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Spring 2005

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Citations:

Bluebook 21st ed.

Hill Rivkin, Environmental Justice: A Universal Discourse , 24 TEMP. J. Sci. TECH. & ENVTL. L. 249 (2005).

ALWD 7th ed.

Hill Rivkin, Environmental Justice: A Universal Discourse , 24 Temp. J. Sci. Tech. & Envntl. L. 249 (2005).

APA 7th ed.

Rivkin, H. (2005). Environmental justice: universal discourse Temple Journal of Science, Technology & Environmental Law, 24(1), 249-252.

Chicago 17th ed.

Hill Rivkin, "Environmental Justice: A Universal Discourse ," Temple Journal of Science, Technology & Environmental Law 24, no. 1 (Spring 2005): 249-252

McGill Guide 9th ed.

Hill Rivkin, "Environmental Justice: A Universal Discourse " (2005) 24:1 Temp J Sci Tech & Envntl L 249.

AGLC 4th ed.

Hill Rivkin, 'Environmental Justice: A Universal Discourse ' (2005) 24(1) Temple Journal of Science, Technology & Environmental Law 249

MLA 9th ed.

Rivkin, Hill. "Environmental Justice: A Universal Discourse ." Temple Journal of Science, Technology & Environmental Law, vol. 24, no. 1, Spring 2005, pp. 249-252. HeinOnline.

OSCOLA 4th ed.

Hill Rivkin, 'Environmental Justice: A Universal Discourse ' (2005) 24 Temp J Sci Tech & Envntl L 249

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Environmental Justice: A Universal Discourse

Dean Hill Rivkin*

The principles of environmental justice—rooted in theories of equality and justice—have universal appeal. The explanatory power of these principles never ceases to amaze. At the moment, the world is reeling from images in New Orleans of the victims of Hurricane Katrina and its aftermath. The disproportionate impact of this human and environmental disaster on communities of color cannot be missed, and the story is just unfolding. Change the frame to many parts of Africa, Eastern Europe, South America, the Middle East, or Asia, and the environmental consequences of water rights, mining, industrialization, or war can be analyzed through the kaleidoscopic lens of environmental justice. But perhaps the biggest challenge facing environmental justice theorists and practitioners is to translate the principles of environmental justice to China, an economic behemoth just beginning to reckon with the staggering environmental impacts of its meteoric rise on the world scene.

Professor Ke Jian gives us a clear-sighted and provocative understanding of China's environmental and economic predicament, using the still evolving discourse of the environmental justice movement in the United States as a framework. His is a clarion call to China. It is measured and realistic. He recognizes that concepts of environmental justice have yet to penetrate the legal or political consciousness of China's decision-makers. But his article is, as it must be, forward looking: "In the long run, it is likely that transitions in the Chinese economy, environmental protection policy, moral expectations, and social structure will contribute to demands for environmental justice."¹

Professor Ke's analysis of the experience of the environmental justice movement in the United States benefits from his outsider perspective and his rich understanding of substantive environmental law and policy. His research into the U.S. environmental justice movement is comprehensive and his account of the movement is packed with keen insights into its successes and failures. He links the environmental justice movement to its animating cognate, the civil rights movement,

* College of Law Distinguished Professor, University of Tennessee College of Law. Professor Ke was a student in my course, "Environmental Justice and Community Lawyering," at Harvard Law School in the fall of 2002.

¹ Ke Jian, *Environmental Justice: Can an American Discourse Make Sense in Chinese Environmental Law?*, 24 TEMP. J. SCI. TECH. & ENVTL. L. 253 (2005).

and demonstrates his understanding of the constitutional constraints that the courts have placed on both movements. For example, Professor Ke observes: “Requiring a showing of discriminatory intent as a prerequisite to racial discrimination under the Equal Protection Clause is too high a burden for environmental justice plaintiffs to meet.”² He also pessimistically notes the near insurmountable obstacles to legislative solutions to environmental justice problems, although this calculus could change in the wake of Katrina and its displaced people.

Following his reconstruction of the various strands that compose the environmental justice movement in the United States, Professor Ke neatly distills ten “conclusions” into his “framework.” Several deserve brief mention:

1. Professor Ke recognizes the political nature of the environmental justice movement, and the importance of “law” in shaping this discourse about power.
2. He also sees that the “internal impetus of the environmental justice movement is its moral and ethical considerations.” These motivate people and communities to be brave and aggressive, critical qualities for success in environmental justice struggles.
3. He also emphasizes how today environmental justice considerations permeate environmental law and policy in the United States

Professor Ke next turns to the “rhetoric vs. reality” of environmental justice in China. His condensed histories of Chinese economic and environmental developments are useful, but deserve more extensive treatment. He fails to provide a thick enough historical description to allow those of us without much background in China’s development to understand how and why the hyper-consciousness around economic development was allowed to overwhelm a meaningful environmental consciousness. In other words, why didn’t a minimum balance between the two take hold, on other than a rhetorical level? The answers may be obvious, but should be elaborated.

Professor Ke’s insights into the current meaning of environmental justice in China are impressive. He states that “the term refers to the interests of the public at large, rather than a notion that all races should share equitably in the burdens and risks of hazardous waste facilities.”³ He and follows this definition by examples. Peasant workers, for example, “seem to suffer greatly from the environmental pollution distribution.”⁴ His call for greater empirical work to document these disparities must warm the hearts of social scientists in China—what an extraordinary challenge! Professor Ke then identifies nine “causes” of environmental disparities in China, ranging from geographical considerations to loopholes in environmental legislation to occupational discrimination. He urges that environmental justice advocates in China focus on “disadvantaged” populations, rather than race-based ones. “In Chinese environmental law, environmental justice can be defined as a set of political, social, legal, and policy responses to address the disparate distribution of

² *Id.* at 261.

³ *Id.* at 271.

⁴ *Id.*

environmental harms and benefits by groups of environmentally disadvantaged people; furthermore, the intent of an environmental justice movement in China is to reform the processes of environmental decision making so that all the affected groups have a right to meaningful participation.”⁵

Professor Ke’s seminal thinking will require vast changes in China’s political, legal, social, and economic structures. For the sake of the health and well being of hundreds of millions of citizens in China, not to mention the natural environment, the time to start was yesterday. Professor Ke represents a cadre of new academic leaders in China, intellectuals sensitive both to theory and practice. They have their life work ahead of them. This piece, as preliminary as it is, provides a ray of hope.

⁵ *Id.* at 278.

