Chapter 9
Rights, Resources and the Politics of Accountability

Environmental injustice, law and accountability

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> Poor people bear the brunt of environmental dangers – from pesticides to air pollution to toxics to occupational hazards – and their negative effects on human health and safety. At the same time, poor people have the fewest resources to cope with these dangers, legally, medically or politically. (Cole 1992: 620)

Work on environmental racism in the United States (US) shows that communities of colour are often targeted by firms engaged in the production of hazardous materials such as chemicals and toxics, because they anticipate a more compliant workforce that can be paid lower wages and where they expect political resistance to be less forthcoming. If these are the 'drivers' of environmental racism, its consequences include much higher levels of exposure to toxics and subsequently increased rates of illnesses related to exposure to these hazards among minority communities. Taking just one statistic to illustrate the point, the famous 1987 study by the United Church of Christ (UCC) Commission for Racial Justice found that three out of every five African and Hispanic-Americans live in communities with uncontrolled toxic waste sites (Commission for Racial Justice 1987).

Given the limitations of voluntary patterns of business-based self-regulation and state interventions to protect the rights of poorer communities – either excluded from

mechanisms of corporate responsibility, or more often than not the victims of acts of corporate irresponsibility – there is growing interest in the role of community-based strategies for corporate accountability (Garvey and Newell 2005). Though it is often assumed that it is communities in the South that are more heavily reliant on strategies of self-help, in a prevailing context of a weak state and a private sector not yet subject to the pressures and disciplines of corporate social responsibility (CSR), we suggest in this chapter that important insights can be gained from the community-based struggles around environmental racism, principally in the US, which manifest many of the basic conditions confronting poorer communities the world over. Our aim is to review and consolidate insights emerging from these struggles in order to explore parallels with other campaigns for corporate accountability explored in this book (see chapters 8 and 10).

The purpose of this chapter is not to document the evidence of the poor being exposed to disproportionate levels of environmental degradation or to engage with debates that seek to establish whether the principal drivers of such patterns are race, class or some other hierarchy of social exclusion. Our enquiry is focused instead on the question of strategy: how poorer groups mobilise to defend their interests, to articulate rights claims and to secure a degree of accountability from the powerful economic actors that are located 'where we live, work and play', to borrow a phrase from the environmental justice movement.

Amid the many state-based, company-based and community-based factors that impinge upon the effectiveness of community-based strategies for corporate accountability, our

enquiry centres on the potential and limitations of legally based strategies for corporate accountability. This reflects the fact that the strategic orientation the environmental justice (EJ) movement has been shaped, in large part, by the experiences of the civil rights movement. As a result, many of the strategies employed by EJ activists during the past three decades have sought to use and extend pre-existing frameworks oriented to addressing racial injustice. As a result, the EJ movement in the US has placed a great deal of strategic emphasis on the use of law as a primary mechanism for defending the interests and articulating the rights of poorer communities of colour.

This is not to suggest that the law is the only or even the best means of realising the rights of those communities, but rather that the orientation of EJ movement has been shaped by the historic importance of the legal arena as the major location of challenges to racial discrimination in the US. Indeed, this emphasis on the law has generated numerous tensions within the EJ movement. As we note below, there are many within the EJ movement who argue that the limits of what can be realised through legal challenge necessarily requires an alternative strategic orientation towards grassroots mobilisation and the direct empowerment of local communities. Our aim in what follows is not to dispute that this may be the case. Instead, in seeking to analyse the use (and equally importantly, the limits) of law as a strategic tool, we hope to shed light on those alternative strategies that may be more appropriately employed when those limits are reached.

In pursuing this aim, we hope to identify parallels, lessons and insights that may resonate with struggles defined in opposition to similar patterns of injustice elsewhere. Lessons

generated from the experiences of the environmental justice movement in the US cannot be unproblematically imported into other settings. Even work from outside the US, from South Africa for example, suggests the importance of studying the interface between race and environment in particular settings (Ruiters 2002). Nevertheless, the patterns of exclusion and inequality which define struggles for environmental justice in the US resonate strongly with the experience of poorer groups the world over, even if the contours of injustice and the forms of accountability politics express different histories, cultures and politics.

The first part of the chapter explores the historical, political and conceptual contexts that have shaped the development of the environmental justice movement in the US in order to better understand the origin and evolution of particular rights-based claims and their relation to broader accountability struggles. In the second part, we construct a framework for understanding the factors that facilitate or inhibit the success of community-based organising for corporate accountability, based on the experience of the environmental justice movement. In the concluding part of the chapter, we discuss how accountability struggles in the US share similarities with, and offer insights for, poorer groups engaged in similar struggles in other parts of the world.

The origins and development of the US environmental justice movement

Defining environmental racism

For many, the origins of the environmental justice movement in the US can be traced back

to the protests that took place in 1982 against the decision to build a toxic waste landfill for PCB-contaminated dirt in Warren County, North Carolina, which is a largely African American and extremely poor area of the state. In the course of these protests, involving the arrest of both local people and high-profile civil rights activists, the relationship between race and environmental impact was given national prominence for the first time. 'While the protests did not succeed in keeping the landfill out of Warren county, an interracial movement was forged, linked to the larger civil rights and poverty movements, with the goal of empowering people to protect themselves and their communities from environmental harms' (Babcock 1995: 8). It was in the aftermath of the Warren County protests that the concept of 'environmental racism' was first advanced by the civil rights activist, Dr Benjamin Chavis. According to Chavis, environmental racism refers to:

> racial discrimination in environmental policy making and the unequal enforcement of the environmental laws and regulations. It is the deliberate targeting of people-of-colour communities for toxic waste facilities and the official sanctioning of a life-threatening presence of poisons and pollutants in people-of-colour communities. It is also manifested in the history of excluding people of colour from the leadership of the environmental movement. (Quoted in Sandweiss 1998: 36)

The idea of 'deliberate targeting' suggests, unequivocally, that the causes of environmental racism are intentional. However, as a basis from which to challenge inequitable distributions of environmental impact, the standard of proof required to demonstrate the existence of 'environmental racism' defined in this way has been notoriously difficult to establish – requiring as it does, *explicit* evidence of intent. Consequently, others have argued for a shift in the burden of proof required to establish the fact of environmental

racism away from a notion of explicit intentionality to one premised on disparate outcomes or impacts of decisions. This can refer to policies, practices or directives (whether intended or unintended) that differentially affect or disadvantage individuals, groups or communities based on race or colour, or unequal protection against toxic and hazardous waste exposure and systematic exclusion of people of colour from decisions affecting their lives (Bryant 1995).

Whatever the precise nature of the mechanisms that generate specific inequalities in respect of environmental decision making, it is clear that an overt focus on causation has been unhelpful to the extent that it has deflected attention from the more important question of what to do about the inequalities (intentional or otherwise) that clearly do persist in respect of communities of colour and low-income communities – inequalities that include not just siting decisions but also standards setting, enforcement, clean-up, and opportunities (or the lack of them) to participate in regulatory processes.

From environmental racism to environmental (in)justice

The pursuit of remedial action in respect of such inequalities is represented in the shift in focus – both politically and conceptually – from environmental racism to environmental justice. If environmental racism is based upon problem identification, environmental justice is based on problem solving (Pellow 2002: 8). For many social activists environmental degradation is just one of many ways in which their communities are under attack. Environmental racism, therefore, is often understood in relation to multiple forms of deprivation and exclusion experienced in daily life:

Because of their experiences, grassroots activists often lose faith in government agencies and elected officials, leading those activists to view environmental problems in their communities as connected to larger structural failings – inner-city disinvestment, residential segregation, lack of decent health care, joblessness, and poor education. Similarly, many activists also seek remedies that are more fundamental than simply stopping a local polluter or toxic dumper. Instead, many view the need for broader, structural reforms as a way to alleviate many of the problems, including environmental degradation, that their communities endure. (Cole and Foster 2001: 33)

It is through this articulation of the problems to be addressed within the framework of EJ as, inseparably, those of racism *and* social justice that the environmental justice movement builds on the rhetorical legacy of the civil rights movement (Sandweiss 1998). Furthermore,

> The collective action frame of the civil rights movement – which emphasised such values as individual rights, equal opportunities, social justice, full citizenship, human dignity, and self-determination – provided a 'master frame' that legitimised the struggles of other disenfranchised groups. By framing the problem of disproportionate exposure as a violation of civil rights, the environmental justice movement was able to integrate environmental concerns into the civil rights frame. (Sandweiss 1998: 39)

This has allowed for a significant expansion of the civil rights movement into the environmental arena, bringing with it all the 'moral force, compelling emotion, dedication, activism, sympathetic response and relentless commitment to the pursuit of rights that have characterised civil rights activism during the past 30 years' (Jones 1993: 28).

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In order to operationalise its demands, the environmental justice movement has advanced two sets of rights-based claims (Pulido 1994). First is the demand for procedural rights to participate equally in the process of environmental regulation. This is seen as a primary mechanism to ensure that communities of colour and poorer communities are able to gain 'voice' in those fora where decision making occurs. As codified in the 'Principles of Environmental Justice' adopted by the First National People of Colour Environmental Leadership Summit, this is 'the right to participate as equal partners at every level of decision making including needs assessment, planning, implementation, enforcement and evaluation' (Bullard 1994: 274–5). However, in and of itself, the demand for equity in decision making around the distribution of hazards signals a clear limit in respect of the strategic goals that the environmental justice movement can hope to realise. As Heiman argues:

> Should the quest for environmental justice merely stop with an equitable distribution of negative externalities, business could proceed as usual. This time it would be with assurance from the Environmental Protection Agency (EPA) and other regulatory agencies that we will all have an equal opportunity to be polluted or – the flip side – protected from pollution, however ineffectively. Such assurance comes complete with procedural guarantees that we may participate in the equitable allocation of this pollution and protection, if we so choose. (Heiman 1996)

As a consequence, the environmental justice movement has also sought to advance a second set of rights claims. This is a demand for rights to live free from environmental hazard, not just to distribute that hazard more equitably. These substantive rights are oriented to the demand for preventative strategies to ensure that threats are eliminated

before they create harm. As expressed in the aforementioned 'Principles' this is 'the fundamental right to clean air, land, water and food'.

Strategic orientation to realising rights: law vs activism

Within the environmental justice movement there are significant differences in respect of how these rights claims can best be pursued. Some argue that meaningful solutions can only be realised through the active intervention of federal government, and this requires a prioritisation of legislative/procedural strategies of reform (Ferris 1995). For others, grassroots mobilisation and the empowerment of local communities are the key strategic goals in any attempt to overcome environmental injustices (Schafer 1993; Bullard 1993b). For yet others, the meaningful realisation of procedural and substantive rights will only be secured through systemic changes in the very basis of economic production (Faber and O'Connor 1993).

As might be expected, given the framing of EJ issues in terms of civil rights, the use of constitutional and statute law features prominently in the tactical arsenal of the EJ movement. The first moves in this direction were to pursue EJ claims under the constitutional right to equal protection – the use of which had been pivotal in helping to secure African American civil rights during the 1950s and 1960s. The first EJ claim to be brought under these auspices was *Bean v. Southwestern Waste Management Corporation* in the late 1970s. This involved a challenge by local residents in Houston, Texas to the siting of a hazardous waste facility in a predominantly African American area. However, in

this case – and in others brought subsequently under the auspices of equal protection – the US Supreme Court rejected the claim of unequal protection on the basis that it is necessary in such cases to show discriminatory *intent*.

Given the difficulties in establishing direct proof of intentionality in such cases, the EJ movement has sought to employ a civil rights approach that has been less onerous in the standards of proof demanded. Of greatest importance in this regard has been the use of Title VI of the 1964 Civil Rights Act, which prohibits racial discrimination in all activities and programmes in receipt of federal funding. Claims pursued under Title VI have sought to deny federal funds to those states that are involved in enacting discriminatory environmental decisions. In these cases, however, the standard of proof required is one of discriminatory outcome or impact rather than intent. Plaintiffs need only prove that the result of the policy or practice impacts disproportionately on (discriminates against) the community, not that it was the intent of policy or practice to do so.

However, the pursuit of legal remedies, while fostering some limited successes, is not the favoured strategic orientation of many EJ activists. As Cole and Foster (2001: 33) note,

> grassroots environmentalists are largely, though not entirely, poor or working-class people. Many are people of colour who come from communities that are disenfranchised from most major societal institutions. Because of their backgrounds, these activists often have a distrust for the law and are often experienced in the use of non-legal strategies, such as protest and other direct action.

Mobilisation

In pursuit of alternative strategies oriented to grassroots mobilisation as opposed to the law, the historical and strategic relationship of the civil rights movement to the EJ movement has again been crucial. According to Sandweiss (1998: 39), there are two aspects to this:

> First, environmental justice activists have been able to draw on the organizational resources and institutional networks established during the previous struggle for racial equality. Churches, neighbourhood improvement associations, and historically black colleges and universities have furnished the environmental justice movement with leadership, money, knowledge, communication networks and other resources essential to the growth of any social movement. Second, environmental justice activists have successfully borrowed many of the tactics associated with the civil rights movement to call attention to their demands – both direct action tactics, such as protests and boycotts, as well as more conventional activities, such as lobbying and litigation.

It was precisely these roots in civil rights and church-based advocacy that led to the UCC's landmark 1987 study, *Toxic Wastes and Race in the United States* and the 1991 First National People of Colour Environmental Leadership Summit (Commission for Racial Justice 1987). Both of these facilitated, for the first time, a national voice and national-level coordination of what until then had been largely localised struggles around specific instances of environmental injustice. The Summit itself, which brought together EJ activists from across the US and other parts of the world, also provided a platform for the first concerted attempt to articulate a coherent vision of environmental justice, embodied in its seventeen 'Principles'.

A further goal was to develop greater coordination of EJ activities at the regional level. In addition to the already-formed Southern Network for Economic and Environmental Justice

(SNEEJ), further regional coordination was facilitated in the development of the Asian Pacific Environmental Network (APEN), the Indigenous Environmental Network (IEN), the North-east Environmental Justice Network; the Midwest/Great Lakes Environmental Justice Network and the Southern Organising Committee for Economic and Environmental Justice. These regional networks have played a crucial role in ensuring the coordination of activism and mobilisation, while at the same time recognising the diverse needs and concerns of specific ethnic and geographic communities (Pellow 2002: 77).

Accounting for mobilisation

Having provided an overview of the contexts in which the environmental justice movement emerged, this section organises insights regarding factors that impact upon the effectiveness of strategies employed by groups that are the victims of environmental racism. Given the many links, suggested above, including the forms of injustice and the ways in which these are contested, between the environmental justice movement and other forms of community-based activism for corporate accountability, we want to suggest there is a broad resonance in these insights that extends well beyond the contexts from which they are derived.

Planning, process and representation

Minority and poorer groups generally lack access to and representation within government, particularly at the national level (Babcock 1995). Beyond voice in areas traditionally considered to be environmental, lack of representation in planning and zoning commissions is particularly relevant here. Bullard (1993: 23) suggests that 'Many of the at-risk communities are victims of land-use decision making that mirrors the power arrangements of the dominant society. Historically, exclusionary zoning has been a subtle form of using government authority and power to foster and perpetuate discriminatory practices.' Even accepting that state laws are to some extent not generating inequalities, Cole and Foster note that 'State permitting laws remain neutral or blind toward these inequalities; they therefore perpetuate, and indeed exacerbate, distributional inequalities' (Cole and Foster 2001: 75).

Corporate penetration of such decision-making processes further reduces their responsiveness to community demands. Discussing attempts by communities in Illinois to hold the company Clark Oil to account for its social and environmental responsibilities, Pellow (2001: 63) notes that the city council's environmental and industrial committee, charged with evaluating Clark Oil's health and safety record, included a former Clark Oil employee. These patterns of influence hint at deeper cracks in the democratic process and the inherent tensions faced by liberal democracies in balancing economic growth with democratic decision making. In this regard, Krauss (1989: 230) argues that 'The state must in one and the same moment achieve two conflicting aims: it must maintain the conditions for profitable capital accumulation and economic growth while legitimating its own power by appealing to the principle of democracy.'

Even where channels of representation within the state are made available, it is often very difficult for groups to make use of them. During the permit application process for the Genesee power station in Michigan, public hearings were held. However, community members were made to sit for hours while the committee undertook other business, and when the group finally got a chance to testify, 'the decision makers talked among themselves, laughed and paid little attention. Moreover, the hearing took place at a location more than an hour from the proposed site, forcing residents to rent a bus' (Cole and Foster 2001: 124). Citizen input is often seen as a nuisance and limited to a short period of time, signalling to residents (1) that they must make a quick decision; (2) that their input was deemed irrelevant during the planning phase of the proposal; and (3) that their input has

been reduced to ‘we want it’ or ‘we don’t want it’ (Allen 2003: 156).

It is predictable, then, that local authorities decide upon sites where residents are least likely to oppose such developments, which a 1984 report for the California Waste Management Board suggested would be ‘rural communities, poor communities, communities whose residents have low educational levels … and whose residents were employed in resource-extractive jobs’ (Cole and Foster 2001: 3). The Cerrell report, a strategy manual for industries needing to set up polluting facilities such as incinerators, aimed to ‘assist in selecting a site that offers the least potential of generating public opposition’ (cited in Cole and Foster 2001: 71). Its recommendations were: (1) avoid middle- and higher-income neighbourhoods; (2) target communities that are less well educated; (3) target conservative or traditional communities, preferably with fewer than 25,000 residents; (4) target rural or elderly communities; and (5) target areas whose residents are employed in resource-extractive jobs like mining, timber or agriculture (Cole and Foster 2001: 3).

At the level of enforcement, there are also oversights, acts of negligence or patterns of exclusionary decision making that activists have sought to contest. Activism, in this sense, can serve to plug gaps in state enforcement of environmental regulations, highlighting both the limits of law and the reluctance of states to enforce it in circumstances in which private investors may be deterred from making further investments. Pellow suggests that corporate–community compacts and good neighbourhood agreements (GNAs) have become more common as a result of the weakening of state policy-making authority, as

corporations have become both policy makers and the new targets of challengers (Pellow 2001). He defines GNAs as 'instruments that provide a vehicle for a community organisation and a corporation to recognise and formalise their roles within a locality and to foster sustainable development' (Pellow 2001: 55). They became more popular as a non-litigious method of dispute resolution among companies, workers, environmentalists and local communities in the wake of an increase in industrial disasters. Combating exemptions that allow corporations to keep certain information out of the public sphere, GNAs encourage broad disclosure so that communities and NGOs can play a role in the enforcement of codes of conduct. Even their proponents are clear, however, that GNAs are not a substitute for governmental regulation: they are simply a response to the lack of, and need for, such regulation.

Community activists often seek to address weaknesses in state-based processes through their own informal sanctions. Process requirements and resources available to corporate actors can make official sanctions difficult to impose, so that community groups adopt what Cable and Benson call (1993: 471) 'informal sanctions' (such as press conferences denouncing the company, pickets outside company offices, and attempts to attract media attention through rallies and protests). Informal sanctions are also important in incentivising the take-up of the sort of informal and 'soft' community-based policy tools described above.

Beyond drawing attention to an injustice through protest or media coverage, community groups have also sought to train and educate themselves, to find ways of exchanging

experience about successful accountability strategies, and to build a degree of learning and reflection into their struggles. Activists have run programmes on participatory citizenship skills as well as setting up literacy programmes and field trips. Environmental justice clinics also play an important role. The clinics function, according to Babcock, 'as laboratories for exploring different ways to overcome legal and institutional barriers … and as catalysts for reforming the legal system' (Babcock 1995: 50). They provide high-quality legal services to communities at risk, including requests for disclosure of information and analysis and distillation of technical reports for local residents. As Babcock notes, 'Victories may be as seemingly insignificant as securing the release of information from a recalcitrant government official; however, even these exercises have led to changes in official attitudes toward public requests for information and reforms in their process of responding' (Babcock 1995: 56).

Law and its limits

These patterns of exclusion from decision making help to explain why legal battles to contest the outcomes of these processes have been commonplace. Allen argues that citizen groups end up with their complaints in the courts precisely because the legislative and executive branches have been co-opted by corporate lobbyists (Allen 2003: 90). She suggests that 'regulatory agencies such as DEQ are easily co-opted by industry because top-level officials often alternate between agency posts and positions in industry. The judicial branch is the last option for residents otherwise disenfranchised by the close liaisons between the chemical industry and their elected and regulatory officials.'

Nevertheless, legal strategies are seen as a key strategy by mainstream groups such as the Sierra Club, whose executive director of legal defence believes that 'Litigation is the most important thing the environmental movement has done over the past fifteen years' (quoted in Cole and Foster 2001: 30). However, there are many resource and procedural barriers to bringing, successfully pursuing and enforcing legal cases. Barriers for poorer groups are multiple and include: lack of legal literacy, lack of resources, distrust of the legal process, and inability to pay costs if the case is unsuccessful (Newell 2001). Babcock (1995: 22) notes that 'some members of a disempowered group may be initially hostile toward, or intimidated by, lawyers and the judicial process, or may have been trained in the confrontational tactics of the civil rights or poverty movements'. There are also process barriers to the successful pursuit of legal strategies, such as high demands for expertise required to engage the legal system effectively. Many environmental laws have 'created complex administrative processes that exclude most people who do not have training in the field and necessitate specific technical expertise' (Cole and Foster 2001: 30).

Besides these barriers and process issues, many environmental justice activists are wary of 'legalising' a problem. The concern, as noted earlier, is that legal strategies take the struggle out of the realm in which the community has control of it. Broader social justice claims get pressed into legally cognisable claims. In these instances, 'collective struggle is translated into an individual lawsuit with the result that the momentum of the community's struggle is lost' (Cole 1992: 652). Though successful in bringing attention to a case, the diverse and spontaneous forms of community organising that groups employ to contest

their fate as victims of environmental justice are largely redundant within the legal process. Moral claims, the use of symbolic power and a variety of 'weapons of the weak' which poorer groups deploy to counter the structural and material forms of power that corporates benefit from become less visible and less relevant once a struggle is reframed in legal terms, shifting the balance of power towards those with resources, expertise and influence. Cole argues that 'Even if the law is "on their side", unless poor people have political or economic power as well, they are unlikely to prevail.... Tactically, taking environmental problems out of the streets and into the courts plays to the grassroots movement's weakest suit' (Cole 1992: 648, 650).

Beyond the limits of legally based strategies in general, there are also questions about the value of poorer communities seeking protection through environmental law. Because they are risk-oriented, environmental laws tend to support decisions as long as emissions comply with minimal state regulatory thresholds. As Cole notes (1992: 646), 'while we may decry the outcome, environmental laws are working as designed. Such a disproportionate burden is legal under US environmental laws.... Thus decisions to place unwanted facilities in low-income neighbourhoods are not made in spite of our system of laws, but because of our system of laws.'

The positive potential of the law

Our emphasis on the many limitations of legally based strategies should be tempered by an acknowledgement that cases can and have been won when the rights of poorer communities have been violated. Landmark legal settlements can pave the way for change.

Allen (2003: 40) describes a court ruling in which it was determined that citizens' environmental protection must be given fair weight alongside economic and social factors. The groups bringing the case 'effectively changed the face of environmental planning in the state' according to Allen (2003: 40). Though enforcement remains a problem, following the ruling, chemical companies that sought to locate in the area had to prove that they had fully considered alternative sites and projects as well as environmental mitigation measures. In cases in Dallas and Alabama, out-of-court settlements have been achieved by communities affected by environmental racism, including, in the case of Olin Chemicals, an agreement to clean up residual PCBs and DDT, allocate money for long-term health care costs and pay cash settlements to individual residents.

Community groups have used to positive effect provisions that require the government to respond to each public comment on an environmental impact report, for example. In the case, Pueblo para el Aire y Agua Limpio *v* County of Kings, a community successfully filed a complaint against the environmental impact report on grounds of its inadequacy under the California Environmental Quality Act, and the court blocked the project. The legal challenge was based upon the principle of discrimination against Spanish speakers in the decision-making process, given the lack of Spanish translation in public consultation meetings and documentation.

Before they can locate a toxic waste facility in a community, companies have to obtain permits. Public notices of plans are issued, a comment period is allowed and public hearings are held where there is a significant degree of public interest, including published

notices in area newspapers. In theory, if the content of the notice or the procedures for publicising it do not meet the regulatory requirements, a court may order the notice process to be repeated (Perkins 1992). While agencies are reluctant to deny permits, if an agency does issue a permit over community objection, administrative and judicial appeals are available, as with the case in California described above.

There are also community right-to-know laws, despite numerous attempts to revoke them. Some statutory schemes for hazardous waste siting have progressive potential. The Massachusetts scheme, for example, requires the hazardous waste developer to negotiate an approved siting agreement with the host community to offset any adverse impacts. State assistance is also sometimes available to the host community to obtain any technical studies and other material it needs to negotiate effectively (Colquette and Robertson 1991). Provision of state legal aid can be important. Because they are free, for many people in low-income communities legal-aid services are the only option available and logically become 'part of the first line of defence for [those] facing environmental dangers' (Cole 1992: 656).

Beyond building legal capacity, the state can also facilitate less confrontational approaches to conflict mediation by initiating dialogues between companies and communities. Pellow and Park (2002) describe 'Project XL' under the Common Sense Initiative, a multi-stakeholder project aimed at reconciling the respective demands and expectations of companies and communities. The problem, however, was that rather than going beyond existing regulations, regulatory flexibility was traded in exchange for increased

community involvement and concessions on improved environmental performance, worker safety and environmental justice criteria. In addition, companies have insisted that meetings would not be open, decisions would not be made by consensus and local stakeholders would not be able to veto the agreement or an element of the agreement.

Concessions to business are seen by community activists as part of a broader pattern of bias evident in the planning process. Allen (2003: 3) quotes a resident from Louisiana's chemical corridor complaining that while the Department for Environmental Quality spent 'hours and weeks with the applicant polluter to help them get their permitting applications legally and technically correct and to help the polluters stay in business … the time for citizens just isn't there'. Cole (1992a: 1995) also takes issue with the presumption of state neutrality in such disputes:

> Increasingly, states have set up processes to site toxic waste facilities over local opposition – whether the opposition is by people of colour or not. Additionally, the US Environmental Protection Agency has threatened at least one state … with loss of superfund monies if it does not site a toxic waste incinerator.

Far from being a neutral arbiter in such conflicts, the state is often aligned in direct opposition to those advocating environmental justice.

The purpose of this section has been to highlight the ways in which particular legal mechanisms and strategies can help to advance corporate accountability claims and the circumstances in which this is possible. In previous sections we noted the very many

procedural barriers that make the legal process a difficult one for community activists to navigate, raising issues such of access, cost and representation. We have also emphasised the ways in which, by its very nature, the law validates certain forms of claim making and delegitimises others. This has important consequences for accountability struggles, which often aim at broader political change and seek to tackle the causes of injustice and discrimination – at times embodied by the law. It raises key dilemmas of strategy and brings to the fore awkward trade-offs between the prospect of short-term gains and the imperative of longer-term change.

Conclusions: parallels and insights

The parallels between what we have found here and other work documented in this book are striking. First, there is a sense in which the most controversial industrial developments are often located in the poorest areas of a country, whether it is areas in the US predominantly inhabited by black and Latino communities or the poorest states of India, where tribal communities are most likely to be victims. The pattern of privatising profit and socialising costs also appears to be similar. Just as Louisiana's cancer corridor has been described as a 'massive human experiment' and a 'national sacrifice zone' (Perkins 1992: 390), so poorer communities in India ask 'We are being sacrificed for the national interest. We are the victims of this cause. What do we get in return?' (chapter 8). Often the target is a particular category of the poor, based on broader patterns of racial and social discrimination. In India, it is tribals, in the US native Americans have found themselves disproportionate victims of toxic waste, while in South Africa forced relocation was

employed by the apartheid regime to make way for mining operations (Madihlaba 2002: 158).

Second, the luring of high-polluting industries as a state strategy emerges as a theme with global resonance. Just as an 'industrial tax exemption' has been used to attract the chemical industry into poor areas of the US, so it is has been common in India for large companies to be offered financial concessions in exchange for promised industrial development that is often not delivered. The importance attached to attracting chemical and pharmaceutical companies to the state of Andhra Pradhesh in India is seen by activists there as a constraint on state action and community mobilisation around claims of negligence.

Such trends serve to compound intra-state practices of economic blackmail, where companies threaten to relocate in the face of new labour or environmental legislation or when confronted by organised opposition. This creates extra challenges for community organising where capital mobility can have the effect of setting impoverished communities, in need of investment, against one another in the search for the least-cost and most trouble-free investment location (Gaventa and Smith 1991). Within the United States cooperative action between social justice and environmental groups has been seen as one of the best ways of weakening the hold of 'job blackmail' – threats of job loss or plant closure – on working-class areas and communities of color (Bullard and Wright 1990: 302). The immense structural advantage afforded to capital by its mobility clearly applies to some sectors more than others. As we shall see in Chapter 10 on the oil industry in Nigeria, the nature and availability of a resource, its materiality, shapes the options

available to an industry in terms of where it operates and the form of politics which surrounds its exploitation, management and distribution. The industries discussed in this chapter have many more options open to them about where to locate, a factor that greatly enhances their bargaining leverage.

A third, interrelated, feature common to many of the situations we describe here is the conscious location of hazardous production activities in areas populated by groups from whom low levels of political resistance are expected. Impoverished communities generally lack the financial and technical resources necessary to resist environmentally hazardous facilities, as well as having less access to traditional remedies to ameliorate those burdens under environmental and civil rights laws. This is compounded by the lack of mobility of the poor in terms of employment and residence.

Fourth, the poorest groups in these conflicts are often the least visible. Migrant labour from some of the poorest states in India provides a pool of cheap and informal labour for industry. Even in high-tech sectors, immigrant populations face disproportionate exposure to toxic hazards (Pellow and Park 2002). Not only is mobilisation harder for migrant, transient populations with fewer resources and networks to draw on, but the often illegal nature of their work renders them less able to secure the forms of protection bestowed upon more formal types of employment. Inhabiting unregulated, unprotected spaces, immigrant, seasonal, temporary and child labour are most vulnerable to exploitation.

A fifth theme we have sought to highlight with global resonance is the importance of the

law in both a positive and negative sense. Legal contests characterise many of the conflicts between communities, corporations and governments, raising issues of access and literacy as well as the enforceability of decisions and the regulations they invoke. While potential resides in existing state provisions for those that know about them and have the resources, time and confidence to make use of them, this positive potential is often diminished by deliberate oversight, manipulation of procedures by powerful interests or non-enforcement of the terms and conditions of regulations. Just as they did in Vizag, Andhra Pradesh, companies choose media with restricted reach to advertise hearings and notices of proposed developments, residents of 'Chemical valley' in the US complain that public notices of siting decisions do not work because they 'can be placed anywhere in the newspaper – in the legal section, the classified and even the social section' (cited in Allen 2003: 36). Even far-reaching legal protection afforded to poorer groups is often bypassed in practice when the economic stakes are raised. Whether it is civil rights laws in the US or provisions for the protection of tribals in India, non-accessibility and the mobilisation of bias against poorer groups diminishes the utility of the law as a tool of accountability.

This is how what start as campaigns about particular siting decisions become struggles over decision-making processes that allocate risks in unjust ways. In this sense, Cole argues that 'many in the grassroots environmental movement conceive of their struggle as not simply a battle against chemicals, but a kind of politics that demands popular control of corporate decision making on behalf of workers and communities' (1992: 633). Anti-toxics activists, through the process of local struggles against polluting facilities, came to understand discrete toxic assaults as part of an economic structure in which, 'as part of the

"natural" functioning of the economy, certain communities would be polluted' (Cole and Foster 2001: 23). This, in turn, raises many strategic questions, such as whether merely calling for environmental equity reproduces a naive faith in procedural justice and the ability of distributional notions of fairness to tackle the structural and institutional sources of injustice (Ruiters 2002: 118).

Our purpose in drawing these parallels is not to suggest that the settings are identical, permitting successful strategies to be exported to other locales unproblematically. How the factors are weighted in terms of political significance, and how they play out in practice, will always be context-specific – a function of the alliances between community, civil society and the state in any particular setting. And whilst we have suggested parallels with the insights emerging from work on environmental racism and the environmental justice movements in the US, it is always important to bear in mind the ways in which accountability struggles are strongly defined by the context in which they emerge and the end for which they are employed.

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