

# INTRODUCTION: ENVIRONMENTAL JUSTICE—ONCE A FOOTNOTE, NOW A HEADLINE

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Four decades ago, the concept of environmental justice was a mere footnote. Before the environmental justice movement burst onto the national scene, it was commonplace and a generally accepted norm by society, government, and industry that steering pollution to poor and people-of-color communities and away from affluent and white communities was no big deal.<sup>1</sup>

Environmental pollution in poor and people-of-color communities was not even news.<sup>2</sup> This dominant lens of viewing pollution as compatible with people of color only began to change after people of color waged a frontal assault on environmental racism and began demanding environmental justice for all.<sup>3</sup> Today, environmental justice is a headline—registering on the radar of the

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1. See generally UNEQUAL PROTECTION: ENVIRONMENTAL JUSTICE AND COMMUNITIES OF COLOR (Robert D. Bullard ed., 1994).
2. See generally THE QUEST FOR ENVIRONMENTAL JUSTICE: HUMAN RIGHTS AND THE POLITICS OF POLLUTION (Robert D. Bullard ed., 2005).
3. See generally Robert D. Bullard & Beverly H. Wright, *Environmental Justice for All: Community Perspectives on Health and Research*, 9 TOXICOLOGY & INDUS. HEALTH 821 (1993); Robert D. Bullard, *Environmental Justice for All*, in G. TYLER MILLER, JR., *LIVING IN THE ENVIRONMENT* 556 (9th ed. 1996); Robert D. Bullard, *Grassroots Flowering: The Environmental Justice Movement Comes of Age*, 16 AMICUS J. 32 (1994); Robert D. Bullard, *Overcoming Racism in Environmental Decisionmaking*, 36 ENVIRONMENT 10 (1994); Robert D. Bullard, *Environmental Dispute Resolution in Communities of Color*, in SCIENCE, TECHNOLOGY, AND THE ENVIRONMENT 287 (James Rodger Fleming & Henry A. Gemery eds., 1994); Robert D. Bullard, *Unequal Environmental Protection: Incorporating Environmental Justice in Decision Making*, in WORST THINGS FIRST? THE DEBATE OVER RISK-BASED NATIONAL ENVIRONMENTAL PRIORITIES 237 (Adam M. Finkel & Dominic Golding eds., 1994); Robert D. Bullard, *The Legacy of American Apartheid and Environmental Racism*, 9 ST. JOHN’S U. J.L. & COMMENT. 445 (1994); Robert D. Bullard, *Environmental Racism and ‘Invisible’ Communities*, 96 W. VA. L. REV. 1037 (1994); Robert D. Bullard, *Environmental Justice for All: It’s the Right Thing to Do*, 9 J. ENV’T. L. & LITIG. 281 (1994); Robert D. Bullard, *The Legacy of Environmental Racism*, in BETH B. HESS, ELIZABETH W. MARKSON & PETER J. STEIN, *SOCIOLOGY* 445 (5th ed. 1996); Robert D. Bullard, *Dismantling Environmental Racism in the Policy Arena: The Role of Collaborative Social Research*, in PHILIP NYDEN ET AL., *BUILDING COMMUNITY: SOCIAL SCIENCE IN ACTION* 67 (1997); Robert D. Bullard, *Building Just, Safe, and Healthy Communities*, 12 TUL. ENV’T J. 373 (1999); Robert D. Bullard, *Leveling the Playing Field Through Environmental Justice*, 23 VT. L. REV. 454 (1999); Robert D. Bullard & Glenn S. Johnson, *Environmental Justice: Grassroots Activism and Its Impact on Public Policy Decision Making*, 56 J. SOC. ISSUES 555 (2000); Eileen Maura McGurty, *Warren County, NC, and the Emergence of the Environmental Justice Movement: Unlikely Coalitions and Shared Meanings in Local Collective Action*, 13 SOC’Y & NAT. RES. 373 (2000).

media; green groups; civil rights, human rights and racial justice organizations; social media networks; academic consortia; educational institutions; and at least one of the major political parties.

Environmental justice did not originate with the Environmental Protection Agency (“EPA”) or government but grew out of local grassroots community struggles. Environmental justice embraces the principle that all people and communities are entitled to equal protection of environmental, energy, health, employment, education, housing, transportation, and civil rights laws and regulation.

It has been forty-one years since the 1979 *Bean v. Southwestern Waste Management Corp.*<sup>4</sup> lawsuit challenged the siting of a solid waste facility in Houston, Texas, using civil rights law.<sup>5</sup> Although the Black residents of the suburban, middle-income Northwood Manor neighborhood and their attorney, Linda McKeever Bullard, lost the lawsuit, the case laid a legal foundation for challenging environmental racism. In addition, the 1979 Houston waste study helped usher in a new field of sociological inquiry around environmental justice and environmental racism.<sup>6</sup>

The Houston waste struggle occurred three years before the Environmental Justice Movement was catapulted into the national limelight in the rural and mostly Black Warren County, North Carolina—again over waste dumping. This time, instead of household waste, it was toxic waste heading to a landfill. The toxic landfill ignited protests led by Reverend Benjamin F. Chavis and others, resulting in over 500 arrests. The protests also provided the impetus for the 1983 U.S. General Accounting Office (“GAO”)—now Government Accountability Office—study of hazardous waste dumping in EPA Region 4, which covers eight states in the South.<sup>7</sup> The GAO found that three of the four off-site, commercial hazardous waste landfills in the region were located in majority-Black communities<sup>8</sup>—even though Blacks made up far less than a majority of the population in those states.<sup>9</sup>

In 1987, the United Church of Christ Commission for Racial Justice produced its landmark report *Toxic Wastes and Race in the United States*, the first

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4. 482 F. Supp. 673 (S.D. Tex. 1979).

5. *Id.* at 675.

6. See generally Robert D. Bullard, *Solid Waste Sites and the Black Houston Community*, 53 SOCIO. INQUIRY 273 (1983); ROBERT D. BULLARD, *INVISIBLE HOUSTON: THE BLACK EXPERIENCE IN BOOM AND BUST* (1987).

7. U.S. GEN. ACCT. OFF., GAO/RCED-83-168, *SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES 2* (1983), <https://perma.cc/8SLR-55ZK>.

8. *Id.* at 1, 3.

9. See *id.* app. at 1, 3, 5, 7.

national study to correlate waste facility sites and demographic characteristics.<sup>10</sup> Race was the most potent variable in predicting where these facilities were located—more powerful than poverty, land values, or home ownership.<sup>11</sup>

A steady stream of empirical research and studies started to emerge in the 1990s documenting what most environmentally impacted residents already knew—poor people and people of color were disproportionately getting dumped on and poisoned in their homes, neighborhoods, jobs, playgrounds, and schools. In 1990, *Dumping in Dixie: Race, Class and Environmental Quality* documented that environmental vulnerability mapped closely with Jim Crow segregation, racial redlining and discriminatory zoning, and land use practices.<sup>12</sup> The book became the first environmental justice textbook, although it was not intended for that purpose.

A year later in 1991, the First National People of Color Environmental Leadership Summit was convened in Washington, DC.<sup>13</sup> The Summit broadened the Environmental Justice Movement beyond its early waste and anti-toxics focus to include issues of public health, worker safety, land use, transportation, housing, energy, food and water security, community empowerment, sustainability, disaster, climate and resilience.<sup>14</sup>

In response to intense public outcry and mounting scientific evidence, President Bill Clinton issued Executive Order 12,898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” on February 11, 1994.<sup>15</sup> This Order attempted to address environmental injustice within existing federal laws and regulations.

Since the 1990s, the United States has made major strides toward achieving environmental justice. Clearly, the 2000s are different from the 1980s and 1990s. Nevertheless, it is incredible to see how much has not changed over these many years. Despite the progress made, all American communities are still not created equal. We have made incremental “baby steps” instead of giant leaps toward systemic and transformative change. To make this point, it is worth presenting some of the environmental disparities and racial inequities that persist today.

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10. UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE IN THE UNITED STATES, at ix (1987), <https://perma.cc/227B-HUSW>.

11. *See id.* at xiii.

12. *See generally* ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS AND ENVIRONMENTAL QUALITY (1990).

13. *See The First National People of Color Environmental Leadership Summit: Principles of Environmental Justice*, 2 RACE, POVERTY & ENV'T 31, 32 (1991).

14. *See generally id.*

15. Exec. Order No. 12,898, 3 C.F.R. 859 (1995), *reprinted as amended in* 42 U.S.C. § 4321.

Environmental vulnerability still maps closely with race. Many of the nation's environmental disparities have their roots in systemic racism.<sup>16</sup> Much of America still has the “wrong complexion for protection,” placing Black Americans, others of color, and Indigenous people at elevated risks from industrial pollution, natural- and human-made disasters, and pandemics.<sup>17</sup>

People of color are overrepresented in populations who live within a one-mile radius (49.8%) and a three-mile radius (49.4%) of the nation's 1,857 Superfund sites<sup>18</sup>—an increase from previous years.<sup>19</sup> The percentage of Black Americans in deadly “fence-line zones” near chemical plants is 75% greater than for the nation as a whole, and the percentage of Latinos is 60% greater.<sup>20</sup> Even money does not insulate Black communities from elevated pollution assaults. Black households with incomes between \$50,000 and \$60,000 live in neighborhoods that are more polluted than neighborhoods in which poor white households with incomes below \$10,000 live.<sup>21</sup>

University of Minnesota researchers found that Black Americans and other people of color breathe 38% more polluted air than whites in terms of residential outdoor nitrogen dioxide.<sup>22</sup> Black Americans and Latinos bear a disproportionate burden of pollution caused mainly by whites: Black Americans and Latinos breathe in 56% and 63%, respectively, more pollution than they generate.<sup>23</sup> Whites, on the other hand, breathe 17% less air pollution than they cause.<sup>24</sup>

Recent studies show that negative impacts associated with COVID-19 map closely with race, class, and environmental disparities. Harvard researchers found persons living in areas with high levels of fine particulate matter (i.e., PM<sub>2.5</sub>) are significantly more likely to die from COVID-19 than persons in a

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16. Dena Takruri, AJ+, *What is Environmental Racism?*, YOUTUBE (Jan. 29, 2016), <https://perma.cc/4N7K-VAXD>.

17. See generally ROBERT D. BULLARD & BEVERLY WRIGHT, *THE WRONG COMPLEXION FOR PROTECTION* (2012).

18. See EPA, *POPULATION SURROUNDING 1,857 SUPERFUND REMEDIAL SITES 1* (2020), <https://perma.cc/U8K9-4WYV>.

19. See *Environmental Justice for All Act: Hearing on H.R. 5986 Before the H. Nat. Res. Comm.*, 116th Cong. (2020) (statement of Robert D. Bullard, professor at Texas Southern University).

20. ENV'T JUST. & HEALTH ALL. FOR CHEM. POL'Y REFORM, *WHO'S IN DANGER? RACE, POVERTY, AND CHEMICAL DISASTERS* 3 (2014), <https://perma.cc/22DY-ZD9W>.

21. See Liam Downey & Brian Hawkins, *Race, Income, and Environmental Inequality in the United States*, 51 SOCIO. PERSPS. 759, 768 (2008).

22. Lara P. Clark, Dylan B. Millet & Julian D. Marshall, *National Patterns in Environmental Injustice and Inequality: Outdoor NO<sub>2</sub> Air Pollution in the United States*, 9 PLOS ONE e94431, at 1 (2014).

23. Christopher W. Tessum et al., *Inequity in Consumption of Goods and Services Adds to Racial-Ethnic Disparities in Air Pollution Exposure*, 116 PROC. NAT'L ACAD. SCIS. 6001, 6001 (2019).

24. *Id.*

region with one unit less of fine particulate pollution.<sup>25</sup> Black communities are at greater risk.<sup>26</sup> Another study confirms this and connects COVID-19 risk to racial redlining, practiced against Black Americans in the 1920s and 1930s.<sup>27</sup> Historically segregated Black and Brown communities have greater neighborhood prevalence of COVID-19 risk factors, such as socioeconomic disadvantage and chronic health conditions.<sup>28</sup>

Racial redlining has also shown up in urban heat island<sup>29</sup> and flooding disparities<sup>30</sup> in the 2020s. Black neighborhoods that were redlined are nearly 5 degrees Fahrenheit warmer on average than non-redlined neighborhoods—and in some cities the difference can reach up to 12.8 degrees Fahrenheit.<sup>31</sup> The urban heat island effect is caused by “replac[ing] natural land cover with dense concentrations of pavement, buildings, and other surfaces that absorb and retain heat.”<sup>32</sup> Black neighborhoods have less of that natural land cover and less access to nature in general. Nearly three-quarters of people-of-color families with children live in “nature-deprived” neighborhoods.<sup>33</sup>

Redlined homes face higher flooding risks.<sup>34</sup> Homes in people-of-color, redlined neighborhoods are 25% more likely to be flooded than non-redlined homes.<sup>35</sup> Not only are the homes more likely to be flooded, but they are also likely to suffer the greatest damage when flooding occurs.<sup>36</sup> Climate change will

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25. Xiao Wu et al., *Air Pollution and COVID-19 Mortality in the United States: Strengths and Limitations of an Ecological Regression Analysis*, 6 SCI. ADVANCES eabd4049, at 1 (2020).

26. *Id.* at 2.

27. JASON RICHARDSON ET AL., NAT’L CMTY. REINVESTMENT COAL., REDLINING AND NEIGHBORHOOD HEALTH (2020), <https://perma.cc/6BG8-ZG8H>.

28. *See id.*; Press Release, Nat’l Cmty. Reinvestment Coal., Study: More Chronic Disease, Shorter Lifespans and Greater Risk Factors for COVID-19 in Neighborhoods that Were Redlined 80 Years Ago (Sept. 10, 2020), <https://perma.cc/3YTG-32EN>.

29. *See* Brad Plumer & Nadja Popovich, *How Decades of Racist Housing Policy Left Neighborhoods Sweltering*, N.Y. TIMES (Aug. 24, 2020), <https://perma.cc/HR77-AMAE>.

30. *See infra* notes 34–36 and accompanying text.

31. Jeremy S. Hoffman, Vivek Shandas & Nicolas Pendleton, *The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 U.S. Urban Areas*, 8 CLIMATE 6 (2020).

32. *Reduce Urban Heat Island Effect*, EPA, <https://perma.cc/4SAG-JXTX>.

33. *See* Alejandra Borunda, *How ‘Nature Deprived’ Neighborhoods Impact the Health of People of Color*, NAT’L GEOGRAPHIC SCI. (July 29, 2020), <https://perma.cc/8HCC-X3UM> (citing VINCENT A. LANDAU, MEREDITH L. MCCLURE & BRETT G. DICKSON, CONSERVATION SCI. PARTNERS, ANALYSIS OF THE DISPARITIES IN NATURE LOSS AND ACCESS TO NATURE (2020), <https://perma.cc/4NGD-4EZW>).

34. Lily Katz, *A Racist Past, a Flooded Future: Formerly Redlined Areas Have \$107 Billion Worth of Homes Facing High Flood Risk—25% More Than Non-Redlined Areas*, REDFIN (Mar. 14, 2021), <https://perma.cc/W7PP-9KH5>.

35. *See id.*

36. *See id.* (“History has shown that when storms hit, communities of color often suffer the most.”).

exacerbate these existing inequalities and worsen vulnerabilities of already-marginalized populations.

The Environmental Justice Movement is much stronger in 2021 because of new and invigorated rallying calls for racial justice with the rise of Black Lives Matter, after the police killings of George Floyd, Breonna Taylor, and countless other Black people, and the intergenerational protests during the Summer of 2020. The protests were about justice: criminal justice, environmental justice, health justice, economic justice, energy justice, food and water justice, transportation justice—all viewed through an overarching racial justice lens. These justice issues were on the ballot in November 2020 and can be seen in the new Biden-Harris administration's policies, priorities, and appointments.<sup>37</sup> Environmental justice has been given a new sense of urgency and visibility at the highest level of government. Time will tell if transformative change will follow.

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37. See Renee Cho, *A Guide to Biden Administration's All-of-Government Approach to Environmental Justice*, COLUM. CLIMATE SCH.: STATE OF THE PLANET (Mar. 4, 2021), <https://perma.cc/D4HA-PKD3>.