

Three Aspects of the American Context: Private Property, States' Rights, and Environmental Justice

Private Property

One of the most basic tenets of American society is the primacy of private property. In the early colonies, European settlers turned on end their forefathers' notions of feudal rights and the commons, and developed a nation in which even the poor (as long as they were free) could own land. Americans extended this notion repeatedly throughout our history, offering intrepid settlers free land in the West if only they would take it from the Indians who held it in common and "improve it"—settle it, farm it, and imbue it with a White European notion of property. Owning a home and a bit of land is still "the American dream," and understanding that is crucial to understanding citizens' relationships to the land.

As a result, Americans consider the ability to possess and use private property a constitutional right, wherein the property owner is allowed to develop or use his or her property for private gain with minimal attention to the public good. While many private property owners are stewards of their land and resources, the tendency to commodify aspects of the environment and equate value with monetary profit supports an instrumental relationship with the environment.

The earliest U.S. attempts to address the problem of environmental destruction on private property were not aimed at changing the fundamental relationship between property owners and the environment but at setting aside land and resources specifically for public protection. Local governments generally were left to establish zoning and nuisance laws to regulate activities on private lands, often in the face of powerful anti-regulatory interests. Recent federal environmental policies, ranging from wetlands protection laws to Community Right to Know laws that require companies to report environmental releases from their facilities, have attempted to exert control over environmentally damaging activities on private lands.

As the Louisiana case demonstrates, however, resistance to such policies is great. There, the importance of the oil and gas industry and its infrastructure meant that pro-producer policies overwhelmed support for lower prices. Because of the rapidly revolving door between officials of state natural resource and conservation departments and oil and gas executives, "corruption, conflict of interest, and inefficiency on the part of oil conservation agencies tainted their desire and ability to protect basic property rights" or enforce regulations.¹

In the West, too, notions of private property rights influence American attitudes toward land use and provide tremendous hurdles to those who would challenge urban development. In the nineteenth century, officials and settlers alike saw Western development as necessary to tame a vast, empty, and wild landscape, and many leaders and residents today persist in the belief that growth can continue indefinitely. This frontier ideology continues to persist in the minds and hearts of citizens across the United States. Indeed, the federal government has subsidized huge water and transportation projects in the West. Many newcomers have arrived after fleeing crowding and government regulation in other parts of the country. Consequently, the region has generally lagged behind the rest of the United States in adopting long-term land use plans and policies, despite evidence that continued environmental degradation in both urban

and rural areas has been exacerbated by the lack of such plans. Successful policies have been carefully crafted to reflect the many, often-conflicting values that Americans hold about land use, especially in the West.

Though gains were made in the 1960s and 1970s, it was not long before planning efforts began to face serious backlash. Public policies that require habitat protection, and therefore restrict what can be done on private property (such as the Endangered Species Act), have come under fire for effectively taking the land by limiting its economic value. More recent efforts to establish western national monuments have been criticized for taking land and resources out of the private domain. According to William Riebsame, the "great tension" in western land use planning

lies between private property rights and public values—and the government imposition of those values... Comprehensive land use planning to protect and enhance public values (a progressive era notion) strengthened in the U.S. right into the 1970s. Many analysts now see it at least seriously challenged, if not weakened, by the rise of a modern property rights movement and the "takings" issue.²

States' Rights

Closely related to notions of private property is the ideology of states' rights, which holds enormous power in both regions studied here. From the Declaration of Independence to the present day, there has been uncertainty and even violent disagreement about the right of the federal government to impose policy on the states, and those in favor of states' rights have held sway at various points in our history. Even though the doctrine is tainted for many Americans by its link to slavery and segregation, it is still championed by many of the country's most powerful politicians. This ideology is crucial to citizens' relationship to the environment, for it affects regulations of hazardous material and the amount of money devoted to environmental projects and policies.

Environmental Justice

State control of these areas also limits the federal government's ability to impose a uniform notion of environmental justice—with the result that some communities get oilfield waste dumped in their neighborhoods and others get "state of the art" sustainable housing. Today, American citizens and the media are acutely aware of the unequal distribution of environmental hazards. It was not always so, however; it took years after the emergence of the environmental movement for the government to realize the importance of environmental justice. EPA's 1978 brochure, *Our Common Concern*, was an early federal acknowledgement of the disproportionate impact of pollution on people of color and included comments by civil rights activists on the importance of environmental issues to blacks.³ In the 1980s, environmental justice emerged as a distinct political concept in the United States, and in the following decade it gained political authority. Central to the environmental justice movement have been efforts to block or close facilities and to seek retribution through the courts.

In the 1990s, environmental justice in the United States remained largely an issue of reacting to the siting and operation of facilities that produce, use, treat, or dispose of hazardous materials.⁴ At the same time, its advocates began to speak up for a more

proactive approach to justice, insisting on the “right of all individuals to be protected from environmental degradation” and calling for the “elimination of the threat before harm occurs.”⁵ This shift in emphasis was a step in the right direction. It still failed in one respect, however; it did not take into account the fact that environmental injustice is not only a question of who suffers from the bad environmental decisions—but also who benefits.

Another future challenge for environmental justice advocates is to amend the standards of proof required to seek redress in courts. Following the crisis in Grand Bois, for example, residents set themselves to gathering scientific data in an effort to demonstrate harm; but because the determination of causality in studies of contamination is so difficult, the court deemed the residents’ new scientific knowledge insufficiently rigorous.

¹ Robert L. Bradley, *Oil, Gas & Government: The U.S. Experience*. Cato Institute. (Lanham, MD: Rowman & Littlefield, 1996), 215.

² William Riebsame, with J. Wescoat and P. Morrisette, “Western Land Use Trends and Policy: Implications for Water Resources,” Western Water Policy Review Advisory Commission, 1997, 9.

³ Cited in Ferris, Deoehn, and David Hahn-Baker, “Environmentalists and Environmental Justice Policy.” In *Environmental Justice: Issues, Policies, and Solutions*, edited by Bunyan Bryant (Washington, D.C.: Island Press, 1995), 66-71.

⁴ For more details see Diane Austin, “Environmental Justice in the United States: Case Studies in Alabama and Louisiana,” Paper prepared for the Workshop on Public Philosophy, Environment, and Social Justice, Carnegie Council on Ethics and International Affairs, New York, 21-22 October 1999. With the assistance of Tom McGuire, Helena Rincon, Rylan Higgins, and Allison Davis. Tucson: Bureau of Applied Research in Anthropology, University of Arizona.

⁵ See Robert D. Bullard, “Environmental Justice in the Twenty-First Century,” available at www.ejrc.cau.edu/ejinthe21century.htm, downloaded 25 February 2004.

This document is part of the web companion to *Forging Environmentalism* (M.E. Sharpe 2006) and corresponds to chapter 4 “Two Faces of American Environmentalism: The Quest for Justice in Southern Louisiana and Sustainability in the Sonoran Desert.”