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ON DIVERSITY AND PUBLIC POLICYMAKING:

AN ENVIRONMENTAL JUSTICE PERSPECTIVE

by *Patrice Lumumba Simms**

INTRODUCTION

Over the course of the Twentieth Century, the environmental movement and the resulting adoption and implementation of increasingly protective environmental laws have literally changed America's social, political, and physical landscape.¹ However, the character of our policymaking institutions – how they both perceive and fulfill their responsibilities – profoundly affects the nature of the benefits they produce for society. In this regard, it would be a mistake to assume that the personalities, family histories, ethnic and linguistic backgrounds, genders, moral values, sexual orientations, social environments, spiritual or religious traditions, life experiences, and cultural perspectives of the decision-makers themselves do not affect the character of these institutions and therefore the nature and quality of their work.

As many have observed, the environmental movement and the institutions responsible for environmental policymaking have been historically and overwhelmingly the province of the white middle class.² While some have argued that diversity is a “fad” – or worse, a disingenuous aesthetic adornment³ – a wealth of research suggests otherwise.⁴ Indeed, in this author's view, the chronic lack of diversity among environmental policymakers has defined the evolutionary path of the institutions that have sprung to life in the United States over the past century. And the ongoing homogeneity of the environmental policy leadership continues to stand as a significant barrier to the important objectives of current environmental justice efforts.

To be sure, the concerns about diversity among environmental policymakers are far from the only challenge facing the environmental justice community.⁵ It is, however, a critical structural failing that will inhibit both the rate of progress and ultimately the ability to achieve environmental justice goals.

Accordingly, achieving real diversity within the ranks of environmental policy decision-makers, especially at the federal and state level, is absolutely essential to true-up the structural failure that stands in the way of genuine progress toward environmental justice. Part I of this article will briefly describe the history and objectives of the environmental justice movement. Part II will examine the “classic approach” to assessing and addressing environmental concerns and discuss a few of the subtle but inherent and invidious biases that historically have gone unrecognized by classic environmental policymakers. Part III will describe how a more diverse body of decision-makers, who more vividly conceptualize environmental issues at a multidimensional level, can lead to better decisions. Part IV will briefly describe the trajectory of Environmental Protection Agency

(“EPA”) efforts to address diversity and environmental justice. Finally, Part V concludes with a call to accelerate the pace of workforce diversification, to explicitly confront the persistent structural biases of U.S. environmental policy, and to actively pursue forward-looking intentional multidimensionality.

SOME PREFATORY OBSERVATIONS

It is important to clarify two points at the outset of this analysis. First, references to diversity in this article do not relate merely to race. While race is an especially important aspect of diversity in the context of environmental protection – due largely to its historical relationship to environmental burden⁶ – it is by no means the only one. As the introduction above suggests, a host of other aspects of diversity are also important and should be integral to any efforts to diversify the ranks of environmental public policymakers. Because the goal of this article is to illuminate the connection between leadership diversity and environmental justice, however, much of the discussion herein focuses on racial, ethnic, and economic diversity. Second, it should be clear that “low-income” and “non-white” are not synonymous.⁷ Indeed, there are relatively wealthy black communities that have very much fallen victim to neglect or worse,⁸ and there are many poor white communities that suffer under the yoke of disproportionate environmental burdens.⁹ Moreover, my references to “non-white” communities are by no means a euphemistic allusion to communities of people of African descent alone. It is true that members of the African Diaspora in the United States have suffered an especially brutal and repressive brand of injustice.¹⁰ However, across the U.S., Spanish speaking communities, Asian American communities, and Native American communities (to name a few) have each experienced their own species of social injustice, elements of which clearly resonate as environmental justice issues.¹¹

I. ENVIRONMENTAL JUSTICE – A SEARCH FOR RESPECT

As many have observed, the civil rights and environmental movements have strong genealogical ties and, at least to some degree, share a common foundation based on principles of human rights and social justice.¹² As Professor Richard J.

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Lazarus has noted, the roots of environmental justice, civil rights, and traditional environmentalism intertwine (at least in principle) as far back as the late nineteenth century.¹³ In the 1960s, the environmental movement adopted many of the organizing strategies, mobilization techniques, and legal tools of the civil rights movement.¹⁴ The modern core of the classic environmental movement, however, made a shift into the mainstream in a way that the civil rights movement did not, and in doing so has in a sense lost sight of its own ancestry.¹⁵ As a result, the idea that environmental protection must acknowledge and account for its social justice implications has only very recently begun to reliably take root as a core value in the minds of contemporary environmentalists and environmental policymakers.¹⁶

At its core, the environmental justice movement, in its many manifestations, is bound together by a set of principles that emerge from a shared experience of abuse and isolation. As described by Professor Tseming Yang:

Many of the complaints of environmental justice activists can be traced to three deficiencies of the environmental regulatory system: 1) the failure of regulations to provide adequate substantive environmental protections for minorities and the poor, 2) inequality and disproportionality in the distribution of the burdens and benefits of regulations, and 3) the inability of minority groups and the poor to participate actively and effectively in environmental decision-making processes.¹⁷

These grievances range from inadequate water quality standards that leave subsistence fishers under-protected because they consume much higher levels of contaminated fish than the official standards presume, to insufficient protections for farm-workers against toxic pesticides, to the disproportionate concentration of hazardous waste facilities and toxic air emission sources in poor and minority communities.¹⁸ Additionally, environmental justice advocates have long protested the marginalization of poor and minority communities in the decision-making process and the relative inattention of environmental enforcement officials to violations that primarily affect these communities.¹⁹

In the end, the appeal of environmental justice advocates is merely that every community, including poor communities and communities of color, should be valued, respected, and extended the full consideration of environmental policy and the full protection of environmental laws.²⁰

II. CLASSIC ENVIRONMENTALISM – BENEFITS AND BIAS

Most people recognize that environmental protection encompasses an enormous range of federal, state, and local policy decision-making.²¹ It includes, among other things, the creation and enforcement of explicit legal restrictions (such as limits on pollution discharges),²² affirmative procedural obligations (such as pre-decisional environmental analysis),²³ and checks on commercial behavior (such as the mandatory tracking of hazardous materials as they travel through commerce).²⁴ In addition, environmental policymaking frequently involves the targeted protection or enhancement of certain natural resources

and environmental values (such as the creation and management of parks and wildlife areas and the protection of species and habitat).²⁵ Even more broadly, classic environmental considerations typically also include decisions regarding zoning, land use, public infrastructure and the provision of certain services (like storm water management).²⁶

This classic understanding of environmental protection can largely be reduced to three broad categories of policy interest:²⁷

1. **Pollution Amelioration** – This category of protection seeks reductions in ambient concentrations of, and human exposure to, environmental pollutants. This is usually accomplished through the targeted reduction of pollutant releases, such as air pollution emissions and water pollution discharges.²⁸
2. **Hazard and Risk Management** – This category includes efforts to manage materials (including both products and wastes), which might be toxic or otherwise hazardous to human health or the environment. These environmental policy objectives are most often accomplished through concentration and isolation of hazardous constituents (e.g., in the case of hazardous wastes), or restrictions on commercial manufacture and/or use (e.g., in the case of pesticides).²⁹
3. **Resource Protection and Conservation** – This category encompasses efforts to prevent over utilization of natural resources (such as forests, minerals and species) and to preserve natural resources for their aesthetic, economic, recreational, and ecosystem values.

One common response of classic environmental thinking to the generalized concerns of the environmental justice community is that environmental protection functions as a “rising tide that lifts all boats.”³⁰ This notion is deceptively alluring – if the air is cleaner, it is cleaner for everyone; if hazards are better managed, all of society benefits. The argument can be made even more pointedly. For example, in the pollution amelioration context, if EPA adopts air emissions standards for a particular category of stationary sources, and poor and minority communities are most likely to be located in close proximity to such sources, not only should these communities benefit from adoption and implementation of the standards, but they will arguably benefit more than anyone else. By this view, environmental protection is an instrument that already, to a large degree, accomplishes objectives that inure to the benefit of disadvantaged communities.

As comforting as it might be to stop the inquiry there, the inadequacy of this level of examination becomes evident when one views the issue from a community’s perspective. To be sure, the reduction of hazardous air pollutants (“HAPs”) from a particular source category *will* generate benefits, and will generate perhaps the greatest absolute benefits for populations adjacent to such sources.³¹ Understandably however, the questions that communities ask are more direct and more practical: “Will the selected level of control ensure that my family will not suffer harmful effects? Is my community as healthy to live in as any other community?”³² The reality is that EPA and other environmental policymakers typically do not approach programmatic

decision-making with an eye toward ensuring comprehensive protection of every community.³³

Consider again the clean air example above. The Clean Air Act (“CAA”) gives EPA a tremendous degree of discretion in implementing its responsibilities under the CAA’s HAP provisions.³⁴ The agency, approaching its task through the lens of classic environmental problem solving, has adopted some rather narrow views regarding how and to what extent it will evaluate risk when setting standards. For example, with regard to cancer risk, the agency has consistently taken the position that it need not reduce risk to a level at or below one in one million,³⁵ even though the CAA uses that threshold as an explicit trigger for listing source categories and obligating the agency to promulgate standards.³⁶ Rather, EPA has utilized something of a sliding scale, whereby, depending on a host of factors, “acceptable” cancer risks might range as high as one in ten thousand.³⁷ Additionally, despite decades of regulatory experience, EPA has yet to establish a reliable means of assessing cumulative risk from multiple sources.³⁸ Thus, for communities that are surrounded by a variety of pollution sources, whether EPA’s rules will provide protection from the combined emissions of all sources is something of mystery, and not one that the agency meaningfully attempts to solve in most instances.³⁹ This mystery deepens when a multitude of sources emit a cocktail of different HAPs, which might interact in synergistic ways to enhance toxicity.⁴⁰ In addition, many overburdened communities are also exposed to toxins through other routes such as contaminated drinking water, lead paint, and mercury-contaminated fish.⁴¹ Finally, poor people and people of color are more likely to be subject to significant occupational exposures, which further enhance individual risk.⁴²

As a result, while such pollution amelioration standards may serve to reduce risks for communities of color and poor communities, they do not necessarily ensure the protection of a healthy environment for these communities, and they often do not answer the questions asked by our hypothetical community member. In the end, these communities are frequently left in a substantially worse position than wealthier and non-minority communities (which may have almost no remaining risk after regulation). Moreover, it is conceivable that, at least in some situations, overburdened communities might be left even *less* protected in a *relative* sense after implementation of environmental laws. That is, implementation of environmental laws might improve conditions for everyone, but improve conditions more substantially in wealthier communities (perhaps eliminating risks altogether for them), effectively magnifying environmental disparities.⁴³

Hazardous waste management and disposal practices also have a long history of generating disproportionate impacts in poor communities and communities of color.⁴⁴ Again, the classic environmental view provides a compelling justification for our approach to hazardous waste regulation. Following hazardous wastes through the stream of commerce, imposing specific treatment and disposal standards, and ensuring targeted long-term management provides immense benefits to society as a whole.⁴⁵ Highly toxic wastes from commercial and industrial activities,

small businesses, agriculture, the military, academic institutions, and a host of other sources (including household hazardous wastes) are prevented from entering the general environment due to the operation of these important regulatory devices. Nonetheless, as these substances are funneled toward managed disposal, they necessarily become geographically concentrated.⁴⁶ The observations of the environmental justice movement are that when this geographic concentration occurs, it is likely to occur disproportionately in minority or low-income communities.⁴⁷

As a result, with respect to both pollution amelioration and hazard and risk management, there is a tendency toward a “concentration bias” that preferentially benefits white and well-to-do communities, while disproportionately allowing higher pollution concentrations to persist in low-income communities and communities of color.⁴⁸

Finally, once again, with respect to resource protection and conservation, the benefits here also tend to favor communities with means. To be sure, there are reasons for these efforts that are incredibly important, and which serve broad social, economic, and public health and welfare interests.⁴⁹ The immediate benefits that relate to tangible quality of life improvements however, largely inure to the benefit of the middle class and even then predominantly to whites.⁵⁰ One prominent explanation for this phenomenon as it relates to recreational resource use is the marginalization of non-white communities, which results in a “lack of access to recreational sites and economic barriers to participation.”⁵¹ Additionally, even where economics do not stand as a barrier, non-whites may be less likely to utilize recreational resources because of past discrimination that engenders “feelings that people of their ethnic or racial group are unwelcome” or raises “fear of physical harm.”⁵² This is hardly surprising in light of the fact that many recreational resources were expressly or implicitly segregated for most of the Twentieth Century – preventing the development and transmission of cultural traditions that would promote greater use.⁵³

Historically, however, relatively little attention has been paid by classic environmental policymakers to acquiring, enhancing, and maintaining natural resources in or near urban cores, where it would provide the most benefit to poor and non-white communities.⁵⁴ This kind of “benefits allocation bias” reflects an historic tendency, with respect to resource protection and conservation, for the prioritization of public expenditures on environmental resources that favor policy-based objectives benefiting relatively privileged communities while systematically undervaluing the needs of already marginalized communities.

In light of the historic homogeneity of environmental policymakers, it should come as no surprise that “concentration bias” and “benefits allocation bias” have gone (until recently) largely unnoticed, or at least uncorrected.⁵⁵ Arguably, it is unrealistic to expect decision-makers, shaped and hardened within a system that is implicitly biased toward the classic environmental model, to stumble upon an appropriate approach to multidimensional decision-making. Indeed, these problems have persisted largely unabated despite the adoption of statutes like the National Environmental Policy Act (“NEPA”),⁵⁶ and the issuance of an

Executive Order specifically addressing environmental justice (E.O. 12898)⁵⁷ – instruments which on their face appear to provide at least the starting point for a more robust and inclusive decision-making framework.⁵⁸

Regardless of the standards to which we hold our policymakers, as environmental justice advocates have long and persuasively argued,⁵⁹ it is *clearly unjust* for the communities who benefit least from our collective environmental compromise to carry the lion's share of the adverse health burden. It is incumbent on the environmental policymaking apparatus to fix its own house; to nurture a capacity to listen to communities and identify and adopt appropriate solutions to environmental justice problems.

While the environmental justice community rightly continues to clamor for action, ultimately it may not be more voices on the outside calling for better decision-making that is necessary, but a more diverse group of decision-makers on the inside that is required.

III. LEVERAGING DIVERSITY: MAKING ENVIRONMENTAL POLICY WORK FOR EVERYONE

At its most basic level, the greatest challenge of environmental justice implementation is ensuring that lawmakers, policymakers, and implementing officials recognize the legitimacy of the concerns voiced by affected communities and make the appropriate inquires before committing internal institutional resources toward a particular objective. Those inquiries must be made, however, at the *beginning* of the decision-making process, not after a preferred course of action has already been selected. The problem with a relatively homogeneous body of decision-makers is that their range of vision is restricted by their own experience. As a result, “[o]rganizational routines or standard operating procedures are developed ... and public officials become increasingly resistant to change over time, especially if there is little turnover within the initial cadre of administrators.”⁶⁰ In this way, policy approaches, once adopted, tend to ossify, thus preventing innovation.

Ultimately, despite some initial optimism in the wake of E.O. 12898 and the Council on Environmental Quality's Environmental Justice NEPA Guidance,⁶¹ the environmental justice community has been profoundly disappointed by policy decision-making at the federal level.⁶² In part, this is a product of the fact that once an institutional policy tradition has been formulated it often proves very resistant to change, even in the face of valid observations from external sources.⁶³ This has meant that even with improved procedural access to the decision-making process, environmental justice advocates and community-based organizations frequently find that policy decision-makers (who have already effectively blessed another institutional approach) are unreceptive to their requests and recommendations.

As a practical matter, to effectively counteract institutionalized “concentration bias” and “resource allocation bias,” policymakers must adopt a truly multidimensional decision-making approach – that is, they must effectively view each decision not only from the perspective of the institution's existing policy

traditions, from the vantage point of economic stakeholders, or from the vantage point of classic environmentalism, but also from the perspective of families, communities, workers, educators, civic leaders, and other affected persons. Moreover, they must deploy this multidimensionality from the very *beginning* of the decision-making process, not merely in response to formal comments submitted after a proposed course of action has already been fully formulated.⁶⁴

The following are examples of the types of questions that must inform environmental policy decision-making from the very earliest stages of the process:

- Does the decision-making involve the concentration of hazardous pollutants or the control of ambient concentrations of pollutants or pollutant discharges?
- Have potentially affected communities been included in the initial process of defining the problem and identifying potential solutions?
- Where will the benefits of the action be felt most acutely?
- Does the action fully account for cumulative risk, multiple routes of exposures, and potential synergistic effects?
- Will the action eliminate risks, harms, or impacts for every community?
- Are any remaining risks or impacts likely to be borne by communities that are already overburdened?
- Do potentially affected communities fully understand the nature and degree of all remaining risks?
- What concerns are most acute for potentially affected communities?
- Are any remaining impacts acceptable to the potentially affected communities?
- If the action will create or allocate resources benefits, does it preferentially benefit certain communities?
- Are there comparable benefits available to other communities?
- Are comparable benefits being pursued or enhanced for underserved communities?
- Can access to benefits by underserved communities be enhanced in the decision-making process?

Undoubtedly, a conceptual framework can serve as a valuable methodological aide in the decision-making processes. However, as the failure of NEPA as an effective environmental justice tool demonstrates, ultimately the decision-makers matter. As Justice O'Connor acknowledged in *Wygant v. Jackson Board of Education*, “[t]he exclusion of minorities from effective participation in the bureaucracy not only promotes ignorance of minority problems in that particular community, but also creates mistrust, alienation, and all too often hostility toward the entire process of government.”⁶⁵ While Justice O'Connor's statement was made in the context of “[d]iscrimination by government,”⁶⁶ it matters little if the exclusion of people of color (and others) is the result of overt discrimination or not; the effect is the same. And, certainly these observations have been borne out time and again in the environmental justice context.⁶⁷

Diversity-related barriers to advancing environmental justice principles cannot be overcome merely by recruiting a

more diverse body of decision-makers (although that is where it must necessarily begin). Rather, environmental policymaking institutions must manifest a commitment to multidimensional decision-making by cultivating, retaining and promoting not just a diverse workforce but also a diverse collection of perspectives.⁶⁸ When it comes to improving the ethical responsiveness of decision-making, valuing differences in *perspective* as a vital institutional asset is just as important as valuing physical or cultural differences such as race, religion, gender, sexual orientation, or disability. To truly benefit from a diverse workforce, and to successfully cultivate a meaningfully diverse leadership, it is necessary to *specifically encourage* the articulation of different perspectives; to pull different viewpoints out from the shadows.⁶⁹

Indeed, many professionals of color and other visible minorities feel overtly or implicitly compelled to hide their viewpoints in a professional environment, and mask any obviously atypical perspectives behind a façade of conformity, often due to an unspoken (but typically not expressly repudiated) expectation of bias against unconventional viewpoints.⁷⁰ In this sense, if diverse perspectives are not actively and openly encouraged, institutional assimilation as a survival mechanism can undermine the benefit of whatever diversity has been achieved. Thus, leveraging the benefits of diversity is not just a challenge of recruitment, retention, and promotion; it is also explicitly a challenge of inclusive management, which must actively pursue intentional multidimensionality.⁷¹

The idea of pursuing a broader set of perspectives among environmental policymakers has a pedigree reaching at least as far back as the early 1990s.⁷² As Richard Lazarus explained:

The need for ‘better understanding’ should not, however, be confined to formal empirical investigation. It must also include efforts aimed at increasing awareness among both the general public and policymakers about the potential for, and impact of, distributional inequities. As described by one minority environmentalist, who warned against addressing the problem by simply including more minority representation, ‘[t]here is a need for diversity *not only in the makeup of the organizations, but also in how these [environmental] issues are looked at.* . . . For environmental groups to consider issues like wetlands, global warming, and wilderness protection as being the only environmental issues flies in the face of reality.’⁷³

In essence, in order to more meaningfully appreciate and consider issues that have immediacy to communities outside the core of classic environmentalism, including for example people of color, poor communities, immigrant communities, language minorities, and Tribes, policymakers must be able to meaningfully engage in a robust internal dialogue on such issues. By necessity, this requires a range of perspectives that can facilitate thinking (and talking) outside the box of classic environmentalism and that can shake off the constraints of longstanding institutional policy traditions.⁷⁴

A NOTE ON AFFIRMATIVE ACTION

While the intent of this article is not to argue for so called “affirmative action” measures in the hiring practices of entities with environmental responsibilities, it would be a disservice not to at least mention this critical point. After all, the legality of race-conscious decision-making is once again before the Supreme Court.⁷⁵ When considered in light of cases like *Bakke* and *Grutter*, which held (among other things) that diversity may constitute a compelling interest that can justify narrowly tailored race-conscious decision-making in university admissions,⁷⁶ there seems good reason to question why such diversity would not also constitute a compelling interest in the context of certain government hiring. These prior cases relied on the proposition that a diverse classroom enhances the educational experience by creating an environment in which a more “robust exchange of ideas” can occur.⁷⁷ It seems incongruous that the government’s interest would somehow be *less* compelling when the benefits of that more robust dialogue (and of overcoming racial stereotypes) involve manifestly higher stakes – i.e., the formulation of official policy that will directly and profoundly affect the health and well-being of communities.⁷⁸ Full exploration of this question, however, is beyond the scope of this article.⁷⁹

IV. FEDERAL DIVERSITY AND ENVIRONMENTAL JUSTICE EFFORTS: FITS AND STARTS

By and large, environmental policymaking agencies have professed an appreciation for diversity since at least the early 1990s. In 1992, after convening a task force to examine diversity issues, EPA adopted a strategy document to address workforce diversity within the agency.⁸⁰ Perhaps not coincidentally, EPA’s 1992 Diversity Strategy document was released the same year as its report entitled “Environmental Equity: Reducing Risk for All Communities.”⁸¹ This was among the agency’s first efforts to directly confront the issue of environmental justice. Additionally, the agency pursued more concrete action; in 1992 creating the Office of Environmental Justice (“OEJ”) and in 1993 commissioning the National Environmental Justice Advisory Council (“NEJAC”) – an advisory body created under the authority of the Federal Advisory Committee Act (“FACA”).⁸² In 1995, pursuant to the 1994 Executive Order on Environmental Justice (E.O. 12898), the agency adopted an environmental justice strategy document (as did other federal agencies), and began to participate as a member of the Interagency Working Group (“IWG”) on Environmental Justice.⁸³

During the period of the mid- to late-1990s, federal efforts to address environmental justice concerns, while clearly in their infancy, appeared genuine. Communication with communities improved, at least marginally, and under pressure from environmental justice advocates, the EPA began to explore legal mechanisms to accomplish environmental justice goals.⁸⁴ This progress came to an abrupt halt at the end of 2000, with the election of President George W. Bush and the transition to an administration that had chilly relations, at best, with the communities representing environmental justice interests. By the end of the Bush administration, despite an ongoing commitment among

OEJ staff, much of the early momentum on environmental justice had been lost; and despite almost two decades of implementation, realization of EPA's "bold plan" to increase agency diversity remained elusive, especially among the ranks of senior decision-makers.⁸⁵

It is noteworthy, however, that in the few short years of Barack Obama's Presidential administration and Lisa Jackson's tenure as Administrator of the U.S. EPA (the first African Americans to hold these respective positions), a conspicuous new effort to engage traditionally marginalized communities of all stripes in environmental justice policy discussions and renewed efforts toward greater diversity among the ranks of government policymakers has emerged. This has been reflected in initiatives such as the Partnership for Sustainable Communities, the development of EPA's Plan EJ 2014, the reinvigoration of the Interagency Working Group on Environmental Justice, the convening of regular Environmental Justice Community Outreach Teleconferences, and the commissioning of several reports evaluating and proposing reforms to EPA's Office of Civil Rights.⁸⁶ Among other things, the renewed focus on diversity has included the issuance of a 2011 Executive Order on federal workforce diversity.⁸⁷

Indeed, one of Administrator Jackson's specific priorities for EPA includes the following:

Expanding the Conversation on Environmentalism and Working for Environmental Justice: We have begun a new era of outreach and protection for communities historically underrepresented in EPA decision-making. We are building strong working relationships with tribes, communities of color, economically distressed cities and towns, young people and others, but this is just a start. We must include environmental justice principles in all of our decisions. *This is an area that calls for innovation and bold thinking, and I am challenging all of our employees to bring vision and creativity to our programs.*⁸⁸

This statement echoes at least one of the themes of this article – the significance of the connection between the *policymakers* (EPA's "employees") and the policies being pursued. Ultimately, to succeed in efforts to bring about an era in which environmental protection leaves no community behind, EPA and other environmental policymaking institutions must be deliberate in their efforts to draw upon the full diversity of perspectives and experiences of what must become an increasingly diverse workforce. Top-down efforts, without corresponding changes in institutional composition and a deliberate embrace of multidimensional decision-making approaches, are bound to produce results that are limited in both duration and efficacy. Success will require nothing short of a willingness to fundamentally rethink the model of classic environmentalism that has heretofore provided the blueprint for existing institutional structures.

V. CONCLUSION: TIME TO GET IT RIGHT

At EPA and around the country, in both government agencies and environmental nonprofits, as the old guard—those heroic stalwarts of classic environmentalism – continues to retire, we have a moment of opportunity. While extending to them our deepest gratitude for their vision and commitment, we must chart an important new course. We must reunite the estranged descendants of the environmental and civil rights movements and reaffirm environmentalism as a peoples' struggle.

Armed with a healthy variety of perspectives that have been encouraged rather than squashed, institutional leadership will be better able to genuinely and effectively address the challenges of environmental justice. The validation of principles of community self-determination and the elimination of significant environmental health disparities may well be the legacy of the next generation of environmental policy leadership. Getting there, however, will require that we re-conceptualize, to some extent, the structure and function of our policymaking institutions. This will take a transformation from within (and of course continuing vigorous advocacy from without) and will depend, at least in part, upon an enduring commitment to real diversity and a deliberate embrace of multidimensional approaches to decision-making.



Endnotes: ON DIVERSITY AND PUBLIC POLICYMAKING: AN ENVIRONMENTAL JUSTICE PERSPECTIVE

¹ This is true to the extent that "environmentalism in the United States appears to have achieved a steady state, with law and social norms mutually reinforcing each other to maintain ... a relatively stable commitment to environmental protection." Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 88 (2001).

² See Dorceta E. Taylor, *Diversity and the Environment: Myth-Making and the Status of Minorities in the Field*, 15 RES. IN SOC. PROBS. & PUB. POL'Y 89, 89-139 (2008) (discussing the evolution of research on diversity and the environment); KATHLYN GAY, POLLUTION AND THE POWERLESS: THE ENVIRONMENTAL JUSTICE MOVEMENT 18 (1994); Robert W. Collin, *Environmental Equity: A Law and Planning Approach to Environmental Racism*, 11 VA. ENVTL. L.J. 495, 517

(1992) (noting how environmental inequity originates in the indifference of traditionally white environmental groups to issues of race and equity); Peter L. Reich, *Greening the Ghetto: A Theory of Environmental Race Discrimination*, 41 U. KAN. L. REV. 271, 278 n.30 (1993) (noting historical examples where traditionally white environmental groups failed to hire people of color and pursue environmental protection in urban areas); Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787, 819-20 (1993) (noting the lack of representation of minority groups relating to environmental protection issues).

³ See *Grutter v. Bollinger*, 539 U.S. 306, 355 (2003) (Thomas, J., dissenting).

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- ⁴ See *Grutter*, 539 U.S. at 330 (2003) (citing studies regarding educational benefits of diversity); Michele DeStefano, *Nonlawyers Influencing Lawyers: Too Many Cooks in the Kitchen or Stone Soup?*, 80 *FORDHAM L. REV.* 2791, 2804-05 (2012) (discussing studies showing that racial and cultural diversity “has a positive impact on accuracy, flexibility, group creativity, thoughtfulness, and information sharing”); Seletha R. Butler, *All On Board! Strategies for Constructing Diverse Boards of Directors*, 7 *VA. L. & BUS. REV.* 61, 73-80, (2012) (discussing benefits of board diversity).
- ⁵ See, e.g., Coglianesse, *supra* note 1, at 110-11 (noting public support of environmentalism as current issue for environmental justice groups).
- ⁶ See Collin, *supra* note 2, at 513, 518.
- ⁷ *American Fact Finder, American Community Survey Selected Population Tables (2006-10)*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_SF4_DP03&prodType=table (last visited Oct. 25, 2012) (noting that in 2010 10.6% of black families had a household income of \$100,000 or more, and more than 21% of white households earned less than \$25,000 per year).
- ⁸ See Rick Jervis, *Six years after Katrina, pockets of New Orleans languishing*, USA TODAY (Aug. 25, 2011), <http://usatoday30.usatoday.com/news/nation/story/2011-08-25/Six-years-after-Katrina-pockets-of-New-Orleans-languishing/50141660/1> (discussing the plight of New Orleans East, a predominantly middle and upper middle class African American community six years after hurricane Katrina).
- ⁹ See Sam Evans, *Voices From the Desecrated Places: A Journey to End Mountaintop Removal Mining*, 34 *HARV. ENVTL. L. REV.* 521 (2010) (discussing the impact of mountaintop mining on impoverished white communities in Appalachia).
- ¹⁰ State sanctioned racism; open and notorious acts of murder, humiliation and degradation; physical segregation; economic isolation; civic neglect; and political disenfranchisement. See, e.g., Paul Butler, *One Hundred Years of Race and Crime*, 100 *J. CRIM. L. & CRIMINOLOGY* 1043, 1043 (2010) (discussing “evolution of thinking about criminal justice and racial justice over the last one hundred years”); See generally JOHN STRAUSBAUGH, *BLACK LIKE YOU: BLACKFACE, WHITEFACE, INSULT & IMITATION IN AMERICAN POPULAR CULTURE* (Aug 16, 2007) (exploring race relations in American popular culture and how blackface performance came to be denounced as purely racist mockery); MICHAEL HARRINGTON, *THE OTHER AMERICA*, (Simon and Shuster, 1962) (exploring depth of poverty crisis and analyzing why “invisible” citizens as the elderly, children, and minorities are not given adequate opportunities).
- ¹¹ See, e.g., Bethany Li, *‘We Are Already Back’: The Post-Katrina Struggle for Survival and Community Control in New Orleans East’s Vietnamese Community of Versailles*, 18 *ASIAN AMER. L.J.* 25 (2011) (discussing a Vietnamese community’s struggle for survival after Hurricane Katrina); Joan D. Flocks, *The Environmental and Social Injustice of Farmworker Pesticide Exposure*, 19 *GEO. J. ON POVERTY L. AND POL’Y* 255 (2012) (discussing hazards to migrant farmworkers from pesticide exposure); Nancy B. Collins & Andrea Hall, *Nuclear Waste in Indian Country: A Paradoxical Trade*, 12 *LAW & INEQ.* 267 (1994) (discussing impacts of radioactive wastes on Tribal communities).
- ¹² See Michael Gelobter, et al., *The Soul of Environmentalism: Rediscovering Transformational Politics in the Twenty-First Century*, GRIST.ORG (2008), available at http://archive.fieldmuseum.org/research_collections/ccuc/ccuc_sites/newallies/pdf/Soul_of_Environmentalism.pdf.
- ¹³ See Richard J. Lazarus, *Highways and Bi-ways for Environmental Justice*, 31 *CUMB. L. REV.* 569, 576 (2001) (noting early sanitation and public health movements with a focus on urban environmental concerns).
- ¹⁴ *Id.* at 572; See Gelobter, *supra* note 12, at 4 (referring to the environmental movement as the “Elvis of Sixties activism”).
- ¹⁵ Gelobter, *supra* note 12, at 5-8.
- ¹⁶ See Collin, *supra* note 2, at 538.
- ¹⁷ Tseming Yang, *Environmental Regulation, Tort Law and Environmental Justice: What Could Have Been*, 41 *WASHBURN L.J.* 607, 610 (2002).
- ¹⁸ *Id.* at 611.
- ¹⁹ See *id.* at 612, 621 (noting the exclusion of minority groups and the poor from environmental decision-making and the weakness of environmental enforcement provisions). In addition to this array of more traditional environmental concerns, environmental justice advocates also demand recognition and consideration of other factors that can profoundly affect the health and wellbeing of communities, such as economic isolation, access to health care, quality of housing and education, and access to healthy food choices.
- ²⁰ See Collins, *supra* note 2, at 545.
- ²¹ *Agriculture: Sustainability*, U.S. EPA, <http://www.epa.gov/agriculture/tsus.html> (last visited Oct. 28, 2012).
- ²² These types of restrictions are at the heart of laws like the federal Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7641, and Clean Water Act (“CWA”), 33 U.S.C. §§ 1252-1387, among others, and state law equivalents.
- ²³ See e.g., The National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-70.
- ²⁴ See Solid Waste Disposal Act, 42 U.S.C. §§ 6921-39 (hazardous waste provisions).
- ²⁵ See e.g., Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-87; Forest and Rangeland Renewable Resources Planning Act, 16 U.S.C. §§ 1600-87; Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-44.
- ²⁶ See generally *Learn the Issues*, U.S. EPA, <http://www.epa.gov/gateway/learn/> (last visited Oct. 28, 2012).
- ²⁷ While these categories overlap to some degree, the categories themselves serve as useful methodical reference points. Additionally, there are categories not included here, such as statutes that serve a primarily informational function, such as NEPA, 42 U.S.C. §§ 4321-70, or the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11046.
- ²⁸ The Clean Air Act and Clean Water Act largely reflect this approach to environmental protection. See 42 U.S.C. § 7401(a)(3), 33 U.S.C. § 1252(a) While such standards are usually tied in various ways to adverse health impacts, the stringency of emission controls are typically not directly linked to a demonstration of hazard or risk.
- ²⁹ See 42 U.S.C. § 7412(k)(2)(A).
- ³⁰ An adage famously used by J.F.K in support of free trade. President John F. Kennedy Address at the Paulskirche in Frankfurt, Germany, 24 (June 25, 1963), available at <http://www.jfklibrary.org/Asset-Viewer/Archives/JFKPOF-045-023.aspx>.
- ³¹ See *Technology Transfer Network Air Toxics Web Site: About Air Toxics*, U.S. EPA, <http://www.epa.gov/ttn/atw/allabout.html> (last visited Oct. 25, 2012).
- ³² Indeed, the problem of disproportionate impacts can be summed up thusly: “Are members of some communities asked to shoulder more than their share of the public health burden associated with the maintenance of our industrialized way of life?” To the extent that the answer is “yes”, any justification that merely accepts such disparities as the natural consequence of relative powerlessness (economic, political, and societal) is morally repugnant.
- ³³ See Yang, *supra* note 17, at 607, 610-12.
- ³⁴ See 42 U.S.C. § 7412(d) (instructing the agency to consider cost, non-air quality impacts, and energy requirements when setting “achievable” standards for HAPs); 42 U.S.C. § 7412(f)(2) (instructing EPA to set “residual risk” standards 8 years after initial HAP emission controls are adopted “if promulgation of such standards is required in order to provide an ample margin of safety to protect public health.”). See generally, Mark W. Ciaravella, Comment, *Regulation of Hazardous Air Pollutants Under Section 112 of The Clean Air Act Amendments of 1990*, 15 *ENERGY L.J.* 485 (1994).
- ³⁵ See, e.g., *Natural Resources Defense Council v. EPA*, 529 F.3d 1077 (D.C. Cir. 2008) (EPA successfully arguing that HAP standards need not protect the public from cancer risks of greater than one in one million).
- ³⁶ 42 U.S.C. §§ 7412(c)(9), 7412(f)(2).
- ³⁷ In the agency’s words: “EPA strives to provide maximum feasible protection against risks to health from HAP[s] by: (1) Protecting the greatest number of persons possible to an individual lifetime cancer risk level of no higher than approximately 1 in 1 million and (2) limiting to no more than 1 in 10,000 the estimated cancer risk to the hypothetical maximum exposed individual.” National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting, 60 Fed. Reg. 32,587, 32,591 (June 23, 1995) (to be codified at 40 C.F.R. pts. 9, 63).
- ³⁸ See, e.g., National Emissions Standards for Hazardous Air Pollutants: Secondary Aluminum Production, 77 Fed. Reg. 8,576, 8,593 (February 14, 2012) (to be codified at 40 C.F.R. pt. 63) (requesting comment on “whether and how best to estimate and evaluate total HAP exposure”).
- ³⁹ See *id.* at 8,595.
- ⁴⁰ See National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry, 75 Fed. Reg. 5,4970, 54,986 (September 9, 2010) (explaining that EPA’s metrics for assessing health risks “do not reflect any potential cumulative or synergistic effects of an individual’s exposure to multiple HAPs or to a combination of HAPs and criteria pollutants”).

⁴¹ See Yang, *supra* note 17, at 610-11.

⁴² See generally George Friedman-Jimenez, M.D., *Achieving Environmental Justice: The Role of Occupational Health*, 21 *FORDHAM URB. L.J.* 605 (1994).

⁴³ This article does not address the question of “geographic implementation bias” whereby environmental protection policies, law enforcement, or other environmental benefits are simply targeted geographically more vigorously at wealthy communities and/or white communities as compared with poor and/or non-white communities. See generally *id.*

⁴⁴ See Alice Kaswan, *Environmental Justice: Bridging the Gap Between Environmental Laws and “Justice”*, 47 *AM. U. L. REV.* 221, 231-32 (1997) (discussing the history of “studies suggesting that minority and low-income communities currently endure undesirable land uses to a greater extent than other communities”).

⁴⁵ See the Resource Conservation and Recovery Act (“RCRA”) 42 U.S.C. §§ 6921-39 (regulating hazardous management and disposal).

⁴⁶ See Kaswan, *supra* note 44, at 269 (explaining that the United States has only a few hazardous waste disposal facilities, which studies show are disproportionately located near low-income or minority populations).

⁴⁷ See Kaswan *supra* note 44, at 232-33 (citing two studies from the 1980s that found correlations between communities’ racial and economic demographics and their proximity to hazardous waste sites).

⁴⁸ See Kaswan *supra* note 44, at 232-33 (“Studies have shown a correlation between race and exposure to air pollution, between race and lead poisoning, between race and pesticides, and between race and exposure to occupational hazards.”); Lazarus, *supra* note 2, at 801-806 (observing that minorities are also more likely to be employed in areas of work that expose them to greater environmental risks, such as pesticide-heavy farming and the steel industry).

⁴⁹ For example, the preservation of wild places is a critically important societal goal for many reasons, not the least of which are habitat protection, ecosystem services, and inter-generational equity. See generally Edith Brown Weiss, *The Planetary Trust: Conservation and Intergenerational Equity*, 11 *ECOLOGICAL L.Q.* 495-582 (1984); Will R. Turner et al., *Global Conservation of Biodiversity and Ecosystem Services*, 57 *BIOSCIENCE* 868, 868 (2007).

⁵⁰ See John Schelhas, *Race, Ethnicity, and Natural Resources in the United States: A Review*, 42 *NAT. RESOURCES J.* 723, 739, 750-54 (2002) (discussing, among other things, discrimination in the conservation movement and the under-participation of minorities in outdoor recreation).

⁵¹ *Id.* at 751 (explaining the marginality hypothesis).

⁵² *Id.*

⁵³ See *id.* at 739 (citing the example of the Southern California Chapter of the Sierra Club, which in the 1950s explicitly excluded minorities from its meetings).

⁵⁴ See Lisa Grow Sun, *Smart Growth in Dumb Places: Sustainability, Disaster, and The Future of the American City*, 2011 *BYU L. REV.* 2157, 2162-66 (2011) (discussing this history and also observing that recently, “mainstream environmentalists and environmental law scholars are engaged in a full-blown love affair with cities”).

⁵⁵ From the perspective of human psychological norms, this should not come as a particular surprise. People disproportionately value their own set of interest and concerns and tend to prioritize based on their own experiences. See generally David M. Messick & Max Bazerman, *Ethical Leadership and the Psychology of Decision Making*, 37 *SLOAN MGMT. REV.* 9 (1996).

⁵⁶ 42 U.S.C. § 4331 (2006) (declaring “it is the continuing policy of the Federal Government” to take the measures necessary “to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans”).

⁵⁷ Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (Feb. 11, 1994) [hereinafter “E.O. 12898”] (ordering, among other things, each federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States”).

⁵⁸ In fact, in 1997, the Council on Environmental Quality (“CEQ”) issued the document “Environmental Justice: Guidance Under the National Environmental Policy Act,” which contemplates some meaningful procedural steps to ensure robust consideration of community concerns during NEPA review. It also provides that “agencies that promulgate or revise regulations, policies, and guidances under NEPA or under any other statutory scheme should consult with CEQ and EPA to ensure that the principles and approaches presented in this guidance are fully incorporated into any new or revised regulations, policies, and guidances.” COUNCIL ON ENVTL. QUALITY, ENVIRONMENTAL JUSTICE: GUIDANCE

UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT 19 (1997), available at <http://ceq.hss.doe.gov/nepa/regs/ej/justice.pdf> (emphasis added).

⁵⁹ See e.g. Kaswan, *supra* note 44, at 238 (“If the government’s remediation decisions are influenced by the demographics of the communities adjoining contaminated areas, the decisionmaking process could be considered unjust.”)

⁶⁰ Charles Davis, *Approaches to the Regulation of Hazardous Wastes*, 18 *ENVTL. L.* 505, 529 (1988). Notably, Robert Percival has observed with respect to the CAA and NEPA, that “both were founded on the conviction that action-forcing legislation was necessary to overcome agency resistance to change.”

Robert V. Percival, *Checks Without Balance: Executive Office Oversight of the Environmental Protection Agency*, 54 *LAW & CONTEMP. PROBS.* 127, 129 (1991). Moreover, in discussing the “tradeoff between politics and expertise as a basis for decision-making” current Justice Kagan observed that one inherent limitation of agency officials is their “insulation from the public, lack of capacity for leadership, and significant resistance to change.” In her view, these attributes “pose significant risks to agency policymaking.” Elena Kagan, *Presidential Administration*, 114 *HARV. L. REV.* 2245-2352-53 (2001).

⁶¹ See Kaswan, *supra* note 44, at 251-52 (“Environmental justice advocates expect that Executive Order 12,898’s two-pronged approach – requiring (1) the compilation and consideration of demographic information, and (2) the improvement of public participation mechanisms – will result in fairer decisionmaking”).

⁶² See Yang, *supra* note 17, at 607 (noting that “[o]ne of the most severe criticisms has been the claim that environmental laws were not merely doing too little for the poor and people of color but that they were in fact the cause of some of the racism and injustice”).

⁶³ See generally RONALD N. JOHNSON & GARY D. LIBECAP, *THE FEDERAL CIVIL SERVICE SYSTEM AND THE PROBLEM OF BUREAUCRACY* 177 (1994).

⁶⁴ See generally Messick & Bazerman, *supra* note 55, at 37 (discussing “concentration bias” and “benefits allocation bias”).

⁶⁵ *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 290 (1986) (J. O’Connor concurring in part and concurring in judgment), quoting S. Rep. No. 92-415, p. 10 (1971) (accompanying the amendments extending coverage of Title VII to the States).

⁶⁶ *Id.*

⁶⁷ Nearly the same observation was made during hearings before the House Legislation and National Security Subcommittee of the Committee on Government Operations. *Environmental Protection Agency Cabinet Elevation—Environmental Equity Issues: Hearing before the Legis. & Nat’l Sec. Subcomm. of the Comm. on Gov’t Operations*, 103rd Cong. 63 (1993) (statement by Richard Moore, coordinator for the Southwest Network for Environmental and Economic Justice), available at http://www26.us.archive.org/stream/environmentalpro00unit/environmentalpro00unit_djvu.txt (“To establish credibility in EPA programs, the Agency must reverse its historical resistance to cultural diversity and integration in the workforce. Congress and EPA should put employees of color in substantive decision-making positions and heed input.”).

⁶⁸ This commentary is not meant to suggest that the perspectives of the American white upper middle class are homogenous. They manifestly are not. However, the range of experiences and perspectives among a broader community of people will necessarily be more expansive.

⁶⁹ See Jennifer K. Brooke & Tom R. Tyler, *Diversity and Corporate Performance: A Review of the Psychological Literature*, 89 *N.C. L. REV.* 715, 726-27 (2011) (arguing that “a diversity of viewpoints can only benefit a company if those viewpoints can be expressed”).

⁷⁰ See Rebecca K. Lee, *Core Diversity*, 19 *TEMP. POL. & CIV. RTS. L. REV.* 477, 488-91 (2010) (explaining that “[d]espite its objectives, surface diversity reinforces asymmetric relationships of power present in broader society and recreated within organizations. The problem with surface diversity speaks to the problem of assimilation ... [and] the phenomenon of ‘covering.’” Lee defines “covering” as “deemphasizing aspects of one’s identity that deviate from the assimilation ideal”); George A. Martinez, *Latinos, Assimilation and the Law: A Philosophical Perspective*, 20 *CHICANO-LATINO L. REV.* 1, 27 (1999) (discussing “the costs to Latinos and other minority groups in attempting to assimilate”).

⁷¹ See Lee, *supra* note 70, at 493-94 (encouraging businesses to adopt the “core diversity” model for achieving inclusive management, which “seeks to apply people’s differences to concretely improve the organization’s practices at its core”). Another aspect of addressing this problem has been the pursuit of a “critical mass” of diverse participants. See Grutter, 539 U.S. 318-19 (asserting that with regard to race, the goal is to achieve “a number that encourages under-represented minorit[ies] ... to participate” without “feel[ing] isolated or like spokespersons for their race”).

⁷² See generally Lazarus, *supra* note 2.

⁷³ Lazarus, *supra* note 2, at 827 (emphasis added).

⁷⁴ Criticism in this regard can be levied equally at government policymakers and at mainstream environmental organizations. This latter group, which has been largely responsible for defining the nature and scope of the environmental debate over the past several decades, is firmly rooted in the classic environmental mindset and has its own set of institutional traditions that have proven amazingly resistant to change.

⁷⁵ *Fisher v. Univ. of Tex.*, 132 S.Ct 1536 (2012) (granting cert again in the context of university admission policies).

⁷⁶ See *Grutter*, 539 U.S. at 328 (“The Law School’s educational judgment that such diversity is essential to its educational mission is one to which we defer. The Law School’s assessment that diversity will, in fact, yield educational benefits is substantiated by respondents and their amici. Our scrutiny of the interest asserted by the Law School is no less strict for taking into account complex educational judgments in an area that lies primarily within the expertise of the university.”); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 314 (1978).

⁷⁷ See *Bakke*, 438 U.S. at 313 (1978); *Grutter*, 539 U.S. at 324.

⁷⁸ Of course the Court has effectively cabined its grant of leave for race-conscious decision-making by relying on the special solicitude afforded universities in the name of “academic freedom.” *Bakke*, 438 U.S. at 319; *Grutter*, 539 U.S. at 324, 329. However the rationale for encouraging diversity in certain public policymaking is implicit in Powell’s rationale in *Bakke*: the “nation’s future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this nation of many peoples.” *Bakke*, 438 U.S. at 313. If such diversity of thought is important in education, should it be considered any less critical to our nation’s future within the institutions that make and implement important public policy?

⁷⁹ Notably, indicators of “sameness” – sometimes described in terms of whether a person is a “good fit” – often emerge as a “factor” in hiring decisions with the effect preventing diversity (with respect to race, gender, disability, or otherwise) and furthering the creep toward institutional homogeneity. See DAVID M. BLANCHARD, REPRESENTING EMPLOYEES IN DISCRIMINATION CASES 4 (2012) (“Millions of Americans have lost their jobs because they were not a ‘good fit’ or because the company wanted to move in a ‘different direction.’”). In such instances ultimately the burden is on the applicant to prove that the employer’s stated reason is a “pretext.” *Id.* at 1.

⁸⁰ See CULTURAL DIVERSITY CHALLENGES FOR EPA: A STRATEGY FOR BOLD ACTION, ENVTL. PROT. AGENCY 3, 13 (1992) (“1992 Diversity Strategy”) (recognizing that “organizations benefit from a broad range of perspectives” which can stimulate “creative thinking, problem solving [and] innovation”).

⁸¹ U.S. EPA, ENVIRONMENTAL EQUITY: REDUCING RISK FOR ALL COMMUNITIES (1992), available at http://www.epa.gov/environmentaljustice/resources/reports/annual-project-reports/reducing_risk_com_voll.pdf.

⁸² *Environmental Justice: Basic Information*, U.S. EPA, <http://www.epa.gov/compliance/ej/basics/ejbackground.html> (last updated May 24, 2012); 58 Fed. Reg. 59,723, 59,723 (Nov. 10, 1993) (EPA Notice of Establishment of the National Environmental Justice Advisory Council and Request for Suggestions of Candidates for Membership).

⁸³ The IWG was also a creature of E.O. 12898. See E.O. 12898, *supra* note 57, at § 1-102 (describing the EJ IWG’s composition and duties, which includes providing guidance to federal agencies “on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations”). See also *Federal Interagency Working Group on Environmental Justice*, U.S. EPA, <http://www.epa.gov/>

<http://www.epa.gov/compliance/ej/interagency/index.html> (last updated Sept. 13, 2012) (stating that the role of the Environmental Justice Interagency Working Group is “to guide, support and enhance federal environmental justice and community-based activities”).

⁸⁴ See Memorandum from Gary Guzy, U.S. EPA General Counsel, regarding EPA Statutory and Regulatory Authorities under which Environmental Justice Issues may be Addressed in Permitting (Dec. 1, 2000), available at http://www.epa.gov/environmentaljustice/resources/policy/ej_permitting_authorities_memo_120100.pdf (reporting that the Environmental Appeals Board (EAB) directly addressed the environmental justice issues in RCRA hazardous waste permits in a 1995 report and found that “‘when the Region has a basis to believe that operation of the facility may have a disproportionate impact on a minority or low-income segment of the affected community, the Region should, as a matter of policy, exercise its discretion to assure early and ongoing opportunities for public involvement in the permitting process.’”).

⁸⁵ Even today, more than 82% of the 2,400 employees comprising the EPA’s senior career staff (grade GS 15) are white (non-Hispanic). See Letter from James H. Johnson, Jr., Chair, National Advisory Council for Environmental Policy and Technology, to Lisa P. Jackson, Administrator, U.S. EPA (Dec. 22, 2011), available at http://www.epa.gov/ocempage/nacept/reports/pdf/2011_1222_nacept_diversity_letter.pdf. One could say this group exhibits all the diversity of Mercy College in Des Moines, Iowa, or St. Olaf College in Northfield, Minnesota. *Mercy College Quick Facts*, MERCY COLLEGE OF HEALTH SCIENCES, <http://www.mchs.edu/quick-facts.cfm> (last visited Nov. 1, 2012); *St. Olaf College 2012 Profile*, ST. OLAF COLLEGE 1, available at <http://www.stolaf.edu/about/StOlafProfile.pdf>. That said, whites made up about 90% of GS 15 employees in 1994 (70% of whom were males). See U.S. EPA, FY 1994 AFFIRMATIVE EMPLOYMENT PROGRAM ACCOMPLISHMENT REPORT AND FY 1995 PLAN UPDATE: STRATEGIC PLAN FOR DIVERSITY 77 (1995), available at <http://www.epa.gov/nsccep/index.html>.

⁸⁶ See generally *Environmental Justice*, U.S. EPA, <http://www.epa.gov/environmentaljustice/index.html> (last updated Oct. 15, 2012) (asserting the EPA’s commitment to promoting environmental justice, which the EPA defines as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies”); and *Strengthening and Revitalizing the EPA’s Civil Rights and Diversity Programs*, U.S. EPA, <http://www.epa.gov/epahome/ocr-statement.htm> (last updated April 24, 2012). While EPA has by no means solved all of its longstanding issues (especially as they relate to the enforcement of Title VI of the Civil Rights Act of 1964), the efforts within the administration have been significant and seemingly genuine.

⁸⁷ Exec. Order No. 13,583, 76 Fed. Reg. 52,847 (Aug. 18, 2011) (establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce, and *inter alia*, acknowledging that “[a] commitment to equal opportunity, diversity, and inclusion is critical for the Federal Government as an employer,” that the federal government has a “special obligation to lead by example,” and that the government “must create a culture that encourages collaboration, flexibility, and fairness to enable individuals to participate to their full potential”).

⁸⁸ Memorandum from Lisa P. Jackson, Administrator, U.S. EPA, to All EPA Employees regarding Seven Priorities for EPA Action, available at <http://blog.epa.gov/administrator/2010/01/12/seven-priorities-for-epas-future/> (emphasis added).

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⁴ *Reproductive Health Analysis of the Toxic Chemicals Safety Act (H.R. 5820)*, REPRODUCTIVE HEALTH TECHNOLOGIES PROJECT 1 (2010) http://www.poder-texas.org/files/TSCA_Reform_Bill.pdf.

⁵ Renee Skelton & Vernice Miller, *The Environmental Justice Movement*, NATIONAL RESOURCE DEFENSE COUNCIL (2006), <http://www.nrdc.org/ej/history/hej.asp>, (last visited Oct. 26, 2012) (CITING *TOXIC WASTES AND RACE IN THE UNITED STATES: A NATIONAL REPORT ON THE RACIAL AND SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES*, COMM’N FOR RACIAL JUSTICE OF THE UNITED CHURCH OF CHRIST (1986), <http://www.ucc.org/about-us/archives/pdfs/toxwrace87.pdf>. This study was updated twenty years later with similar findings. See *TOXIC WASTES AND RACE AT TWENTY 1987-2007: GRASSROOTS STRUGGLES TO DISMANTLE ENVIRONMENTAL RACISM IN THE UNITED STATES*, UNITED CHURCH OF CHRIST

JUSTICE AND WITNESS MINISTRIES (2007), <http://www.ejrc.cau.edu/2007%20UCC%20Executive%20Summary.pdf>.

⁶ LAW STUDENTS FOR REPRODUCTIVE JUSTICE, *SUPRA* NOTE 2 AT 1.

⁷ Chinue Turner Richardson, *Environmental Justice Campaigns Provide Fertile Ground for Joint Efforts With Reproductive Rights Advocates*, 9 GUTTMACHER POL. REV. 14, 17 (2006), available at <http://www.guttmacher.org/pubs/gpr/09/1/gpr090114.pdf>.

⁸ *Why is Reproductive Justice Important to Women of Color?*, SISTER SONG, http://www.sistersong.net/index.php?option=com_content&view=article&id=141&Itemid=81 (last visited Oct. 28, 2012).

⁹ See *Environmental Justice*, ENVTL. PROTECTION AGENCY, <http://www.epa.gov/environmentaljustice/> (last visited Oct. 28, 2012); see also 17 PRINCIPLES OF