be highly illuminating and useful in its own way.

14. Or about siting of land use disamenities or differential access to the political process. I should note that other authors have ascribed other paradigms and paradigm shifts to the modern environmental movement. E.g., Zygmunt J.B. Plater, *From the Beginning, a Fundamental Shift of Paradigms: A Theory and Short History of Environmental Law*, 27 LOY. L.A. L. REV. 981 (1994); Joseph L. Sax, *Property Rights and the Economy of Nature: Understanding Lucas v. South Carolina Coastal Council*, 45 STAN. L. REV. 1433 (1993); A. Dan Tarlock, *The Nonequilibrium Paradigm in Ecology and the Partial Unraveling of Environmental Law*, 27 LOY. L.A. L. REV. 1121 (1994). These authors are also making valid points about the history of environmental law. But the paradigms I describe are uncontroversial and do not contradict these other authors' analyses.

15. E.g., *Sierra Club v. Morton*, 405 U.S. 727, 741 (1972) (Douglas, J. dissenting); CHRISTOPHER D. STONE, *SHOULD TREES HAVE STANDING? TOWARD LEGAL RIGHTS FOR NATURAL OBJECTS* (1974). Behind this movement stand RACHEL CARSON, *SILENT SPRING* (1962) and ALDO LEOPOLD, *A SAND COUNTY ALMANAC* (1949), and behind Carson and Leopold, at a distance, stand John Muir, founder of the Sierra Club, and GEORGE PERKINS MARSH, *MAN AND NATURE* (1864). Although my sketch of this paradigm has obviously stressed the preservationist approach to nature, the contrasting, conservationist concern with appropriate management also overlooked distributional issues.

16. Yes, I do mean "man" here. I believe this to be historically accurate as the term the environmental movement would have used during the period. One might well wonder

assigned to discussions of the relationship to nature of different social groups with disparate power and disparate access to environmental goods or bads. So arguments about disparities in the use of resources and disparate impact on various minority populations simply would not register as significant, even though factual predicates were available. The discourse system was just not designed to place value on those issues.¹⁷

The same can be said of the economic analysis that came increasingly to dominate environmental discourse as the 1970s progressed.¹⁸ The standard concern of welfare economics is overall social welfare. Distributional concerns are secondary. Until public choice theory took hold, which I believe occurred somewhat later, there was not a place of honor within the resource economics tradition for discussion of influence groups and power politics and of rent-seeking as applied to the allocation of environmental goods and bads. Thus, those economic discourses that might have been congruent with some of the local knowledges and individual voices of resistance raised in the early 1970s were not available either. The debate between the ecological and economic strands of the environmental movement only occasionally touched on distributional problems.¹⁹

whether particular movements using the “man” rhetoric included women in positions of authority and agenda-setting, and what difference it might have made if they had. *See generally* ECOFEMINISM: WOMEN, ANIMALS, NATURE (Greta Gaard ed., 1993); REWEAVING THE WORLD: THE EMERGENCE OF ECOFEMINISM (Irene Diamond & Gloria Feman Orenstein eds., 1990). Moreover, as Dr. Bullard and others point out, *e.g.*, Bullard, *Anatomy*, *supra* note 5, at 30, the typical leader of the minority grassroots environmental organization is a woman.

17. Chapman, *supra* note 13, at 217. For an example chosen almost at random, *see* James S. Bowman, *The Environmental Movement: An Assessment of Ecological Politics*, 5 ENVTL. AFF. 649 (1976). As astute as this piece may be, it is simply devoid of any consideration of class, let alone race or distributional issues.

18. This is not to say that resource economics wasn't a well-established field before 1970. But the environmental activism of the 1960s was not informed by it; nor, I suspect, were the political decisions of the period about resource management and environmental matters. Indeed, in the relevant time period, groups such as Resources for the Future very clearly set out to bring resource economics and other social science methodologies to bear on the newly important issue of environmental quality. *E.g.*, Allen V. Kneese & Blair T. Bower, *Introduction*, in KNEESE & BOWER, *supra* note 4, at 1-6. There is also major work to be done on this piece of the intellectual history of environmentalism.

19. Reich, *supra* note 5, at 281-82.

Let me move for a moment to a more general theoretical level. I want to talk about the relationship between an underlying narrative or rhetoric and a social movement. In the professional arena, Thomas Kuhn's well-known description of normative science and paradigm shifts suggests that scientific communities establish knowledge systems, through what might be called a series of social practices.²⁰ Within a historical time period and a discipline, these practices establish what does and does not count as a valid proposition or method of scientific knowledge. In a similar vein, the work of Robert Cover and others suggests that the law is part of a conceptual framework, an overall social system. Where law is concerned, a drastic, formalized, ultimately violent system of authority is set up to weed out alternative versions of law and justice before they can take root in the popular mind.²¹ Critical race theory, feminist theory, and queer (or Gay and Lesbian) theory have all seized upon the idea of competing narrative systems to describe on the one hand systems of ideological oppression and on the other a strategy for bringing new forms of social organization to light, and eventually, to power.²²

20. THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970).

21. Robert M. Cover, *The Supreme Court, 1982—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601 (1986); see also Paul Brest, *Interpretation and Interest*, 34 STAN. L. REV. 765 (1982).

22. See, e.g., Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 862-63, 877-80 (1990); Kimberle Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994); Marc A. Fajer, *Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511 (1992); Gerald Torres, *Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice—Some Observations and Questions of an Emerging Phenomenon*, 75 MINN. L. REV. 993 (1991). But see Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993) (criticizing indiscriminate use of storytelling as a scholarly technique). See generally Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255 (1994); Jane B. Baron, Book Review, *The Many Promises of Storytelling in Law*, 23 RUTGERS L.J. 79 (1991); Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665 (1993).

In different ways, Michel Foucault and Antonio Gramsci describe the relationship of socially contingent forms of thought to the potential for progressive or revolutionary social change as a general theoretical matter. I will focus on Foucault.²³ In contrast to Kuhn, Foucault is interested not just in the contingency of practices and of knowledges, but in upsetting the established order through the reintroduction of suppressed discourses. This can be done by undertaking to develop a “historical knowledge of struggles” in order to produce a “genealogy of knowledges.”²⁴ Foucault seeks to describe and perhaps to provoke “an insurrection of subjugated knowledges.”²⁵ He views these as of two types—both discredited or unheeded scientific knowledge, and native knowledge, which he describes as “particular, local, regional knowledge, incapable of unanimity and which owes its forces only to the harshness with which it is opposed by everything surrounding it”²⁶

Foucault’s project provides a powerful framework for undertaking to address my historical question. When we think or talk about natural resources and their allocation and management—and *a fortiori* when a grassroots or national political movement arises around environmental or resource issues²⁷—we are not using an “objective” mode of

23. For brief descriptions of how Antonio Gramsci’s notion of “hegemony” is useful in discussing control of the way in which people think about the social world, and the relationship of thought systems to social change, see Edward Greer, *Antonio Gramsci and “Legal Hegemony”*, in *THE POLITICS OF LAW; A PROGRESSIVE CRITIQUE* 304 (David Kairys ed., 1982). Reliance on Gramsci and the concept of hegemony, in the context of critical race theory, can be found, for example, in Crenshaw, *supra* note 22. For a thoughtful discussion of how Foucault’s concept of power can be used to study legal systems and processes, see Lucie E. White, *Seeking “. . . the Faces of Otherness . . .”*: A Response to Professors Sarat, Felstiner, and Cahn, 77 *CORNELL L. REV.* 1499 (1992).

24. Michel Foucault, *Two Lectures*, in MICHEL FOUCAULT, *POWER/KNOWLEDGE* 78, 83 (Colin Gordon ed., 1978).

25. *Id.* at 81.

26. *Id.* at 82.

27. I view all environmental issues as versions of resource management issues. See Carol M. Rose, *Rethinking Environmental Controls: Management Strategies for Common Resources*, 1991 *DUKE L.J.* 1. I believe Dr. Bullard would agree. He describes the questions of the environmental justice movement as “who gets what, why, and how much.” Robert D. Bullard, *Conclusion: Environmentalism with Justice*, in *GRASSROOTS*, *supra* note 5, at 203.

thought. From the point of view of narrative theory, there is no such thing. Rather, we use one social/cultural/rhetorical filter or another in order to understand our individual and social relations to resources.²⁸

Professor Carol Rose has made a similar observation about the necessity of narrative frameworks in environmental and resource management schemes, although she does not explore in any detail the idea's consequences for political organizing around environmental issues. After she describes, in the good, universalized, neutral, economist's fashion, the general choices that face any community trying to address an environmental problem, she moves on to rhetoric and politics. She argues that whatever system of property or resource regulation is chosen—however one wants to establish the political practice about resources—there is an underlying rhetoric, an underlying understanding of politics, resources, ownership, entitlements, the role of government and so on, that goes along with it,²⁹ and these underlying understandings differ markedly.³⁰

The notion that any social group's practice around resources embodies a particular rhetoric has consequences for any attempt to organize for social change in management of resources and the environment. When organizing occurs, issues foreign to the structures of the dominant rhetoric within the social movement's patterns of thought

28. See, e.g., George Cvetkovich & Timothy C. Earle, *Environmental Hazards and the Public*, 48 J. SOC. ISSUES 1, 7-9 (Winter 1992) (articulating how a constructivist perspective is relevant to risk assessment and hazard management); Ortwin Renn *et al.*, *The Social Amplification of Risk: Theoretical Foundations and Empirical Applications*, 48 J. SOC. ISSUES 137 (Winter 1992) (arguing that perception of risk is governed in part by social constructs). See generally J. M. Balkin, Review Essay, *Ideology as Constraint*, 43 STAN. L. REV. 1133, 1153 (1991); Pierre Schlag, *Pre-Figuration and Evaluation*, 80 CAL. L. REV. 965, 967 (1992) (there is no getting away from pre-figuration); Pierre Schlag, *Missing Pieces: A Cognitive Approach to Law*, 67 TEX. L. REV. 1195 (1989); Steven L. Winter, *An Upside/Down View of the Countermajoritarian Difficulty*, 69 TEX. L. REV. 1881, 1883-89 (1991).

29. Rose, *supra* note 27, at 32-36; see also Carol M. Rose, *Property as Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory*, 2 YALE J.L. & HUMAN. 37 (1990) (arguing that whatever view of human nature and selfishness/altruism we take and however we thus undertake to set up a property regime is arrived at through a communicative, narrative process).

30. Rose, *supra* note 27, at 32-36.

will be ignored, unless a paradigm shift occurs within the movement so that a new configuration of rhetorical values takes the place of the old one.³¹

To return now to the historical question, it seems that both at the scientific or expert level, and in terms of the local knowledge of particular communities, there was in the 1970s a local understanding of environmental and resource inequities that was somehow suppressed or not followed up on politically. One of the essential elements of an EERJ movement is a recognition of the importance of addressing the political power of disparate social groups in relation to resources. This theme was not prominent in either of the main patterns of environmental discourse in the 1970s. For the environmental equity/racism/justice movement to have gelled in the 1970s would have required it to emerge from other discourses that did not permit it. The conflict that explains the historical silence of EJRE can, thus, be conceptualized as one of competing discourses or knowledges.³²

What of the civil rights movement? I suggest that its rhetoric during this period lacked a different element, but one also necessary for the information about disparate power and environmental issues to take root as a widespread movement.³³ By focusing on individual acts

31. See, e.g., Torres, *supra* note 22, at 1002-03 (relying on the work of Jean-Francois Lyotard and explaining that one effect of universalized discourse is that signification of a wrong may not be permitted in the idiom of the dominant narrative).

32. The following quotation from Foucault further suggests how this discourse theory can be applied to struggles around environmental issues:

Each struggle develops around a particular source of power (out of the countless, tiny sources—a small-time boss, the manager of “H.L.M.” [a moderate income housing facility], a prison warden, a judge, a union representative, the editor-in-chief of a newspaper). And if pointing out these sources—denouncing and speaking out—is to be a part of the struggle, it is not because they were previously unknown. Rather, it is because to speak to this subject, to force the institutionalized networks or information to listen, to produce names, to point the finger of accusation, to find targets, is the first step in the reversal of power and the initiation of new struggles against existing forms of power.

Michel Foucault, *Intellectuals and Power*, *A Conversation between Michel Foucault and Gilles Deleuze*, in MICHEL FOUCAULT, LANGUAGE, COUNTER-MEMORY, PRACTICE 205, 214 (Donald F. Bouchard ed., 1977).

33. For an account of the evolution of the paradigm of formal equal opportunity that underlay the mainstream civil rights movement, see ROY L. BROOKS, RETHINKING THE

of discrimination and on equal access to all kinds of social services, processes, and opportunities, the mainstream civil rights movement put the emphasis on race, individuals, and opportunity.³⁴ The mainstream civil rights movement addressed relations between people, not how land and other resources should be managed generally.³⁵ Its premise was that the door simply needed to be opened wider.

My comments here do not address the more radical discourses of black power and black nationalism that also gained strength in the 1960s and 1970s. With their economic focus and critique of white society, I believe they *were* prepared to engage in organizing around a wholesale reallocation of power over, *inter alia*, resources.³⁶ But these

AMERICAN RACE PROBLEM 26-31 (1990).

34. Robert D. Bullard, *Ecological Inequities and the New South: Black Communities Under Siege*, 17 J. ETHNIC STUD. 101 (1990) (during the late 1960s and early 1970s, “[s]ocial justice, political empowerment, and equal access to education and employment were at the heart of Black people’s struggle for parity with the larger society”); John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-the Future Essay*, 71 N.C. L. REV. 1487 (1993) (generally critiquing the integrationist ideal); Crenshaw, *supra* note 22 (generally critiquing restrictive vision of antidiscrimination law as addressing isolated incidents against individuals).

35. To be sure, land use was important in many senses to the civil rights movement of the 1960s and 1970s, *viz.*, on issues of exclusionary zoning, park and swimming pool access, and disparate municipal services. But these were probably typically conceived of as either about individual opportunity and individual racial animus or about the disparate effect of racial and economic land use patterns. Nowadays, we might get fairly broad agreement that “most environmental problems are, at bottom, land use problems” Philip Weisberg, *Environmental Protection in the Next Decades: Moving from Clean Up to Prevention*, 27 LOY. L.A. L. REV. 1145, 1153 (1994). Although more research would be appropriate, I do not believe that these issues were conceptualized, within the mainstream civil rights movement and within the time frame, as calling for a reallocation of scarce resources.

36. *See, e.g.*, Robert S. Browne, A CASE FOR SEPARATION, in ROBERT S. BROWNE & BAYARD RUSTIN, SEPARATISM OR INTEGRATION, WHICH WAY FOR AMERICA? 7-15 (1968); Calmore, *supra* note 34, at 1505 n.88. Even Dr. Martin Luther King, Jr., in the last year or so of his life, began to articulate control over resources as a central concern of the movement. *See, e.g.*, Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 HARV. L. REV. 985, 1040-41 (1990) (quoting Martin Luther King, Jr., asking, “Who owns the iron ore? The oil?” in WHERE DO WE GO FROM HERE (1967), reprinted in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR. 245, 247, 250 (J. Washington ed., 1986)).

nationalist movements would not have wanted to work with the mainstream white environmental movements for other reasons.³⁷

The situation changed toward the end of the 1970s. Once the site-specific toxics problem came into clear view as a major issue, we began to get grassroots organization around toxic threats to particular communities.³⁸ These could be predominantly white local movements, such as Love Canal in 1977; or black local movements, *e.g.*, Warren County, North Carolina in 1982.³⁹ Concern about the environmental threats to the local community is the common ground between grassroots minority environmental movements and other grassroots environmental efforts.⁴⁰ But the perception that local concentrations of toxics were a peril to the local community, which I think it is fair to say

37. It has been pointed out to me that my account of the civil rights movement focuses on urban and rural African Americans and not on Native Americans, whose struggles during this period (as well as before and after it) had a very different form and rhetoric. One could extend the same criticism to my failure to include an account of civil rights issues faced by Chicanos, Latinos and various Asian groups. Such an account, as important as it is, is beyond the scope of this essay. Also, I think it is fair to say that the rhetoric of the civil rights movement during the time period was most influenced by the situation of African Americans.

38. Luke Cole calls these the "third wave activists." Cole, *supra* note 3, at 636-37.

39. For a description of the 1982 protests in Warren County that led to the 1983 GAO study, see Bullard, *supra* note 3, at 328-29; Bullard, *supra* note 34, at 109; Charles Lee, *Beyond Toxic Wastes and Race*, in GRASSROOTS, *supra* note 5, at 43.

40. Dr. Bullard says that in the 1980s the NIMBY syndrome "trickled down to nearly all communities, even poor Black communities in the South." Bullard, *supra* note 34, at 103, 105, 107. Indeed, Dr. Bullard and Dr. Wright described the purpose of ERJE as being to "[e]xpos[e] the black 'Love Canals.'" That is, Love Canal and Times Beach got an immediate federal response, while similar toxic contamination of Black neighborhoods did not. Robert D. Bullard & Beverly Hendrix Wright, *The Politics of Pollution: Implications for the Black Community*, 47 PHYLON 71, 75 (1986). Dorceta Taylor also describes blacks as organizing "around the environmental issues that are most threatening and relevant to their lives." Taylor, *supra* note 6, at 198. She also seems to link minority grassroots environmental activism to a general grassroots environmental activism that has occurred since 1978. *Id.* Professors Regina Austin and Michael Schill stress that the minority grassroots environmental movement is qualitatively different from the white grassroots movement. Regina Austin & Michael Schill, *Black, Brown, Poor & Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice*, 1 KAN. J.L. & PUB. POL'Y 69, 71-76 (1991). Austin & Schill also suggest that minority grassroots have much to fear from white NIMBY groups, which are likely to be more powerful. *Id.* at 78.

jump-started the environmental justice movement, just wasn't prevalent until the late 1970s.

III. THE CONTEMPORARY QUESTION

One can take this method of narrative or discourse analysis and apply it to contemporary versions of ERJE. I will do so in an extremely abbreviated fashion here, given this essay's space constraints. Indeed, given the brevity of this section, the reader could consider it as an introduction to the discussion in Part III on the political questions facing EJRE.

At the outset, we should distinguish two types of contemporary discourse on EERJ. The learned discourse is easier to track down than the folk discourse. For one thing, it gets published and indexed.⁴¹ So I will begin there. Upon reading through the contemporary EJRE literature,⁴² it fairly leaps out at one that there are a number of different rhetorical and professional traditions represented. Furthermore, to a great extent, they are not talking each other's language. Even the footnotes (we cannot have a learned tradition without footnotes, can we?) are drawn from very different sets of sources. There is the sociological tradition,⁴³ the civil rights lawyer tradition,⁴⁴ the poverty

41. Although some of the leaders of the grassroots environmental justice movements are certainly in print, either as subjects of articles or as speakers. *E.g.*, Peggy M. Shepard, *Issues of Community Empowerment*, 21 *FORDHAM URB. L.J.* 739 (1994). There is also an increasingly expansive network of communications among grassroots EJER groups that is not always visible from the ivory tower of academia. In any event, I rely herein on standard legal research plus the social sciences index, even though this isn't altogether satisfactory.

42. This is already much more daunting than it was even a couple of years ago, as the EERJ term has caught on and become fashionable. As usual, the legal academic circles are in some ways well behind the curve.

43. *E.g.*, ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS AND ENVIRONMENTAL QUALITY* (1990); Paul Mohai & Bunyan Bryant, *Environmental Injustice: Weighing Race and Class as Factors in the Distribution of Environmental Hazards*, 63 *U. COLO. L. REV.* 921 (1992).

44. *E.g.*, Kelly M. Colquette & Elizabeth A. Henry Robertson, *Environmental Racism: The Causes, Consequences, and Commendations*, 5 *TUL. ENVTL. L.J.* 153 (1991); Rachel D. Godsil, Note, *Remedying Environmental Racism*, 90 *MICH. L. REV.* 394 (1991); Lazarus, *supra* note 5, at 827-842 (discussing civil rights-type litigation as part of a broader strat-

law/organizer tradition,⁴⁵ the land use approach,⁴⁶ a jurisprudential tradition or two,⁴⁷ a human rights perspective,⁴⁸ historical inquiry,⁴⁹ a conflict of cultural views of nature,⁵⁰ various native sovereignty perspectives,⁵¹ first world/third world perspectives,⁵² a feminist perspec-

egy); Naikang Tsao, Note, *Ameliorating Environmental Racism: A Citizens' Guide to Combatting the Discriminatory Siting of Toxic Waste Dumps*, 67 N.Y.U. L. REV. 366 (1992).

45. E.g., Cole, *supra* note 3; Luke W. Cole, *Remedies for Environmental Racism: A View from the Field*, 90 MICH. L. REV. 1991 (1992).

46. E.g., Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 YALE. L.J. 1383 (1994); Vicki Been, *What's Fairness Got to Do With It?: Environmental Equity and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001 (1993); Robert W. Collin, *Environmental Equity: A Law and Planning Approach to Environmental Racism*, 11 VA. ENVTL. L.J. 495 (1992). To a considerable extent, Bullard's work partakes of this tradition.

47. E.g., Been, *What's Fairness Got to Do With It?*, *supra* note 46, at 1006-09, 1027-68 (examining several possible meanings of "fairness" in the context of facility siting); Joseph P. Tomain, *Distributional Consequences of Environmental Regulation: Economics, Politics, and Environmental Policymaking*, 1 KAN. J.L. & PUB. POL'Y 101 (1991).

48. E.g., Chapman, *supra* note 13; James W. Nickel, *The Human Right to a Safe Environment: Philosophical Perspectives on Its Scope and Justification*, 18 YALE J. INT'L L. 281 (1993).

49. For example, I am currently researching the ways in which the issue of restricting access to beaches was construed in the 1970s in the New York metropolitan area. It sometimes was viewed as an environmental issue, using neutral property doctrines related to beach use; it sometimes was viewed as exclusionary zoning, using versions of equal protection doctrine and civil rights law applicable to beach access. These different modes of discourse derived from different political situations and in turn produced different types of political organizing and somewhat different legal doctrines.

50. E.g., Williamson B.C. Chang, *The "Wasteland" in the Western Exploitation of "Race" and the Environment*, 63 U. COLO. L. REV. 849 (1992). *See also* Taylor, *supra* note 6, at 184-85 (summarizing arguments that low black participation in the environmental movement reflected black cultural traditions).

51. E.g., Chang, *supra* note 50, at 864-70 (Native Hawaiian); Kevin Gover & Jana L. Walker, *Escaping Environmental Paternalism: One Tribe's Approach to Developing a Commercial Waste Disposal Project in Indian Country*, 63 U. COLO. L. REV. 933 (1992); Ruth Kovnat, *Solid Waste Regulation in Indian Country*, 21 N.M. L. REV. 121, 123-26 (1990); Armstrong Wiggins, *Indian Rights and the Environment*, 18 YALE J. INT'L L. 345 (1993). *But see* James L. Huffman, *An Exploratory Essay on Native Americans and Environmentalism*, 63 U. COLO. L. REV. 901, 905-09 (1992) (describing different Native American views of nature, and asserting an antipathy between the biocentric values of environmentalism and the economic needs and sovereignty demands of Native Americans). Native American and Native Hawaiian issues can of course be explicitly linked to racism and to first world/third world approaches.

52. E.g., Daniel B. Magraw, *Legal Treatment of Developing Countries, Differential,*

tive,⁵³ and so on. Pragmatic approaches may blend more than one of these.⁵⁴ Other ways of parsing EJER continue to emerge—connecting it to occupational health,⁵⁵ and to this article's narrative theory perspective, for example.⁵⁶

Some of these contemporary articulations of EJER are academic and derivative and have little direct relation with the grassroots of EERJ, or with the folk discourses that make the grassroots organizing and politics possible. Others are much closer to the grassroots, especially where the individual authors are also involved in some way with specific EJER struggles. But it does not follow that the disjunction in rhetorical traditions and histories is merely a byproduct of and in the

Contextual and Absolute Norms, 1 COLO. J. INT'L ENVTL. L. & POL'Y 69 (1990) (discussing potential for differential treatment of developing countries under international environmental law); Mutombo Mpanya, *The Dumping of Toxic Waste in African Countries: A Case of Poverty and Racism*, in RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE 204 (Bunyan Bryant & Paul Mohai eds., 1992) [hereinafter BRYANT & MOHAI]; Ved P. Nanda, *Developed Countries' Assistance to the Developing World for Environmental Protection*, 1 KAN. J.L. & PUB. POL'Y 27 (1991) (international development policy); Ivette Perfecto, *Pesticide Exposure of Farm Workers and the International Connection*, in BRYANT & MOHAI, *supra*, at 176 (pesticide export to third world countries).

53. Most often, the bureaucratic/scientific approach to risk assessment of toxic chemicals has overlooked the different functioning of women's bodies (size, fat content, hormonal patterns, reproductive systems) and women's different work roles. This has resulted in surprising gaps in information about risk and in setting acceptable maximum exposure standards. *Women's Health Seen as Neglected Subject for Research in Occupationally Related Cancer*, 17 BNA CHEM. REG. REP. 1449 (1993); *Risk Standard Should Address Estrogenicity, Scientists Say; Additional Research Needed*, 17 BNA CHEM. REG. REP. 1371 (1993). Cf. *supra* note 16 (minority grassroots struggles often led by women and focused around preservation of community).

54. E.g., Collin, *supra* note 46; Lazarus, *supra* note 5; Reich, *supra* note 5; Samara F. Swanston, *Legal Strategies for Achieving Environmental Equity*, 18 YALE J. INT'L L. 337 (1993).

55. George Friedman-Jimenez, *Achieving Environmental Justice: The Role of Occupational Health*, 21 FORDHAM URB. L.J. 605 (1994); Beverly Hendrix Wright, *The Effects of Occupational Injury, Illness, and Disease on the Health Status of Black Americans: A Review*, in BRYANT & MOHAI, *supra* note 52, at 114 (the farmworker pesticide litigation of the past 25 years is also characterizable as an occupational health issue).

56. As another example, Laura Howorth, a Sea Grant attorney at the University of Mississippi School of Law, is currently doing research on how different roles of religion affected the ability of African American communities in the South and the environmental movement to work together.

secondary literature. It does not follow that the disjunction of rhetorics is an eggheads' quibble. How closely will the rhetoric in which the residents of an urban ghetto organize around a decision on siting of an incinerator resemble the rhetoric that facilitates organizing around pesticide use in the rural southwest, the use of Native American lands for waste sites, a Hawaiian river for hydroelectricity, or the pollution of streams by coal mining companies in rural Appalachia?⁵⁷ Unless a careful groundwork for an analysis of these geographically specific resource conflicts as examples of race- and class-based oppression has been laid over the years, I submit that different rhetorical traditions will emerge. These will be localized not only by region and specific environmental issue, but by political, racial, religious, cultural, and historical situation. Moreover, any overview that expressly identifies all these local struggles as linked will itself likely be the product of a decades-long attempt by unions, civil rights, and political organizers of the left to build coalitions. As such, it will also represent and depend on specific rhetorical traditions.⁵⁸

As soon as one grassroots struggle seeks to join forces with another, the question of what rhetorical and narrative tradition underlies each is bound to come to the forefront. To work together means to come up against the very limits that make strategies of resistance possible in the first place, and the challenge posed by the diverse traditions and rhetorics that undergird specific struggles needs to be acknowledged and addressed. The contemporary attempt to piece to-

57. There may be no specifically racial differentiation of the poor white community affected in coal mining related environmental issues in Appalachia. Yet the dynamic of wealth and class is similar. Should these issues be within the ambit of EREJ?

58. I suspect these traditions could themselves be traced back to Marxist and socialist roots in the mid-nineteenth century. To be sure, the nineteenth century rhetorics around organizing the people for social change or revolution did not address "environmental" issues as such. But they may have generally addressed private ownership or management of resources. For example, the conservation movement of turn-of-the-century America did have as one of its concerns the rampant exploitation of natural resources by big business, to the detriment of the people. See, e.g., Marc R. Poirier & Jane Hardin, *Public Preference and the Relicensing of Hydroelectric Projects*, 21 HARV. J. ON LEGIS. 459, 466-67 (1984). But cf. SAMUEL P. HAYS, CONSERVATION AND THE GOSPEL OF EFFICIENCY 1-2 (1959) (despite the rhetoric of the people versus the "interests", the conservation movement was about rational planning and use of natural resources).

gether a national framework for EERJ—that is, precisely to carry out this joining of forces—is well underway.⁵⁹

IV. THE POLITICAL QUESTION

I will approach discussion of the political question from two directions, prompted by two very different verbal challenges made in my presence. One is Professor Robert Williams' probing question, "Why should we trust you?"⁶⁰ The other comment was leveled as a criticism of the Environmental Justice/Equity/Racism movement by Dr. Michael Greve, a conservative commentator and author, at a recent Symposium on Environmental Justice at St. John's Law School. "Isn't this movement impossibly vague?" he asked.⁶¹

Professor Williams' question, "Why should we trust you?", has some problematic terms right off the bat. Who are the "we" and the "you"? I suspect that by "you" Williams meant the law professors he was addressing, and probably more generally, a professional intellectual elite that has become intellectually interested in these issues in the last five years or so.

However, this tentative account doesn't explain all the terms in Williams' question. Knowing who the enemy or outsider is is easy. But who would Williams count as "we"? Because Professor Williams is a Native American, works with Native Americans, and writes on Native American legal and political issues, by "we" he certainly means Native Americans. Would Williams count Native Hawaiians as "we"?⁶² Would African Americans in the rural South count as "we"

59. See, e.g. Dorceta E. Taylor, *Environmentalism and the Politics of Inclusion*, in GRASSROOTS, *supra* note 5, at 53, 56-57 (describing various forms of networking of multi-racial environmental groups); PEOPLE OF COLOR ENVIRONMENTAL GROUPS DIRECTORY (Robert D. Bullard ed., 1992) [*hereinafter* DIRECTORY].

60. Williams, *supra* note 2.

61. Dr. Michael Greve, Remarks at the St. John's Law School Environmental Justice Symposium (Apr. 8, 1994).

62. In case this seems obvious, let me point out that one of Professor Williams' criticisms of federal governmental attempts to accommodate Native American interests in natural resources is to assign them powers on a par with states in some environmental statutes. See Robert A. Williams, *Large Binocular Telescopes, Red Squirrel Piñatas, and*

or “you”? How about African Americans in the urban centers? How about Mexican American farmworkers? How about poor whites in Appalachia? How about people of color who are professionals (and there were some in the room when Professor Williams asked his question)? Should women be included in “we” because of their exclusion from risk analysis on issues of toxic exposure?⁶³

If the EREJ issue, phrased at its most general, is one of asserting a poor or minority community’s power over natural resources—whether couched in a particular instance as sovereignty or as limiting exposure to toxics, air and water pollution, access to recreation, or as choice about land use disamenities—any outsider to that particular struggle is plausibly suspect. But though different communities are not alike, the members of one community struggling against a particular injustice can find a bond—albeit not a 100% alignment—with other similar struggles. “We” is, to some extent, whomever we trust to deal with and make alliance with.

Don’t mistake my argument. Professor Williams’ suspicion is appropriate, especially to the extent that EEJR arises from and derives its political power from specific grassroots struggles. Professional analysis and control can deform and even derail a grassroots fight.⁶⁴ Oftentimes, the grassroots leaders are not of the same educational background, class, or race as those who might profess to help them.⁶⁵ But

Apache Sacred Mountains: Decolonizing Environmental Law in a Multicultural World, 96 W. VA. L. REV. 1133 (1994). This approach requires that the tribe have a governmental structure that looks something like a state’s. Many tribes do not have the resources and expertise to handle authority over resources when decisions must be addressed in a scientific/bureaucratic language. Furthermore, some Plains tribes had no centralized governmental structure at all. To insist that a governing body be formed in order to obtain sovereignty over resources betrays and destroys what is left of those traditional tribal social structures. Is the issue of externally imposed centralized government an issue for Native Hawaiians, who traditionally had a clear centralized governmental structure? Cf. Gerald Torres & Kathryn Milun, *Translating Yonnonodio by Precedent and Evidence: The Mashpee Indian Case*, 1990 DUKE L.J. 625 (discussing Mashpee Tribe v. Town of Mashpee, 447 F. Supp. 940 (D. Mass 1978), *aff’d sub nom.*, Mashpee Tribe v. New Seabury Corp., 592 F.2d 575 (1st Cir.), *cert. denied*, 444 U.S. 866 (1979), wherein a threshold requirement to demonstrate that a tribe had continuously existed resulted in barring a land claims suit by Native Americans in Massachusetts; concept of tribe foreign to the Mashpee).

63. See *supra* note 53.

64. Cole, *supra* note 3, at 647-54.

65. This is not to suggest that race is an ironclad guarantee of similarity of political

as long as the ability to assert a community's interest in legal, regulatory, and legislative arenas is of some value, the language and tools of the legal and regulatory system need to be appreciated and occasionally employed. To be sure, any time a grassroots group short on resources gets as far as litigation, it is in a precarious position.⁶⁶ But, on the other hand, if one possible objective of a grassroots group is to address its goals through the administrative and regulatory process at all, it will probably need some advice. If nothing else, it will wind up talking to people on the other side who are socialized as experts and technocrats, and who expect to encounter that lingo.⁶⁷

vision and objectives. *E.g.*, DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 14-15 (1987) (criticizing black neo-conservatives); A. Leon Higgenbotham, Jr., *An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague*, 140 U. PENN. L. REV. 1005 (1992). But on the other hand, institutions and experts from outside the minority community may understandably be suspect. *See infra* note 67.

66. Luke Cole's version is that if you get to litigation, it's very bad news. Cole, *supra* note 3, at 650.

67. Dr. Bullard argues that communities of color faced with EJRE issues should seek out the expertise of historically black colleges and universities and other minority institutions. Bullard, *supra* note 27, at 202. He also points out that at this stage thousands of minority community residents have been involved in grassroots environmental struggles and now have the equivalent of expert knowledge that could be shared with others. *Id.* Dr. Bullard's argument here reflects a more general argument that communities of color, and the African American community in particular, should rely on their own resources. *Cf.* BROOKS, *supra* note 33, at 131-49 (arguing generally for self-help within the African American community). *But see* Richard Delgado, *Recasting the American Race Problem*, 79 CAL. L. REV. 1389, 1392-93 (1991) (reviewing BROOKS, *supra* note 33, and arguing that the black managerial and professional class is too small and too beleaguered to take on this responsibility). *A fortiori*, a small Native American tribe is unlikely to be able to rely on "its own" professionals.

Such arguments are motivated by an entirely plausible concern. Any supposedly neutral expert organization, individual or professional practice exists within a society where power and knowledge are differentially allocated along racial lines. Expertise from outside the minority community is more likely to reproduce racial and economic inequalities (that is, to be racist in a broad sense), even if inadvertently. This is an important but problematic topic. It deserves much more attention than I could give it here.

In any event, Dr. Bullard also recognizes the value of the EJRE movement's continuing coalition work with the mainstream environmental movement. Bullard, *supra* note 27, at 202-03. *See also* Bullard, *Anatomy*, *supra* note 5, at 32-33, 39 (describing reliance of grassroots EJER groups on both regional ERJE clearinghouses and mainstream environmental groups). *Accord*, Cole, *supra* note 3, at 654.

The environmental game, as currently defined in our society, is played out in part in an expert language and in halls of power. Communities of resistance can use expert, elite assistance. I say assistance, not control. The challenge to professionals (legal, scientific, whatever) who believe in EEJR's goals is to listen and assist, and to do our best not to defuse or deform the movement. Indeed, as Dr. Bullard points out, the grassroots environmental organizations seek to redefine and broaden the goals of the environmental movement.⁶⁸ So the "experts" had better listen carefully.⁶⁹ There is always going to be a tension here.

There is something else to be said about professionals committed to EERJ. Local resistance movements rise and fall. As the first flush of a successful movement subsides and it loses political power, the forces (racist and economic) that created the harms in the first place can simply reemerge from the wings and retake control. The experience of both the environmental and civil rights movements (and other reform movements as well) shows that legislative and policy gains *have to* be backed up, in the longer term, by organizations with the ongoing ability to enforce whatever legal gains have been made. Using

68. Bullard, *Anatomy*, *supra* note 5, at 39; Cole, *supra* note 3, at 638-39 (predicting that as grassroots environmentalism grows in numbers and power it will increasingly set the environmental agenda).

69. All this is not so different from problems of the legal services attorney working with the disempowered. The attorney's articulation of the client's problem is itself problematic. *E.g.*, Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769 (1992); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Anthony V. Alfieri, *The Politics of Clinical Knowledge*, 35 N.Y.L. SCH. L. REV. 7 (1990); Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-1988); Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992); Cole, *supra* note 3, at 647-48 & n.101, 657-59; William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992); GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 11-82 (1992); Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1, 23 (1984); Austin Sarat & William L.F. Felstiner, *Law and Social Relations: Vocabularies of Motive In Lawyer/Client Interaction*, 22 LAW & SOC'Y REV. 737 (1988); Lucie E. White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853 (1992); White, *supra* note 23; Lucie E. White, *Goldberg v. Kelly, On the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 886-87 (1990).

the environmental movement as an example, the environmental "Big Ten" may be accused with some plausibility of taking over and shifting the focus of the environmental movement. But without the kind of public interest group structure that they have successfully established, the major environmental laws would long since all have been gutted. Similarly, to the extent the EJRE hopes to have any long term impact on the way in which environmental issues are identified or prioritized, environmental siting decisions are made, and so on, it must become established as a long-term force, not one that gears up in grassroots mode from scratch each time some specific community realizes that it is threatened. This is so even though community-based struggles are arguably the heart of EERJ.

This brings me to the vagueness point. Dr. Greve accused the EERJ movement of being extremely vague. He added that EEREJ was opportunistic. In his view, the civil rights movement and the environmental movement have run out of steam and are seeking to join forces and somehow gear up in tandem in a way that is newly marketable and that would regain them their former clout. Somehow, Dr. Greve seemed to think that this description (which may well have some accuracy to it) would deny legitimacy to the EERJ movement.

I commented from the audience that day that EEREJ was vague—but so what? Any time one wants to build coalitions to put political, legal, or moral pressure on existing power structures (whether one is facing racism, economic discrimination,⁷⁰ or bureaucratic inertia), one has to blur issues a little and to make compromises. We are talking about generating a movement for people who view themselves as vaguely in the same bad position, if they are even aware of other localized struggles at all. There *are* a lot of disparate issues, as I have shown above. But if groups can work together to obtain a better living and more control of their environment (using the word, as EEREJ

70. I don't want to get into what I think is an energy-dissipating argument about how much of the problem is race and how much is class. In this country, any economic disparity *always* has an element of disparate impact racism, at the very least, given this country's history. And eliminating intentional disparate treatment is an inadequate goal for EEREJ. Disparate impacts as well must be addressed.

spokespersons would, in a broad sense), what's wrong with being a little vague about the details?

I have to report that Dr. Bullard, who was on the same panel as Dr. Greve, replied to my comment that he didn't consider EERJ vague at all. "We know exactly what we want," he said. Dr. Bullard's place in this movement is central, and it takes a certain temerity to differ in print, even a little bit. Besides, Dr. Bullard has articulated a lot of things that the EJER movement should want, and some things it shouldn't want, in his searing response to the 1992 EPA *Environmental Equity* report.⁷¹

I want to suggest that "we" (whoever that is—see discussion above) may know what "we" want—and that that may be vague, or at least multidirectional and inclusive. As I have argued, EERJ can be approached in a multitude of different ways. Many of these, to be sure, are egghead distinctions, based on profession subspecializations that may not be of any particular use to a community on the front lines of a siting dispute or a cleanup standard fight. To the extent that Dr. Greve's comment is a challenge to eggheads to sit down now and hash out the theoretical fine points of one form of environmental justice versus another, I see it as an apple of discord offered to the academics that could destabilize the academic interest in and support for the movement.⁷² We should not heed it.

When people feel threatened (as most communities do about decisions on the siting of disamenities, and as all African American communities in this country do for many reasons),⁷³ it is easy to unite around opposing that threat, even at that vague a level. But when push

71. Bullard, *supra* note 27, at 195-206 (criticizing UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISK FOR ALL COMMUNITIES (1992)). I note that in the course of his discussion he does describe the environmental justice movement as "diverse." *Id.* at 195. See also Principles of Environmental Justice, The First National People of Color Environmental Leadership Summit, October 24-27, 1991, reprinted in BRYANT & MOHAI, *supra* note 52, at 216-17.

72. This in itself shouldn't make all that much difference, except that academic disagreements can be used to make the movement's rhetoric less persuasive to the politically powerful.

73. Shoot. Why stop here? All communities in this country at this time feel threatened.

comes to shove—and sooner or later it will—generalities about environmental improvement or inclusion in environmental decisionmaking can be hard to pin down. Too many conflicting interests are involved, too many standards may be invoked, too much uncertainty can arise. The recent debate over whether the NAACP's support of a particular Superfund reform proposal is in keeping with ERJE's objectives⁷⁴ is an example of things to come. This isn't always just a matter of getting signals straight, although it might be in this particular example. Rather, there are too many factors, too many variables. Whenever resource use and allocation schemes are at issue, there is an inherent source of conflict. An absolute agreement, with no sign of discussion or dissent, would only mean that one group's views of environmental management were being imposed in a way that silenced others.

V. CONCLUSION

A host of the resource, land use, and industrial management decisions that we collectively call "environmental" are unfair, and because of their discriminatory and racist impacts, appalling. We (yes, but who is "we"?) have known this for a long time.⁷⁵ We need to work together to focus more on the distributional aspects of resource decisionmaking and to oppose economic and racist forces and bureaucratic inertia that have stacked the deck another way. We can move together in the same direction *and* talk to one another despite differences of outlook, despite some differences in goals as each local matter comes to the forefront, and despite the different articulations that professionalization brings to the matter. Dr. Charles Lee, who directed

74. *Environmental Equity Groups Oppose NAACP on Superfund Liability*, INSIDE EPA, Nov. 5, 1993, at 5; Richard Lazarus, *Environmental Justice and the Teaching of Environmental Law*, 96 W. VA. L. REV. 1025 (1994).

75. At first, I put down for a generation, at least, since the coalescence of the modern environmental movement. It's for several, if you count segregation of recreational facilities and denial of access to equivalent municipal services. Or since Europeans came to these shores, if you take the sovereignty approach. Why stop even there? Professor Williams persuasively articulates the connection between the legal justifications for the conquest of the New World and doctrines developed to justify Crusades against the infidel. ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* 3-58 (1990).

the seminal 1987 United Church of Christ study,⁷⁶ suggested at the Fordham Law School conference this March that we should not try to define EERJ too closely. "There are many environmental justices," he said.

And I add, and we can still talk. Indeed, we need to.

76. UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, *supra* note 3.

