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ENVIRONMENTAL JUSTICE AND ENTREPRENEURSHIP: PITFALLS FOR THE UNWARY

LUKE W. COLE*

I. INTRODUCTION TO ENVIRONMENTAL JUSTICE

For entrepreneurs seeking to redevelop formerly used industrial sites—often called “brownfields”¹—knowledge of environmental justice is critical. Because of structural racism in the United States economy and real estate markets, unwary entrepreneurs may unwittingly take action that causes or perpetuates environmental discrimination. Avoiding this pitfall with foresight is a good business strategy, and it furthers social justice.

The Environmental Justice Movement is the broad-based wave of activism that grew in the 1980s and continues today to challenge the disparate impact of environmental hazards on the basis of race and income.² Environmental justice activists push for both distributive justice,³ as well as procedural justice.⁴ This Article briefly describes how structural economic factors influence decisions to site industrial facilities, and then briefly describes the efforts of my organization—the Center on Race, Poverty & the Environment (CRPE)⁵—to approach community development from the ground

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1. See *infra* section II.B.

2. See generally LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT (2001).

3. The Environmental Justice Movement seeks to alleviate the burden of pollution on all populations.

4. Procedural justice is accomplished when communities affected by environmental hazards are at the table for decision making regarding these hazards.

5. Center on Race, Poverty & the Environment, <http://www.crpe-ej.org/> (last visited May 15, 2009).

up. It concludes with the insight that the most successful entrepreneurial efforts will be those that are community led and community building.

II. RACE, SPACE, AND PLACE: WHY ARE WE PUTTING IT THERE?

In developing properties in urban areas, we need to be students both of environmental justice and of history. Looking at the confluence of the two helps explain both why environmental injustice happened to begin with, and why “neutral” decisions made by well-meaning entrepreneurs today may have racially disproportionate impacts.⁶

A. *How Structural Racism Helps Determine the Location of Industrial Facilities*

Land use decisions in the United States are not made independently of history, even those decisions made today by civic-minded entrepreneurs. Let’s say that I want to develop a new widget factory in my hometown to provide jobs and widgets for the people. What am I going to look for in choosing the location for my new factory? Planners and sociologists give us a list—with the top three being correct zoning, access to transportation routes, and property values.⁷ As an entrepreneur today, I approach each of these with an open mind, a desire to serve my community, and the goal of doing the right thing. I may not realize that each criterion, because of structural racism, will steer me into locating my facility in a low-income community of color.⁸ Let me explain.

Zoning is the first critical choice point—I can’t put my factory in a residential area or a commercial one. I need to look for heavy industrial zoning. Unless I am in Houston, which has no zoning laws,⁹ I am steered by the zoning decisions made over the last

6. Luke W. Cole & Caroline Farrell, *Structural Racism, Structural Pollution and the Need for a New Paradigm*, 20 WASH. U. J.L. & POL’Y 265, 269 (2006).

7. See generally TODD LITMAN, VICTORIA TRANSP. POLICY INST., *EVALUATING TRANSPORTATION LAND USE IMPACTS* (2008), <http://www.vtpi.org/landuse.pdf>.

8. See COLE & FOSTER, *supra* note 2, at 63-65.

9. See Mike Snyder & Matt Stiles, *Chipping Away at Builders’ Access: City Has Been Toughening Rules on Industry Not Used to It Here*, HOUSTON CHRON., Dec. 10, 2007, at A1, available at http://www.chron.com/CDA/archives/archive.mpl?id=2007_4475351.

eighty years in my local community.¹⁰ As Yale Rabin has carefully documented, zoning decisions made in the 1920s and onward not only segregated residential, commercial, and industrial neighborhoods—what we expect zoning to do—they also segregated people on the basis of race.¹¹ Indeed, Rabin has documented that not only was zoning used as a tool to enforce racial segregation, it was also used aggressively to destroy African American neighborhoods through down-zoning. Stable African American residential neighborhoods were zoned industrial, which simultaneously led to the placement of incompatible industrial land uses in those communities and the inability of families living there to qualify for home improvement loans because of the zoning conflict.¹² Rabin calls this well-documented practice “expulsive zoning.”¹³

How does that affect me, in my desire to build or buy a factory today? Well, the racially segregative aspect of zoning is no longer on the books, but the planning of neighborhoods through zoning from that period—particularly the placement of African American neighborhoods directly adjacent to industrial zoning—persists in every major city in America.¹⁴

Let’s turn to access to transportation. As a business person, I need my trucks to be able to quickly get on and off the freeway so that my widgets get to market. Proximity to major transportation routes is a critical factor in deciding where to put my factory.¹⁵ As students of urban renewal know, the siting of freeways and highways is another set of land use decisions—this time mostly from the 1950s and 1960s—that had a strong racial element.¹⁶ White decision-makers routinely ran freeways through “blighted”—read, Afri-

10. See Richard T. Ford, *Introduction to Local Racisms and the Law*, in *THE LEGAL GEOGRAPHIES READER: LAW, POWER, AND SPACE* 52 (Nicholas Blomley, David Delaney & Richard T. Ford eds., 2001).

11. Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid*, in *ZONING AND THE AMERICAN DREAM: PROMISES STILL TO KEEP* 101, 101-03 (Charles M. Haar & Jerold S. Kayden eds., 1989) (discussing the aftermath of *Village of Euclid, Ohio v. Ambler Realty Company*, 272 U.S. 365 (1926)).

12. *Id.*

13. *Id.*

14. See, e.g., Scott S. Greenberger, *City’s First Zoning Map Plotted Neighborhood of Minorities, Hazards*, *AUSTIN AM.-STATESMAN*, July 20, 1997, available at http://www.statesman.com/search/content/metro/stories/archive/race/072097_zoning.html.

15. Ken Boyko & Ross Connor, *Freeway Access Key to Wilsonville’s Promise*, *DAILY J. COM.* (Portland, Or.), Mar. 20, 2008, available at <http://www.djcoregon.com/articleDetail.htm?recid=32605>.

16. Robert D. Bullard & Glenn S. Johnson, *Just Transportation*, in *JUST TRANSPORTATION: DISMANTLING RACE AND CLASS BARRIERS TO MOBILITY* 7, 7-8 (Robert D. Bullard & Glenn S. Johnson eds., 1997).

can American—neighborhoods, cutting those communities in half and sometimes cutting them off from the rest of cities.¹⁷ The well-known targeting of communities of color for freeways, with its consequent destruction of housing, led activists in the 1960s to call urban renewal “urban removal,” or even “Negro removal.”¹⁸ Communities of color today are far more likely to be near freeways as a result.¹⁹ Thus, my “neutral” criterion of proximity to freeways and highways also has a racial element.

Finally, let’s look at land values. Putting aside the fact that, in a negative, reinforcing feedback loop, industrially zoned property is generally worth less than residentially zoned property, and property near freeways is generally seen as less desirable and worth less than property further from freeways,²⁰ there are also direct racial aspects to land values. Sociologists Douglas Massey and Nancy Denton have documented that white people will pay a premium to live with other white people, making land values in white neighborhoods higher than in African American neighborhoods.²¹ All of these factors combine today to steer me, the good guy entrepreneur in search of cheap land, to communities of color.

My point here is that we need to be aware that even “neutral” criteria, applied by well-meaning businesspeople in 2008, can lead to racially disparate impacts. This is how the silent violence of structural racism continues to manifest itself.

17. *Id.*

18. ROBERT J. WASTE, *INDEPENDENT CITIES: RETHINKING U.S. URBAN POLICY* 44-45 (1998).

19. Robert B. Gunier et al., *Traffic Density in California: Socioeconomic and Ethnic Differences Among Potentially Exposed Children*, 13 J. EXPOSURE ANALYSIS & ENVTL. EPIDEMIOLOGY 240, 241 (2003).

20. Bullard & Johnson, *supra* note 16, at 7-8.

21. Douglas S. Massey & Nancy A. Denton, *The Dimensions of Residential Segregation*, 67 SOC. FORCES 281 (1988); see also MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 147 (2d ed. 2006); Camille Zubrinsky Charles, *Who Will Live Near Whom?*, POVERTY & RACE (Poverty & Race Research Action Council, D.C.), Sept.-Oct. 2008, at 1, 2 (“To put it plainly, whites are *willing* to live with small numbers of blacks, Latinos and/or Asians, but *prefer* to live in predominantly same-race neighborhoods.”). Ingrid Gould Ellen suggests that “white households’ motivation to avoid sharing neighborhoods with blacks often does not stem from a desire to live exclusively among other whites or from the fact that their taste for local public services differs from that of blacks,” but is instead rooted in racial stereotyping by whites. Ingrid Gould Ellen, *Supporting Integrative Choices*, POVERTY & RACE, *supra*, at 3, 3.

B. *The Promise and Peril of Brownfields*

Development of brownfields—abandoned commercial and industrial properties—is an excellent example of the promise and pitfalls of urban entrepreneurial development. Brownfields promise new economic development in neighborhoods in dire need of it, the ability to re-use already degraded urban land rather than greenfields, an antidote to urban sprawl and its consequent congestion and pollution, and a vehicle for cleaning up contaminated sites.²² These are all exciting possibilities for the neighborhoods targeted for brownfields redevelopment.

But there is another side to brownfields as well: because most of our blighted, degraded areas that are today considered brownfields are in low-income communities and communities of color, there are equal protection and disparate impact concerns that accompany any such redevelopment. Some environmental justice activists fear that “brownfields redevelopment” is merely a way to ensure that contaminated sites in communities of color are not cleaned up to the same standards as similar contaminated sites in white communities—that brownfields redevelopment is the 1990s or 2000s version of urban removal.²³

In 1996, the National Environmental Justice Advisory Council (NEJAC), of which I was a member, created an important document on brownfields. *Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope* is a must-read for anyone seeking to do brownfields work.²⁴ As the report notes: “If the brownfields issue is nothing else, it [is] an opportunity for community groups to engage government, developers, and other stakeholders around their vision of what healthy and sustainable communities are.”²⁵ It is this opportunity to which I now turn.

22. See WASTE & FACILITY SITING SUBCOMM., NAT'L ENVTL. JUSTICE ADVISORY COUNCIL, ENVIRONMENTAL JUSTICE, URBAN REVITALIZATION, AND BROWNFIELDS: THE SEARCH FOR AUTHENTIC SIGNS OF HOPE (1996), <http://www.epa.gov/compliance/resources/publications/ej/nejac/public-dialogue-brownfields-1296.pdf> [hereinafter SIGNS OF HOPE].

23. See Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, NAT'L L.J., Sept. 21, 1992, at S1, S2. Their concern is not without foundation: a *National Law Journal* study in 1992 found that the EPA consistently used more protective clean-up methods—excavation and removal—in white communities while using less protective methods such as capping-in-place in communities of color. *Id.* Since most brownfields development calls for similar capping or less-than-full cleanup, the discrepancy in cleanup standards is an issue.

24. See generally SIGNS OF HOPE, *supra* note 22.

25. *Id.* at es-viii.

III. ENVIRONMENTAL JUSTICE AND COMMUNITY PLANNING: THE "POWER TO THE PEOPLE" CAMPAIGN IN CALIFORNIA'S CENTRAL VALLEY

CRPE recently launched a new initiative, called "Power to the People," to put into action in a development context the environmental justice principles we have long used in fighting proposed land uses. After nineteen years of successfully blocking locally undesirable land uses (LULUs), we are taking a crack at answering the tough question we often encounter: what should be built there, if not the ____?²⁶ CRPE's Power to the People campaign deepens our work on land use siting issues, air quality in the San Joaquin Valley, and global warming. In addition, it focuses on CRPE's real expertise—working with local community residents on issues that directly affect them. For the campaign, we are focusing on two communities, Wasco and Allensworth, in which we have worked for more than a decade.

As it is conceived by our organizing team, the Power to the People campaign will have three phases: outreach, training, and planning. The end goal is for each community to have a specific, achievable plan for development of green industry and green jobs, ideally in the renewable energy field. We believe that a plan that comes out of the community can benefit the community.

The first phase is an intensive outreach and education effort focused on our two communities but also including a number of other tiny, rural communities in the southern San Joaquin Valley. Through that effort we will reach perhaps five or six hundred rural residents to expose them to big picture planning ideas and the possibilities of community-based planning for economic development. The outreach is based on the Fred Ross model of organizing,²⁷ honed and adapted by our four-person organizing department: meetings with individuals lead to those individuals having house meetings with their friends and neighbors. After dozens of house meetings, the organizers hold a community meeting where the lead-

26. Insert your LULU of choice here: the toxic waste incinerator, the factory dairy farm, the chicken waste composting facility, the auto speedway complex, the ethanol plant—all land uses that we have worked with communities to resist. See Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619, 646-48 (1992).

27. Fred Ross, a labor organizer, helped to found the United Farm Workers union with Cesar Chavez. He is best known for his community organizing principles, many of which are widely used today. See Obituary, *Fred Ross Dies at 82; Farm Union Organizer*, N.Y. TIMES, Oct. 2, 1992, at A22.

ers who have been running the house meetings explain to community residents the idea of community-based economic development around green jobs and alternative energy. Through this process, we identify leaders, activists, and followers. The leaders can take on tasks and manage people; the activists will take on tasks; and the followers will show up. Each has its role in a campaign like this.

The second phase is an intensive training of the leaders and activists, perhaps sixty to eighty people who emerge out of the first phase. One of the central difficulties in doing environmental justice work is the lack of capacity in many of our client communities: many of our clients have not finished high school; do not have scientific, legal, or policy backgrounds; and may not even speak English. We recognize that to present to these residents the question, "how will you plan for alternative energy here in Wasco?" will not likely yield much in the way of ideas, or enthusiasm. People will be scared away or simply not interested, or perhaps not be familiar with what "alternative energy" means. The second phase is thus aimed at building community-based capacity so that the participants reach a fairly sophisticated understanding of a number of critical concepts in community planning and alternative energy, as well as learn concrete skills that are transferable outside this particular campaign. We envision holding twelve trainings on alternative power issues within the southern Valley over twenty-four months, perhaps including topics like Power 101, Fuel 101, the California Environmental Quality Act, Public Speaking, Working with the Media, and Economic Development. Our previous trainings and organizing have helped create cadres of engaged activists who have reshaped Valley environmental policy from the most local level, such as water boards in rural communities, to the statewide level, such as helping pass legislation,²⁸ so we know our methods can and will be effective. We call our strategy "organizing locally for regional change.

"The third phase is putting knowledge into action. Working with those who have gone through the trainings, CRPE will produce a White Paper or Community Planning Document on best practices for developing clean energy and fuel while also providing for economic development and job training. We are closely following a nearby rural community, Mendota, which is developing a solar

28. See S.B. 719, 2007 Leg., Reg. Sess. (Cal. 2007); Editorial, *Valley Air Board Now Has a Scientist in One of Its Seats: Appointment Should Add Expertise in Health Issues*, FRESNO BEE (Cal.), Oct. 27, 2008, at B7.

farm and providing job training to local residents—this may be a model, or an example of what not to do. The planning document will contain criteria for acceptable projects that protect public health and mitigate environmental and economic externalities, and will be used in our advocacy and to drive policy on a regional and statewide level. It will contain economic, health-based, and scientific critiques of the use of ethanol and other fuels proposed for use in Valley communities in order to bring some factual reality to policy debates at the local and regional level.

CRPE believes that this approach to community training and advocacy based on legal and technical support will work because it has successfully used this model in the past.²⁹ CRPE has seen that when communities are informed and are actively engaged in siting decisions that affect them, projects are changed to protect public health. It is our ambition that having community residents come up with the projects, rather than merely reacting to them, will provide an opportunity for entrepreneurial developers to partner with these communities to realize their visions.

If we are successful in these first three phases, we will have excellent ideas to put into play. A fourth phase would involve partnering with like-minded businesses and elected decision-makers, securing the capital to make the projects a reality, and then implementing them.

This campaign is in keeping with CRPE's mission to train individuals, build community power, and address environmental hazards. CRPE has earned a reputation of helping underserved and underrepresented communities in the southern San Joaquin Valley fight to protect their health. We are in the first phase of this campaign right now, and are receiving excellent response in the communities of Wasco and Allensworth.

The Power to the People campaign faces an interesting challenge: the jobs versus environment debate, which is common in the Valley.³⁰ This campaign will be an excellent opportunity to demonstrate how sustainable and environmentally sound energy and fuel production are actually better for the economy than the traditional

29. See Luke W. Cole, *Lawyering For Environmental Justice: Center on Race, Poverty & the Environment—California Rural Legal Assistance Foundation*, RACE, POVERTY & THE ENV'T, Fall 1994-Winter 1995, 28-30; About the Center on Race, Poverty and the Environment, <http://www.crpe-ej.org/about/index.html> (last visited May 15, 2009).

30. Martha Groves, *Taking 'Factory' Dairy Farming to the 'Mega' Stage*, L.A. TIMES, Feb. 14, 1999, at C1.

fossil-fuel-based production methods. Studies have demonstrated that solar power production creates more jobs, and better jobs, than conventional natural gas power plants. This campaign is CRPE's opportunity to provide an alternative method of economic development.

CONCLUSION

Entrepreneurial development is needed in urban America and brownfields are an excellent place to begin. But such development must be done through an environmental justice approach that is community based, community led, and community building. This is a big challenge—but as this Conference demonstrates and our own work in the Central Valley is establishing—it is one full of rewards.

The NEJAC's Brownfields Report concludes with ringing rhetoric that could describe the ambition of our panel and conference today: "We hope to engage a process which ultimately will coalesce a new type of environmental and social policy capable of meeting the challenges of revitalizing urban America and restoring ecological balance to the nation."³¹ The report ends, "This was our intent. Anything less would have amounted to a failure of leadership, a breaking of faith with communities, and acquiescence to business as usual."³²

31. SIGNS OF HOPE, *supra* note 22, at es-viii.

32. *Id.*