

Environmental Justice in EU Environmental Law: A missing element in the Anthropocene?

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1. 'EJ' in a transatlantic perspective
2. A look at substantive EU environmental law
3. A look at procedural EU environmental law
4. A priority for *environmental* law in Europe?
5. Conclusion



1. 'EJ' in a transatlantic perspective

- 'Environmental inequality' in Europe
 - A growing body of research

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Don't blame it on the sunshine! An exploration of the spatial distribution of heat injustice across districts in Antwerp, Belgium

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ABSTRACT

Cities experience temperature differences during heat events, in part modulated by green spaces. In the face of climate change, vegetation and green infrastructure are increasingly important for residents' thermal comfort. Generally, socio-economically marginalised communities are more likely to live in neighbourhoods with less access to green spaces, which can lead to the experience of hotter temperatures and higher incidences of poor health during heat-waves. Building on three bodies of literature – thermal inequity and green space planning, risk and vulnerability, and critical urban theory – an interdisciplinary approach was employed to understand residents' perceptions of heat and vulnerability, and disparities in distribution of green space arising due to urban planning in Antwerp, Belgium. Using census data, a high and low-vulnerability district – Borgerhout and Wilrijk – were selected as case studies. Park audits and interviews were carried out to provide insights into parks' cooling ability and residents' potential responses to extreme heat. Results demonstrated an unequal distribution, access and quality of green spaces between inner-city Borgerhout and suburban Wilrijk, suggesting that lower-income, vulnerable residents are systematically disadvantaged by municipal green space planning. All Borgerhout interviewees described feeling too hot in summer, whilst the opposite held true for interviewees in Wilrijk. Results were situated within Antwerp planning documents to understand how neoliberalism and social exclusion drive and reproduce patterns of injustice, introducing the term "heat injustice" to describe entrenched injustice in green space distribution and corresponding resident perceptions, experiences of and vulnerabilities to heat within the city.

ARTICLE HISTORY

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KEYWORDS

Heat injustice; climate change; vulnerability; socio-economic justice; urban planning; cities

Introduction

Population vulnerability to heat is exacerbated in cities; large urban areas alter heat fluxes between the earth and the atmosphere, due to the high solar reflectivity of human-made surfaces and the waste heat energy generated by high building densities (IPCC 2007; Tursilowati et al. 2012). This

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An environmental justice analysis of British air quality

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Environmental justice in France? A spatio-temporal analysis of incinerator location

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The concept of Environmental Justice (EJ) refers to social inequities in the distribution of environmental risks. This paper presents the first European *spatio-temporal* EJ analysis, focusing on the location of 107 waste incinerators in France since the 1960s to assess potential biases in siting decisions. It uses a spatial econometric analysis that accounts for vulnerable populations at the time unwanted land uses were sited. We find that, after controlling for a town's socio-economic characteristics and the opportunity costs represented by the demand of its neighbours, each additional 1% of a town's population that is foreign-born increased the odds that the town received an incinerator by 29%. Disproportionate siting near concentrations of immigrants thus generates environmental injustice in France.

Keywords: environmental justice; spatial econometric analysis; incinerators; France

1. Introduction

The concept of Environmental Justice (EJ), which emerged in the US in the 1980s and in Europe in the early 2000s, refers to social inequities in the distribution of environmental risks. EJ analyses typically focus on the location of polluting facilities in disadvantaged communities. A common weakness of EJ studies is their failure to control for factors that are unrelated to social disadvantages yet shape site selection

Introduction

Environmental protection and social justice, two of the fundamental tenets of sustainable development, are brought together by 'environmental justice' (EJ), a concept of growing interest to researchers and policymakers. Cutter (1995) defines EJ as equal access to a clean environment and equal protection from possible environmental harm irrespective of race, income, class, or any other differentiating feature of socioeconomic status. Thus EJ research seeks to determine whether marginal and/or minority groups bear a disproportionate burden of environmental problems and whether planning policy



Unequal exposure and unequal impacts: social vulnerability to air pollution, noise and extreme temperatures in Europe

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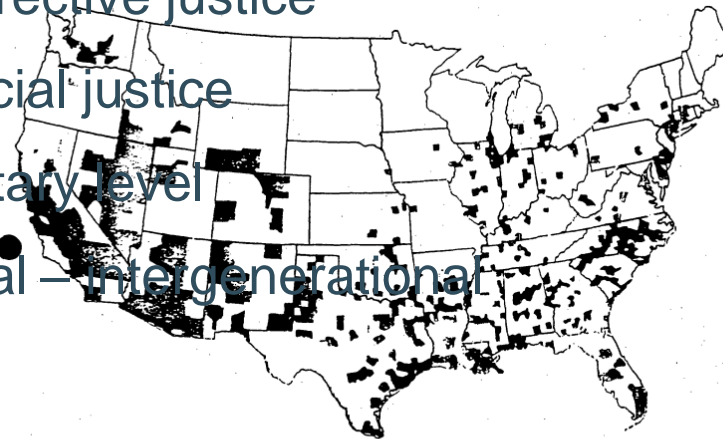
European Environment Agency

1. 'EJ' in a transatlantic perspective

- 'EJ' genesis in the US
- A cross-cutting issue in the Anthropocene
 - Distributive; procedural; corrective justice
 - Recognition; productive; social justice
 - Spatial scale: local to planetary level
 - Time scale: intragenerational – intergenerational
 - Climate and energy justice
- 'EJ' in European law and scholarship

TOXIC WASTES AND RACE In The United States

A National Report On the Racial and Socio-Economic
Characteristics of Communities
with Hazardous Waste Sites



COMMISSION FOR RACIAL JUSTICE
United Church of Christ
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Federal Register
Vol. 59, No. 32
Wednesday, February 16, 1994

Presidential Documents

Title 3—
The President

Executive Order 12898 of February 11, 1994

Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1. Implementation.

1-101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall 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 and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. Creation of an Interagency Working Group on Environmental Justice.

(a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

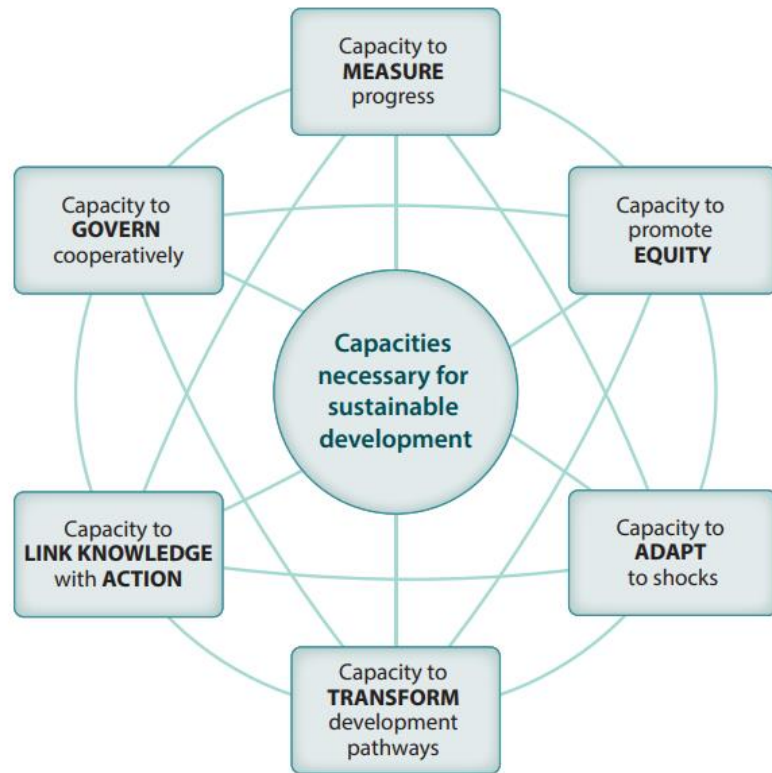
(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other

1. 'EJ' in a transatlantic perspective

- 'EJ' genesis in the US
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 - Climate and energy justice
- 'EJ' in European law and legal scholarship
 - Some exceptions



1. 'EJ' in a transatlantic perspective



Source: Clark & Harley, 'Sustainability Science: Toward a Synthesis' (2020), *Ann.Rev.Env.Res.*

- Importance of EJ: ethics and policy
 - Instances of socio-ecological injustice
 - Challenge of rising (socio-economic) inequality
 - Anthropocene: reduced 'buffer capacity'; growing issue
- Sustainable development:
 - Anthropocentrism of 'Brundtland definition'
 - EJ → social dimension
 - EJ → human and social capital as prerequisites for the ecological and economical dimensions

2. A look at substantive EU environmental law

- Art. 191 TFEU:
 - Formulated in absolute/non-distributive terms ('EJ-blindness')
 - But also a goal of 'sustainable development' (+ 11 TFEU; 3 TEU; 37 Charter)
- General principles: opportunities and risks
- Sectoral environmental law:
 - No social equity considerations (distributive effects)
 - Mostly isolated standards (cumulative effects)
 - Minimum harmonization → EJ through 193 TFEU?
 - Multi-level governance: opportunity and risk



Source: *Het Laatste Nieuws* 10/1/2021 'Kinderen Moretusburg tonen Umicore hoe graag ze in hun wijk willen blijven'

2. A look at substantive EU environmental law

- Example: AAQD 2008/50
 - Local attainment measures often worst options for EJ
 - Obligation to maintain better quality than limit values
- Example: Habitats 92/43 Birds 2009/147
 - Ecocentric ↔ human burdens and benefits
 - Nature compensation effects
- Example: environmental impact assessments
 - Requirement of ‘cumulative effects’
 - Potentially significant tool for EJ → GIS-tools

ARTICLE

ANOTHER GAME CHANGER IN THE MAKING? LESSONS FROM STATES ADVANCING ENVIRONMENTAL JUSTICE THROUGH MAPPING AND CUMULATIVE IMPACT STRATEGIES

by Charles Lee

Charles Lee was the principal author of the landmark report *Toxic Wastes and Race in the United States*.

I. Introduction

During the past several years, I have devoted considerable energy to laying the groundwork for advancing environmental justice (EJ) at the state level.¹ State agencies make most of the decisions under both federal and state environmental laws, and activists and pundits alike have argued for a stronger focus on state EJ efforts.² States can be robust laboratories³ for experimenting with ways to advance EJ,

*Editor's Note: This Article is excerpted from 50 ELR10203 (Mar. 2020). A true pioneer in the arena of environmental justice, Charles Lee was principal author of the landmark report *Toxic Wastes and Race in the United States*, the first national study on the demographics associated with the location of hazardous waste sites, and organized the First National People of Color Environmental Leadership Summit. The author wishes to thank the many individuals who spearheaded the work described in this Article, as well as those who provided helpful comments. The ideas put forth in this Article are the author's own. They do not represent the views of the U.S. Environmental Protection Agency or any agency in the federal government, and no such representation should be inferred.*

and some transformative advances have taken place.⁴ It is critical that those of us working to advance EJ systematically expand the discourse within all levels of government. Under the federalist system of governance in the United States, lessons from one level can cross-fertilize and inform work at other levels. Critical attention to the role of non-governmental players in driving transformative change in government is also necessary.

This Article will focus on lessons learned from state practice in EJ mapping and screening, and their relationship to addressing the central issue of cumulative impacts. Identifying appropriate geographic areas of concern has emerged as a recurring issue because it is a practice essential to federal and state environmental programs. A rich history of approaches and applications in this area is beginning to emerge, and I hope to offer useful lessons for EJ practitioners—including advocates, researchers, policymakers, funders—and staff from community and advocacy organizations, academia, and government, seeking to advance work in their own states.

These lessons are based on work in California and the development, use, and impact of the California Environmental Protection Agency's (CalEPA's) CalEnviroScreen tool. In addition, I discuss the U.S. Environmental Pro-

3. A look at procedural EU environmental law

- Aarhus Convention's 3 pillars
 - *Theoretical* enabler of procedural justice \leftrightarrow *In practice*, unequal opportunities
 - Risk of socially regressive effect: '*path of least resistance*'
 - \rightarrow Underlying goal(s) of European environmental democracy?

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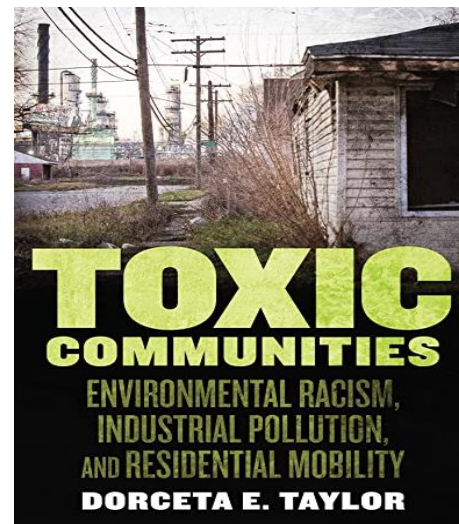
Environmental Justice
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Key Words
disproportionate impact, exposure, inequality, mobilization, pollution, race

Abstract
The article reviews two decades of scholars' claims that exposures to pollution and other environmental risks are unequally distributed by race and class, examines case studies of environmental justice social movements and the history and politics of environmental justice policy making in the United States, and describes the emerging issue of global climate justice. The authors engage the contentious literature on how to quantitatively measure and document environmental injustice, especially the complex problems of having data of very different types and areas (such as zip codes, census tracts, or concentric circles) around polluting facilities or exposed populations. Also considered is the value of perspectives from critical race theory and ethnic studies for making sense of these social phenomena. The article concludes with a discussion of the globalization of the environmental justice movement, discourse, and issues, as well as with some policy implications of finding and understanding environmental justice. One unique feature of this review is its breadth and diversity, given the different approaches taken by the three coauthors.

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Environmental Research Letters

LETTER

Which came first, people or pollution? Assessing the disparate siting and post-siting demographic change hypotheses of environmental injustice

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Keywords: environmental justice, environmental racism, environmental disparities, racial disparities, longitudinal studies, environmental justice theory, environmental justice evidence
Supplementary material for this article is available online

Abstract
Although a large body of quantitative environmental justice research exists, only a handful of studies have examined the processes by which racial and socioeconomic disparities in the location of polluting industrial facilities can occur. These studies have had mixed results, we contend, principally because of methodological differences, that is, the use of the unit-hazard coincidence method as compared to distance-based methods. This study is the first national-level environmental justice study to conduct longitudinal analyses using distance-based methods. Our purposes are to: (1) determine whether disparate siting, post-siting demographic change, or a combination of the two created present-day disparities; (2) test related explanations; and (3) determine whether the application of distance-based methods helps resolve the inconsistent findings of previous research. We used a national database of commercial hazardous waste facilities sited from 1966 to 1995 and examined the demographic composition of host neighborhoods around the time of siting and demographic changes that occurred after siting. We found strong evidence of disparate siting for facilities sited in all time periods. Although we found some evidence of post-siting demographic changes, they were mostly a

4. A priority for *environmental law* in Europe?

- ↔ lower socio-economic inequality

Alternative instruments for EJ:

- taxation; social security; healthcare; education; housing policy; ...
- private law: anti-discrimination law; fundamental rights; criminal and local administrative law, ...

Does environmental law need to be focused on distributive effects and social justice?

- Cumulative effects, across projects and programs
- Inefficiency of counteracting legal institutions and policy
- → need for better integrated, holistic governance of complex SES



5. Conclusion



Source: <<https://stock.adobe.com/>>

- Environmental injustice in EU = real and pervasive
- Current EU EL = ‘EJ-blind’
 - Indirect contribution: absolute, sector-specific standards
 - No distributive or cross-sectoral cumulative effects
- Need for ‘EJ-reflex’ in substantive EU EL
 - EIA; sectoral policy implementation
 - ‘Recalibration’ rather than ‘revolution’
- Avoiding Aarhus’ current socially regressive effect

Let's discuss!

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Partially based on E. Van Gool, 'Searching for 'Environmental Justice' in EU Environmental Law',
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