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**Environmental Reparations for Sustainability and Justice:
Why We Cannot Wait
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Environmental Reparations for Sustainability and Justice: Why We Cannot Wait

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Abstract

What are the major EJ issues involved in your selected topic?

Environmental Justice communities are the targets of illegal dumping, expanding Brownfields, bio accumulating emissions, dangerous transportation practices, and pollution. These conditions are the direct result of development policies, land use practices, and racism that has toxified the environment in which EJ communities live, work, learn, and play. In addition, an anti urban bias has infected the main stream environmental movement. This trend shows no likelihood of decreasing, and the combined effect is to leave urban land out of planning for environmental restoration, and to leave environmental justice communities on land that is not capable of supporting clean, healthy communities.

What existing laws, regulations, or policies are currently in place to address the issues?

Urban residents, and residents of EJ communities are seeking a voice in public policy forums including the public participation processes of land use decision making, administrative intervention through complaint processes such as the Title VI of the Environmental Protection Agency, and litigation under the National Environmental Policy Act.

How effective is the current environmental protection apparatus in addressing these issues and concerns?

These are procedural justice remedies at best, and they offer very little remediation to the land itself. In addition, community residents invest enormous amounts of time and energy in these procedural battles, with few demonstrable environmental benefits achieved in terms of restoration, clean up and revitalization of the land itself.

What new (or revised) policies, regulations, or laws would you recommend to address these issues?

We propose Environmental Reparation Districts, administered by Environmental Review Boards from the community. Community-based Environmental Preservation Boards would give environmental preservation control to neighborhoods. They would also lay the foundation for citizen environmental monitoring, necessary for establishing the environmental baselines to begin policies of urban sustainability.

What action plans and resources (i.e., financial, institutional, organizational, et al) would you recommend addressing these issues?

We propose Environmental Reparation Districts, administered by Environmental Review Boards from the community. These would be modeled on the same legal foundation as Historic Districts. State delegation of zoning power to municipalities usually allows for Preservation, historic and environmental. Zoning is local power, and has allowed for the protection of historic districts in order to preserve culture, design, and place. These are administered by Architectural Review Boards, which control all aspects of structure and design. Planning Commissions, residents, EJ groups, and Environmental Organizations need training and capacity building on land use law and policy. Objective standards and clear processes will need to be established. Current state and local “smart growth” land use initiatives will need to develop environmental benefits for cities in order to develop the regional structure necessary for sustainability.

The Case for Environmental Reparations: Sustainability and Justice

The general arguments for reparations for African Americans are well developed. The shocking gaps in health, income, education, justice and housing that remain between African Americans, and whites are linked explicitly to

slavery. The fact that these gaps remain constant over time, pervasive, predictable, and lethal despite the expressed good intentions of individuals within these systems is evidence that the active cause is structural racism, so pervasive that it has become normal regardless of professed values.

Regardless of political and legal debates about internationality, racism, and public policy, or the scientific debates about accumulating toxic exposures, the reality of burdened land and burdened people is rapidly overcoming the flimsy barriers of privilege, private property, and class to threaten the life systems of which all living things depend. Centuries of racist, exploitive public policy externalized the detritus of industrial development in places defined by the race and income of the people living there. But Nature is not interested in the politics of externalities, nor deceived by the rhetoric of intentions. The exposures and injuries are reflected in the watershed, air sheds, and lands that connect entire bio regions. They are reflected in the mother's milk and babies' bones of all humanity now.

The urgency of the need for repair to the most impacted places on earth is based not simply upon claims for justice. It is based upon recognition of the common dependence of all living things on heavily burdened living systems. It would be right to do what is just, and then find ways to make that sustainable. But it is now critical that we do what is just in the name of what is sustainable. Whether accompanied by an apology, or acknowledgment of harm, the urgency of the need for environmental reparations in urban communities of color is too clear for compromise. The benefits of environmental reparations to these areas would have the effect of revitalizing the living systems on which all living things in these bioregions depend.

Environmental Preservation Districts

We propose Environmental Preservation Districts as reparations.¹ Land, and not capital, as reparations is not a new idea, as former colonies have recently reasserted these types of claims at the World Conference Against Racism.² Environmental justice reparations mean the un-compromised clean up of air, water sheds, and land poisoned by industrial users, and externalized onto politically and economically stigmatized communities.

Environmental reparations to some communities may be environmental reparations for an entire bio region in some cases. For example, in a community with a history of dumping toxic and hazardous chemicals in an African American community, the location of those sites is a key importance to a regional water quality program, especially if the wastes have migrated into the water table. Making environmental reparations to that African American community for waste site detection, clean up, adaptive reuse, and environmental monitoring will benefit the water quality of the region. Although the courts tend to dismiss environmental justice claims or deny them to citizens, they do become more engaged when the land use problems become systemic. Even without current examination of land use under smart growth or sustainability these systemic land use problems are only judicially recognized when tied to explicitly racist land use planning. For example, in the case of

Cadillac Heights, the African American community sued the City of Dallas, Texas sued the City of Dallas for denying them equal protection and access to flood protection and other municipal services, and the unequal enforcement of zoning and environmental laws. The community won the decision in *Miller, et al., v. City of Dallas*, 2002 U.S. Dist. LEXIS 2341 (Feb. 14, 2002) largely due to a showing of the discriminatory effects of the City's policies and decisions, and its discriminatory intent.

Cadillac Heights is on a flood plain near the Trinity River. The Trinity River is on flat land. When it rains, air borne particulate material, runoff from roads and farms, and antiquated sewer systems all obey the law of gravity and accumulate in the river. When the river floods it brings the risk of all these accumulated wastes, emissions, and industrial by products with it. Ninety-eight per cent of the population is African American and other racial and ethnic minorities; ½ the population is poor. Much of the actual land is zoned for heavy industrial uses, including two lead smelting facilities, the City of Dallas' Central Wastewater Treatment Plant, meat packing and animal rendering plants, and illegal landfills.³ But the Trinity River floods, and when it does, the floods bring the toxic waste to all communities in the flood plain. It is a natural disaster and a systemic land use concern.

In 1945, Dallas decided that the high risk of flooding made residential development in this flood plain too dangerous. Nevertheless, in 1947, Dallas designated Cadillac Heights as a "Negro Subdivision Development." As predicted, the

river did flood, flooding Cadillac Heights as well as other communities. Dallas built a levee system to protect these other communities and specifically excluded racial minority neighborhoods from the levee system. This levee system increased flooding to the Cadillac Heights subdivision. In 1983, Dallas refused a proposal from the U.S. Army to jointly fund a project to alleviate flooding there. As late as 1991, Dallas developed a levee plan for the area, but built only enough to protect the City of Dallas' Central Wastewater Treatment Plant. As the Court stated:

[A]fter an initial, intentional failure to protect minority neighborhoods from flooding, the City has repeatedly refused to protect Cadillac Height, despite the fact that its recent decisions do not cite race as a factor.⁴

The court held that municipal actions of which the plaintiffs complained reflected discriminatory intent and results.

Preservation Districts themselves are not a radical concept, and an entire legal and policy framework at the local, state, and federal level exists to implement them. Environmental Preservation Districts would be modeled on current Historic District land use ordinances. There are more than 35,000 historic listings on the US National Register of Historic Places. Federal law requires federal agencies to take historic resources into account in Environmental Impact Statements. Historic District programs are widespread at the state and local level. The fifth amendment to the US constitution allows for the exercise of the power of eminent domain by the state if done for a public purpose and fair compensation is paid to the property owner. Most cities prefer not to pay for these takings of private property, and develop land use regulations to avoid takings of private property. Historic Districts highlight the edge of land use actions that are not quite "takings," but nonetheless greatly restrict the use of private property. Historic Districts create rigid criteria for the built environment.

The basic constitutional underpinning to the legality of historic districts is the concept of average reciprocity of property values. All landowners in a given Historic District are burdened by the restrictive nature of the Historic District, but all also benefit from the protection of property values the Historic District ordinance provides. This is also a foundation of zoning, and allows for the creation of wealth over time by private property owners. Again, the purposes and goals that animate the land use planning processes help preserve the value of private property. Environmental Preservation Districts would ecologically and culturally restore ecosystems and communities, and the purposes and goals that would animate these processes would be community inclusion and precautionary development. For us to be "sustainable," our legally articulated social policies with respect to our relation with nature in serving human interests and ecosystem needs in a land use planning and community context will require these processes. It is also likely that Environmental Preservation Districts will still increase wealth over time for private property owners, and perhaps economic empowerment for the community.

Just like Historic Districts, Environmental Preservation Districts would not allow the property owner to demolish her land so she can put it to a more profitable use, would require her to restore the ecosystem, and would require her to go through an Environmental Review Board similar to the Architectural Review Board required in Historic Districts. The concept of average reciprocity of value could be incorporated measuring environmental benefits and burdens, along with property value preservation. Environmental benefits and burdens of a land use regulation would raise questions about the carrying capacity of the land. Just as in a land use plan where build out is when every zone has its maximum allowed density, carrying capacity analyses would examine the "build out" of an ecosystem. While it is probably a good policy to know ecosystem capacity, to plan to grow to the point of capacity may violate precautionary principles. Environmental Preservation Districts would help establish urban environmental baselines, which are sorely missing from US cities. Reparations to oppressed people in ravaged land will help us become sustainable. It will help create trust between city and suburb by demonstrating an observable and long-lasting commitment to truly end sprawl.

Environmental reparations represent a bridge to sustainability and equity. Even if environmental reparations are limited to monitoring environmental impacts and measuring their accumulation then at least we can eliminate some of the current uncertainty that surrounds many environmental decisions and establish something of an environmental baseline in our urban areas. In this way we can begin to repair the worst damage bequeathed to our generation and our futures by the imperial and industrial past which brought wealth and privilege to some. Reparations are both spiritual and environmental medicine for healing and reconciliation. They are legally possible, and they are the path to both justice and restoration of living systems on which we all depend.

This is not an idealistic pipe dream because land is actually becoming available in our dense urban areas with high populations of people of color. “Fresh Kills” landfill in New York City, the world’s largest municipal garbage dump containing 2500 acres, closed, has closed. Boston, Massachusetts has covered a landfill in the West Roxbury community bigger than the Boston Common and the Boston Public Garden combined, named Millennium Park. These landfills are expected to settle a few feet a year, and will continue to ooze leachate and emit gases for years. Unlike industrial “Brownfields” and “Superfund Sites,” these former municipal dumps do not get cleaned as much as contained while the trash rotting takes place. Covered over urban landfills will not be safe to build upon for decades. The sites necessary and available for Environmental Reparation Districts are not park-like; they are damaged ecosystems. “Parks” are separate land uses and often banked as land to develop later and are not adequate as environmental reparation districts. They will not achieve environmental reparation without knowledgeable, on-site, human supervision of all development.

Communities that do not have much experience with exclusionary, community-based land use decision making often put golf courses on former municipal landfills. Golf courses require large amounts of water, and cater to a sport that historically excluded African Americans. Fulton County, Georgia leased an old landfill to a developer specifically to build a golf course, and there are currently about 60 golf courses built on former landfills and dumps. By contrast both New York City and Boston are noted for their neighborhood planning processes, which are much more inclusionary than most. Over time, neighborhoods in these communities have organized and mobilized over a variety of issues, and often do not need additional capacity building to be an effective, sophisticated stakeholder in processes of equal power decision making. They are mobilized for Environmental Justice. The current Republican Mayor of New York City wants to put a golf course on the former Fresh Kills dump site. The New York City planning process is just beginning. It will be a test of power and inclusion that will be evaluated by Nature.

The Roots and Consequences of Anti-Urban Environmental Attitudes

Anti urban and racist values have left critical gaps in our approaches to environmental justice and repairing these living systems. The profound anti urban messages of environmentalists, their unacknowledged grounds in racist ideology and land use practices, and the resistance of scientific elites to confronting the phenomenon of multiple, chronic, cumulative and bio-accumulative toxins in risk decisions, are a particular obstacle to urban sustainability. Urban environments in particular have been ignored in the U.S. environmental movement, and in governmental policy development about the environment.⁵ The way environmental concern is traditionally, narrowly conceptualized by mainstream environmental activists, public policy officials, and researchers is limited by media, and ignores public health indicators.

*[W]hen we restrict the boundary conditions of 'environmental concern' to include only environmental impacts related to air, water, land, . . . we tend to ignore critical impacts to sociocultural and cultural systems.*⁶

Environmentalists have not given serious consideration to negative attitudes toward Cities generally, and African Americans specifically. From the very beginning of our history in the United States, our leaders thought of cities as having a negative impact on people, and as a corruptive force on democracy. For example, Thomas Jefferson thought of cities as “. . . pestilential to the morals, the health and the liberties of man.”⁷ He went on to write,

*The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body. It is the manner and spirit of a people which preserve a republic in vigor. A degeneracy in these [cities] is a canker which so eats to the heart of its laws and constitution.*⁸

Daniel Burnham called for an environmentally healthy city in the 1893 Columbian Expedition which he labeled the “White City.” In the early 1900's, Cities began to be referred to as “Jungles” and “Wilderness” and later, whites were called “Urban Pioneers” when they moved back into cities they had abandoned for suburbs. This metaphor of city as jungle reveals potent attitudes about African Americans implying that Cities can only become civilized when whites are the majority population. This attitude pervades the contemporary environmental movement in countless, mindlessly accepted ways, for example, Brownfields for brown and black city dwellers, Greenfields for whites. Population activists, and anti immigration environmental policies continue to promote a vision of white cultures as the standard for clean and worthy of environmental protection.⁹

Environmentalists must consider what happens when these attitudes form the basis of contemporary environmental policy, sustainability, “Green Urbanism” or “smart growth.” What remains after 600 years of colonization, removals, industrialization, slavery, and segregation, are tremendous disparities in economic, physical, and environmental well being, especially in places where African Americans, and Native Americans have been concentrated by governmental policies. Perhaps, as long as these disparities remained in the cities where they were portrayed as “black” problems, or on reservations where they were invisible, they the acceptable price of industrial expansion. But environmental policy must now engage and embrace burdened people and places to repair and restore whole living systems that are impacted by externalized toxins and neglect. This is especially true of any environmental policy with “sustainable” values.

Cities, and their increasingly brown and black inhabitants are where waste streams confluence and accumulate. As wastes, emissions, discharges, and pollution have accumulated in our cities, they have begun to affect air sheds and watersheds of ecosystems far removed from the source of the pollution. As both wastes and human population increase, they are brought closer together, increasing conflict over environmental decisions. Cities are also where voters necessary to change governmental policies are located. In addition, urban dwellers are increasingly people of African descent who define environment and environmental concern much more holistically as including the quality of life indicators wherever they live, work and play.¹⁰ This broader approach to environmentalism is at odds with the approaches of mainstream environmental groups which evolved out of a conservation of wilderness political agenda.¹¹ This mainstream sensibility has operated to exclude the concerns of urban dwellers and people of color from the environmental movement, and from the traditional posts within government devoted to environmental concerns.¹² Largely without support from the mainstream environmental groups, and scientific elites, environmental justice communities are struggling against these barriers to effective coalition building to build the framework for a reparative, restorative environmental policy in the cities.

At the turn of this century, William E.B.DuBois observed that it is the color line in America that establishes the standard for acceptance.¹³ Race may not be real in any respected scientific sense, but racism is real and has consequences for the environment. Nature may not countenance race or racism, but it shows that we do. The power of skin color in the psyche and behavior of Americans sets the tone for all public policy, program planning and implementation, and external and self-images. Even advocates of sustainability segregate communities of color out of their discourses, with occasional references to Native Americans as noble savages with an authentic environmental ethic. Sustainable policies must be the first exception to the normative rule of environmental decision making of color exclusion. Beginning our efforts to make overdue reparations to the land is the right way to begin the process of reconciliation.

To talk about environmental reparations is an essential first dialog toward a fair transition to a sustainable future; a necessary first step in preparing ourselves for more meaningful and inclusive subsequent dialogs. We call for reparations to urban environments, damaged by a legacy of racism and injustice, in the form of environmental justice reparations.

Authors:

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Endnotes

1. Derrick Bell, "The Racial Barrier to Reparations" in AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE pages 123 - 139. Professor Bell discusses how racism prevents reparations.
2. Nicole Itano, Former Colonies Calling For Reparations, Christian Science Monitor, 9/5/2001, vol. 93, issue 198, p. 1 Op, 1c. The United States withdrew from this conference when the African delegates called upon the United States to make restitution for the slave trade.
3. Miller, et al. V City of Dallas, 2002 U.S. Dist. LEXIS 2341 (Feb. 14, 2002).
4. Id. This claim was brought under the Fourteenth Amendment of the U.S. Constitution and a statute, volume 42 United States Code Annotated, sections 1981 and 1983. A successful claim would require proof of racially discriminatory intent or purpose, a difficult burden. Here, the court used a two pronged test based on historical and circumstantial evidence and the magnitude of the disparity in services offered to Caucasian and African American residents.
5. See, Robert W. Collin and Robin Morris Collin "Urban Environmentalism and Race" in URBAN PLANNING AND THE AFRICAN AMERICAN COMMUNITY: IN THE SHADOWS (June Manning Thomas and Marsha Ritzdorf, eds)(1997 Sage Pub. CA), pp. 220-238. See generally Robert Gottlieb FORCING THE SPRING: THE TRANSFORMATION OF THE AMERICAN ENVIRONMENTAL MOVEMENT (1993 Island Press, Washington, D.C.), and "City Care: Proceedings of a National Conference on the Urban Environment," held in Detroit, Michigan, April 8 - 11. 1979.
6. Robert Emmet Jones and Lewis F. Carter, *Concern for the Environment among Black Americans: An Assessment of Common Assumptions* 75 THE SOCIAL SCIENCE QUARTERLY 560, 579(1994).
7. Thomas Jefferson, Letter to Benjamin Rush, Works of Thomas Jefferson, vol. 4, ed. P. Ford (New York: G.P. Putnam's, 1905), 146 -47.
8. Thomas Jefferson, Notes on the State of Virginia, 1785 (Chapel Hill, N.C.: Published by the Institute of Early American History and Culture, Williamsburg, VA, by the University of North Carolina Press, 1955), 158.
9. Robert W. Collin and Robin Morris Collin, *Environmental Justice and Sustainability: Is the Future Clean and Black?* THE ENVIRONMENTAL LAW REPORTER vol. 31, 10968 -10985, (2001).
10. For a discussion of African American perspectives on the environment see, Carl Anthony, *Why African Americans Should be Environmentalists*, RACE, POVERTY, AND THE ENVIRONMENT (April 1990):5-6, and Rachel Kaplan & Janet Frey Talbot, *Ethnicity and Preference for Natural Settings: A Review and Recent Findings*, J. OF LANDSCAPE ARCHITECTURE AND URBAN PLANNING 15 (1988): 107-14, 112.
11. See, generally George Perkins Marsh, THE EARTH AS MODIFIED BY HUMAN ACTION (New York: Scribner, Armstrong, Co., 1877); and Roderick Nash, WILDERNESS AND THE AMERICAN MIND (New Haven, CT: Yale University Press 1982) for examples of these viewpoints.
12. Phillip Shabecoff states:
Unfortunately, it is true that the leadership of national environmental groups is largely white, male, and well educated , with incomes above the national average.
in A FIERCE GREEN FIRE: THE AMERICAN ENVIRONMENTAL MOVEMENT 281-3 (1993).
In 1991, The Wilderness Society had no people of color on its board, and minorities occupied only four of the eighty professional positions. The Sierra Club had one out of fifteen directors, and the Audubon Society had two

minorities out of thirty - three directors. Peter Steinhart, "What Can We Do About Environmental Racism?" Audubon Magazine, May 1991, 18 - 20.

See also, Dorceta Taylor, "Can the Environmental Movement Attract and Maintain the Support of Minorities?" in RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS, ed. Bunyan Bryant & Paul Mohai (Boulder, CO: Westview Press, 1992).

10. William E. B. DuBois, THE SOULS OF BLACK FOLK.