Fundamental Rights & Environmental Justice: Identifying Rights-based Environmental Protection in Europe and the United States.

Abstract:

Environmental justice emerged as a coherent section of academic research in the United States during the last three decades. There, the field focuses tightly on the tendency of environmental problems to cluster amongst minorities and pulls insight from economics, law, and social policy research. In the same span of time, however, an analogous field of pursuit has not fully congealed in Europe. But despite a lack of codified focus, similar problems are addressed within existing fields, notably under human rights protections of the European Convention on Human Rights.

As the developed literature shows, the problem of agglomerated environmental burdens on which environmental justice focuses is a combination of the economics of land use, existing laws, and environmental regulation. The outcomes are subsequently influenced by individual voices via political and legal engagement. Given that the problems impact a smaller percentage of the population—a minority—political solutions are underpowered. Legal pathways then provide the main protection against agglomeration and provide the only opportunities for rectification.

With the tight focus on the racial aspect of the minority component, the U.S. leans heavily on anti-discrimination laws to address environmental injustice, a method that has met with only limited success. Europe, in contrast, has experienced more success in protecting against analogous injustices with appeals to the full spectrum of human rights instruments.

Given the underlying dynamics of the environmental injustice problem this work explains and illustrates why the European approach has enjoyed this success. The conclusion is that application of these multiple human rights is both more encompassing of the entire environmental injustice dynamic and less contentious in its use of fundamental rights toward environmental protections. The conclusions suggest a more open approach for the United States as the form of emergent protections depend on the content of underlying rights.