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No Guarantees:
Impartiality in Mediation

AIMEE DELMAN

Issues related to the topic of mediator’s impartiality continue to generate a great deal of debate within the field of conflict resolution. The discussion can be roughly divided into two spheres of argument. On the one hand, there are mediators who contend that the practice of mediation requires a process whose primary and overriding goal is agreement. Thus, the mediator should not attempt to restrict the process from reaching settlement. Conversely, other mediators question the value or quality of any settlement that is reached without regard for a weaker party’s position in the process.

In addition to focusing on issues related to the balance of power in mediation, many advocate the necessity that settlement be of mutual benefit to each party. While academic discussion usually polarizes on the question of the possibility and role of the mediator’s impartiality, in practice most mediators embrace a style that incorporates a combination of these divergent viewpoints.

An examination of how practitioners perceive and justify their own use of impartiality demonstrates both the complexity of the issue and the ambiguous or “folk nature” of the concept (Cobb and Rifkin 1991).

In Taking Charge: Managing Conflicts without Litigation, Joseph Stulberg (1987) argues that, in mediation, “ultimate authority belongs to the parties themselves” (8). Similarly, in his article, “A mediation overview: History and dimensions of practice,” Jay Folger argues that a mediator must help parties “develop settlement terms that they find acceptable, even if the mediator finds those terms objectionable” (1983:3). Both Stulberg and Folger emphasize the parties’ control of the settlement process.

Opposing these views, in Divorce Mediation, John M. Haynes (1981) states that “a mediator may have to work in a way that enhances the power of the weaker party” (62–63). In fact, Haynes further argues that, if necessary, a mediator should “act forcibly to prevent the victimization of a third party” (129). Like Haynes, Christopher Moore (1986), in The Mediation Process: Practical Strategies for Resolving Conflict, and Mark Umbreit (1995), in Mediating Interpersonal Conflicts: A Pathway to Peace, emphasize the need for mediators to address issues of power imbalance and the quality and fairness of settlement.

In a graduate course on “Civil and Commercial Mediation” at Nova Southeastern University taught by John Lande, J.D., Ph.D., students explored issues in mediation by participating in, observing, and discussing mediation simulations. In this paper, I apply insights from observations of these simulations or “role-plays” to the concept of impartiality in mediation. That is, for this analysis, the mediation role-plays serve as data to test ideas regarding impartiality in mediation.

In “Not effective communication but effective persuasion,” Alan Tidwell (1994) describes the existence of persuasion in mediation as a common approach used to balance power and reach settlement. Tidwell argues that the mediator’s employment of “powerful, positive language” used to “influence another’s mental state” is necessary in order to galvanize parties towards agreeing upon mutually beneficial settlements. But in one mediation role-play, a mediator’s use of persuasive and aggressive statements demonstrated the problems inherent in using such tactics.

In caucus, the mediator’s repeated warnings to the party to “not overestimate the potency of her arguments and case” left the party feeling misunderstood and defensive. Likewise, the mediator’s frequent use of the words “settlement,” “compromise,” and “movement” created an impression that the mediator was overly focused on the process. As a result, the party felt less willing to cooperate and more compelled to protect her interests.

Similarly, in another role-play, a mediator’s repeated remarks about her positive feelings about the process thus
far and her hopeful perceptions about the eventual outcome left the parties feeling as if the mediator was prematurely focused on resolution. Further, because the parties did not share in the mediator’s vision of an expeditious end to the dispute, they felt as if they had less control over the session. Left feeling disempowered, the disputants became further entrenched in their positions.

In addition to advocating the use of certain types of diction and expressions to persuade parties, Tidwell (1994) notes that “by the mediator’s rejection of some forms of communication and the acceptance of others” (4), the process becomes value-laden. This point was demonstrated by one role-play’s caucus, which took place between the mediator and the plaintiff’s attorney. During the caucus, the attorney peppered his remarks with derogatory comments about the quality of the other party’s case and about the preparedness of the opposing counsel. In response, the mediator repeatedly interrupted the session to remind the attorney that he would not tolerate aggressive posturing and that the process required that all parties meet certain standards of behavior. During the next caucus when the opposing counsel mimicked the aggressive tactics of his colleague, the mediator threatened the attorney with the prospect of ending the session if his adversarial tactics continued.

These episodes raise a number of important issues. For example, is the mediator’s insistence that the parties abide by “fair play” standards an indication of disrespect and disregard for the cultural differences of legal professionals? Accordingly, one could argue that the negative banter of attorneys is normal to their style of communication. If indeed adversarial language is inherent to the style of a party, a mediator’s insistence that the attorney rely on another mode of communication may place the party in an unequal position. Furthermore, if antagonistic styles of communication are a party’s natural form of expression, the party may have a different set of criteria for judging what constitutes inappropriate expression. For example, during the caucus described above, the attorneys engaged in conversation which they may likely have perceived to be light and harmless bantering—natural to their cultural mode of expression—but which the mediator informed them was detrimental to the process.

In Mediation and Criminal Justice: Victims, Offenders and Community, Martin Wright and Burt Galaway (1989) consider the value of coercion as a means to initiate and affect settlement. Wright and Galaway describe a number of methods mediators can employ to “supervise and control the private lives” (239) of individuals. The authors argue that “mediation risks creating a coercive process under the rhetoric of voluntariness, participation, and community involvement” (244). In an article on “The dynamics of informal procedure: The case of a public housing eviction board” (1989), Richard Lempert suggests that informal legal processes can be deceptive. Specifically, Lempert relates how a procedure that invites the participants to not only provide factual details, but also to expound upon their feelings, concerns, and any special circumstances they feel relate to the dispute, fosters an impression that all testimony will be applied to the decision-making process. Conversely, Lempert’s study of a public housing eviction board suggests that although informal legal proceedings elicit “extraneous” details, the process still favors official law. Not unlike the public housing board in Lempert’s research, many mediations operate in a “non-bureaucratic structure, relatively little different from the larger society” and with “norms that are vague, unwritten, commonsensical, flexible, ad hoc, and particularistic” combining to give the process a “naturalistic rather than a legal tone” (Lempert 1989: 355).

If the arguments of Wright and Galaway (1989) and Lempert (1989) are valid, then informal legal processes such as mediation will encourage participants to feel less apprehensive about revealing information and generally protecting their interests. During a role-play, a mediator’s repeated remarks encouraging the parties to be accommodating and considerate of one another’s positions implied that these values were inherent to the process. As a result, the parties’ willingness to cooperate was based upon a belief that their positions and interests would be protected. When one party conceded to many of the demands of the other, he was surprised when the mediator did not attempt to secure his interests, but instead immediately focused on getting a settlement.

Closely related to the role of coercion in informal legal settings is Wright and Galaway’s (1989) second contention that the informality and often vaguely understood role of both the process and the mediator fixes the parties in the precarious position of not knowing “the extent and scope of the mediator’s power” (224). Wright and Galaway suggest that as mediation programs become more attached to the court system, they may come to be seen as appendages of the system rather than as a separate institution. As a consequence, the authors surmise that parties may believe that the legal system will automatically enforce their mediation agreements, or that they may agree in hopes of impressing the judge. In addition to these concerns, Wright and Galaway assert that one of the processes’ major liabilities is the potential for a
mediator to take advantage of the participants’ nebulous understanding of the session. Accordingly, the authors found that in certain programs “mediators who are having difficulty forging an agreement sometimes resort to claiming their connection to the court or assuring participants that the court will supervise the agreement” (245). Interestingly, during a recent panel discussion at Nova Southeastern University’s Department of Dispute Resolution (March 20, 1996), a mediator-attorney with Mediation Inc., a Florida company, asserted that he would feel comfortable telling an uncooperative party that if their behavior continued, he would inform the judge of their disposition.

Similar to the problem of the informality of mediation influencing participants’ understanding of the process, the role of the mediator, and the mediator’s directions to the participants is that of the relationship between in-house mediators and the corporate executive. During a role-play involving an in-house corporate mediator and two other employees, the issue of the mediator’s impartiality was raised. The discussion between the mediator and one of the parties concerned itself with attempting to determine what the mediator’s interests were and the extent of the mediator’s influence over decision-making. Throughout this conversation, the mediator attempted to assure the party that she was impartial with regards to the specifics of his particular dispute and that the mediation process would operate independently of the company’s influence. However, in defense of her position, the mediator refrained from specifying what, if any, directives the company had given regarding the resolution of certain types of conflicts. Moreover, later on during a caucus, when attempting to induce movement when the mediation process was stuck, the mediator used the term “their employer” when referring to the corporation. The use of this term was employed to remind the party of his unclear understanding of the relationship between the mediator and the corporation. In encouraging the party’s doubts about the authority and impartiality of the mediator, after the party had been persuaded to reveal his interests and concerns, the mediator was in effect coercing the party towards settlement.

Coercive and persuasive techniques are among only a few of the issues that complicate practitioners’ perceptions and justification of impartiality. Sara Cobb and Janet Rifkin’s (1991) study involving 40 mediators found that the concepts of “power,” “justice,” and “ideology” were used to define and discuss neutrality and impartiality. However, when asked to discuss and define each term, the mediator’s definitions indicated that the concepts functioned interdependently. For example, one practitioner explained that “justice is served if power is balanced and if hidden interests are uncovered” (40). Despite the mediator’s frequent use of the concepts, few could objectively explain how each concept worked. Accordingly, one mediator described that in order to right what he perceived to be a power imbalance between two couples, he encouraged the women to speak up for themselves. In the role-play involving the in-house corporate mediation, the mediator was hard-pressed to define how justice and power functioned in her sessions. In attempting to answer the question of who defined justice, the corporation or the parties and to what degree each party was empowered, an explanation would have demonstrated how the issues were complicated by the subjectivity of the setting. The concept of ideology is the most elusive. Indeed, none of the mediators outlined a specific ideology. Instead, the majority of respondents in Cobb and Rifkin’s study used examples of righting power imbalances and securing just settlement terms to illustrate the role of ideology. As a concept, ideology is the most challenging to examine in separate terms because it is inherent in the definition and functioning of other concepts such as power.

In their article, “What is a fair agreement?” Joan Sworkin and William London (1989) identify “fairness as the ultimate issue...and criteria in mediation” (3). Similar to the limitations of trying to discern practical definitions for concepts such as justice and ideology, fairness cannot be explained without including a subjective bias. The functioning of fairness is clearly indicative of the major role the mediator’s bias plays. It is not uncommon for mediators who have parties who are close to agreeing upon a financial settlement to suggest a number somewhere between the parties’ offers. Few mediators follow a formula to reach this value. Besides, those practitioners who do use a formula to locate a settlement offer, are often criticized for employing a system which fails to account for all variables in the case. Even those mediators who encourage the popular practice of “splitting the difference” are judged to be partial because they are in a sense saying that both sides are equal.

Sara Cobb and Janet Rifkin (1991) argue that impartiality “functions like a folk concept, talked, practiced, and researched on the basis of tacit and local understandings” (37). If concepts intrinsic to the notion of impartiality, such as power, ideology, justice, language, coercion, persuasion, and structure are, as many of these authors have illustrated, elusive in their meaning and role, Cobb and Rifkin may have exposed a major vulnerabili-
Accordingly, some of the major authors of conflict resolution, such as Christopher Moore (1986), Joseph Stulberg (1987), Roger Fisher and William Ury (1981), and Dudley Weeks (1992), all emphasize the centrality of impartiality to the role of the mediator. Likewise, organizations such as the American Bar Association require a mediator to “suspend or terminate the mediation if one of the parties is unwilling to participate and if reasonable agreement is unlikely” (Dworkin and London 1989:6). Clearly the evaluation of reasonability necessitates a subjective judgment. Furthermore, the Mediation Council of Illinois, in its Professional Standards of Practice for Mediators (1984, sec. IV) states that “mediators must be impartial to participants,” and, further, that “essential that mediators dissociate themselves from agreements that they perceive to be far outside the parameter of fairness” (cited in Dworkin and London 1989:6). If elusive and complicated concepts such as justice and fairness act as the underpinnings of mediation, then mediators may be forced to behave in ways contrary to these values. Accordingly, one of the answers given by a respondent in Cobb and Rifkin’s (1991) survey on “Deconstructing Neutrality” indicated this contradiction when he said, “I used my neutrality to make sure that the daughter got her own opinions and feelings on the table” (25).

Complicating the matter is the reality that the concept of impartiality requires that mediators monitor unconscious processes, which begs the question, How can one monitor that which is outside of her or his awareness? (Cobb and Rifkin 1991:25). Clearly one cannot, and thus the definition of impartiality can put the practice of impartiality beyond the mediators complete control. If there is a major internal contradiction within the practice of mediation, why do many practitioners continue to advertise the system as being value-neutral? In his article on “The Power of Mediation,” Tony Marshall (1990) contends that “mediation, far from being value-neutral, represents a distinct and well-developed value system” (115). Marshall adds that most mediators are “purveyors of a certain attitude to conflict, an outlook on life, that stresses such things as nonviolence, cooperation, communication, rationalizing, self-control, and empowerment” (122). If Marshall’s portrayal of mediation is valid, one could explain the current perception and practical use of impartiality in mediation from a different perspective. If one agrees with Marshall’s position that mediation is a transmitter of a distinct value system, then one could reason that the absence of practical guidelines for the practice of concepts such as neutrality and impartiality serves a purpose. That is, any serious attempt by a mediation council to draw guidelines would suggest that impartiality is conceivable. Further, if mediation is indeed a value-laden system functioning under the rhetoric of impartiality, then proponents of this system can, from a fairly unassuming position, create a base from which to affect social policy. These “transformationalists,” as they are often called, can construct a “potentially intimate relationship between mediation and social power” (Marshall 1990:122). Correspondingly, one could reason that the “settlers” (i.e., those whose primary interest is in reaching settlement and not in effecting social policy) abide by the lack of guidelines on issues related to impartiality because they recognize that such laws would be virtually impossible to comply with and would limit their ability to reach settlement.

As previously indicated, the concept of impartiality in mediation is deceptive and any attempt to clarify its terms would demonstrate its fallibility. One cannot define impartiality in mediation because it does not exist. Ultimately, the best way to deal with the issue is to recognize its ambiguity. Wright and Galaway’s (1989) description of impartiality as “mediators’ behavior insofar as they do not take sides...in ways that (parties) recognize” (244) is indicative of an attitude which recognizes the reality of acting as an “impartial” mediator.

References


When Private Wants and Public Needs Collide:
Making a Case for ADR in Environmental Regulatory Takings Conflicts

MARS A B. DETSCHER

Nothing strikes fear in the heart of a property owner as when government announces a new policy initiative to protect the environment. Or to save an endangered species. Or to preserve dwindling open space. Each new policy holds a promise to enhance the public good. But, undoubtedly, it will be at someone’s expense. Therein lies the rub: To what extent can government promote a public benefit or protect the public from harm at the expense of individual property owners? Which right in the bundle each property owner possesses is expendable? Which rights are compensable, and which are not? How should this determination be made?

The enactment of regulations to promote a benefit or prevent a harm which results in the diminution of property value is a volatile issue debated in legislatures and courts throughout the country. At the root of this issue is the 5th Amendment to the U.S. Constitution which states, in part, that “private property [shall not] be taken for public use without just compensation.” At issue is the “fair allocation of the burdens and benefits of programs undertaken by government for a public purpose. Specifically, the purpose of the takings clause is to ensure that society collectively bears the burden of regulation that may arbitrarily affect an individual landowner” (Strong, Mandelker, and Kelly 1995:6).

The property rights issue becomes debatable when government adopts a new regulation, such as a coastal construction setback line to implement existing coastal zone management policies. Such regulations limit development water-side of the setback, thus impacting development rights of property owners. A second instance when the property rights issue becomes debatable is when there are changing circumstances involving an existing regulation, such as the re-delineation of or adjustment to boundaries on an existing floodplain map. A third occasion is when there is a change in public policy, as when government values the protection of an endangered animal and limits development within the identified habitat.

What is important to remember is that changes in public policy and enactment of regulations might result in diminished property values. However, such effects do not necessarily constitute a taking when there remains a residual “reasonable” economic value (that is, when it does not constitute a “total taking” of property value) as long as the government enacts the regulation to prevent a harm or promote a public benefit. Private property rights are influenced by judicial action, legislation, and regulatory activities. This paper shall briefly address the property rights issue from these perspectives, and discuss policy implications and alternatives.

Judicial Disposition of Property Rights Claims

The customary and common law view of property rights is that such rights emanate from the community and are conveyed to the nation-state. It is not that the state grants people property rights; rather, the state exists because the people have such rights. There is a direct relationship between property rights and civil rights; the property right is a civil right. Therefore, it is understandable that the dilemma of private property rights and takings for public benefits continue as the subject of great debate.

Historically, the impact of a government regulation that adversely affected private property values was not thought of as a taking, as expressed by Bosselman, Callies, and Banta (1973): “There is no evidence that
anyone involved in the drafting of the state or federal bills of rights ever considered the possibility that a regulation might be thought to be a taking, even when the regulation effectively prohibited any economic use” (p. 239). Mugler v. Kansas (1887) exemplified the U.S. Supreme Court’s position that a regulatory action did not constitute a taking when the Court upheld the state’s prohibition of the manufacture and sale of alcoholic beverages even though Mugler’s property became worthless. In Hadacheck v. Los Angeles (1915), the court found that enactment of land use regulations precluding the operation of an existing brickyard near a residential area advanced the interests of the general public and those interests outweighed the private interests of the property owner whose property was rendered almost valueless. In fact, while Hadacheck could no longer produce bricks on his land, the property, although reduced in value from $800,000 to $60,000, retained some economic use since Hadacheck could continue to mine red clay from the property.

As of 1922, judicial consideration of takings claims relied on Justice Holmes’ opinion in the Pennsylvania Coal v. Mahon case which included, in part, the following: “The general rule, at least, is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking” (p. 415). The operative phrase is “if regulation goes too far” and it is this measure which shaped judicial decision-making until the late 1970s. Generally, the courts ruled in favor of legislators and legislation, finding that no compensation is necessary when the intent of the legislation is to deliver a public benefit or avert a public harm. The Pennsylvania Coal decision introduced the “average reciprocity of advantage” principle. According to Justice Holmes, landowners affected by regulatory decision-making could not claim a taking if such regulation confers a reciprocal advantage, in this case an advantage to each owner in the form of enhanced worker safety.

During World War II, the federal government shut down gold mines in an effort to cultivate a seasoned labor force and managers to operate copper mines needed to supply war materials. The court, in U.S. v. Central Exureka Mining Co. (1958), found that the public purpose served was enough to sideline the individual property rights of the gold mine owners. In Penn Central Transportation Co. v. City of New York (1978), the plaintiff sought relief from the city’s development limitations arising from historic preservation regulations. Penn Central was one of numerous property owners affected by the regulations. Penn Central, together with the public at large, stood to benefit from the preservation of historic structures in part from enhanced property values.

Again, the average reciprocity of advantage principle introduced in Pennsylvania Coal applied. The opinion in Penn Central contained a two-pronged test: First, the court must determine if the governmental action affects the entire property, and not just part, for it to be a taking. Second, three factors must be considered, including the character of the governmental action, the economic impact on the landowner, and the existence or lack of reasonable, investment-backed expectations. While the court ruled that the limitations on development did not result in a taking, this was a landmark case since the justices did acknowledge that a taking could occur short of the transfer of physical control over a parcel of land.

In a split decision in San Diego Gas & Electric Co. v. City of San Diego (1981), the majority ruled that a taking did not occur; however, the dissenting opinion proclaimed that “regulations...can destroy the use and enjoyment of property in order to promote the public good just as effectively as formal condemnation... It is only logical, then, that government action other than the acquisition of title, occupancy, or physical invasion can be a ‘taking,’ and therefore a de facto exercise of the power of eminent domain” (p. 631). The court looked at diminution of value as the measurement tool, and considered complete loss of value as the ultimate threshold for a taking. The Hadacheck decision is an illustrative example of this test; other such examples abound.

The plaintiff in the case of William C. Haas & Co. v. City and County of San Francisco (1979) invested $2 million to build a high-rise complex. The city changed the land development regulations in the interest of the general public, and the property value plummeted to $100,000. While the diminution of property value was dramatic, the court nonetheless recognized a residual economic benefit and denied the takings claim.

A similar instance occurred in Los Angeles County. In the case of HFH Ltd. v. Superior Court of Los Angeles County (1975), purchasers who bought their land for just under $400,000 found themselves down-zoned five years later from commercial (a zoning the plaintiff sought and obtained while the property was under contract to purchase) to residential. As a result of the regulatory action, the property value dropped to $75,000. Again, the court held that there was no taking. A two-part taking test was first articulated in Justice Stevens’ opinion in Agins v. City of Tiburon (1980) and requires the court to consider if the law substantially advances a legitimate public in-
terest and whether or not the regulatory action deprives
the owner economically viable use of land.

By the 1980s, the U.S. Supreme Court began to look
at the impact federal legislation had on property rights
and considered takings cases with a renewed interest and
from a different perspective. The court relied less on legis­

tative intent and whether or not the public benefit out­
weighed private interests. The focus shifted to whether
or not the governmental action furthered a legitimate state
interest. Even so, the court determined that a justifiable
restriction on the use of private property must not result
in the loss of economically viable use and looked to­
ward compensation to right the wrong.

Three landmark cases decided by the U.S. Supreme
Court in 1987 initiated a shift in the court’s approach to
property rights claims. The first, Keystone Bituminous
Coal Association v. DeBenedictis (1987), revisited the
subsidence requirements, an earlier version of which
was considered in the 1922 Pennsylvania Coal case. The
court rejected the plaintiff’s taking claim finding that the
purpose of the applicable regulation is to protect the
public’s interest in environment, health, safety, and fi­
scale soundness.

Three issues shaped the court’s decision: First, coal is
but one part of the total property interest and, therefore,
an inseparable interest. A reasonable use of the property
remained despite the limitation on activity; “destruction
of one of the bundle of sticks cannot alone amount to a
taking” (Freilich and Chinn 1988:5). Second, the court
rejected the argument of investment-backed expectations.
An overwhelming amount of property value remained;
and the court acknowledged that a property owner is not
necessarily entitled to a maximum profit. Finally, the
plaintiff failed to identify the specific property taken and
could not show which property lacked any value as a
result of the regulation.

In First English Evangelical Lutheran Church v. L.A.
County (1987), a second landmark case, the plaintiff at­
tempered to rebuild a campground destroyed by flood in
1978. The County denied the necessary permits citing
floodplain preservation and property protection regula­
tions adopted subsequent to the flood. The court did not
review this as a “taking case” but rather addressed the
issue of compensation, finding that the Church was due
compensation for lost use.

In the third landmark case of 1987, Nollan v. Califor­
nia Coastal Commission, Nollan purchased property to
construct a beach house and was told he must provide an
access easement across his property for public beach ac­
cess. The court ruled that Nollan was deprived of his
right to exclude access to his property by others, one in
the bundle of rights held by property owners. Again, the
court required compensation.

In Lucas v. South Carolina Coastal Commission
(1992), the plaintiff purchased beachfront lots on the
landward side of a coastal construction setback line. Sub­
sequent to his acquisition, the coastal construction set­
back line was shifted, thus placing the plaintiff’s prop­
erty on the restricted side of the line. The defendant was
denied building permits for the construction of a home
on beach front lots, thus instigating this claim. While the
court required compensation, several ambiguities re­
main. The court left uncertainty regarding the depre­
vation of value: If some value remains, is the taking
compensable at all? How much is enough to require com­
pensation? That is, does a “total take” exist only when
there is no residual benefit? A third debatable issue is
whether or not compensation is required if the prohib­
ted use was not originally part of the title.

The court required an “essential nexus” between the
exaction and projected impact of development in the case
do Lan v. City of Tigard (1994). Dolan owned and op­
erated a hardware store and wanted to expand. The city
required a creek and bicycle easement across the prop­
erty, claiming the easement would relieve traffic con­
gestion in the area. Dolan successfully challenged the
relationship between the impact of the easement on the
property and the impact that the store expansion would
have on traffic circulation in general; the court found
that a rational nexus did not exist.

The current trend in court decisions reflects the con­
cern that governmental actions might overstep reason­
able bounds without providing some form of compensa­
tion. Several state supreme courts foretold this trend. In
Redevelopment Authority of Oil City v. Woodring (1982),
the Pennsylvania body determined that the city’s require­
ment for aesthetic treatment of utilities improvements
required compensation. In the state of Washington, regu­
lations governing moorages and rent control, including
severe eviction limitations, constituted a compensable

Regulations, Legislation,
and the Popular Response

Historically, the government encouraged settlement in
the United States, making land available for homestead­ing
and development. As “owner and marketer” of pub­
lic lands, the government promoted conveyance of pub­
lies into private ownership. The Industrial Revolu-
tion marked a modification of government’s role to manager-overseer of the then-remaining public lands, a role that continued to the 1960s with the exception of the Depression Era, during which time the government again took on the role of developer of public projects.

In 1964, the federal role shifted from “temporary custodian” of public lands to “protector” when the Department of Interior placed a moratorium on the reclamation of desert land for farming. This shift in federal focus impacted the western states. Nevada was most impacted by this policy shift since almost 90 percent of the land area in the state was under federal administration.

The effect of the moratorium was to create two distinct groups: property rights advocates, and conservationists. From the moratorium, grew a populist movement named the Sagebrush Rebellion, founded on the principle that the federal government had an obligation to dispose of federal lands. The property rights advocates, mobilized by the Sagebrush Rebellion, constituted a clear minority of relatively powerless Westerners, homesteaders who were not well connected, organized, or networked. The opposition was comprised of powerful and influential urbanites, a large and well-organized group of “conservationists.” The Rebellion was almost totally ineffectual, given the property rights activists’ lack of resources, power, and organization.

The Wise Use movement was a coalition of developers, hunters, fishermen and other recreational enthusiasts organized in the 1970s to counterbalance the conservationists who now called themselves “environmentalists.” The Wise Use advocates resolved to expose the true environmental issues, working hard to dispel myths of exaggeration. The contention of these property rights activists was that they were not opposed to environmental protection; pointedly, they generally supported the concept. However, the group opposed government taking of private property rights without just compensation. They viewed such takings as an infringement of their constitutional rights to the enjoyment of property under the guise of a government action necessary for the public good or in the public interest.

Critics of the movement proclaimed that “[t]he sooner the energies of property rights advocates dissipate, the quicker we can get on with centralized management of a complex world that has no room for such natural rights notions as private property rights” (Yandle 1995: x). Property rights activists assumed an anti-environmentalist label since the greatest number of cases under the property rights umbrella challenge environmental protection legislation and regulations.

Prior to the Wise Use movement, environmental regulations governing the use of land emanated from every level of governmental authority. However, when the 1970s movement began, the focus on environmental regulation shifted to the federal level, beginning in 1970 with the creation by Congress of the Environmental Protection Agency (EPA). One of the first regulatory mandates affecting many private property owners was the requirement of an Environmental Impact Statement (EIS) prior to the development of certain lands. During the 1970s, Congress enacted wide sweeping legislation, including the Coastal Zone Management Act (CZMA), the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Resource Conservation and Recovery Act (RCRA), and the Surface Mining Control and Reclamation Act (SMCRA).

Legislation adopted throughout the 1970s reflected a permitting or regulatory focus. A shift to a liability focus is evident in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), approved in 1980 and subsequently amended to include the designation of “Superfund” sites and requirement for clean-up. At the time of this shift, the prevailing assumption was that governmental entities are better stewards of the environment than private property owners. Also, there was a presumption that the popular environmental issues and/or concerns cannot be solved by common law applications. Traditionally, protection of public health and safety were state issues until the creation of the EPA. Thereafter, the federal government assumed a primary role in environmental protection. Zoning and land use restrictions shifted from state focus to federal focus in an effort to preserve public health and safety. (During the late 1960s and early 1970s, states acknowledged local government deficiencies in land use planning and systematically assumed the local planning role and responsibility. This trend was continued when the federal government assumed responsibility of state planning functions.)

The contemporary view reflects a change from “environmental protection” to an “ecosystem” approach or an integrative ecological management system of comprehensive land-use planning and control. This comprehensive approach is evident in federal as well as state and local policy and legislation.

In states with property rights legislation, such legislation reflects one of two philosophies. First, legislation contains “look before you leap” provisions, addressing purely procedural or planning issues. Regulatory agencies and governments are required to review the impact
that a decision would have on a property owner, and act accordingly. The second approach is to draw a “bright line” to quantify exactly what constitutes a regulatory taking, whether it is at 90 percent of market value, 80 percent, or some other number.

The Florida Experience

The issue of private property rights and regulatory takings impacted Florida policy-making for years. In the 1970s, Florida lawmakers passed landmark legislation regulating land use and promoting environmental protection. These laws, and most importantly Chapter 380 of the Florida Statutes establishing the Development of Regional Impact (DRI) restrictions, upset property owners. In response to concerns voiced by the public and in light of federal court rulings on regulatory takings, then Governor Askew created the Property Rights Study Commission I. The “mission was to develop policy guidelines as to where ‘the private prerogative should end and where the public prerogative should begin’ relative to property rights” (Rhodes 1995:26).

The result of the Commission’s deliberations was the 1978 Property Rights Act. This act addressed the issue of compensation for property owners affected by regulations that “unduly diminish the value of property although the Commission failed to agree on the criteria for determining what “unduly diminishes” precisely means. The act includes the Commission’s recommendation that regulating governments retain the opportunity to modify or grant a variance as an alternative to compensation. Further, the act recognizes that the courtroom rather than administrative proceeding is an appropriate venue to determine compensation or other relief. Also, the act applies only to state or regional activity and does not apply to local government action.

Fifteen years after the adoption of the original Property Rights Act, Governor Chiles responded to a change in the legal and political climate and established the Governor’s Property Rights Study Commission II. The pivotal theme of the new commission “centered on the need for the development of a conflict resolution mechanism for takings cases” (Poklemba 1995:31). The new Commission had numerous landmark court decisions and a multitude of new legislative initiatives to review and assess. An example is the “Snyder Decision,” which had the effect of “legalizing” the decision-making process that local government uses while considering changes in land use (Board of Commissioners v. Snyder 1993). This shift towards handling land use issues via a quasi-judicial process versus an administrative or legislative process underscores the primary role that the courts maintain in property rights issues.

Recommendations from Commission II stressed the need to establish and implement easily accessible, informal, nonjudicial programs to review and address complaints from property owners. It was suggested that an “intermediator,” familiar with land use, environmental protection and permitting procedures, make recommendations to regulatory agencies to rectify perceived injustices. Intervenors, such as adjacent property owners affected by the proposed action, may be granted status by the intermediator to participate in the process. The intermediator would function first as a mediator, and second as an arbitrator whose decision is advisory only. The regulatory agency may accept, modify, or reject the intermediator’s recommendation, subject to the property owner’s concurrence. The Commission also recommended the creation of a Property Owner Assistance Program, agreed upon a compensation proposal, and endorsed the “transfer of development rights” (TDR) as a conceptual alternative to compensation.

The Bert J. Harris, Jr., Private Property Rights Protection Act was signed into law by Governor Chiles on May 18, 1995. The intent of the legislation is to apply to any local, regional, or state governmental action that constitutes an inordinate burden but that does not occur to the extent covered by Florida or U.S. Constitutional taking protection. Rather, the new law protects existing land uses, and land uses for which a landowner maintains vested rights. A claimant must satisfy one of two tests. The first requires the property owner to demonstrate that the governmental action deprives the owner of the realization of the reasonable, investment-backed expectation for the property; that the deprivation is permanent; and that the deprivation affects the entire property. The second is a test of reasonableness, in that the landowner must show that the regulatory action places an inordinate burden such that the property owner bears a disproportionate share of the burden imposed for the public good.

The Harris Act encourages the government and the property owner to work together in good faith to address alleged inequities that result from government action. Section 2 of the property rights law, “Florida Land Use and Environmental Dispute Resolution Act or Special Master Law,” promotes alternative dispute resolution techniques for addressing disputes involving development orders or enforcement actions. Thus, the Harris Act sets forth informal and expeditious procedures to deal
with such disputes. In summary, the property rights law enacted by the Florida Legislature in 1995 responds to the current legal and political climate which generally favors private property owner rights, and introduces alternative methods to resolve the compensatory issue in a more constructive and expeditious manner.

Policy Implications and Alternatives
Policy limiting the use of property results in benefits and costs; government may act "to limit property use only when benefits are clearly high enough to warrant the costs and an equitable distribution of costs and benefits can be determined" (Rinehart and Pompe 1995:93). Exactly what does this mean? Several theories regarding policy formulation in the area of property rights attempt to formulate the appropriate equation.

In 1967, Frank Michelman proposed that property takings and compensation issues involve efficiency gains, demoralization costs, and settlement costs. The analysis involves whether or not a balance exists between efficiency gains, and demoralization and settlement costs. Thomas Miceli and Kathleen Segerson (1994) employed efficiency criteria as an evaluative tool, balancing regulatory takings to eliminate the "moral hazard" of landowner over investment, as well as a taking without compensation.

Land Rights movement advocate Richard Epstein (1993) supports the property owner’s natural rights to the fruits of his or her labor. The basis for Epstein’s approach is that compensation is required if the owner does not receive something of value for the regulatory taking. Epstein advocates enlarging the pie to compensate for takings, and acknowledges that property owners may receive benefits other than monetary compensation.

The “public choice theory” of legislative decision making identifies the following four characteristics. First, politicians are as self-interested as their constituents. Second, the voters are self-interested. Third, legislative and executive decision-making is influenced by special interest groups more so than by private individuals. Finally, voters are rationally uninformed about government.

Pursuant to this theoretical framework, it is reasonable to generalize that the public mobilizes and influences public policy formulation when directly affected by policy outcome, and organizes to directly impact the policy makers. The Sagebrush Rebellion is an example of an impacted group of individuals who did not significantly impact policy-making, ostensibly due to their lack of organization and, therefore, lack of ability to directly impact the policy makers. In contrast, the more organized and networked Wise Use movement effected change in policy when its activists directly influenced the ability of elected leaders to progress politically.

Prior to the adoption of any policy which has the effect of limiting the use of land, government may ask the following three questions:

1. Should this area be regulated by government at any level?
2. To the degree that government regulation is appropriate, what level of government—federal, state, and/or local—should be ultimately responsible?
3. If a governmental role is desirable, where should this responsibility be placed and how should it be administered? (Nelson 1995:312)

Government should consider benefits and costs of policy implementation, and recognize that there is no “one-size-fits-all” answer to the property rights issue. There is increasing support for the contention that government should pay for the use of private property for social purposes, however the definition of “social purposes” is subject to interpretation. Finally, there is a need for greater scientific understanding of environmental regulation and a greater need for dissemination of such technical information.

Alternatives to regulatory takings may go far to de-escalate the private property rights dilemma. First, government could consider removing the subsidies currently offered to developers in sensitive or affected areas. An example of such subsidies includes the National Flood Insurance Program which protects private property in areas unsuitable for development. A system of taxes and subsidies may address inequities by sharing the costs of regulatory actions among the larger group that benefits. In addition, government or private organizations can purchase land subject to regulatory control; land acquisition programs such as environmentally sensitive lands programs, Florida’s Preservation 2000, local Open Space Programs, or Trust for Public Lands activities offer such opportunities. Finally, the Coarse Theorem suggests that property owners might have an incentive to negotiate a solution to their dilemma if transaction costs are not too high, and property rights are well defined. This seems to open the door to an expanded role for alternative dispute resolution mechanisms in the disposition of property rights issues.
Endnotes

1 Nelson suggests that all major areas of environmental policy undergo this three-question test. I suggest that it may apply to virtually any area of policy consideration.

2 The Snyder decision requires that a local government use a quasi-judicial process to consider a site-specific re-zoning, land use plan amendment, or other alteration in land use. All testimony, by petitioner, staff and the general public, is under oath and subject to cross-examination.

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Conflict and Culture: Colonialism and Structural Violence as Portrayed in the Literature Of Dangarembga, Walker, Wright, and Toomer

T.J. DE GAFFERELLY

No one can fully understand another's perspective of the world without having walked in the same shoes. Sympathy can be given to others in a particular situation, but empathy is rarely achieved. Comprehension of what another person is going through is nebulous, especially when addressing different cultures. But through literature, sometimes an author is able to present diverse points of view, allowing the reader to glimpse another dimension of life and discover another cultural experience parallels her or his own experiences. Tsitsi Dangarembga's *Nervous Conditions* (1988), Alice Walker's *The Color Purple* (1985), Richard Wright's *Native Son* (1968, 1987), and Jean Toomer's "Box Seat" (1980) are opportunities for a reader to go beyond a known cultural structure, especially in their representations of colonialism's impact on the person.

In this analysis, it becomes clear that while colonialism is universally understood as the establishment of a settlement in a distant land that remains under the jurisdiction of the colonizing state, colonialism can and does exist on multiple planes within all cultures and is as harmful and devastating to individuals and cultural groups. Race, gender, and intellectual colonialism are far more prevalent globally, yet in no way acknowledged or addressed to the same degree as the strategic take-over of a geographical territory by a dominant state. The dominance of one race over another, one gender over the other, and the selective education of one human being over the next are far more subtle forms of colonialism, and, in effect, structural violence.

In Dangarembga's *Nervous Conditions*, the African state of Rhodesia provides a dual setting for both the indigenous *gemeinschaft* culture of the Shona people and the *gesellschaft* culture of the colonizers or settlers from Great Britain. The indigenous culture is enveloped within British culture, politics, economics, and educational systems. This novel is told from the point of view of Tambudzai, a young Rhodesian girl. The novel's theme reflects universal meanings of power and oppression through imagery.

In Walker's *The Color Purple*, the cultural setting is also a dual environment, describing the early 1900s in a poor southern Georgia town through the perspectives of both black and white American cultural norms. However, the main theme revolves around gender dominance and oppression. As in *Nervous Conditions*, the story is told from the point of view of a young girl, here an African-American named Celie. Walker has created a unique writing style by developing an organic quest narrative told through letter form. As the protagonist, Celie, offers a feminist perspective through questioning male wisdom, passed from father to son, claiming the inherent inferiority of women and the exigency for keeping women under male control, through violence if necessary (Bloom 1988).

Wright's *Native Son* is written in a naturalistic style and presented in a third person selective narrative. Wright's novel is fixed in a contemporary American urban setting. African-American protest to the structural violence within the American society resounds throughout the novel. Wright describes violence as a given, leaving only the question: To what degree does his protagonist, Bigger, deal with fear? (Rosenblatt 1974). Through violence the central character frees himself from his inferiority to white males and gains self-esteem. But the cleansing force which the protagonist perceives as giving him equality further entrenches the colonialist ideology by stereotyping his race and perpetuating colonialism, and, therefore, violence against himself. While not

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addressed explicitly in *Native Son*, colonialism executed against gender is alluded to within the novel for to gain equality the protagonist kills a woman.

In the story “Box Seat,” the central character, Dan, struggles within his environment. Toomer’s approach critiques colonialism by questioning western rules and culture versus God and nature. The impersonalization of American culture within a southern neighborhood is the setting for Dan’s conflict with society. The story’s imagery conveys social division and a desire to escape reality as well as hostility and fear. The overriding theme of the story is that one can gain control of one’s individual destiny by leaving the mechanized world and embracing nature. Dan attempts to put a crack in the system by professing to be the savior of his people. However, his interest is for himself alone and he becomes a parody of the colonialist penchant for one will overpowering another.

The parallel among the four literary works is their depicting colonialism and structural violence. Although they represent different perspectives and settings, they all describe a social structure prevailing locally and globally—that is, a patriarchal hierarchy. The authors draw on their own life experiences. For Dangarembga, born and raised in Zimbabwe, her experiences provide her with insight into the historical and contemporary conflicts prevailing among diverse cultures there: black and white, male and female.

In her creation of the character, Celie, Walker draws on her own childhood feelings of inadequacy, loneliness, and despair. When Walker was eight years old, an accident caused to her lose sight in one eye and produced a severe disfigurement to her face. Out of this experience developed Walker’s view of the world characterized by naturalism—that is, one cannot escape fate but one must learn to survive by wits or strength.

Wright and Toomer are both African-American Harlem Renaissance writers, but their life experiences vary greatly. Wright propels black protests into the forefront of his life as well as his writings while Toomer denies his own heritage and attempts to transcend reality by creating another.

A fuller appreciation of the universal experience of multi-dimensional colonialism, patterns of structural violence, culture conflicts, race and gender oppression can be gained from these four erudite works. As described well by Franz Fanon (1963), the dominance of one group over another is attained through convincing the subordinate group that it is inferior, uneducated, and undeserving. In *Nervous Conditions*, the poverty of the indigenous people become an embarrassment to those who enter the white missionary school. By achieving a master’s degree in England, Babamukuru could be proud of his position to provide for his family, unlike the rest of the family branches who were uneducated. When Babamukuru offers an education to his nephew, Nhomo, the inferior position of the nephew is apparently immediately dispelled as he disowns his father’s name. The acceptance of a lesser status is best indoctrinated into the young as succinctly evidenced through Tambudzai’s reflection that when she was very young she was correct in her devotion to admire and yield to all superior people at the mission.

The self-confirmation of an ascribed inferior status is also clearly represented in *The Color Purple* as Celie dwells on her lack of self-worth. The dominance of men over Celie can be seen in her letters to God, where she expresses her conviction that she is subordinate because she is ugly and stupid. Her world is dark and desolate with no hope of escape as her mother was beaten down by men. Education is denied Celie and there is only hope in the education of her sister, Nettie. Ironically, the education of Nettie is through missionaries who have taken her to Africa to teach English, reading, writing, history, geography, arithmetic, and biblical stories to the children of the indigenous people. The role for the women in *The Color Purple* is constrained by the supposition that women are property. Further submissiveness to the dominate social class is evidenced through the belief in the inappropriateness of whites and blacks sitting next to each other.

The setting in *Native Son* points to a physical world in which being black means living in an impoverished milieu (Joyce 1986). The forthrightness of Wright’s naturalist viewpoint presents a blatant reality as Bigger expresses his frustration by observing that planes symbolize freedom and blacks are not allowed to fly planes, and therefore blacks cannot be free simply because they are blacks. Inferiority has permeated Bigger’s life and those of African-Americans through stereotyping. In this novel, the overall approach by the dominant culture to dealing with blacks is to categorize them as being simple-minded and inferior. Wright is the first novelist to tell the truth that blacks are marked by fear and that they hate every second of their abasement (Howe 1961).

The structural system that proclaims that certain populations need dominating due to their inferiority and lack of education is conveyed from an entirely different approach in “Box Seat.” Romanticism provides a way for the human consciousness to transcend to a higher
level and create a new reality, often through nature. Nature is at the essence of Toomer’s writing. The struggle of African-Americans is seen as their turning away from nature, which is God, and adhering to the white mechanistic world. The protagonist, Dan, sees the images of nature fade while the repressive conditions of his people advance. The coldness of the social organization of the higher society has filtered into his life, forcing Dan to hide from reality and reducing people to cold objects. In his quest for goodness and harmony, Dan’s appeal to the townspeople ignites violence, for Dan is negating the legitimacy of his people as much as the culture in which they live.

Achievement of dominance is also attained through political structures, whereby a system of laws and religion are centralized and economic gain is controlled. “Box Seat” expresses the heroic, yet unrealistic, mission of Dan to be the savior of his people. By bringing the people back to nature, and therefore back to God, and stirring “the root-life of a withered people” (Toomer 1980:104), a noble ideal will be attained. But Dan’s renunciation of the townspeople’s values and beliefs is no less destructive than the insistence that the subordinate culture follows the superior culture’s laws and religion. The townspeople are concerned about their respectability and their professions and will not violate the social codes of their world (McKay 1984). There are social barriers that Dan cannot break through; he is ostracized by the people. Yet he believes that “the values of the folk heritage turn away from the treeless alley of the modern world” (McKay 1984:145).

The political system plays an important role in Native Son. Bigger is an angry young black man who wants desperately to attain all that America offers. Like his counterparts in Africa under the rule of Britain, he is led to believe that individual effort will lead to success, but ultimately discovers that being black limits his opportunities: “They got things and we ain’t...they do things and we can’t” (Wright 1968, 1987:23). For Bigger, living under the rule of his colonizer, the white patriarchal system, is “just like living in jail” (Wright 1968, 1987:23). Violence forms an inescapable part of his existence (Howe 1961). His behavior arises out of fear. For naturalists, God is all but denied, but the basic philosophy revealed is that a person cannot escape the forces controlling his life. For Bigger, the elements have consorted to bring about his ruin (Joyce 1986).

The realism conveyed in The Color Purple also addresses the political systems within the culture, only the centralized system of laws and economic gain are focused on the men, and religion is mainly addressed by the women. Celie’s letters to God emphasize the lack of control in her life, but as “long as [she] can spell G-O-D [Celie’s] got somebody along” (Walker 1985:18). The underlying theme within this novel is one of faith—that is, spiritual survival and individual identity. Religion, through a colonialist view, is presented on two platforms: the conversion of the African natives, the Olika, and the patriarchal favoring the erroneous assumption that Christianity places all men over all women. The law protected the men, but the women were left to be beaten by their husbands as well as by other men. Economic gains in The Color Purple are solely afforded to the men. Dowries were given in marriage. However, Celie does find economic gain after escaping from her dependency on men. The expansion of Celie’s life expresses the imagination of the author, who has developed a talent which crosses all borders and peoples. Becoming a seamstress, Celie designs pants which fit all shapes and sizes, both men and women, suggesting an ideology where all people fit together in a harmonious relationship. To justify their expansionism, the colonizers conclude that their culture fits all peoples. However, in reality, this expansion is accomplished through violence and intimidation which negates any redeeming factors.

Intimidation is clearly present within the many-tiered political systems described in Nervous Conditions. The omnipresent patriarchy of both the British and indigenous cultures, the intellectual native elites such as Babamukuru, and at the bottom of the hierarchy, women. In both the British and indigenous Shona economic structure and financial authority is held by men. Maiguru, Babamukuru’s wife, holds a master’s degree, yet her salary goes directly to her husband. The dominion over the family income is directly communicated through the ire of Tambudzai’s father, Jeremiah, when he discovers his daughter’s school tuition was paid. He describes this use of money as stealing because the duty of a daughter is invested in the daughter is lost. In this view, women are resources to be managed by men.

Also, the conflict caused by imposed religious values is depicted in Nervous Conditions. A British-style wedding ceremony was planned by Babamukuru for his brother in order to make his brother and sister-in-law’s long-standing union sanctioned and cleansed of sin within a British worldview of marriage and morality. This pronouncement of the Shona tradition as sinful delegitimizes Jeremiah’s family as well as the Shona culture itself.
While colonialism establishes a political system, it engenders cultural conflicts which bring about aggression and violence. Identity is formed from culture and the emotions related to losing one's identity range from confusion to death.

Cultural confusion reigns in "Box Seat." For Dan, nature is his culture. Reverently, he describes the "chestnut buds and blossoms are wool he walks upon" (Toomer 1980:104). Toomer's imagery is so colorful that it "fuse[s] with the soul of the South" (Wagner 1982:423). In like manner, Dan wants the soul of the town to fuse with his ideas. He further desires that the townspeople to turn away from their ordinary and practical lives. The protagonist's culture is born out of innocence; he lives in an ideal world of his own design. Aggression is ignited when Dan is rejected by the townspeople. In the same idiosyncratic mode of colonizers, Dan threatens to "grab the girders... and pull them down. Hide by the smoke and dust...[he] will arise. Lightning will flash" (Toomer 1980:126-127). Envisioning the gallantry, Dan considers only himself and the goal (McKay 1984:144).

In The Color Purple, cultural conflict is seen as twofold, through the eyes of African-Americans in a white-dominated society and through cognizance of gender. Both perspectives are comparable in the sense that there is structural warfare perpetrated along both race and gender lines in the colonialism of a patriarchal system. The symbiotic relationship which should exist for the good of both mutates into conflict.

The African-American males are kept from achieving prosperity while working to gain riches for the white man, or they cannot get work at all. From a woman's perspective, life is work with no compensation, as evidenced by Celie's husband who declares that "women work. I'm a man" (Walker 1985:22). The statement that all women are good for is to work and give man satisfaction distinctly defines the cultural norms of the society. It is interesting to note that while women are not included in decision-making in the patriarchal system, the indoctrination of patriarchal thinking is embodied in Celie's suggestion to beat an unsubmitive wife. Celie's instruction solidifies the potential of women solely in the roles that nurture patriarchy (Sylvester 1992:37).

The complexity of cultural conflict is also exhibited through the intrapsychic discord of Nyasha in Nervous Conditions. As a young Rhodesian, Nyasha was educated in England and British culture became her culture. Brought back to her native land, she is expected to assimilate into the Shona culture while maintaining English decorum, "being whatever's necessary" (Dangarembga 1988:117). Her victimization is continued as she is being educated to think freely but is mandated to strictly adhere to her father's commands. Rebellion against the social rule of her father, for being "water to be poured wherever he wants" (Dangarembga 1988:119) brings about her challenging her deepest beliefs about authority. Paralleling Dan in "Box Seat," Nyasha loses herself in books, looking for truth, harmony, and a different reality. The struggle between cultures, both political and gender, is superbly related through imagery by Dangarembga. Babamukuru and Nyasha both "devoured English letters with a ferocious appetite" (Dangarembga 1988:36), connoting their desire to become one with the colonizer. Babamukuru epitomizes the patriarchal system through his insistence that meals be held up until he arrives, symbolizing submission to consuming power and authority. While Nyasha once admired the British culture and her father, she now sees herself as oppressed by both. Her ferocious appetite becomes worthless because of the disparity between the colonizers and the colonized.

The most extreme example of cultural conflict is found in Native Son. The oppression of African-Americans is significantly evident in the imagery Wright uses in expressing the limited freedom of black America. By describing "the white man's home [as] huge" (Wright 1968, 1987:46), the author paints a picture of the reality of the global influence of Western culture. The social and political laws of whites are like "a rug so soft and deep that it seemed [Bigger] was going to fall at each step he took" (Wright 1968, 1987:49), intimating that white Western laws are written with deliberate intent to impede African-Americans. While admiring his oppressors for the advantages they have, Bigger also feels like a helpless servant who wants to "wave his hand and blot out the white man [or] blot himself out" (Wright 1968, 1987:50). Turning to violence Bigger restores his self-respect, becoming cleansed in "a new-born strength" (141). In attempting to escape domination, Bigger's "body landed on the snow-covered roof" (250), surrounded by police. Wright uses a black and white color scheme to signify the cultural division in America: the white snow illustrates white authority. Antagonism towards repression has Bigger "trying to feel the texture of his own feelings" (323). The disparity between black and white America poses a true dilemma for African Americans, for their culture is American but without their being allowed to fully assimilate or contribute.

Creating cleavages through race and gender, oppression supports the colonialist approach to stability within
the dynamics of power. Since power is fluid, stereotyping and limited education, or intellectual colonialism solidifies the status quo. In all four of the literary works discussed, race and gender oppression is skillfully exposed. Through intellectual colonialism, the deprivation of education is used to keep a group subordinate. Even when education is afforded, the struggle to limit access to achievement is aggressively pursued. Toomer inverses the colonialis ideology by depriving his protagonist intellectual understanding of the world around him. Dan loses everything in his attempt to conquer the townspeople. The image of the townspeople as “each one [being] a bolt that shoots into a slot, and is locked there” (117) more appropriately describes Dan himself. The people are struggling for achievement and self-esteem, while Dan is conspiring to limit them through his insistence that they turn away from their culture. Dan’s motivation, like the colonizer, is purely self-interest. His love for Muriel magnifies his hostility towards the townspeople because he does not want to adhere to their cultural values. On the surface, Dan appears noble and heroic. However, his selfishness mars any love he has for Muriel for he would disgrace her to get what he wants. His villainousness is no less than that of other gender oppressors.

Being uneducated, Bigger knows he must use his wits and strength to get what he wants. The hostility revealed in Native Son is congruent with “frustration-aggression theory” (Lorenz, 1966). Denied access to achievement, Bigger violently takes his aggression out on a young white woman and kills her, which in turn reinforces the stereotype of the black male in white society. Just as the colonialists use aggression to achieve their goals for power and resources at the expense of others, Bigger gains self-worth and the realization that he “didn’t know [he] was really alive … until [he] felt things hard enough to kill for ’em” (392). His achievement came from the destruction of another human being. Bigger’s violence toward women is badly ironic in that Bigger subjugated, tyrannized, and ultimately ended the existence of a human being while hating the fact that the white culture was doing the same to him. It is irrefutable that both patriarchy and colonialism are self-sustaining (Sylvester 1992:35–36).

The dynamics of power, through race and gender oppression is also represented in The Color Purple. Social coercion to gain stability within a culture appears to be universal. Stereotyping and intellectual colonialism are used to keep groups submissive even through the guise of protection. The despair Celie feels toward an unloving world can be recognized by all oppressed women no matter what race, no matter what era: “happiness [is] just a trick” (266). Celie has been restrained from achieving an education, her restraint coming from the violence of incest. No greater oppression and violence is described in any of the learned works analyzed. Even though it is discovered that incest was not the case, the violation of a young girl emphasizes strongly the burden placed on women in a patriarchal structure.

Intellectual and gender colonialism is also found within the Olinka people in Africa. Protection is the premise used by the Olinka men to oppress women; they always have a man to look after them. They “do not believe that girls should be educated” (161). The opposition to women being educated is strongly conveyed by a father of an Olinka girl, who states that “her face is beginning to show the spirit of one of her aunts who was sold to the trader because she no longer fit into the village…she refused to bow to the chief” (166). Although the patriarchal system dictated a traditional role for its women, the difference in the treatment of women in America and Africa, it is suggested, is that “women are respected” in Africa (167). More poignantly, women are respected if they surrender to behest of the patriarchal system.

Racism is documented in Walker’s novel. Celie’s friend, Sofia, is put in jail for “sassing the [white] mayor’s wife” (89). The white African road builders considered the Olinka expendable people. The Olinka were told that even though they had lived on the land for generations they “no longer owned their village” (176). The Olinka are racists themselves for they “don’t even recognize…the brothers and sisters they sold” (243). Within The Color Purple, a dual racism is presented about the Cherokee Indians. The Cherokee, like the Olinka, were forced off their land by the whites. However, the Cherokee prejudice appears to be more brazen in that they believe that “everybody not a Indian they got no use for” (275). The irony of racism and stereotyping is that all peoples cultivate their own prejudices while protesting bigotry against themselves. Nettie observes that the indigenous Africans “are very much like white people back home, in that they think they are the center of the universe and that everything that is done is done for them” (174).

Nervous Conditions is interwoven with the multifaceted dynamics of power. Racism, gender oppression, and intellectual deprivation are stressed throughout the novel on many planes. The British colonialists select from the indigenous people those who would best serve the Empire through education. Babamukuru is one of the intellectual elites, educated in England but only allowed to
reach a specific position in the administrative apparatus. His worth to the Empire is in his controlling his people and perpetuating the British privilege. His racism is doing what the British ask even if it is not in the best interest of his people. Babamukuru, in a way, is a romantic in that he is concerned with self and seeks harmony between the two diverse cultures. He supplies his family with needs but offers little in the way of giving real help to free his family from his domination or that of the British. Babamukuru’s status affords him the luxury of not questioning too much. His first concern is keeping what he has achieved.

Nyasha, on the other hand, questions everything. Her status as Babamukuru’s daughter has given her the opportunity for an education, which she willingly absorbed. However, through education comes independence and Nyasha is suffocated by her father’s insistence upon her taking a traditional role within the family, both English and Shona. The imagery used by Dangarembga to project Nyasha’s position is through the use of food as educational and psycho-cultural nourishment. The gender oppression forced on Nyasha causes her to reject both cultures, first Shona, then English; to reject authority, including her father, and ultimately herself, by disgorging all nourishment. Tambudzai’s brother died from a lump in his throat, suggesting the English education (food) struck him down.

Tambudzai gives hope throughout the novel. Her intelligence to weigh the options and work hard to achieve success overpowers the struggles he has to endure. Being repeatedly told that she was a girl and does not need to be educated, she began learning from her grandmother’s stories. As in the case of Celie, in The Color Purple, women pass on their history through storytelling. Through a historical perspective, Tambudzai realized what would be in her future if she did not gain an education. Using the system to her advantage, Tambudzai accomplished many things. However, Dangarembga does leave the reader wondering if Tambudzai will forget her heritage and whether that would even be a negative factor considering the oppressive nature of the system in which her sisters have to live. Nevertheless, it is clear that Tambudzai did not allow the Englishness to pervade her total being, instead she took what she felt was necessary and rejected the rest.

The literary accomplishments of Dangarembga, Walker, Wright, and Toomer present uncommon occasion for the examination of cultural structures which provide insights into an analogous consciousness. Even if one cannot fully appreciate the cultures, lives, and situations of the characters, an honest search within one’s soul for colonialisim tendencies may prove surprising. Cultural differences should not bring about destructive conflicts, they should instead enhance relationships through understanding. There is no place for race and gender bias, everyone has a unique gift or talent which should be utilized instead of being oppressed. The structural violence generated by colonialism, patriarchy, and intellectual oppression can only begin to be eradicated through the efforts of individuals, one person to another.

Endnote

1 A distinction between gemeinschaft and gesellschaft cultures was made by Ferdinand Tönnies (1887, 1957). Gemeinschaft culture refers to cultures based on shared customs, traditions, and identity. Gesellschaft refers to industrial society based on concepts of individuality, rational thought, impersonal contracts, and utilitarian standards. This is a historical frame describing how, while at different rates, human society has been moving from the gemeinschaft to the gesellschaft culture. This dichotomy, while referring to a historical continuum is congruent with distinctions between non-Western, “low-context” cultures and Western, “high-context” cultures, and between the colonized and the colonizer.

References


Eco-Terrorism:  
When Vigilance Turns to Violence

LISA GARCIA

Environmentalism has taken on many forms over the past two decades, ranging from the nonviolent methods of protest utilized by mainstream environmental groups to obstruct the depletion and destruction of the environment, such as letter-writing campaigns and the promotion of public awareness of environmental issues, to the flamboyant and often dangerous methods used by more radical groups. The latter approach has been termed “eco-terrorism” because of the willingness of radical environmental groups to use violent methods to attain their goals. To counter any threat that the radical environmental movement may pose, the government has also used violent tactics against environmental activists which, at times, resembles a form of terrorism. To understand why many radical environmentalists have legitimized the use of violence as a method to facilitate environmental change, we must understand the ideology of radical environmentalism and other factors such as the structure of terrorist organizations, group psychology, the power and use of rhetoric and propaganda, and how political agendas play into the decision to use violent tactics.

Radical environmentalists appear to follow the ideology of “Deep Ecology.” Although this doctrine itself does not address the use of violent means to bring about environmental change, for some factions, violence has become a manner in which to implement their vision. In its most basic form, Deep Ecology demands that human beings re-evaluate their relationship with the environment in such a way as to acknowledge that both human and non-human life have an intrinsic moral worth. In adopting a deep ecology perspective, one moves from the anthropocentrism of industrialized society to what is believed to be an ecologically responsible biocentrism. The philosophy also predicts that if things continue as they presently are, a crisis will result, and thus includes an imperative to action (Lee 1995:18).

Arne Naess first used the term “Deep Ecology” to distinguish between “reform environmentalism”—that is, environmental change through existing political institutions—from the desire to reconceptualize the relationship between humans and nature (Lee 1995). Through Deep Ecology, the individual sees himself or herself as an equal with all other life forms and not a superior form of life with the prerogative to impose his or her wants and needs onto the other lower forms. Moreover, Deep Ecology is not a catalyst for the relationship between humans and nature, as much as a “response” to what already exists in the relationship between the two. The link between humankind and nature has always existed, humans have just forgotten what their true role and responsibilities are as part of nature as an integral web of life.

In 1980, Dave Foreman, the founder of Earth First! wrote a memo containing the “Statement of Principles” for his organization.

• Wilderness has the right to exist for its own sake.
• All life forms, from virus to the great whales, have an inherent and equal right to existence.
• Humankind is no greater than any other form of life and has no legitimate claim to dominate the Earth.
• Humankind, through overpopulation, anthropocentrism, industrialization, excessive energy consumption / resource extraction, state capitalism, father-figure hierarchies, imperialism, pollution, and natural area destruction, threatens the basic life processes of Earth.
• All human decisions should consider Earth first, humankind second.
• The only true test of morality is whether an action—individual, social, or political—

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benefits the Earth.

- Humankind will be happier, healthier, and more secure, and more comfortable in a society that recognizes humankind’s true biological nature and which is in dynamic harmony with the total biosphere.
- Political compromise has no place in the defense of Earth.

The memo depicts the essence of what Deep Ecology is about, that is, what humankind’s responsibility is to the Earth, and how deep the radical environmentalist’s beliefs are regarding the true order of man and nature. But it also exhibits a militant tone as it refuses to compromise regarding the relationship between humans and the earth.

Deep Ecology is based on the principle of biocentrism as opposed to anthropocentrism. From the anthropocentric perspective, humankind and its needs are paramount. Biocentrism, on the other hand, argues that nature and the wilderness should be identified as the absolute good and that everything else should be compared to and judged by it. All action in defense of nature is justifiable, and compromise is synonymous with evil (Lee 1995). Radical environmentalists like Christopher Manes see groups such as Greenpeace even as anthropocentric because they only advocate environmental reform: “Reform environmentalists aim to preserve the environment in order that the earth can continue to support human life and that humans may continue to enjoy wilderness areas” (cited in Lee 1995:12). Manes believes that the goals of the reformists are misplaced but see their value in educating the public and pursuing cases to save the environment through the legal system (Lee 1995:12).

Another belief or ideological principle of radical environmentalism that is consistent with Deep Ecology is the strong belief in millenarianism and the possibility of a cataclysmic end (Smith 1994:125).

The ideology of radical environmentalism also has a spiritual nature although organized religion appears to be rejected. Radical environmentalists gravitate more toward eastern religions and the religions of tribal peoples, and to the harmony and oneness with the earth that these religions sanctify. For the radical environmental group Earth First!, many religious or spiritual themes are a part of the organization’s culture, including Taoism, Buddhism, Hinduism, witchcraft, and pagan earth-worship, and especially American Indian spirituality” (Lee 1995). Radical environmentalist John Seed describes how, for tribal peoples, the defense of the environment and their very existence is one and the same: “Hunter-gatherer peoples, like the Penan in the Malaysian provinces on the island of Borneo, embodied in their culture an attitude toward the environment that accepted natural cycles and that saw nonhuman beings as part of an extended family of beings all sharing a place, rather than inferior creatures to be dominated or destroyed at will” (cited in Manes 1990:122). The view of the earth held by many indigenous peoples resonates throughout the ideology of deep ecology held by radical environmentalists.

The ideology of an organization is the glue that holds it together. It acts as a compass to guide it through the rough spots. Ideology is what the group uses to justify its behavior, and thus it becomes “the scripture for the group’s morality” (Reich 1990:34). The ideology of the group is also the mechanism that causes people to grow apart from their families and friends because they may not share the same beliefs or the same degree of fanaticism for the “cause.” For its members, “Earth First!’s doctrine redefined morality, the good life, and the best political society, and in doing so, reoriented its adherents’ lives” (Lee 1995:179). Thus, ideology is a fundamental component of creating and maintaining the structure of the organization.

Radical environmental groups do vary in some degree in the outward appearances of the organizational structure of each group although the fundamental principles of Deep Ecology are present in all of them. Considering the fact that many radical environmental groups have been called eco-terrorist organizations, it is interesting to examine the ways in which they actually compare to one another. In *Origins of Terrorism*, Walter Reich (1990) describes the terrorist organizational structure:

Both the structure and the social origin are of consequence. Identification of the locus of power and decision-making authority is
particular influence to structural analysis. In the autonomous terrorist cell, the leader is within the cell, and all the warts are visible. These cells tend to be emotional hot-houses, rife with tension. In contrast, in a well differentiated organization, such as the Red Brigades, the action cells are organized in columns, and the policy decisions are developed outside the cell, although details of implementation are left to the cells (32).

This is not necessarily true for the structure of all the groups, but some of the radical environmental "eco-terrorist" groups have some of the above characteristics.

The most infamous radical environmental organization to be accused of terrorist activities is Earth First! The basic doctrine was the same for all Earth First! groups no matter where they were, and basic parameters were set up to guide the groups' activities. However, each local group would implement protests and plan covert actions where and when they were needed. Many times they would receive outside help from members of other Earth First! groups or even other radical environmental groups. But because of the tribal structure of the organization, there was no actual "hierarchy of responsibility" and it was difficult to control the actions of individual Earth First! members.

Furthermore, monkeywrenching (the sabotaging of industrial equipment and tree spiking) and other forms of eco-sabotage, although not officially condoned by the organization, were unquestionably supported by Earth First! (Lee 1995). "Monkeywrenching could not be centrally organized or performed by groups because such direction would invite discovery and/or infiltration" (Lee 1995:54). Many monkeywrenchers moved around a lot to avoid the authorities. "It was difficult for law enforcement agencies to track monkeywrenchers at the best of times. When the monkeywrenching population changed frequently, individuals were better able to remain anonymous, and their activities were harder to predict" (Lee 1995:79–80). The overall organizational structure of Earth First! was very loose out of necessity. A more centralized structure would have been counterproductive to achieving the ultimate goal of the demise of industrialization and the salvation of the earth.

When the authorities finally decided to eradicate the threat of Earth First!, they chose the group in Prescott, Arizona, where Dave Foreman, the founder and official leader of the organization, was active. In regard to the traditional terrorist organizational structure, this particular cell contained a distinguishable leader that the authorities could identify whereas other groups did not. While there were other cell groups whose actions could be seen as more dangerous and costly, the FBI wanted the presumed leader, and this was the best way to implicate and arrest him (Lee 1995).

Because small organizations frequently lack the constituency base needed to implement change peacefully, they have the propensity to resort to violence to compensate for their size (Lee 1995). Three such organizations are ALF (Animal Liberation Front), EMETIC (Evan Mecham Eco-Terrorist International Conspiracy), and Earth Night Action Group. In 1989, ALF was responsible for two of the four documented eco-terrorist acts committed that year. In 1990, the Earth Night Action Group made itself known by cutting power poles supplying electricity to Santa Cruz, California, and leaving 95 percent of its residents in the dark. And it wasn't until 1988, two years after the sabotage of the Palo Verde Nuclear Generating Station, that EMETIC was officially linked to this eco-terrorist activity (Reich 1990). EMETIC was recognized as an even more militant off-shoot of Earth First!

Terrorism has become a viable tool for radical environmentalists who cannot attain their goals through more mainstream methods which promote compromise. By definition, terrorism is a strategy of violence designed to promote desired outcomes by instilling fear in the public at large. Public intimidation is a key element that distinguishes terrorist violence from others forms of violence in which victims are personally targeted. In terrorism the victims are incidental to the terrorists' intended objectives and are used simply as a way to provoke social conditions designed to further their broader aims (Reich 1991:162–163).

Whether or not eco-terrorism is a true form of terrorism can be debated. By definition, it does not fit the proposed criteria of who the terrorism is supposed to target because it does not target the public at large. But it does target industries that symbolize the destruction and industrialization of the planet and are synonymous with mankind in general. In eco-terrorism the symbolic site is the intended target. The people who happen to get hurt as a consequence of the violence are the incidental factor. By bringing attention to their "cause" through the use of violent tactics, the radical environmentalists hope to provoke sympathy and outrage about how the earth is being devastated by industry and its resources perma-
nently exhausted.

Even more difficult to classify is "terrorist type" violence committed by loners, such as the "Unibomber." "While the activities of individual citizens acting alone may result in a criminal investigation, they will seldom be designated as an act of terror" (Smith 1994:12). But should the focus on what makes an act terrorism solely be the combination of how many individuals are involved in the conspiracy, the intended targets, and the element of fear that it instills in a population; or solely the element of fear? When a specific population, as a part of the entirety, is fearful because of the acts of one or many, an act of terrorism has been committed because terrorism is essentially a psychological phenomenon.

A key characteristic of the terrorist act is that it engenders a sense of uncontrollability among the larger population (Reich 1994). For example, tree-spiking has become a popular method of slowing the clear-cutting of old growth forests in the Northwest. In May 1987, George Alexander, a logger for a timber company, was nearly killed when he hit a spike countersunk in the tree he was cutting down. The bandsaw blade wrapped around his face and neck, slashing it, and knocking out a dozen teeth. If it were not for a friend applying pressure to his jugular vein for nearly an hour until emergency help could arrive, he would have died (Helvarg 1994). Every time a logger cuts down a tree, it becomes a game of Russian roulette. Even with sophisticated detection equipment, the thought has to be there: Is this the tree? But tree-spiking has reached a new level. Now there is a method for spiking that is virtually undetectable. Tree-pinning is when non-metallic rock cores or hardened ceramic pins have been inserted in trees. Thus far, there has only been one incident of tree-pinning reported in the Mount Hood area of Oregon, but the possibility of more dangerous encounters with tree-spiking is certain (Manes 1990). By spreading insecurity by means of tree-spiking, the radical environmental group hopes to pressure the timber companies into making the old growth forests off limits for clear-cutting (Reich 1990).

The persons committing the act of terrorism do not see their actions as being comprehensible, but rather as moral and right. They blame their victims for the consequences (Reich 1990). For instance, in their demand for the preservation and recreation of the wilderness, Earth First! adherents did not understand themselves to be radicals. Indeed, they said that it was the earth destroyers who were the radicals and that the destruction of the corporate/industrial mono-
th was an opportunity for the rejuvenation of true American political community" (Lee 1995:43).

Through moral justification they are able to transcend the loathsome ness of their deeds (Reich 1990).

Radical environmentalists are not the only groups who have committed violent and potentially deadly acts over the state of the environment. On the contrary, they have at times found themselves the intended victims of violence perpetrated by the anti-environmental faction. The acts have ranged from minor vandalism, to arson, to physical injury, to attempted murder. Meanwhile law enforcement agencies have been reluctant to pursue any type of action against the anti-environmental retaliators.

On May 5, 1983, one incident involved a bulldozer operator who was clearing a road through an old growth forest. He charged five protesters who were blocking the road while screaming that if they didn't move, he was going to kill them. The bulldozer operator then ran over one protester's foot leaving tread marks on his boot, and knocked down another protester whom he buried in mud up to her neck. Two days later, Dave Foreman, founder of Earth First! was run down and dragged over a gravel road in the same area by the same crew, resulting in serious injury to his leg. The incident occurred while a local sheriff's deputy was looking on. The deputy did nothing to stop the assault and then promptly arrested Dave Foreman when it was over (Manes 1990).

There have been numerous acts of violence committed against people involved with the environmental movement, such as in the northeastern United States, where environmental activists have had their homes arsoned for expressing their views against the clear-cutting of New Hampshire's forests (Helvarg 1994).

In 1992, the year that Pat Costner's home was burned down, Diane Wilson's dog was shot and boat nearly sunk, Paula Siemers was stabbed, Ann LaBastille's barn was burned, the Adirondack Council office vandalized, and dozens of other environmentalists were harassed, shot at, and assaulted, the FBI reported that "there were no suspected terrorist incidents recorded in 1992" (Helvarg 1994:409). Again, police officers did not label counter-environmentalist acts as terrorism or act to protect the victims.

Still, the most notorious act of violence that was ever committed against environmental activists in the U.S. occurred on May 24, 1990, when a pipe bomb exploded in a car driven by two activists associated with Earth
First! They were on their way to Santa Cruz to recruit support for a protest to save the redwoods. The driver, Judi Bari, was injured the most seriously. Debris from the bomb’s blast crushed her pelvis and she is now permanently crippled. The injuries of the passenger, Darryl Cherney, were minor in comparison, but his left eye caught debris from the explosion. The Oakland Police came to the conclusion that the two were transporting the bomb and consequently named them as the primary suspects in the explosion. The police agency later dropped the charges, but never arrested anyone else in connection to the bombing (Lee 1995).

Other anti-environmental organizations have gone after the environmentalists just as viciously. Risk Sieman of the Sahara Club, an anti-environmental group, gives dirty tricks seminars to teach persons how to “handle” the environmentalists. For example, he instructs them how to make fake bombs to scare environmentalists, how to change the license stickers on the environmentalists’ cars, and how to send what are referred to as “pizzas and turds” through the mail. “Pizzas” are mail order items that are sent to the environmental group COD, and “turds” are items sent to them using the environmental groups’ return postage. Typical items are heavy objects that require a lot of postage, or human/animal waste (Helvarg 1994). These acts, albeit minor, are malicious and designed to cause fear.

One company in the timber industry made a deal up front with the men they hired to guard the areas being clear-cut. They would pay $40 thousand to either defend anyone who was arrested for killing an environmentalist or help them evade arrest and prosecution. They also set up ambushes to catch monkeywrenchers in the act of sabotaging equipment. Uzi machine guns were given to the men hired to guard the work areas. One man hired to guard equipment for the timber company said, “They gave me this Uzi that was just a beautiful weapon. I’d never handled one of them before” (cited in Helvarg 1994:251–252).

One tool used by radical environmentalists, as well as by other radical and/or terrorist organizations, to keep the antagonism high against the “enemy” and the focus on the “cause” is rhetoric and propaganda.

Considering the diversity of causes to which terrorists are committed, the uniformity of their rhetoric is striking. Polarizing and absolutist, it is the rhetoric of “us versus them.” It is a rhetoric without nuance, without shades of gray. “They,” the establishment, are the source of all evil, in vivid contrast to “us,” the freedom fighters, consumed with righteous rage. And if “they” are the sources of our problems, it follows ineluctably, in the special psycho-logic of the terrorist, that “they” must be destroyed. It is the only just and moral thing to do. Once the basic premises are accepted, the logical reasoning is flawless (Reich 1990:25–26).

This same type of rhetoric is apparent in Dave Foreman’s “Statement of Principles” discussed above. He states that, “political compromise has no place in the defense of the Earth,” and “all human decisions should consider Earth first, humankind second” (Lee 1995:39). Foreman sees a clear distinction between right and wrong, justice and injustice. His “cause,” the defense of the Earth, born out of the doctrine of Deep Ecology, is the right and just cause. Anything less than this, he and other radical environmentalists consider wrong and immoral. “Accused of committing environmental terrorism, Foreman responds that the corporations who rape and despoil the land are the environmental terrorists. Earth First! is a group of eco-warriors defending mother nature because she can’t defend herself” (LeBaron 1995:3).

Industry and the establishment have also been successful in countering the rhetoric of radical environmental groups by using propaganda against the environmentalists, particularly the fringe element of the movement. By referring to radical environmental groups as eco-terrorists, a strategy is set forth by factions opposed to the environmental movement to instill a dynamic of fear in the general population. The citizenry and authorities begin to worry about their safety. The propaganda then sets the stage for vigilante behavior against the environmentalists; violence becomes an acceptable response to an imminent threat (Helvarg 1994). Furthermore, radical environmental groups such as Earth First!, have supplied industry with the ammunition to ultimately destroy them. They escalated their covert activities from the vandalizing of machinery to tree-spiking. The public will usually tolerate the destruction of property as a harmless prank, but when an act threatens human beings with bodily harm, it invokes public outrage (Helvarg 1994).

The ultimate goal of both radical activism and terrorism is to bring about a political change in favor of one’s needs or desires. “Terrorism has an extremely useful agenda-setting function. If the reasons behind the violence are skillfully articulated, terrorism can put the issues of political change on the public agenda. By attracting attention, it makes the claims of the resistance a salient issue in the public mind. The government can re-
ject but not ignore an opposition’s demand” (Reich 1990:17). The environmental movement, in essence, was able to accomplish this in the 1980s when there was "a shift in the political landscape, as environmental issues, once dismissed as a fringe movement of tree huggers, became the concern of millions of Americans” (Oelshaeger 1995:121). Unfortunately for the movement itself, the situation was not changing quick enough. This led to some radical environmental groups rejecting what they saw as an incrementalist approach to environmental reform (Oelshaeger 1995).

In the U.S., there has never been a strong link between politics and the environment. Perhaps it is because the U.S. was blessed with such an overwhelming abundance of natural resources. Now, approaching the year 2000, it is apparent that the resources of this country and this planet are finite. Americans are now learning what Europeans learned years ago: environmental issues must be linked to politics if the country—and the world—are to survive into the coming millennium.

With the looming threats of radiation, acid rain, and toxic waste in their own backyard, European environmentalists did not have the luxury of separating ecology from politics. Many environmentalists in America and elsewhere envy the Greens for their political clout, without realizing that to a great extent their success rests on the unfortunate fact that by the time environmentalism came on the scene in the Old World, the battle to defend the natural world had already been lost (Manes 1990:124).

The question is, as the mainstream citizenry begins to hear the message of the radicals in the environmental movement, and as environmental issues become paramount to political change, will the existing polity in the U.S. be able to accept a new political party such as the Greens in Europe, and be able to build a constituency with enough political clout to make a difference. Being that Americans are not very open to change, it will probably not occur until the U.S. reaches the same point of depletion that galvanized the European Green Movement.

There are varying degrees of environmental activism being utilized in an attempt to save what is left of the natural splendor of the earth. Environmental activism in the U.S. ranges from the very mainstream methods of organizations such as the Sierra Club to the overtly radical and sometimes terroristic methods of groups like Earth First! Violence has been used as a tool by both environmentalists and anti-environmental groups to counteract each other’s threats, and to sway public opinion. As Christopher Manes (1990) so eloquently concludes in his book Green Rage:

We are living in a time of rage—humanitarian rage against impoverishment, famine, wars; political rage against right-wing death squads, oppressive communist bureaucracies, military occupations; economic rage against marginalization of the underclass and the monolithic power of multinational corporations. And now there is a growing green rage against the destruction of the Earth and its breathtaking profusion of life (p. 124).

To many people, the earth is the giver of life. Earth is not just the planet they live on. It is their being. Drawing on the ideology of Deep Ecology, they will do anything they can to save the earth—even if it means committing violent acts against other human beings.

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Violence is defined by Johan Galtung (1969) as “The cause of the difference between the potential and the actual; between what could have been and what is. Violence is that which increases the distance between the potential and the actual, and that which impedes the decrease of this distance” (167). Galtung further describes some violence as occurring at a systemic level because the monopoly of resources used by a group or class causes another group or class to fall below their somatic and mental potentials. Galtung terms this type of violent condition “structural violence.”

According to Galtung (1969), structural violence is present within a system if a number of distinctions can be identified: (1) There is physical violence which may not necessarily put an end to the human being somatically, but assaults the physical person in some way that is severely constraining. This is “the violence that works on the soul” (Galtung 1969:168). (2) Structural violence involves negative and positive approaches to influence. That is, a person can be influenced by punishment if he does something the influencer considers wrong and can also be rewarded at the influencer’s whim if he acquiesces to his demands. (3) There is an object of violence that is hurt. (4) There is a subject who acts intentionally against the object or allows such action to take place even when avoidable. (5) There is a response to intended versus unintended violence. Intended violence is defined as direct physical violence and unintended as structural. (6) If there is latent violence and the objects of structural violence do not complain, the potential for direct violence exists.

There is no better example of structural violence than the life experience of a significant portion of the African-American populations that live in the so-called “Black Belt.” The Black Belt is an area encompassing over 200 counties with a majority black population in the Southern United States—including Virginia, Texas, Alabama, Louisiana, Arkansas, South Carolina, Georgia, and Florida. This group has been the object of systemic structural violence in several ways.

The findings of scholarly investigations suggest that Southern blacks’ difficulty in achieving “self-actualization” and being able to meet the higher needs on Maslow’s (1970) “hierarchy of needs” is no accident. This lack of success is a combined result of several forces of structural oppression: (1) the earning ability of Southern blacks being so curtailed that they are unable to do better than feed themselves, (2) being denied the protection and redress of the government to which most of the population is entitled, and (3) living in economically and politically depressed neighborhoods quickly becoming the dumping grounds for some of America’s major industries.

The combination of these three debilitating structural weapons against Southern blacks converge to constitute an assault on their somatic and mental potential and keeps this population from “getting out from under.” In essence, by means of the overt and covert policies that create these systems, the Southern black person is being slowly killed in all states of his humanity—physical, mental, and spiritual. The consequence of the deliberate moral disregard for this disadvantaged group is the perpetuation of their repression which keeps them marginally better off than before their emancipation from slavery.

In this paper, Galtung’s (1969) theory of structural violence is used to examine the position of the Black Belt community within the wider social context. First, two dimensions of Southern black society are discussed: seasonal agricultural labor and toxic dumping. Then it is argued that these two dimensions of Southern life are powerful forces of structural violence. Finally, the implications of this analysis is examined.
Seasonal Agricultural Labor

As of 1994, approximately ten percent of the 1.6 million seasonal farm workers in the United States are poor blacks living in the Black Belt (Williams 1996). Although the migrant population as a whole is blatantly exploited, this discussion focuses only on the rural African-American experience. Their numbers used to be significantly higher. However, due to mechanization and the import of labor from other countries, their numbers have dropped.

The poor black Southern laborer is the historical precursor to the modern migrant labor force. They have suffered brutish oppression by both the chief employer of labor in the Black Belt—that is, large and small agricultural concerns—and the U.S. Government. The treatment of seasonal laborers by both entities, employer and government, embodies all of Galtung’s criteria for structural violence. Marc Linder’s (1992) account of the exploitation of seasonal workers details how the migrant and domestic laborer lives in a revolving world of misery between the employer and the government. The laborers’ typical experience can be characterized by fungibility (that is, the fact that the unskilled laborer is replaceable), labor contracting practices, wage exploitation, and lack of protection by the government.

FUNGIBILITY. With their only skill being their raw labor, agricultural laborers work at the whim of their employer. Because of the inexhaustible supply of alien (both legal and illegal) laborers, an even more repressed migrant labor population, Southern black laborers remain in a state of docile acceptance of the terms under which they work. They are forced to compete with what amounts to immigrant indentured servitude. Migrant workers from other countries are willing to work for the subsistence wages offered because it is often more money than they would make in their own countries. Lacking the necessary education for upward mobility, the black Southern seasonal worker soon finds himself with two options—unemployment or acquiescence. Linder’s (1969) account describes examples of how migrant workers have to be prepared on a moment’s notice to travel to farms, some as far as 2,000 miles from departure point, to engage in back-breaking harvesting—often stoop labor—for less than minimum wage.

LABOR CONTRACTING. The cornerstone of this exploitive system lies in the practice of labor contracting. The agricultural processor is the ultimate employer of the seasonal agricultural laborer. However, companies such as General Foods, Heinz, Vlassic Foods, and Campbell’s often employ a labor contractor as the broker between the farmer/processor and laborers. The processor pays the labor contractor a lump sum which often includes the actual payroll. It is up to the contractor’s discretion as to how much to pay the pickers and under what conditions they work. The contractor may engage a laborer under a sharecropping arrangement (sharing the receipts of the harvest), paying at piece rate, or paying an hourly wage rate. He provides supervision, tools, transportation, and sometimes lodgings and consumables including liquor (Linder 1992).

One scenario that underscores the exploitive nature of labor contracting is described by Roland Benson (1996), Director of Community Relations at the North Broward Hospital District, who is a former program coordinator for a South Florida community migrant program. Benson recalled that a typical situation characterizing the labor contracting arrangement in Florida that he observed is that once the worker arrives at the “camp,” he is told that his needs will be taken care of. What he is not told is that all those provisions will be deducted from his meager earnings. Sometimes there are no wages at all when the contractor abscends with the payroll (Linder 1992).

This becomes more injurious when the employer elects to treat the migrant worker as an independent sub-contractor and thereby circumvents having to pay taxes such as FICA (Linder 1992). Thus, the employer is able to shield itself from any liability. Further, the IRS may then go after the poor laborer for taxes owed (Linder 1992).

The government’s failure to redress the situation enables the employer to hide behind the labor contractor by claiming no paternalistic relationship with the laborer. The contractor in turn claims no relationship with the laborer other than contractor to sub-contractor. This claim is made despite the fact that the contractor provides the tools and the supervision needed to harvest, and also meets other needs of the laborer while he is at “camp” (Ricky 1996).

The migrant laborer is vertically coopted by need into the exploitive system by “sub-contracting” work to his wife and children. Linder (1992) states that often the migrant worker will take his able-bodied children who are old enough to make the journey to pick with him because that is the only way he will make enough money to provide for his family. It also enables the farmer to extend his working hours because he does not get time-and-a-half overtime pay. Ricky (pseudonym), a 40-year-old man who grew up on a farm in North Carolina, describes his own experience of this situation. He recalled that his first excursion to a potato field took place in Ohio when he was six years old. He continued to accompany his parents until he was 18 years old. This vertical inte-
migration is especially insidious because children who work for their laborer parent(s) are outside the scope of child labor laws (Linder 1992).

**WAGE EXPLOITATION.** The campaign to relieve agricultural laborers of their earnings begins as soon as they arrive at the farm—and everyone takes a bite. Linder (1992) explains that the laborers are often not told how much they will be paid until they reach the farm destination or at the end of the day or week when they get paid. These monies are often below minimum wage, often forcing the laborer to work extended hours and “sub-contracting” to his family to make any decent money at the end of the day.

Although the aggregate earnings of the migrant family is less than the prevailing consumption norms—even below those of low income families—the drive for subsistence requires the migrant labor to engage in the perpetual “forced sale” of his labor. Ricky’s description of his life growing up with migrant laborer parents bears witness to this “Catch 22” experience. He recounts that work usually started at 8 A.M. and ended at 6 P.M. in the winter and 8 P.M. in the summer, with an hour for lunch. The pay at the end of the work day was usually about $10. In Ricky’s opinion, $10 for a day’s work was “pretty good money in those days [that is, in 1972]”. He further explained that at the end of two months the family, which included his father and mother, would leave the camp with about $2,000.

Although their methods are obviously exploitative and prevent these workers from realizing their somatic potential, the employers use the most disingenuous rationalization to excuse their behavior. In 1904, one sugar cane producer in Florida unashamedly excused his opposition to statutorily mandated wage rate for cane cutters by stating, “If we were to pay one cent more to these men it would be disastrous to the laborers...If you were to give the ‘nigger’ more money than he gets now he would leave two months sooner because he has too much money to spend” (USDA 1904, cited in Linder 1992).

**GOVERNMENT’S LACK OF PROTECTION.** Linder (1992) argues that the perpetuation of this horrendous violent assault on the migrant worker and other Southern black laborers has its roots in the drafting of many of the New Deal legislation of Franklin Delaneor Roosevelt’s government. Linder argues that in Roosevelt’s democratic government, many key positions especially in departments which oversaw labor and agriculture were staffed by many of the white Southern plantocracy. As New Deal legislation abounded, these politicians extorted and ensured exclusion of farm workers from coverage under the Fair Labor Standards Act. In effect, President Roosevelt was told that many of his reforms to revive the depressed economy of the 1930s would be filibustered if he did not ensure that the traditional race and class patterns in the South remained intact. Thus, the founding of New Deal law codes which excluded the protection of black laborers was a grievous act of structural violence. For example, the exclusion of protective wage and hourly benefit codes under The National Industrial Recovery Act for the two major areas of employment for blacks—agriculture and domestic service—ensured ongoing disenfranchisement. Some provisions even enabled employers to pay white workers more than blacks, and certain jobs were covered under NRA while others were not. Other legislation such as The Agricultural Adjustment Act (1933) effectively provided a legal vehicle for throwing black tenant farmers and sharecroppers off farms.

There is clear legislation that defines the acceptable parameters of superior-dependent employer-employee relationships. However, for more than 25 years legislators and judges have apparently bought into the illegitimate claim by employers that the seasonal agricultural laborers are independent contractors and not employees. As late as 1983, precedent-setting cases such as *Marshall v. Brandell* saw the courts upholding self-serving claims of farmers that their laborers were independent contractors and that the farmer (Brandell) was dependent on the laborers for his income. Other courts in companion cases upheld claims of child laborers’ being sub-contractors (Linder 1992).

**Toxic Dumping in the Black Belt**

The structural assault waged on Southern blacks by the partnership of industrial companies and the government bears striking resemblance to the population’s experience with the agricultural industry. Many minority neighborhoods within the Black Belt sit downwind from some of the largest chemical, industrial, and toxic waste disposal companies in the country. They include such multinational corporations as Union Carbide and ChemWaste. According to Robert Bullard (1990), the South experienced new growth in the 1980s because it presented an attractive location site for big polluters for several reasons: its plantation-economy legacy, pleasant climate to attract out-of-state workers, cheap land and labor, weak labor unions, strong right-to-work laws, weak environmental laws, and booster campaigns by the states to attract new business. However, the over 14 million blacks that live in the region have not for the most part accessed...
the positive benefits from the recovery in the South. Instead, many have been the recipients of bad deals where health is traded for menial or other non-administrative jobs and in some cases for the empty promise of jobs (Hager and Agrest 1985). Bullard (1990) sums up the experience of black communities vis à vis industrial relocation as "localized cost and dispersed benefits." The structural violence the Southern black population experience in the area of environmental pollution can be seen in their limited housing options, slow grassroots awareness, and the NIMBY (not-in-my-backyard) principle.

**LIMITED HOUSING OPTIONS.** According to Bullard (1990), an integral part of the problem is federal, institutional, and individual discrimination in the housing market combined with local political zoning policies which discriminate against blacks. Poor Southern blacks, already limited in economic resources, have few alternatives to moving out of an area targeted for dumping. They are further curtailed from movement by federal housing policies. Bullard states that federal housing policies are the main cause for fueling white flight out of urban areas into the suburbs. Additionally, highways constructed with federal tax dollars cut paths through black communities, separating the population from their institutions. These dynamics are underscored by Charleston reporters who concluded that the "federal government is the essential and proximate cause of urban apartheid in the United States" (Hager and Agrest 1985:1A, 16A, cited in Bullard 1990). Local government worsens the problem with lax local zoning policies that do not incorporate black communities and shortchange these communities of adequate services. Further, loopholes are created which allow polluters to gain entry into their backyards.

**SLOW GRASSROOTS AWARENESS.** For these citizens, the other alternative to moving out of their environmentally hazardous neighborhoods is to fight against toxic dumping in their backyard. However, this population, involved in the miserable exercise of eking out a living, have been slow to coalesce into formidable fronts to stop toxic dumping. Therefore, they have suffered both short- and long-term assaults on their health.

Although there have been some recent efforts by black townships to fight the toxic onslaught from big corporations, unfortunately their activism in most cases is a little too late. Bullard (1990) argues that the lateness in voicing concern in many black communities is due to the disassociation of the fight for civil rights with the fight for environmental rights. (Both movements started at approximately the same time.) Blacks largely saw the environmental organizations in the light of whites' defending nature, typically for purposes of recreation and wildlife preservation. Fighting for the right to drink clean water and breathe clean air did not seem as pressing when fighting for the right to be treated as an equal citizen in the country of your birth. Additionally, few lobbyists existed on the national and local levels who could counter big industry. In many cases, black residents were kept in dark about the coming of a polluter until the ink was dry on the contract and the foundation was broken. Such was the case with Houston's Norwood Manor community who thought they were getting a mall, and discovered the truth—that they were getting a landfill—only when construction began on the site (Bullard 1990). The consequence of Southern black's political powerlessness in combatting the placement of high toxic material processing plants, locally unwanted land uses (LULUS), and dumpsites is that now many Southern blacks live in environments that abound with the effluence of industrial waste (Bullard 1990).

**THE NIMBY PRINCIPLE.** According to Bullard (1990), it is no accident that toxic dumping and locally unwanted land uses have followed the path of least resistance. When big polluters encountered the not-in-my-backyard (NIMBY) cry from affluent white suburbs, they and public officials responded to the phenomenon with the place-in-black's-backyard (PIBBY) principle. Bullard lists several accounts of this deliberate circumvention by both politicians and companies.

**Structural Violence**

Though there may be no conspiracy by the dominant actors in the discrete systems, it can be seen that there is a pattern of structural assault which contains all distinctions argued by Galtung: constraint, positive influence, subject and object of violence, intended and unintended violence, and manifest and latent violence. Each of these aspects of structural violence as they are played out in the employer-employee relationship of the Southern black seasonal agricultural laborer, in situations of toxic dumping in poor black neighborhoods, and in the role of the government are discussed below.

**CONSTRAINT**

- **Constraint—seasonal agricultural labor.** Constraint of somatic potential describes the entire working experience of the laborer. From the moment he boards designated transportation to the farms to the moment he is paid, there is little latitude for his personhood to engage in any activity that liberates him from the struggle to
survive. His lack of minimum wage earnings and total dependence on the labor contractor arrangement ensures his inability for upward vertical movement.

- **Constraint—toxic dumping.** The poor black laborer living and working in or near plants that discharge toxic materials and toxic dump sites located in his neighborhood faces similar somatic and mental constraints to his personhood. He is physically constrained by heightened debilitating health consequences because of his consistent and constant exposure to toxic substances. His lack of housing options and adequate income ensures that he remains constrained in a harmful environment.

- **Constraint—the role of the government.** The Southern black’s constraint is further exacerbated by government legislation that denies him adequate legal remedy. The lack of recognition of the situation of the black migrant and domestic laborer allows for the perpetuation of non-protection under the law. Even if he tries to fight for his rights, the laborer’s employers usually have enough resources to tie up the plaintiff and his lawyers in litigation for years. By the time the “wheels of justice” have turned, the employer will have maximized his profits from underpaid labor and may still end up with nothing more than a slap on the wrist from the courts. Because the laborer cannot access equal protection under the law, his very citizenship is violated and assaulted.

In the environmental arena, black Southerners also face government inaction in protecting their rights to live in unpolluted surroundings. The black Southerner is constrained by the government’s lack of protection because precious resources such as time, energy, and money which could be used to enhance his communities in other ways must be spent in fighting entities that outrank him in those said resources. For example, black residents of West Dallas, Alsen, and Houston’s Northwood Manor, retained their own attorneys in filing suit against industrial facilities (Bullard 1990).

**POSITIVE INFLUENCE**

- **Positive influence—seasonal agricultural labor.** Galtung’s (1969) distinction between positive influence and negative influence is present in both cases. He emphasizes the presence of positive influence because it demonstrates that the influencer has coercive power on both sides of the equation. In the migrant laborer–agricultural employer relationship, this phenomenon is demonstrated by the whimsical nature of the employer’s payment and his access to a poorer immigrant labor pool. Whether or not the black laborer is even allowed to work when he gets to the farm keeps him in a fearful mode of compliance. His actual reward is not his wages but his simply being given the opportunity to be considered for work as the employer can choose from an even more desperate labor pool.

- **Positive influence—toxic dumping.** Job blackmail and the threat of industries’ removing much needed tax dollars from depressed black communities constitutes an example of positive influence with regards to the toxifying of poor black communities.

- **Positive influence—the role of the government.** The government exercises a silent positive influence by non-enforcement of codes or laws which allows employers and polluters to exert overt positive influence via job blackmail and threat of economic atrophy in black communities. Therefore, the government need not exert overt positive influence and leave itself open to public criticism for removing or threatening to remove its protection (the reward). It can only be assumed that rewards (actual government protection and code enforcement) will be overtly meted out to the Southern black laborer if and when it becomes politically expedient in both the areas of wage and environmental protection to do so.

**OBJECT AND SUBJECT OF VIOLENCE**

- **Object and subject of violence—seasonal agricultural labor.** In the relationship between the employer and the Southern black laborer there is the object/subject relationship. The life of the laborer is directly degraded and negatively affected by the actions of the employer. The employer seeks to perpetuate its ability to actualize its somatic and mental potential at the expense of the laborer. The employer ensures that resources remain unequally distributed which affects most other aspects of the laborer’s life. Though the laborer’s degenerative life experience is avoidable at little expense to the employer, his condition is allowed to continue. The employer uses the resources of money and political power as weapons to curtail the ability of the migrant worker to actualize their potential.

- **Object and subject of violence—toxic dumping.** There is also a subject-object relationship with industry and other polluting entities that locate in or near black neighborhoods. Industries that process toxic substances as well as other waste management entities bear much responsibility for the truncated good health (which translates to life) and quality of habitat living (psychological life) of poor Southern blacks. Although no human being physically constrains the objects and forces them to ingest toxic substances, the blatant disregard with which toxic and effluent matter is discharged in their living environment
makes polluters the proximate cause of slow physical and psychological death of the object. For example, Rollins, a hazardous waste landfill located in Alsen, Louisiana, paid a wealthy white farmer $5 million dollars for the death of his cows when hazardous water spilled onto that man’s farm. Yet the company refused to acknowledge that it was the cause of heightened health problems suffered among Alsen’s majority black residents (Bullard 1990). Further, the harm being experienced by the object is in many instances avoidable because the technology exists in many cases to minimize the harmful effects of toxic discharge. Bullard cites the cases of Murphy Metals in West Dallas and Union Carbide in Institute, West Virginia, as examples of the negligent lack of implementing safeguards against toxic discharge into the environment.

**Object and subject of violence—the role of the government.** The government also acts as the subject of structural violence and may, in fact, be the main perpetrator against the Southern black laborers and residents because it has the power to protect its citizens equally, which is ostensibly its purpose and responsibility. However, the government assists in perpetuating the discrepancy between the life expectancy of whites and blacks in the South. The failure of the IRS to penalize employers of migrant workers for issuing self-employed tax claim forms instead of the W2 forms is one example of the government as a subject and agent. Another example is the EPA’s lack of forceful intervention of its own accord in making polluters comply with proper processing and discharge procedures in these communities. The government also fails to demonstrate a willingness to litigate against the polluters on behalf of the residents of affected counties.

**INTENDED AND UNINTENDED VIOLENCE**

Clearly, there is unintended violence in the relationship among Southern blacks, the agricultural employer, the government, and the industrial polluter, as well as the lack of response to it. One can imagine that if thousands of farm and domestic laborers were lined up and shot, there would be much outcry from the society. Along these lines, it can further be imagined that if a farm laborer or one who worked in processing highly toxic substances saw his employer stand in front of him with a gun, he would try to run or defend himself. However, because of the “carrot-and-stick” relationship between subject and object in both cases and the lack of public awareness, the injustices wrought on these individuals continues in “tranquil waters” (Bullard 1990). Therefore, society fails to ascribe guilt to the perpetrators of structural violence.

Although the broader society is at fault for ignoring the plight of the Black Belt’s black populations, one can see how that has happened for the most part due to lack of awareness. The public in general remains unaware of the structural violence of this system and the part it plays in its perpetuation because the laborer himself is unable to identify the fact that he is being victimized. He makes no outcry, hence the public remains ignorant. He has been so coopted into the system that he aids the victimizer in perpetuating the assault to his humanity. An example of this phenomenon is seen in Linder’s (1990) description of one farmer clearly expressing his preference for bus­ sing migrant labor in from as far as 2,000 miles away instead of using local laborers and students: “Students complain, migrants don’t.”

Another disturbing example of the laborer accepting his own exploitation and slow death was given by Benson (1996) who recounts that it was a challenging task to woo migrant laborers away from pea picking where they made 98 cents per hamper picked. Each hamper held approximately five gallons of peas, packed. But even when offered more money and better working conditions, the laborer would often opt for continuing to pick peas. Apparently, the reason for this was that the laborer was recruited for the better job, he was told how much he would earn and then how much would be taken out of his wages for taxes, etc. He was further informed that he would be paid bi-weekly. When the laborer analyzed his options, pea picking was seen as the better deal because he was given a flat rate with nothing taken out and was paid at the end of the day—a simple process for a simple mind. Ricky’s (1996) recollection of his years as youth picking potatoes and other produce as “happy ones” is another example.

The decision for the pea picker to go back to pea-picking though he would have clearly benefited more from the other work opportunity presented as well as Ricky’s “happy” childhood recollections, exemplify structural violence in its perfection—when the tools of oppression has been internalized by the victim.

Some residents who live in toxic zones also cooperate with the victimizer and fail to sound the alarm which would bring public awareness to the situation. The relationship between Union Carbide and Institute, West Virginia, is an example of internalized oppression. Many residents are hesitant to see the plant close even though the plant only employs about ten percent of the local residents and pays no taxes to the town of Institute (Bullard 1990).
The government, which is the legal vehicle for bringing the perpetrator of violence to justice, perhaps bears the most responsibility in this system for its failure to ascribe blame. The legislative and judicial branches of government typically respond to lobbying and advocacy forces. If a particular sector of the society pounds their drums hard enough, these bodies of government usually respond amiably. Unfortunately, the lack of ferocious, collective outcry is not happening in both areas of farm labor and environmental discrimination. Pockets of isolated objection are not enough for a voice to be truly heard. The research of Linder (1992), Bullard (1990), and others bears this out.

**MANIFEST AND LATENT VIOLENCE.** The capacity for both latent and manifest structural violence is present in both the migrant labor experience and the pollution of Southern black residential areas. In my opinion, the evidence of manifest violence lies in the physical and psychological degenerative experiences of poor Southern blacks in both situations as discussed above. However, latent violence in both situations resides in the decisions of the employer, the polluter, and the government.

**Latent Violence—Employer.** The decisions of the employer of migrant labor as to how he will treat those who work for him has the latent ability for violence or lack of violence. As the evidence shows, once the employer makes up his mind to cheat the worker of what he or she is entitled to by law, then the domino effect of structural violence against the laborer begins. However, if the employer chooses to deal with his employees lawfully and even with a sense of moral justice, the possibility of latent violence is reduced or even eliminated.

**Latent Violence—Polluter.** The same is true of the industrial polluter and waste processors. Latent violence via toxic pollution in the environment of black Southern residents could be reduced or avoided in the embryonic stages of decision making. Obviously, if toxic substances are going to be released into an environment in which people live, how mechanisms for safe disposal are decided upon become loaded with the potential for violence or lack thereof. Several examples given in Bullard’s (1990) accounts show that not only placing a dump site or an industrial site in a particular neighborhood, but the total disregard for the effects of toxic emissions in itself constitutes latent violence.

**Latent Violence—Government.** As discussed above, the failure of the government to adequately protect the black populations living and working in the Black Belt allows for the condition of latent violence to exist.

**Wages, Dumping, and Structural Violence**

It is clear that all the elements of structural violence exist in the working conditions of black Southern laborers and in the experience of black Southern residents vis à vis the location of toxic industries and dump sites in their neighborhoods. Galtung’s (1969) definition rings true as constriction of the laborer’s earning ability disables him to convert his income to enjoy other dimensions of life. These dimensions, as described by Galtung, include a good education and quality medical service. To go one step further, the progeny of the poor Southern black is also an object of violence because of the severe constriction of their parents’ potential which affects the viability and somatic and psychological potential of the next generation.

If we recognize the presence of structural violence in both of these social arenas then we are presented with the challenge to get a democratic society—which claims to defend the inalienable rights of all its citizens—to address the problem. Unfortunately, many of us who benefit from a system that oppresses other human beings, such as described in this paper, would be hard-pressed to come to our “brother’s” aid. It is not that we generally condone the violent behavior of the oppressor. Instead our challenge would come from denying ourselves those goods we deem necessary for quality of life produced by the oppressor. Would we of our own free will be willing to pay more for a bag of beans or a canteloupe if the farming industry passed on the price of paying migrant workers minimum wage? Will we stop buying goods which are made of chemical materials produced by Dupont and Union Carbide? An honest examination of these questions would lead many of us to answer in the negative because buying products at relatively inexpensive prices helps us to keep our own heads above water while trying to improve our somatic existence. Additionally, the problem of migrant workers and the “black Love Canals” are not high on the media or political agenda, which is how most of us become informed and aware. However, if structural violence in both areas persists because it is too amorphous to stir the passions of public sentiment to challenge its perpetrators, how can it be curtailed? I believe that the answer to the solution comes back to the tried and proven path. It lies in the aggregate voice of the victim who decides not to be victimized further.

History is replete with examples of victims of one type of structural violence or another challenging the system of violence. Some examples are the fight for emancipa-
tion from slavery in the U.S., the Boston Tea Party, the French Revolution, the labor movement, and the civil rights movement. The common factor that runs through all these movements or revolutions is that those who were the victims of the particular system of violence finally said, enough is enough. The victims must become empowered to fight against their victimization and bring about awareness of what is happening to them. Bullard's (1990) research indicates hopeful signs that at least in this area there is growing awareness and militancy in black neighborhoods. More residents in the Black Belt are becoming aware of the dangers of the environmental time bombs ticking away in their neighborhoods. They have employed a variety of stratagems to combat polluters and would-be polluters. Some of these strategies included defining hazardous dumping and emissions as a health threat and forming action groups which employed picketing, protesting, media lobbying and petition drives. Some residents got as far as employing the assistance of the EPA in litigating against a polluter. The results of such actions have seen plant closures, emission and discharge compliance, fines, and the relocation of plants.

Unfortunately, migrant workers organizing to the point of activism on their own behalf, may take a lot longer than black residents in toxic zones. Their dire subsistence level combined with not having a static workplace and their replaceability makes collective protest, bargaining, or litigation nearly impossible. One of the most powerful ways in which the migrants could empower themselves is simply to stay home during a harvesting season. Fields of rotting fruits and vegetables could speak in volumes. However, when your family needs to eat and there is no government backing you, taking such an action would seem suicidal.

Linder (1992) argues that collective grassroots empowerment of migrant workers would be such a difficult task that the onus of correcting some of the injustice they face must unfortunately fall on the shoulders of their indirect oppressor, the U.S. Government. Some of his suggestions are as follows:

1. Reduce the labor supply by prohibiting child labor, repeal laws that allow for the importation of aliens, and penalize employers who import illegals to pick.

2. Abolish the labor contract system. Repeal legislation that enables employers to hide behind contractors, evading responsibility of sole employer status. Encourage bona fide accountable employment agencies which deal solely with agricultural workers. And ban old style labor contractors.

3. Increase the minimum wage for migrants.

4. Establish an Agricultural Wage Board.

5. Eliminate the exclusion of employees of small farm employers from FLSA.

6. Criminalize the theft of labor.

7. Void unconscionable contracts between the farm workers and employers: that is, the judicial restitution of unjust enrichment.

8. Finally, the government must enforce pension and housing plans and guarantee a minimum aggregate yearly income to encourage worker resistance of unfair employment.

Clearly, the situation of Southern blacks with regards to seasonal agricultural labor and toxic dumping is a social system characterized by structural violence in which all Americans play a part. Its resolution requires public awareness, grassroots resistance, and—most importantly—governmental legislation that will alter the dynamics and power relations that keep this system in tact.

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The prison system in the United States represents one of the most rigidly structured and authoritarian forms of social organization in Western democratic society. Within this rigid and hierarchical system, the personal lives of inmates are closely regulated. Perceived as deviant and dangerous, most of the decisions affecting their daily activities are made for them, and contacts with the outside world are severely restricted (Hepburn and Laue 1980). In the aftermath of a prison riot, regarding the seemingly self-destructive actions of himself and his peers, one inmate explained, “It may seem stupid, but this is the only time someone ever listened to us” (Singer 1973:367).

Driven by frustration and desperation, inmates may use violent tactics such as hunger strikes, burning their mattresses, smashing their television sets, and endangering lives to get attention. In its examination of the Attica riots of the early 1970s, the McKay Commission found inadequate medical care, food, and recreational facilities. Inmates were barred from all forms of communication with the outside world; rules were poorly communicated, often petty, and selectively enforced; and the relationship between most correctional officers and inmates was characterized by fear, hostility, and mistrust (Singer 1973). In her discussion of the Alternatives to Violence Project (AVP), Lila Rucker (1991) describes the norm within prisons as one of “hostility, anger, hopelessness, distrust, continual and abnormal physical aggression and sexual assaults, poor health and the spread of diseases, increasing idleness and stagnation, and the total loss of privacy” (p. 173).

Within a prison system there are a number of interest groups competing for the control of prison resources and prisoner control. Inside the walls these include administrators, line staff, and inmates. On the outside, these include state and federal officials, legislators, bar associations, advocacy groups, and citizens. The power disparities among these groups is significant, but the two least powerful of these groups are guards and inmates (Hepburn and Laue 1980). Further, among inmates there exists an informal power structure, and between inmates and guards there is an informal coping device whereby these two groups exercise informal power and some control over their lives.

However, the repressive atmosphere dramatically affects the tone of this relationship. The prisoner believes he can increase his self-esteem only by acquiring power over others—that is, other inmates and, to the degree possible, prison guards. The prison staff, in turn, relies on repression, and by so doing increases the inmates’ and their own insecurity (Sanzen 1991:241).

Thirty Years of Progress and Regression
In a brief review of the history of the prison system in the United States, Douglas Dennis (1994), a 28-year inmate at the Louisiana State Penitentiary and a staff writer for The Angolite, the nation’s leading prison news magazine, argues that the 1960s was a watershed decade for the United States and its prisons. Following World War II, reformers were active and the worst penal abuses were exposed to public scrutiny and abolished. Capital punishment was seen as a questionable deterrent to violent crime, and rehabilitation based on a “medical model” achieved credibility. Criminals, it was thought, could be “cured” of the “disease” of criminality and “rehabilitated” into society (Dennis 1994:4).

Unfortunately, according to Dennis (1994), the proponents of this theory—the sociologists, psychologists, and psychiatrists who were busy testing behavior-modification programs—overlooked the reality that no one can be rehabilitated unless they want to be. Because “progress” was linked to early release, many prisoners were able to feign repentance, and the reformed could not be distinguished from the unrepentant. In addition,
for those who really wanted to reintegrate into society, there were at that time few transitional work-release or halfway-house programs in existence. Those who could not make it on their own, who Dennis says were in the minority, returned to criminal behavior.

During the 1960s, along with the Vietnam War and the Civil Rights movement came civil disobedience and a rising crime rate. Riots in the Black ghettos frightened the general public. Richard Nixon came into office in 1968 with law and order as a major item in his agenda. By the time he left office in 1974, reform and redemption had fallen out of favor, replaced by a punitive penal policy (Dennis 1994).

The Legal Problem
In spite of this shift in attitude from reform and redemption to a more punitive penal policy, the excessive cost of violence as a means of obtaining prisoner redress of grievances was recognized in the early 1970s as prohibitive (Singer 1973). During the 1960s, the courts began to abandon their former hands-off policy toward prisoners’ grievance claims. As judges began to listen to prisoners’ complaints, the hopes of prison reformers focused on the courts as the primary vehicle for correctional reform.

The constitution guarantees prisoners (1) the right of meaningful access to the courts and (2) that prison officials may not retaliate against prisoners who exercise their rights to use the courts (Mandel 1992). Most prisoner complaints are pursued under 42 U.S.C. 1983 of the Civil Rights act of 1871, which provides that a prisoner may seek redress when a person acting under color of state law deprives the prisoner of rights guaranteed under the constitution (Mandel 1992).

In the 1960s and 1970s, prisoner civil rights suits led to important rulings setting standards for medical treatment, disciplinary proceedings, and prison conditions (Dennis 1994). However, civil rights suits brought by prisoners since 1983 have resulted in an ever increasing burden on the federal judicial system. Prisoner suits have increased tenfold from 3,348 in 1973 to 33,018 in 1993 (Doumar 1994). These suits have led to the creation of an entire subsection of the judiciary whose sole function is to deal with prisoner petitions. These petitions have also resulted in an increase in the number of federal judges, clerks, and office staff. There are more prisoner cases filed in the United States District Courts than any other type of civil case and the increasing cost to the federal government to support this process is staggering (Doumar 1994).

Members of the federal judiciary have indicated that most prisoner petitions are frivolous. A suit can be frivolous in two ways: factually, i.e., cases that are baseless or fanciful; or legally, i.e., cases that are based on meritless legal theory (Mandel 1992). Reluctant to interfere with matters of internal prison administration, the federal courts have been largely ineffective in eliminating frivolous complaints. Clearly, the courts are faced with a dilemma: how to reconcile the fine line between civil rights and the apparent need to limit among prisoners many normal societal privileges and rights. As a result, the impact of prisoner litigation has deteriorated from positive to negative, and the volume of prisoner civil rights litigation has bred judicial insensitivity.

Expressing the thoughts of many observers of this problem, Roberta Goodman Mandel (1992) argues that it is essential to develop a better reconciliation between the competing demands of efficient judicial administration and just disposition of individual civil rights cases: “State prison grievance mechanisms represent a step forward in the redress of prisoner rights by providing inmates with a legitimate means to challenge state correctional actions” (p. 92). But Mandel goes on to say that such grievance procedures often are not perceived by the prisoner as a viable alternative to litigation for challenges to conditions of confinement.

Mandel (1992) echoes the concerns of many observers who, over the past two decades, have called for alternatives to the courts for readdressing prisoner grievances (Singer 1973; Birkinshaw 1981; Brakel 1982; Davidow 1982; Williams 1984; Hansen 1987; Witte 1989; Bremer 1994). The remainder of this paper will discuss two alternatives to litigation in the prison environment which involve third-party intervention—mediation and the ombudsman plan.

Mediation
Reynolds and Tonry (1981) point out that although many prisoner complaints are docketed, many are dismissed following cursory defense motions for summary judgment. Further, Reynolds and Tonry express concern that few complaints filed by prisoners receive significant legal review. In addition, they argue that the adversary nature of litigation discourages parties from listening to one another; the prisoner is often frustrated and the prison administration is reluctant to concede the legitimacy of some well-founded complaints. The authors mention a variety of profiling to litigation alternatives that have been
proposed such as administrative grievance procedures, visitors' committees, ombudsmen, and prelitigation mediation. They do not, however, feel that such programs will do much to reduce the volume of federal court filings for prisoners. With regards to a postfiling program such as mandatory arbitration, they are concerned that such a program would raise equal-protection-under-the-law and right-to-jury problems.

Given the success of mediation in resolving disputes in other areas such as small claims and family conflicts, Reynolds and Tonry (1981) called for testing the effectiveness of mediation in resolving prisoner complaints. The advantages they foresaw for the success of mediation in the prison environment included its voluntary nature, its confidentiality, and the neutrality of the mediator. While recognizing that cases involving assault or monetary damages might be difficult to settle outside the courtroom, they felt that cases involving procedural or policy issues such as the return of personal property, regulations dealing with the receipt of mail, prison disciplinary procedures, and matters of religious observance would be suitable for mediation. Even with the more complex cases, it was hoped that mediation might be welcomed by administrators as an insulation against political and bureaucratic pressures and allow them to feel free to take a stance that they might not otherwise take (Reynolds and Tonry, 1981). As a case in point, the authors discuss the fact that the National Center for Correctional Mediation had recently received a grant from the National Institute of Corrections to mediate conditions of confinement cases filed by prisoners in the federal prison in Danbury, Connecticut.

The Danbury prison was a minimum security facility with a population of approximately 650. The majority of inmates had committed nonviolent drug-related and white collar crimes. More than half of the population was white Caucasian with generally middle-class educational and economic levels. A non-litigative administrative grievance procedure was already available for the prisoners (Cole, Hansen, and Sibert 1982). Among the federal prisons in the Northeast Region, Danbury had a reputation as the most litigious, with prison officials citing the educational level of the inmates, overcrowded conditions, and management problems as contributing to the large number of complaints.

However, the results of an evaluation study conducted a year later in May of 1982 by Cole, Hansen, and Sibert (1982) indicated that the Danbury experience with prison mediation was less than satisfactory. During the nine months of the mediation project, Danbury inmates filed only 32 cases. In only one of the filed cases was mediation even attempted, and the case did not result in agreement (Cole, Hansen, and Sibert 1982).

Although this record appears pessimistic at first, Cole, Hansen, and Sibert (1982) believed that there was evidence that mediation could successfully address and resolve legitimate prisoner grievances. For example, the one case that was mediated concerned conditions relating to the prison's visiting room. The mediator successfully bridged the gap between the prisoner and the administration and produced a number of reforms which were approved in principle and eventually implemented. Only the refusal of the Bureau of Prisons to stipulate in writing the resolution of a case in which personal liability had initially been at issue prevented the case from being counted as a mediated settlement.

Of the remaining 31 cases that were filed by prisoners and not mediated only eight were found by the mediator to be suitable for mediation. Many of the cases were set aside because they involved parole and sentencing issues, and a significant number of others encountered the problem that the complaint was brought against multiple parties extending from the Bureau of Prisons to the warden to an individually named employee. In such cases it was felt that all parties had to agree to mediate and be a party to any proposed solution. Also, as anticipated by Reynolds and Tonry (1981), Cole, Hansen, and Sibert (1982) found that cases involving assault and potential financial awards were denied consideration under the project.

However, of the eight cases in which the prisoner and the warden were invited to mediate the results were as follows:

<table>
<thead>
<tr>
<th>Total cases in which prisoner and warden invited to mediate</th>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prisoner rejects mediation</td>
<td>1</td>
</tr>
<tr>
<td>Warden rejects mediation</td>
<td>7</td>
</tr>
<tr>
<td>Because administrative remedies not exhausted</td>
<td>2</td>
</tr>
<tr>
<td>Because warden will not consider policy change</td>
<td>3</td>
</tr>
<tr>
<td>Because warden denies allegation</td>
<td>2</td>
</tr>
</tbody>
</table>


Note that of the seven cases rejected by the warden: three were rejected because of a refusal to consider a policy change, and two because the warden denied the allegation. These numbers reveal a serious problem facing any prison-directed mediation project—when a warden believes that mediation would erode leadership. Cole, Hansen, and Sibert (1982) found that at an early stage of
the mediation project the warden set a pattern of refusing to mediate where he or a member of his staff could “lose face” in front of a prisoner. To overcome this problem, the mediator agreed to hold separate discussions between the parties. The warden, however, still refused to participate in mediation in some cases because he felt to do so might undercut his position or that of a staff member.

While the Cole, Hansen, and Sibert (1982) concede that every correctional setting is unique and would require a tailor-made mediation project, their list of negative concerns for the success of prison-based mediation projects is impressive. Among the most significant and troublesome concerns cited are: (1) the nature of the complaints arising in prisons which are considered ill-suited to mediation, (2) the lack of incentive to mediate for differing reasons among the parties depending on the issue involved, (3) and the nature of the prison setting which almost forces the mediator to violate the principles of bias and neutrality. In the opinion of the authors, because of the realities of prisons, the role of the mediator is unavoidably more like that of an ombudsman exercising a facilitating role, rather than a dispassionate conciliator of conflicting positions.

Prison Ombudsmen

Unlike a mediator, an ombudsman is an appointed public official appointed to investigate citizens’ complaints about local or national governmental agencies that may be infringing on the rights of individuals. As the title implies, the corrections ombudsman performs this function in relation to a correctional agency (Williams 1975: 488).

In 1983, Stanley Anderson, a distinguished professor at the University of California-Santa Barbara and an early proponent of ombudsman programs in the United States wrote a paper for inclusion in the International Handbook of the Ombudsman in which he reviewed a decade of ombudsman programs in penal settings within the United States. An ombudsman for corrections had existed in Minnesota since 1972 and at the time of this publication, in the structure of their prison work, there were four main types of statutory ombudsmen in the United States:

- General purpose offices (Alaska, Hawaii, and Nebraska)
- General purpose office, with specially designated prison deputy (Iowa)
- Correctional offices, with the ombudsman appointed by the governor (Minnesota and Oregon), the legislature (Michigan), as special board (Kansas), or a private philanthropic institution (Connecticut)
- Inmate grievance commissions, with an executive director who functions as a correctional ombudsman (Maryland and North Carolina) (Anderson 1983:142).

According to Anderson, what distinguishes ombudsman plans in the U.S. as compared with other countries is not the initiation of a specialized ombudsman office, but the bringing of the ombudsman to the inmate. This is done by correctional ombudsmen and deputies who visit prisons frequently in order to carry out their investigations.

It is the presence on the premises that defines the work of the prison ombudsmen. Being on the scene alters the way in which complaints are received and handled. First, the effort required for the prisoner to lodge a complaint is reduced by the face-to-face or telephone availability of the ombudsman. Second, an inmate’s reluctance to complain is lessened by the protection against retaliation implicit in the ombudsman’s continued presence over time. Finally, an inmate is more likely to express his grievance at an early stage when rectification is still possible (Anderson 1983).

The professional backgrounds of the prisoner ombudsmen in the United States varies. While some are lawyers and criminologists, others and their deputies are not (Anderson 1983). Regardless of their backgrounds, it is important to note that the workings of their offices are remarkably similar which suggests that what works in one location may work in another.

Anderson’s (1983) research indicates that there is substantial support for prison ombudsmen whether it be by inmate, guard, administrator, warden, commissioner, legislator, or governor (Anderson 1983). Describing the prison ombudsman program as both popular and successful, Anderson feels this favorable reception is deserved for several reasons:

- It is the imposition of the third-party principle into the resolution of grievances, so that no man is the judge of his own case. In the prison context, with a nudge from the courts, ombudsmen have for the first time made officials accountable to an external arbiter.
- It provides a speedy and inexpensive way of limiting administrative discretion which heretofore has been largely uncontrolled.
Ombudsmen make a significant contribution to the development of fair standards and fair procedures within prisons. The creation of an ombudsman-like office has been concurrent with the formal upgrading of internal grievance procedures.

- It is a vehicle for crisis intervention.
- It is a sensitive feedback relay that is triggered by complaints and inquiries to identify salient information and communicate it to appropriate supervisory and policy-making officials.
- Finally, the ombudsman symbolizes the use of reason and moral persuasion rather than force. (Anderson 1983:143)

A living example deserving of Anderson’s enthusiastic endorsement of prison ombudsman programs is provided by Theatrice Williams, who was the first ombudsman appointed by the governor of Minnesota to the first such prison program in the United States in 1973. He served in this position for twelve years. After only two years on the job, he wrote an article inspired by his experiences in which he related impressive examples of three crisis situations in which he, as ombudsman, was able to successfully defuse potentially explosive situations. For example, in one case he was able to successfully negotiate the release of a hostage at the request of the warden, the commissioner of corrections, and the prisoners. Clearly, Williams had developed a significant level of trust between himself and those around him.

Commenting about these incidents Williams (1975) argued that although a hoped-for by-product of the program was a riot-free system, that was not its purpose, nor should such a program be developed to prevent riots: “Rather an ombudsman program should be developed because there is a commitment to decency and fairness for all people, even those in prison” (p. 488). Most of the complaints he investigated had to do with actions which might be (1) contrary to law or regulation, (2) unreasonable, unfair, oppressive, or inconsistent with the general course of the administrative agency’s judgments, (3) mistaken in law or arbitrary in the ascertaining of facts, (4) unclear or inadequately explained, or (5) inefficiently performed. All complaints were accepted and a special effort was made to see the complainant before a decision was made. Of almost 2,000 complaints received during his first two years, Williams dismissed only 18 because they were beyond the purview of the ombudsman. This is in sharp contrast to the Danbury mediation experience and demonstrates the scope of the ombudsman’s authority.

The ombudsman, however, only has the power to investigate a complaint or to act on his own initiative to uncover abuses. Preston N. Barton II (1983), a one time corrections ombudsman for the state of Kansas, observed that although the corrections ombudsman is appointed by the governor or the legislature and usually has unlimited access to facilities, people, records, and documents of correction departments, he cannot make policy. The power of his office comes from the fact that the ombudsman has statutory authority to be present within the walls of the prison, which has been traditionally prohibited to outsiders. As an outside agency, the ombudsman and his staff are more interested in the treatment of individuals than the survival of the prison bureaucracy (Barton 1983).

Barton’s (1983) observations concerning his office reflect the same positive attitude toward the efficacy of the corrections ombudsman as that of Anderson and Williams. Barton goes further, however, by discussing the delicate relational issues among the interest groups within the prison walls. As could be seen with the mediation program discussed in the previous section, Barton observes that the institutional staff members perceive the ombudsman as an intrusion to their work. The advantage the ombudsman has over the mediator, however, is his statutory authority. To minimize the sense of intrusiveness, as well as to insure that all aspects of a contended issue is known, Barton’s approach is to investigate and resolve complaints at the lowest possible level within the institutional chain of command, that is, at the guard-inmate level. Using this approach, Barton finds that institutional staff members have a considerable pride in their work, but one of the most difficult tasks is to convince them that there is indeed a problem in their area of responsibility. Once this has been accepted, however, Barton says that staff members are often eager to find a solution to the problem.

It is possible that a big difference between mediation as described in the Danbury example and the ombudsman plan, is that the ombudsman is able to operate at this critical level of the power scale where the “tire meets the road,” so to speak. But while this approach is usually effective, Barton points out that there are times when an issue cannot be resolved at the lower level and must be taken up the chain of command. Cases conducted at the higher level take a great deal of time and demonstrate the same type of problems that were mentioned with regard to mediation. Specifically, by concentrating on problem-solving at the lower level, Barton says that the senior administrators often feel left in the dark about the...
activities of the ombudsman office. This can result in their feeling that the ombudsman is not effective, or result in suspicion or paranoia on their part as to what the ombudsman is doing and what he may know (Barton 1983).

To avoid this problem, Barton holds frequent meetings with top administrators to discuss the nature of his job and the progress being made. This provides a forum in which to get information to top administrators that they might not otherwise be aware of and serves as a feedback mechanism. Thus, the meetings facilitate communication in both directions.

Finally, Barton reiterates the concern previously cited that there is a very thin line within the prison environment relative to the balance of control between inmates and staff. Administrators, he observes, are very often reluctant to amend policy decisions once they have been made. Even if a policy is admittedly wrong, it may be defended on the basis of holding the line in the power structure—to avoid “losing face” or appearing indecisive with the inmates. But if the issue is important enough Barton says the ombudsman—as an outsider on the inside—can and must pursue the issue and not be overly concerned with the administration’s worry about “losing face.”

Conclusion

With the exception of the first two decades after World War II, little attention has been directed at behavior modification of our prison population. Still, the courts have clearly expressed that simply because one has been convicted of a crime and has been sent to prison, one does not lose all civil rights; and some of the most visible abuses of prisoner civil rights have been corrected through the courts. However, this vehicle for redress has been grossly overused and abused by inmates to the extent that our federal court system has been severely strained.

A review of the literature suggests that within the prison system numerous other alternatives to dispute resolution have been tried with various degrees of success (Singer 1973; Hepburn 1980; Brakel 1982; Hansen 1987; Witte 1989; Rucker 1991; Dennis 1994). Unfortunately, a review of this literature also suggests that during the past decade the primary concern of researchers has been how to solve the case-load dilemma faced by the legal system through measures designed to cut off this avenue of redress. This presents a very delicate question of constitutional law. If prisoners have legal rights, how can our court system deny them access to the courts without violating basic constitutional principles?

Because of a fear to explore alternative dispute resolution techniques and the overriding punitive nature of our approach to dealing with offenders, alternative methods of dealing with both the serious and frivolous complaints of inmates have been met with less than enthusiastic support by interest groups both inside and outside prison walls. This paper has briefly examined two of these alternative dispute mechanisms, mediation and ombudsman plans.

The literature indicates that mediation as a tool in settling disputes in prisons has some severe limitations and may not be suited to the prison environment. The lessons learned from the Danbury case suggest limitations to the successful application of mediation to this situation. Perhaps with significant modifications to the traditional process, mediation would work more productively; but this begs the question: Is this an attempt to fit a square peg in a round hole?

The experience with ombudsman plans, on the other hand, met with better results. The ombudsman role most critically allows for better negotiating the delicate power relations between inmates and prison officials. What this suggests is that alternative methods of dispute resolution are just that, alternatives, and we must experiment with these different techniques and strategies to determine what works best in a given setting.

Endnotes

1 This research covers only male institutions. A similar inquiry into attempts to use mediation within female prisons would be interesting. Perhaps one would find a better environment for mediation. However, I believe one would encounter a similar power structure and the fear of losing prisoner control.

2 In Bounds v. Smith, 430 US 817, 824, 828 (1977), it was found that prisoners have a constitutional right to adequate, effective, and meaningful access to the courts to challenge violations of constitutional rights. In Smith v. Maschner, 899, F.2nd 940, 949 (10th Cir. 1990), it was further found that allegations that a prisoner was segregated immediately prior to hearings, that witnesses and assistants were transferred, and legal materials were destroyed was sufficient to state a claim.

3 The statute provides that “every person who, under color of any statute, ordinance, regulation, custom, usage, of any State or Territory or the district of Columbia, subjects, or causes to be subjected, any citizen of the
United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. 1983 (1988).

References


Community policing is a vision of policing that emphasizes the interaction between the police officer and the public. This paper examines community policing through the theoretical lens of symbolic interactionism which focuses on how persons understand themselves and others as they interact within their social world.

The basic principles of the theory of symbolic interactionism include the following (Rose 1962, Blumer 1969, Manis & Meltzer 1978):

1. Human beings, unlike lower animals, are endowed with the capacity for thought.
2. The capacity for thought is shaped by social interaction.
3. In social interaction, people learn the meaning and the symbols that allow them to exercise their distinctly human capacity for thought.
4. Meaning and symbols allow people to carry on distinctly human actions and interactions.
5. People are able to modify or alter the meanings and symbols they use in action and interaction.
6. People are able to make these modifications and alterations because, in part, of their ability to interact with themselves, which allows them to examine possible courses of action, assess the relative advantages and disadvantages, and then choose one.
7. Intertwined patterns of action and interaction make up groups and societies.

The theory of symbolic interactionism addresses such areas as social psychology, symbols, language, culture, behavior, social roles, and the concept of self.

All of these concepts are extremely applicable to the community policing paradigm. Three points are critical for symbolic interactionism: (1) a focus on the interaction between the actor and the world, (2) a view of both the actor and the world as dynamic processes and not static structures, and (3) an emphasis on the actor's ability to interpret the social world (Ritzer 1983). These key understandings of social interaction and dynamic process of meaning-making are crucial for understanding relationship-building in community policing.

Relationship-building is central to the philosophy of community policing:

The community policing philosophy reaffirms that proactive crime prevention, not merely responding to calls for service, is the basic mission of the police. Community policing fulfills this mission by maintaining a police presence in neighborhoods, undertaking activities to solve crime-producing problems, arresting law violators, maintaining order, and resolving disputes. At the same time, community policing is anchored in the concept of shared responsibility for the community safety and security. In community policing, the police and citizens are partners in establishing and maintaining safe and peaceful neighborhoods (National Institute of Justice Journal 1992:2–3).

Herbert Mead, who first developed the ideas of symbolic interactionism was concerned with meaning. Mead suggested that when we use our minds to put ourselves in the place of others in order to interpret their thoughts and actions, conduct becomes meaningful (Ritzer 1983). While stating that meaning comes from the social situation originally and not from the mind, the role of social interaction is significant. This idea informs community policing because community policing is founded in building relationships through social interaction.
According to Mead (1934/1962), the self, like the mind, is not an object but a conscious process that involves several dimensions:

1. the ability to respond to one’s self as others respond to it.
2. the ability to take part in one’s own conversation with others.
3. the ability to be aware of what one is saying and to use that awareness to determine what one is going to do next (134).

This understanding of the self is relevant to the community policing paradigm because awareness is crucial to the social interactions of the police officer within the community context. If officers are proactive and understand themselves—their values and ideologies—they are more effective in embracing the community policing model.

How the officer views himself is crucial to the application of the community policing model. The ideas of Charles Horton Cooley (1956)—considered today among the symbolic interactionists although his scholarship predated the theory as currently named—are also useful. Cooley’s concept of the “looking-glass self” refers to our capacity to see ourselves as we see any other social object. Three components are (1) how we imagine we appear to others, (2) what we believe their judgment of that appearance might be, and (3) feelings we develop as a result of these perceptions, such as pride or embarrassment. This process is particularly important in a public occupation, such as policing, where image is very important.

While conducting qualitative dissertation research on community policing, I consistently hear officers talk about how the public views them and, in turn, learn how these understandings affect officers’ behavioral decisions. Officer’s perceptions of themselves and how that affects their interactions with citizens can be an escalating cycle. This dynamic escalates positively in the community policing paradigm as a result of the empowerment afforded to the officer by the department and the citizens. By becoming partners in resolving community problems, as much of the community policing literature suggests, the relationship benefits while, at the same time, ultimately increasing the self image that the officers have of themselves. The reciprocal process between the public and the officer is enriched and both parties ultimately benefit. Public reaction and perception alters and, in return, the officer changes his or her perception of the public.

Whereas in traditional law enforcement the adversarial relationship may serve to intensify a negative reciprocal relations. The officer treats the citizen disparagingly because when citizens behave in such a way that causes the officer to not respect them. This image that the officer must maintain “control” of the “uncontrollable” citizen reinforces this oppositional relationship and reinforces psychological alienation on both sides. Thus, in this paradigm, most interactions are going to lead to a negatively escalating cycle of actions and perceptions.

Erving Goffman’s (1959) work on dramaturgy is extremely applicable to the police profession. Goffman perceived the self not as a possession of the actor, but rather as a product of the dramatic interaction between the actor and audience. The self “is a dramatic effect arising from a scene that is presented” (253). Goffman assumed that when individuals interact they want to present a certain sense of self that will be accepted by others. As the actors realize that the audience could disturb their performance, they feel the need to control the audience. They feel that if their performance is strong enough, the audience will voluntarily act the desired way. This is what Goffman refers to as “impression management”—that is, an effort to maintain certain impressions, likely problems, and copying methods.

Police officers are masters at this technique. They are trained at the academy to “control the people and the scene.” What they cannot control, they are told, will lead to chaos and problems. During research interviews, one officer said, “You must maintain a certain image and attitude to maintain control of the situation and the people.”

Goffman (1961) discusses interaction and presents the concept of “stages.” In the front stage, actors must present an idealized image of themselves to the public. Here they want to conceal secret pleasures and errors, only showing end products. They hide demeaning tasks and humiliations and attempt to make the public feel that this is their most important performance. Mystification is another technique by means of which actors restrict the contact between themselves and the audience. This technique is commonly used in policing where officers maintain strong exclusionary rules to maintain a closed structure. They feel that this helps keep the audience from questioning the performance. In fact, the opposite often occurs, which is why the concept of community policing, with an unguarded, partnership model is appealing.

Goffman (1961) furthers discusses the “backstage.” This is where informal actions occur. The backstage is cut off from the public and is clearly restricted. This
Impression management, as described by Goffman (1961), involves a high set of actions producing dramaturgical loyalty by, for example, fostering high in-group loyalty and preventing team members from identifying with the audience (Ritzer 1983:314). Both of these dynamics can be seen in traditional policing. Goffman also suggests various forms of dramaturgical discipline, such as having the presence of mind to avoid slips, maintaining self-control, and managing facial expressions and the verbal tone of one’s performance (Ritzer 1983:315). Again, these practices are typical of traditional law enforcement, yet are not embraced by the community policing paradigm.

Lastly, Goffman discusses dramaturgical circumspection, planning for outcome and emergencies, selecting loyal teammates, selecting good audiences, being involved in small teams, preventing access to private information, and settling on an agenda to prevent future complications. Although community policing and traditional law enforcement are more closely related with regards to these aspects of dramaturgical loyalty—for example, selecting loyal teammates and overall planning strategies—they differ on the amount of input they desire from outside sources. “Constructive action by the police and community is always better than action done by police alone” was a major point made by the Executive Session on Policing at Harvard University’s JFK School of Government (Wasserman and Moore 1988:6), made up of criminal justice experts from around the country.

Goffman also expands upon the concept of “role distance” as it relates to how much distance an individual assumes from a given role. Although Goffman states that “very few people get completely involved in any given role,” this is not usually the case with police officers. Being a police officer is a 24-hour-a-day job and many officers identify with their occupation and often state outwardly in nonworking situations, “I’m a cop.” Many officers complete identity, especially those of rookie officers who lack the occupational maturity, is enveloped within their occupational identity. While not discussed further here, the concept of roles, role selection (emphasizing the self most appropriate to observers present), and role distance are extremely important components when researching the subject of police. These concepts also play a large part in the positive success of the philosophy of community policing.

The topic of values, another major tenet of symbolic interactionism, is strongly correlated with community policing. By definition, community policing reflects a set of values rather than a technical orientation. In Boston, Commissioner Francis M. Roache stated, “The department is committed to the positive evolution, growth, and livability of our city.” Sir Kenneth Newman, Commissioner of the Metropolitan Police in London, England, set forth the values of his department as follows:

In pursuing the aim and duty of maintaining a peaceful community, members of the Metropolitan Police view their role as one involving cooperation with others in the creation and maintenance of a way of life in communities which strikes optimum balance between the collective interests of all citizens and the personal rights of all individuals (cited in Wasserman and Moore 1988:5).

As stated through discussions at the Executive Session on Community Policing at Harvard’s JFK School of Government, values set forth include:

- The highest commitment of the community policing organization is respect for and sensitivity to all citizens and their problems.
- Community policing values the skills of positive social interaction [emphasis added], rather than simply technical application of procedures to situations, whether dealing with crime, disorder, or other problemsolving (cited in Wasserman and Moore 1988:5).

The emphasis on social interaction and the importance of encompassing values is paramount to the success of the community policing paradigm.

An example of the frustration that traditional law enforcement causes can be seen in the excerpt from Jonathan Rubinstein’s City Police (1973):

The police have been given an impossible responsibility. They cannot prevent crime altogether, and whatever amount of crime they do prevent by their presence on the street cannot be demonstrated. The people who support wholeheartedly their efforts to control crime are by and large persons who do not have to experience at first hand the inconvenience, tension, and unpleasantness tactics invariably produce. The people who desperately need their help and protection (and constantly call on the police for aid) are often angered by what they perceive to
be the policeman's indifference and callousness toward them. Whenever the police respond to demands that they "do something" about crime, whatever they actually do is likely to increase tensions without their also being able to show conclusively that it is helpful (Rubinstein 1973:369).

This is one of the main advantages of creating a partnership with communities thereby increasing the relationship and sharing the responsibility of crime prevention.

Several key concepts that distinguish community policing from traditional policing can be understood by means of symbolic interactionism. These include an emphasis on individual thought processes and the role of symbols in shaping perceptions and social interactions.

1. Individual thought processes. The importance of thought processes to symbolic interactionists is reflected in their views on objects. Blumer differentiates among three types of objects: physical objects, such as a chair or a tree, social objects such as a student or a mother, and abstract objects, such as an idea or more principle (Ritzer 1983:308). "A tree will be a different object to a botanist, a lumberjack, a poet, and a home gardener" (Blumer 1969b:11). That is, things do not have meaning in themselves. People make sense of things, and these perceptions influence further understandings and their behavior.

In community policing versus traditional policing, the citizen is understood by the police officer differently, and vice versa. The philosophy of an interactive process between the police and the community to mutually identify and resolve community problems exemplifies the differing thought processes of the traditional law enforcement officer to that thought process of the community policing officer. The citizen served and the moral obligation of the services performed become interdependent upon the symbolic interpretation of the officer. Thus, the meaning does not stem from the mental processes alone, but rather the process of interaction in a context where respect, cooperation, and rights are valued.

2. Language. The community policing officer interacts with the public via a language of symbols. Words are symbols since they are used to stand for things. As discussed by Ritzer (1983:308), first, symbols allow people to deal with the material and social world by allowing them to name, categorize, and remember the objects they encounter there. Second, symbols improve people's ability to perceive the environment. Third, symbols improve the ability to think. Fourth, symbols greatly increase the ability to solve various problems (a crucial key aspect to community policing). Fifth, the use of symbols allows actors to transcend time, space, and even their own persons. Sixth, symbols allow people to avoid being enslaved by their environment.

Symbols abound with respect to police. The uniform, the badge, automobile with lights, guns, and—from a more macro perspective—the symbols of power and control associated with policing all play a significant part in how the officers understands himself or herself and his or her social interactions. The community policing model seeks to alter the public's and officers' perspective of these symbols by its emphasis on cooperation between officers and the public, and the officers' physical and psychological accessibility.

Robert Prus (1991) discusses five major assumptions of symbolic interactionism. These insights inform our understanding of the community policing paradigm as articulated by Lee Brown (1985) in Community Policing: A Practical Guide for Police Officials. First, instead of assuming that there is a singular or objective reality, interactionists attend to the perspectives of the people they are studying. Greater citizen support, shared responsibility, and better internal relationships are seen as benefits of community policing (Brown 1985). This results when the focus is more on understanding what people are thinking and why. Public citizens are seen as agents of control, not simply as objects to be controlled.


Third, symbolic interactionists argue that human behavior is fundamentally interactive (Prus 1991). Community policing emphasizes interactions, especially the relationship among officers and citizens. For example, community policing promotes shared responsibilities and creating coordination links between the police and the public.

Fourth, symbolic interactionism focuses on preferences and patterns of perception and interaction among different persons and identity groups (Prus 1991). Brown (1989) discusses this issue of values of the officer and the community: beat redesign, to meet natural, rather than artificially created, boundaries, and permanent assign-
ments, enabling officers to become an integral part of the neighborhood and becoming familiar with the patterns and cultural norms.

Finally, symbolic interactionism emphasizes process (Prus 1991). Likewise, the community policing paradigm is based on an understanding that process and outcome are inextricable. By definition, community policing is an interactive process between the police and the community to mutually identify and resolve community problems (Brown 1989).

I have attempted to show the strong correlations between the theory of symbolic interactionism and the community policing paradigm. But symbolic interactionism is not without its limitations. Some scholars suggest that the theory is not scientific enough, too vague, and that the larger social structures are ignored. To address this last point, we look towards Stryker (1980:53) who stated "a satisfactory theoretical framework must bridge social structure and person, must be able to move from the level of the person to that of large-scale social structure and back again, there must exist a conceptual framework facilitating movement across the levels of organization and person." While agreeing that macro analysis is important and variables such as class, status, and power are extremely significant, that is beyond the scope of this paper. I will contend, however, that the community policing model readily acknowledges that these variables exist and appraises their components in a way as to increase the effectiveness of the philosophy and provide the public with a meritorious contribution towards alleviating those social concerns.

That is not to say the implementing the community policing model is not without its share of problems. There are entrepreneurial, tactical, and administrative problems, not to mention the structural resistance that is extremely powerful. But the effort is worth the ultimate future social gains. We must learn from past failures and successes and apply them to future applications. Symbolic interactionism as a social theory can be applied not only to the specific model of community policing, but in a generalized way to the field of criminal justice as a whole.

References


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