

SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL JUSTICE: SAME PLANET, DIFFERENT WORLDS?

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I. INTRODUCTION

Scholars have criticized the term sustainable development as aspirational at best, and as “the latest in a succession of restrictive. . .politically correct expressions” at worst.¹ If profit has historically been a proxy for social good,² the chance that principles of sustainable development will translate into real benefits for environmental justice communities seems unlikely within the prevailing economic structure. Even more troubling is the possibility that “green” developments do harm to these communities by serving a market-based system that puts dollar capital over human capital.

Part I of this paper will address some of the challenges in defining sustainable development and related criticisms of sustainability. Despite arguments that sustainable development is at best a lofty ideal incapable of real application, I will attempt to find a more practical definition of sustainable development for purposes of this discussion. A functional definition of sustainable development must also include principles of equity.

Part II will introduce the basic principles of environmental justice and argue that the success of the environmental justice movement requires incorporation of sustainable development principles. Unsustainable commercial activity has complicated many environmental and social problems. In particular, unsustainable practices of cost-externalization have played a significant role in the creation of distributive injustice.

Part III discusses the major obstacles to combining the environmental justice and sustainability movements. The movements often appear to exist at opposite ends of the economic spectrum, and both attempt to function in an economic system that fails to value natural and human capital. This flaw in our current interpretation of capitalism misleads

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¹ M. CLARK, *Domestic Futures and Sustainable Residential Development*, 33 *FUTURES* 817, 819 (2001), available at <http://www.elsevier.com/locate/futures>.

² Robert Collin, *Forever Wild, Forever Free: Sustainability and Equity*, Virtual Lecture at Mercer University Law School (March. 13, 2000) (transcript available at www.law.mercer.edu/elaw/collin.html).

communities into ongoing bargains between economic benefit and ecological well-being.

Part IV will address what role the legal community and local governments might play in making the benefits of sustainable development more available across the board. As in the environmental justice movement, perhaps one of the most important tasks is community building and clearing channels for community voices to be heard. Community leaders will need the cooperation of local governments. Lawyers can generally be more useful to communities as negotiators and facilitators than as litigators.

This paper will analyze sustainable development as an ideal and as it is put into practice, attempting to find common ground where sustainability and environmental justice ideals can not only coexist but have a synergistic effect. Communities seeking to address environmental concerns and develop sustainably must be able to decide not only what burdens they will reject, but what benefits they will insist upon.

II. WHAT IS SUSTAINABLE DEVELOPMENT?

Sustainable development as a term is often intended to stand as proxy for something desirable; a better way of living than what we currently have. This kind of happy vagueness makes it an ideal political buzzword. Sustainability has successfully invaded the rhetoric of policy debate even where it has failed to produce substantive results.³

Politicians and policy makers are not alone in tossing these words around. For people who are even a little bit familiar with the language of sustainability, it might bring up an array of images: wind turbines, solar power, "natural foods" supermarkets, straw-bale houses, fair trade coffee, and hybrid Toyotas. Residents of Davis, California might think of the Village Homes housing development, with its edible landscaping, pedestrian-friendly layout, and competitive market edge.⁴ While this list includes goods (especially alternative energy sources) that could certainly benefit broad segments of the population, it tends to sound like a catalog for the affluent who want all the luxury with less guilt. In this sense, "sustainable" becomes a marketing tool for any commodity paired with it, much like the word "green."

³ Lamont C. Hempel, *Conceptual and Analytical Challenges in Building Sustainable Communities*, in *TOWARD SUSTAINABLE COMMUNITIES: TRANSITION AND TRANSFORMATIONS IN ENVIRONMENTAL POLICY*, 43 (Daniel A. Mazmanian & Michael E. Kraft, eds., 1999).

⁴ The Smart Communities Network, a project of the U.S. Department of Energy states that Village Homes initially sold for the same price as others in Davis, CA, but on average, now sell for \$11 more per square foot. See <http://www.sustainabledoe.gov/landuse/village.html>.

The problem with using sustainability as a marketing buzzword is that it then reinforces the very patterns of consumption and waste that it would claim to alleviate.⁵ The niche market for so-called sustainable commodities and housing developments in the U.S. leaves little room for broader issues of environmental and social justice. Sustainability as a marketing concept thus serves to widen gaps between movements that should be connected.

A. *Sustainable Development as Freedom*

Beyond marketing and political buzzwords, there are other more helpful ways to understand sustainable development. Organizations from around the world have used the term in ways that may mean access to clean water and safe power in developing nations, community-based economic revitalization of depressed urban areas, localizing and protecting the food supply, and creating safe, affordable housing. Obviously this list may incorporate much or all of our earlier catalog of luxuries. More importantly, it captures a spectrum of environmental, economic, political and social issues in such a way that we begin to see their interconnection. In its broadest sense, sustainability has been described as an ecological reconception of freedom.⁶ It seeks to promote long-term human flourishing over short-term gain. While some might interpret freedom as a right to consume as many resources as cash and credit will allow, along with a right to accumulate as much wealth as possible, these kinds of “freedoms” are enjoyable by an ever-shrinking percentage of the world’s population.

A brochure promoting the Johannesburg World Summit on Sustainable Development (WSSD) described sustainable development as an effort requiring integration of action in three key areas. These include 1) economic growth and equity, 2) conserving natural resources and the environment, and 3) social development.⁷ The WSSD emphasized that all sectors of society have a role to play in realizing the goals of sustainable development, identifying “Major Groups” whose active leadership and partnerships are crucial to putting sustainable development programs into action.⁸

⁵ See PAUL HAWKEN, *THE ECOLOGY OF COMMERCE: A DECLARATION OF SUSTAINABILITY*, xi - xiii (Harper Business 1993) (arguing that commerce and sustainability are antithetical by design).

⁶ Hempel, *supra* note 3, at 68.

⁷ UNITED NATIONS, *JOHANNESBURG SUMMIT 2002: WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT 4* (2002), <http://www.johannesburgsummit.org>.

⁸ *Id.* at 7. (Among the “Major Groups” identified were business and industry, farmers, children and youth, indigenous people, non-governmental organizations, women, workers and trade unions, scientific communities, and local authorities).

Dialogue on sustainable development may seem more fruitful outside of the U.S. at the moment, but dialogue is happening here as well. The Bay Area Alliance for Sustainable Development created a "Draft Compact for a Sustainable Bay Area" in July 2000, identifying three guiding principles much like those in the WSSD: the "Three E's" of prosperous economy, quality environment, and social equity.⁹

In 2000, Jackson State University held its "First Annual Freedom Colloquium" on the topic of sustainable development and environmental justice.¹⁰ Panelist Minister Benjamin Muhammad described sustainability as a method of spurring economic growth without environmental degradation.¹¹ The ultimate question, in Muhammad's terms, is "whether or not you can have a growing economy and treat everybody fairly, treat everybody justly."¹² This question could be rephrased as whether all people are, at least theoretically, entitled to the same opportunities to flourish. Is freedom in the sense of access to basic requirements of life and pursuit of happiness only available to select pockets of the world's population? These questions are philosophical and even metaphysical in nature, and therefore what one might expect to hear from a minister. It is time, however, for more secular activists and policy makers to "get religion" in the sense of questioning the old, dysfunctional social order that assumes it will have to dump its mountains of waste somewhere, on somebody.

Also on the JSU Freedom Colloquium panel was Professor Robert W. Collin, who criticized what he termed "eco-fascism" in the environmental and sustainability movements.¹³ Collin suggested that the absence of community voices, particularly minority communities, in sustainable development will move us toward "bioregionally based sustainability where it's greenfields for whites and brownfields for browns unless the community comes in and grabs a say."¹⁴ According to Collin, any definition of sustainability is not acceptable unless it includes "issues of reparations for environmental injustices of the past."¹⁵

⁹ BAY AREA ALLIANCE FOR SUSTAINABLE COMMUNITIES, COMPACT FOR A SUSTAINABLE BAY AREA: ECONOMY, ENVIRONMENT, EQUITY, 3 (2002), <http://www.bayareaalliance.org>.

¹⁰ Colloquium, *Environmental Justice and Sustainable Development in the City*, 17 J. ENVTL. L. & LITIG. 97 (2002) [hereinafter Colloquium].

¹¹ *Id.* at 103.

¹² *Id.* at 103-04.

¹³ *Id.* at 114.

¹⁴ *Id.*

¹⁵ *Id.* at 115.

B. Criticisms of Sustainable Development

In discussions of sustainable development, it may not seem so difficult to reduce sustainability to a mathematical formula: don't deplete faster than you (or nature) can replenish. However, current economic, social, and political structures can seriously complicate our ability to apply this formula. Some people might respond negatively to Muhammad's question of whether economic growth and across-the-board fairness can coexist. Growth and development must inevitably create burdens that corporations will shift around in the most cost-effective ways possible. Those with means will always find ways to mitigate their burdens at the expense of those without means. If this is the case, sustainable development is not only an oxymoron, but antithetical to environmental justice. Sustainable development will be a proxy for the ability of more affluent and empowered members of society to avoid their share of environmental burdens.

If development is defined as the process of more and more people consuming more and more goods, with fewer and fewer goods available, pairing the "development" with "sustainable" seems ridiculous.¹⁶ The law of entropy states that nothing is permanently sustainable; why should mere endurance be trumped up as a virtue?¹⁷ However, development can be understood in different ways. Some people are more comfortable with the term "community" in place of "development" because it focuses attention on the process of increasing the self-sufficiency and health of its members in ways that do not infringe on other communities' freedom to do likewise.¹⁸ And in terms of entropy, not even the Iroquois, spiritual ancestors of sustainable development, felt compelled to plan farther ahead than seven generations.¹⁹ It makes little sense to worry about whether sustainable means eternal, if we will be lucky to last another forty years.²⁰

¹⁶ Hempel, *supra* note 3, at 46 (quoting William Ophuls, *Unsustainable Liberty, Sustainable Freedom*, in *BUILDING SUSTAINABLE SOCIETIES: A BLUEPRINT FOR A POST-INDUSTRIAL WORLD* (Dennis Pirages ed., 1996)).

¹⁷ See HAWKEN, *supra* note 5, at xv (stating that the "dirty secret" in environmentalism is that sustainability does not really exist because present planetary resources have already been depleted beyond their capacity to support the population of the next forty years); Hempel, *supra* note 3, at 43, 46.

¹⁸ See generally Hempel, *supra* note 3, at 52.

¹⁹ E.g., 10 KEY VALUES OF THE CANADIAN GREENS, available at [http://www.global.greens.org.au/charter/10values\(canada\).html](http://www.global.greens.org.au/charter/10values(canada).html) (citing Iroquois' concept of considering effects of every decision on the next seven generations).

²⁰ HAWKEN, *supra* note 5, at xv.

III. ENVIRONMENTAL JUSTICE AND SUSTAINABILITY

As Robert Collin implied when criticizing sustainability as a movement plagued by eco-fascism, some of the problems with the movement can be resolved by incorporating principles of equity and environmental justice into the definition of sustainability. Any model for sustainable development failing to incorporate equity is simply not a sustainable model.²¹ Similarly, environmental justice advocacy that disregards principles of sustainability will never be able to achieve its objectives on a large scale.

A. *Lack of Sustainability Intensifies Environmental Justice Issues*

The environmental justice movement developed in response to mounting evidence that communities of color (and low-income communities, to a lesser degree) bear a disproportionate level of industry's adverse environmental impacts in siting, compliance, and cleanup contexts.²² Environmental justice advocates assert that communities impacted by polluting facilities and contaminated sites should be able to participate as equal stakeholders in environmental regulation processes.²³ Neighborhoods suffering from disparate environmental impacts are often referred to as environmental justice communities (EJ communities), perhaps in consideration of the result they would hope to achieve through community empowerment, activism and legal strategies.

A serious challenge faced by EJ communities in seeking redress for environmental inequities is establishing causation. Evidence that an individual corporate or agency decision caused an environmental problem may fall considerably short of establishing legal responsibility for redress.²⁴ Though the causation debate in environmental justice is multifaceted, one part of the debate is whether market forces are really the culprits behind the uneven distribution of environmental burdens.²⁵ Market forces are notoriously judgment-proof in a lawsuit, especially if the affected community became "disproportionately minority or poor" sometime after a polluting facility was sited, as property values dropped and housing became more affordable in the area.²⁶ However, typical economic theories of causation have a major weakness: they accept some level of cost-shifting as a given. Cost-shifting could also fall under the

²¹ See Colloquium, *supra* note 10, at 113-14.

²² See generally CLIFFORD RECHTSCHAFFEN & EILEEN GAUNA, ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION 3-5 (2002); Collin, *supra* note 2.

²³ See RECHTSCHAFFEN & GAUNA, *supra* note 22, at 5.

²⁴ See *id.* at 27-52.

²⁵ See *id.* at 34-44.

²⁶ See Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?* 103 YALE L.J. 1383 (1994), excerpted in RECHTSCHAFFEN & GAUNA, *supra* note 22, at 42.

category of intentional discrimination if a corporation deliberately shifts its environmental burdens to a community of color in the belief that the corporation will save money by doing so.

Sustainable development questions the assumption that cost-shifting and externalization is legitimate business practice. In so doing, it helps EJ communities in the causation debate because it demands that industry pay its own way. If a corporation is failing to account for the real costs of doing business, it is causing an adverse environmental, economic, or social impact somewhere, end of story.

B. Environmental Justice and Sustainability Movements Have Symbiotic Goals

While sustainable development and environmental justice have distinguishable goals, they relate to each other symbiotically. A comparison of the goals of the two movements reveals their need for interdependence. If environmental justice seeks to remedy the disparate impacts of industrial pollution and ecological damage on minority and low-income communities, failure to question the continuing existence of damaging practices puts environmental justice communities in a position of continual struggle and / or compromise. The community must be sufficiently organized and empowered to resist the siting of a facility, or be able to negotiate some form of compensation for the real or speculative harms a facility might cause. These are the more successful environmental justice efforts; many communities are not yet in a position to resist or negotiate at all.

Sustainable development attempts to close loops of resource consumption and waste production. It attempts to return human activity to its rational place in the ecosystem, using technology that integrates and accommodates natural processes rather than foolishly (and expensively) trying to counteract them. Sustainable development trusts that given a chance, nature can do remarkably well at recycling waste, regulating temperature, cleaning air and water, and even controlling floods. On an economic level, sustainable development is about community self-reliance and responsibility. A sustainable community is one that is able to identify and fulfill its own needs without impacting its neighbors' ability to do the same. Rather than accepting the notion that a burden can go somewhere else, a sustainable community is able to internalize its costs by closing resource and waste loops.

Considered separately, environmental justice and sustainable development each has a missing piece that prevents it from maximizing its effectiveness as a movement. If sustainable development fails to prioritize issues of distributive justice, it will be little more than an accomplice to the ongoing exploitations of the market. Similarly, environmental jus-

tice cannot achieve its goal of distributive justice as long as there are burdens to distribute. Burdens will always follow a path of least resistance that will probably terminate in yet another EJ community.

C. *Poverty as an Environmental Issue*

While race is a more significant indicator for environmental justice communities than income,²⁷ the two demographics frequently overlap. The effects of poverty and institutionalized racism may overlap in these communities to such an extent that it becomes extremely difficult to pinpoint causation. Is a polluting facility causing the community's health problems, or are they more directly related to poor nutrition, tobacco and alcohol use, and inadequate medical care?²⁸ Bringing sustainability into the discussion and seeing poverty as an environmental issue of its own makes the causation debate less important. A community locked into the belief that it cannot survive without the employment created by a new polluting facility is already a depressed community, in terms of economic, physical, and mental health. The environmental effects of this depression reach far beyond the community itself, as "white flight" creates suburban sprawl, gobbling up open spaces and causing more pollution from cars.²⁹

Far-reaching environmental damage linked to poverty can look even more dramatic away from our familiar U.S. urban / suburban landscapes. Alan Durning notes that not only do the poor "suffer disproportionately from environmental damage caused by the better off, they have become a major cause of ecological decline themselves."³⁰ Population growth and inequitable development patterns push the poor in developing nations to clear rainforest plots and overgraze rangeland.³¹

As we examine the environmental impacts of both industry and poverty, it becomes increasingly difficult to tell where socioeconomic issues stop and environmental issues begin. Separation between what is urban and what is natural in the public consciousness may prevent us from commonly thinking of issues, such as the affordable housing shortage, in environmental terms. However, when even people of average income cannot afford to live in the cities where they work, an environmental

²⁷ RECHTSCHAFFEN & GAUNA, *supra* note 22, at 4.

²⁸ See CHRISTOPHER H. FOREMAN, JR., *THE PROMISE AND PERIL OF ENVIRONMENTAL JUSTICE* (1998), excerpted in RECHTSCHAFFEN & GAUNA, *supra* note 22, at 17.

²⁹ See PAUL HAWKEN ET AL., *NATURAL CAPITALISM* 108 (1999) (citing federally sponsored industry study called *The Costs of Sprawl*). See also John G. Mitchell, *Urban Sprawl*, *NATIONAL GEOGRAPHIC*, July 2001, at 55.

³⁰ ALAN B. DURNING, *POVERTY AND THE ENVIRONMENT: REVERSING THE DOWNWARD SPIRAL* 6 (World Watch Institute Paper No. 92, 1989).

³¹ *Id.*

problem is born in the form of more automobile pollution. The shortage of affordable housing also contributes to the concentration of environmental burdens in minority and low-income communities, as it serves to concentrate these populations in areas already considered less desirable by white people. City planners and property owners who fear its high density (and sometimes its potential for racial diversity) frequently view affordable housing itself as a locally unwanted land use. However, no study in California has ever shown that affordable housing developments reduce property values.³² Additionally, well-designed affordable housing can be completely congruent with the aesthetics of more expensive housing in the area.³³

IV. OVERCOMING OBSTACLES TO SUSTAINABLE DEVELOPMENT

Ours is not a society that generally trusts government, business, one another, or even ourselves to do the right thing when faced with opportunities for short-term benefit. Sustainability requires a commitment on a personal level to act with long-term benefits in mind, and the state cannot coerce such commitments.³⁴ Paul Hawken questions the impulse to legally mandate the imposition of higher rights than those constitutionally recognized for the sake of ecological protection, even when facing ecological crisis.³⁵ He suggests that while government has a critical role, it must coincide with society's natural impulses because humans will ultimately reject any conservation system that conflicts with their "impulse to flourish and prosper."³⁶ Some might argue that the impulse to flourish and prosper includes an impulse to consume at whatever rate a person's economic status will permit. If, for the sake of argument, we construe these natural impulses as rights, in a world of finite resources there is a big difference between a right to flourish and a right to consume. People can flourish freely without significant harm to the present and future interests of others. However, a right to consume is really a proxy for competition that will have more and more losers as resources decline.

A. *Recognizing False Dichotomies*

Our ways of thinking about human existence as an endless struggle for dominance over nature and other humans have created a dichotomy between people and nature that obstructs both ecological protection and

³² CALIFORNIA PLANNING ROUNDTABLE, *Myths & Facts About Affordable and High-Density Housing* (June 1997), <http://www.abag.ca.gov/services/finance/fan/housingmyths2.htm>.

³³ *Id.*

³⁴ Robin M. Collin and Robert W. Collin, *Where Did All the Blue Skies Go? Sustainability and Equity: The New Paradigm*, 9 J. ENVTL. L. & LITIG. 399, 439 (1994).

³⁵ HAWKEN, *supra* note 5, at xiv-xv.

³⁶ *Id.* at xv.

economic wellness. Without trying to refute basic theories of evolution, it seems safe to say that many human societies and institutions have missed the point: cooperation is often a better survival strategy than competition. The people vs. nature dichotomy often puts EJ communities (along with regions whose economies have historically depended on industries such as lumber, fishing, mining, etc.) in the painful position of choosing between jobs and the environment, or even between economic growth and the community's long-term health and safety. These dichotomies also pose a serious problem to environmentalists who want to make sure that communities make the "right" choices. In reality, the dichotomy is not a "choice" but a form of extortion.

Robert Collin explains that false dichotomies operate to preserve privilege, externalizing clean up and abatement costs onto either nature or minority and low-income communities.³⁷ Conversely, sustainable development, or sustainable human flourishing, provides communities with an escape from environmental extortion by promoting corporate cost internalization and community self-reliance. While people may have to choose between particular types of jobs and environmental protection, a sustainably developed community will not have all its economic eggs in one basket.

The natural world contains built-in redundancy to promote the stability and success of the ecosystem when one part of the system falters.³⁸ Thriving sustainable communities and businesses depend on this kind of diversity as well. Because each component of a sustainable system serves multiple functions, the backup systems are not wasteful and give communities the power to say no to benefits that come at too high a cost. Diversifying for survival is not an alien concept to the business mind, yet in some important commercial contexts the need for diversity has been overlooked. In the realm of agribusiness, for example, monoculture practices threaten the security of our food supply.³⁹ Largely as a result of these practices, one study indicates that 97 percent of the vegetable varieties available in 1900 are now extinct.⁴⁰

Monoculture is not limited to the realm of agribusiness, however. The current global economic system seems not only to deny that diversity

³⁷ Collin, *supra* note 2.

³⁸ Toby Hemmingway, Presentation on permaculture and design of sustainable environments at the Bioneers Conference in San Rafael, California (Oct. 18, 2002) (using an example of implementing multiple water conservation methods in drought areas to create human habitation that provides a net gain, rather than loss, for the environment).

³⁹ See *FATAL HARVEST: THE TRAGEDY OF INDUSTRIAL AGRICULTURE* 71 (Douglas Tompkins & Andrew Kimbrel eds., 2002) (explaining that industrial-scale planting of single crop monocultures are an open invitation to plant pests and diseases, particularly as the pests develop increasing resistance to chemicals used to combat them).

⁴⁰ *Id.*

equals wealth but appears to have declared war against it.⁴¹ The dominant economic paradigm views biological, cultural, and even racial diversity as costly and inefficient, a problem either to be streamlined out of existence or dumped somewhere out of the way. If this is true, especially in regard to the latter “solution”, we need not spend much time wondering why there is a correlation between communities of color and environmental inequity. It is simply global capitalism’s deranged sense of efficiency.

B. *Reinterpreting Capitalism*

Capitalism as currently practiced is a world threat, largely because it fails to adhere to its own principles of accounting. As Paul Hawken explains, the current economic system “liquidates its capital and calls it income. It neglects to assign any value to the largest stocks of capital it employs – the natural resources and living systems, as well as the social and cultural systems that are the basis of human capital.”⁴² If capitalism shifted its bottom line of financial capital to one of human and natural capital, recognizing that there are, in fact, other valid forms of wealth that exist in the stability of ecosystems and in human health, business itself could become an extremely powerful tool for restoring and preserving the environment. Even the World Bank has acknowledged that economic capital accounts for only 20% of the world’s total wealth. Yet economic capital seems to get all the love and attention.⁴³

While economic capital continues to be the nearly exclusive focus of the market, the market will continue to deplete natural resources and oppress humanity, thus ultimately sealing its own doom. As Hawken states, “the single most damaging aspect of the present economic system is that the expense of destroying the earth is largely absent from the prices set in the marketplace.”⁴⁴ Changing destructive cost-externalization practices requires a paradigm shift toward fairness that legislation cannot mandate.⁴⁵ However, many other factors can encourage large-scale behavioral changes. Collin and Collin note that social change arises from a desire for a different future. When this desire becomes widely articulated, it can change existing relationships of power and inequality.⁴⁶

⁴¹ See HAWKEN, *supra* note 5 at 27 (declaring biodiversity the source of all wealth); Vandana Shiva, *Monocultures of the Mind*, in FATAL HARVEST, *supra* note 40 at 67.

⁴² HAWKEN ET AL., *supra* note 30, at 5 (1999).

⁴³ Trevor Hancock, *People, Partnerships and human progress: building community capital*, 16 HEALTH PROMOTION INTERNATIONAL 275 (Sept. 2001), available at <http://heapro.oupjournals.org>.

⁴⁴ HAWKEN, *supra* note 5 at 13.

⁴⁵ Collin & Collin, *supra* note 35, at 439.

⁴⁶ *Id.* at 412-13.

C. *Dudley Street Neighborhood Initiative: Example of Success*

The Dudley Street Neighborhood Initiative (DSNI) in the Roxbury area of Boston, Massachusetts, provides an example of how sustainable development can rebuild an urban community and address its environmental justice concerns.⁴⁷ Between 1950 and 1981, the Roxbury area became a wasteland through disinvestment, abandonment, and arson, until one-third of the land in the neighborhood lay vacant.⁴⁸ By the early 1980's, the area was home to approximately 1,300 abandoned lots, most of them brownfields, in addition to 51 hazardous waste sites and forty percent of Boston's trash business. Illegal dumping from around the city and state posed additional health and safety threats to residents.⁴⁹ In 1984, residents founded the DSNI to address serious ongoing threats to their community such as the illegal dumping, arson for profit, and urban renewal projects aimed at removing low-income people from their neighborhoods. The initiative began with a "Don't Dump on Us" campaign to organize cleanup of the vacant lots and shut down illegal trash transfer stations.⁵⁰

DSNI responded to the problem of Roxbury's hazardous waste sites by becoming the first group in Boston to petition for and obtain the right of public involvement in remedying hazardous sites. DSNI's Environmental Committee has a collaborative relationship with the EPA, the state attorney general's office, the city Environmental Strike team and other agencies for strategizing environmental cleanup.⁵¹

Rather than struggling to influence city government's traditional top-down urban planning methods, Roxbury residents hired their own planning consultants and created a "bottom-up" redevelopment plan focused on true urban renewal rather than urban "removal" and displacement of the poor. DSNI became the first community-based nonprofit group to be granted eminent domain authority, which it was entitled to exercise over thirty acres of vacant land in the most burned-out part of Roxbury.⁵² It established a community land trust in the eminent domain area to prevent real estate speculation and further displacement. The community land trust thus helped to ensure availability of affordable housing while building the community's wealth. Real property ownership in the community land trust splits real property ownership with the

⁴⁷ Greg Watson, *Options for Sustainable Cities: Development Without Displacement*, Address at the Bioneers Conference in San Rafael, CA (Oct. 18, 2002).

⁴⁸ Holly Sklar, *Building an Urban Village: The Dudley Street Neighborhood Initiative*, 28 ENVIRONMENTAL ACTION MAGAZINE 33 (March 22, 1996).

⁴⁹ Watson, *supra* note 48.

⁵⁰ Sklar, *supra* note 49.

⁵¹ *Id.*

⁵² Sklar, *supra* note 49; Watson, *supra* note 48.

residents: the trust has title to the land, and the residents have the title to their homes. 440 new units of housing have been built or are planned.⁵³

Other important elements in DSNI's vision of itself as an "urban village" include urban agriculture (a community greenhouse is planned on a former brownfield site, and numerous vacant lots have already become community gardens) to provide produce for local markets and restaurants. In 1996, the neighborhood was 37 percent Black, 29 percent Latino, 37 percent Cape Verdean and 7 percent white, and over a third of the residents were under 18 years of age. DSNI has explored and celebrated the wealth of the neighborhood's diversity with multicultural festivals and job mentoring programs for its youth.⁵⁴ It created a "Declaration of Community Rights" so bold as to state that the community has the right to shape the development of "all plans, programs and policies likely to affect the quality of our lives as neighborhood residents."⁵⁵

DSNI's successes may not be reproducible in all EJ communities and urban areas targeted for more traditional redevelopment. It is, however, a stunning example of what a community can achieve with bold thinking and extensive organization. Though DSNI interacted with government and legal structures out of necessity to accomplish its goals, it refused to wait for the city or the law or even market forces to provide solutions for its most urgent problems. DSNI's environmental justice gains are more likely to last because of its holistic, sustainable view of redevelopment for the community.

V. ROLE OF LEGAL PROFESSIONALS IN PROMOTING ENVIRONMENTALLY JUST, SUSTAINABLE DEVELOPMENT

Environmental justice scholars have seriously questioned the effectiveness of traditional legal methods as tools for solving complex problems of environmental and social equity.⁵⁶ Conditions of near gridlock in the justice system may be one reason for this, but as Robin and Robert Collins also point out, conventional decision making and problem solving structures are based on "twin pillars of governmental coercion and expert consultancy."⁵⁷ This structure does not readily accommodate the kind of public communication and consensus building needed on the environmental justice front. The traditional approach is even less conducive to sustainability that demands not only community consensus, but self-created changes in behavior.

⁵³ Watson, *supra* note 48.

⁵⁴ Sklar, *supra* note 49.

⁵⁵ *Id.*

⁵⁶ Collin & Collin, *supra* note 35, at 449.

⁵⁷ *Id.*

A. *Facilitation of Community Organizing Efforts*

Robin Collin describes an approach to using the law that might sound more non-traditional than it actually is: that the law is not just what judges say, but what communities say.⁵⁸ The DSNI example illustrates this approach as the community itself was able to assume characteristics of a lawmaking body in addressing its own needs. While community efforts may be constrained by scarce financial resources, neighborhood groups are ideally positioned to unleash the power of human capital. Lawyers must encourage this process by helping communities find their voices and make them heard. Lawyers can be resources for problem solving in community groups' negotiations with non-profit and commercial developers, government agencies, and city planners. Community organizing, administrative advocacy, and media pressure are three strategic areas where lawyers can be of service to client communities.⁵⁹

Luke Cole identifies three questions for advocates seeking to maximize the effectiveness of their efforts in helping a community achieve its goals.⁶⁰ These questions are readily adaptable to environmental justice and sustainable development issues because they encourage any given strategy to serve multiple functions, a key element of a sustainable system. First, will a strategy educate people? Cole defines "people" in this context as the client group, policy and decision-makers, the general public, and the lawyer herself.⁶¹ Second, will it build the movement? Strategies should be calculated to draw new membership and support to the community organization. Programs that educate and empower community members naturally attract new participants.⁶² Third, does the strategy address the cause rather than the symptoms of a problem? This question relates directly to sustainable development because it looks beyond existing environmental hazards,⁶³ and perhaps even beyond the facilities that created the hazards. Really addressing the cause of an environmental justice problem requires questioning the viability of an economy based on a pattern of "extract, consume, and pollute."⁶⁴

⁵⁸ Dalbey, *supra* note 8 at 130.

⁵⁹ Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 Ecology L.Q. 619 (1992), excerpted in RECHTSCHAFFEN & GAUNA, *supra* note 22 at 247.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Collin, *supra* note 2.

B. (Non)Traditional Legal Methods

Though litigation as a strategy is not an effective tool for community education, movement building, or for addressing the causes of a problem, lawyers can help community groups use the law to their advantage in many different ways. Additionally, progressive policy-makers can make public institutions more friendly toward sustainable development. One example of such a policy is the "locationally-efficient mortgage."⁶⁵ This program allows urban homeowners to qualify for bigger mortgages on lower incomes by accounting for saved commuting costs. Urban housing thus becomes cheaper and suburban sprawl more expensive, reflecting the latter's higher social and environmental costs.⁶⁶ Similar lending programs already exist which qualify energy-efficient homes for bigger mortgages on less income because lower energy costs can support more debt service.⁶⁷

Laws at the county and municipal level, such as San Francisco's Resource-Efficient Building (REB) ordinance, promote sustainable development and subsequently reduce adverse environmental impacts through better management of waste and more efficient use of energy.⁶⁸ The REB or "green building" ordinance went into effect in 1999 in an effort to address the serious environmental impacts of conventional building. On a national scale, conventional building accounts for 40% of annual energy use, 40% of ozone layer depletion, 35% of municipal solid waste, and 25% of water use.⁶⁹ Additionally, at least 30% of conventionally built buildings have poor indoor air quality and most people spent about 90% of their time indoors.⁷⁰ U.S. EPA estimates the direct health care costs associated with "sick" buildings at \$30 billion annually, with another \$100 billion in sick leave and lost productivity.⁷¹ San Francisco city staff projectors have estimated that implementation of the REB ordinance will save the City and County \$22 million over ten years.⁷² If the projections prove at all accurate, we should expect that municipalities across the country will be scrambling to create and implement similar ordinances. Legal professionals could play a crucial role in shaping these

⁶⁵ HAWKEN ET AL., *supra* note 30 at 46.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See San Francisco Mun. Code § 82.1, (1999) available at <http://www.ci.sf.ca.us/sfenvironment/aboutus/policy/legislation/efficient.htm#4>.

⁶⁹ Fact sheet on green building, San Francisco Department of the Environment, available at http://www.ci.sf.ca.us/sfenvironment/facts/resouce_bldg.htm.

⁷⁰ *Id.*

⁷¹ Peter Asmus, *San Francisco Has a Chance to Lead Green Building Revolution* (May 12, 1999), available at <http://www.pacificnews.org/jinn/stories/5.10/990512-green-building.html>.

⁷² *Id.*

laws and ensuring that municipal governments address EJ community concerns.

Once a region, city, or community begins to implement sustainable development policies, it can utilize a number of indicators to monitor its progress. Some of these indicators may be percentage of the workforce concentrated in the largest five employers, greenhouse gas emissions per capita, number of community gardens, net growth in livable wage jobs, voter turnout in municipal elections, pounds of toxics produced and released per year, homeownership rates, and community volunteerism by age group.⁷³

Regional and community organizations should identify the indicators best suited to their specific goals. The Bay Area Alliance for Sustainable Development in Oakland, California highlights ten "commitments to action" in its Compact for a Sustainable Bay Area (Compact).⁷⁴ These commitments address specific Bay Area environmental, economic, and social concerns. Each of the ten commitments to action has several "sustainable development indicators" to be used in monitoring its progress. For example, under commitment five, "Use Resources Efficiently, Eliminate Pollution, and Significantly Reduce Waste," the Alliance has identified (among other indicators) days in violation of air quality standards and toxic pollutants discharged into San Francisco Bay as sustainable development indicators.⁷⁵ Commitment two is "Accommodate Sufficient Housing Affordable to All Income Levels within the Bay Area to Match Population Increases and Job Generation." Some of its sustainable development indicators include average density of new housing and percent of total housing within 1/2 mile of transit nodes, and number of homeless, including data by ethnicity and gender.⁷⁶

While the *Compact* is huge in the scope of policy and change it hopes to facilitate, it demonstrates how a regional plan for sustainability can be mapped out. Planning for sustainable development requires a more holistic, interconnected view of socioeconomic and environmental issues than many legal professionals are accustomed to taking. The legal world itself is fragmented between corporate and public interests, environmental, economic, and social issues, and local, state, and federal concerns. In accordance with principles of sustainability, legal professionals must begin to use their diversity of perspectives as a problem solving resource rather than allowing so-called competing interests (see discus-

⁷³ Hempel, *supra* note 3, at 64.

⁷⁴ BAY AREA ALLIANCE FOR SUSTAINABLE COMMUNITIES, *supra* note 9, at 8.

⁷⁵ *Id.* at app. A.

⁷⁶ *Id.*

sion of false dichotomies, *supra*) to waste resources and exacerbate socioeconomic and environmental problems.

The fact that the legal profession is much better at litigating than it is at solving problems is a serious problem for the law.⁷⁷ In many circumstances, it seems doubtful that communities need lawyers in the conventional sense at all. However, community groups undoubtedly need people who understand the law and who have problem-solving, negotiation, research and writing skills. If lawyers can provide those services, the future of the legal profession in a more sustainable world looks hopeful.

VI. CONCLUSION

Sustainability requires changes in individual, community, and corporate thinking and behavior that government mandate and coercion cannot achieve. Nevertheless, lawyers and policymakers must identify existing legal structures in areas of government, business, and social policy that either encourage or obstruct sustainable development and the equitable distribution of environmental benefits and burdens. Once identified, helpful structures can be utilized more intensively, while less helpful or even unjust structures could be dismantled and recycled. As Paul Hawken suggests, we already possess most of the ideas and technology required to redesign business and restore the world; all we need is collective will.⁷⁸

⁷⁷ Colloquium, *supra* note 10, at 130 (statement by Professor Robin Collin).

⁷⁸ HAWKEN, *supra* note 5, at 17.

