

INTEGRAL Season Four: Environmental Justice and the Common Good
Bannan Institute, Ignatian Center for Jesuit Education, Santa Clara University
Tseming Yang, Professor, School of Law
Ensuring a Voice for Communities in Environmental Decision-making
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THERESA LADRIGAN-WHELPLEY: Welcome to INTEGRAL, a podcast production out of the Ignatian Center for Jesuit Education at Santa Clara University; exploring the question: is there a common good in our common home?

I'm Theresa Ladrigan-Whelpley, the director of the Bannan Institutes in the Ignatian Center, and your host for this podcast. We're coming to you from Vari Hall on the campus of Santa Clara in the heart of Silicon Valley, California. This season of INTEGRAL, we're examining the ways in which the work of environmental justice is central to our pursuit of the common good. How can we ensure that the benefits of environmental regulation, as well as the burdens of toxins and pollution, are justly distributed. Today, we'll look at a specific case in California, that was filed with the Environmental Protection Agency in order to consider and evaluate all that is at stake for environmental justice.

TSEMING YANG: After an exhaustive investigation, EPA found that there was a discriminatory impact on Latino school children from methyl bromide fumigation...Attempting to solve problems raised by the community without their substantive input is not only disrespectful of their stake in these issues and the outcome, but it also presents a huge risk of missing important pieces of the solution.

THERESA LADRIGAN-WHELPLEY: To unpack these issues, we're joined today by Tseming Yang, Professor of Law at Santa Clara and Bannan Institute Scholar in the Ignatian Center. Professor Yang teaches environmental law, and his research focuses on the intersection of social justice and civil rights issues with environmental law. He served as Deputy General Counsel of the US Environmental Protection Agency in the Obama Administration, as Director of a US AID and State Department funded initiative to build China's institutional capacity in

environmental law and governance and as an attorney in the Environmental Division of the US Department of Justice. Welcome Tseming!

TSEMING YANG: Thanks Theresa. The environmental justice movement has often been described as a coming together of the great movements of the 1950s and 60s – that of civil rights activism and of environmentalism. The beginnings of the environmental justice movement are usually traced to the 1983 protests in Warren County, North Carolina, where the state decided to create a toxic landfill in a predominately African-American community. The location was profoundly unsuitable because the groundwater levels in that area were very shallow.

Just as civil rights activists did in the 1950s and 60s, local residents marched in the streets to prevent what started to be called "environmental racism." These activists engaged in acts of civil disobedience, laid in the streets to stop trucks filled with hazardous waste from coming into their community.

PROTESTER [AUDIO CLIP]: We will not allow one county to become a dump site!

REPORTER [AUDIO CLIP]: The protesters were told not to block the trucks. They are now lying in the streets now, blocking one truck moving into the landfill. They are refusing the order to move, and they are being arrested one by one.

TSEMING YANG: As Professor Robert Bullard, the most prominent scholar studying the movement, has once said, the community simply said: enough is enough.

ROBERT BULLARD [AUDIO CLIP]: This black community, being dumped on, being targeted, and people saying “No, we have a right to live in a clean and healthy environment,” that’s when the whole idea of environmental justice as a *national* movement came into effect.

TSEMING YANG: The protests in Warren County did not remain an isolated incident. They brought about a broader national conversation about whether hazardous waste sites were being put disproportionately into racial minority neighborhoods. It also forced environmentalists, regulators, politicians, and corporations to face the issue of how race and class relate to their actions and decisions on pollution, toxics and the environment.

To me, as an academic who has studied the environmental justice movement and the role of human rights in managing the environment, it raises fundamental questions, such as "How do we ensure that the distribution of the burdens of toxics and pollution, as well as the benefits of environmental protection, are justly distributed?" In essence, "How do we as a society ensure justice for all with respect to the environment?"

Now, the focus of my podcast here is the Angelita C case. The case involved Latino families in California and their fears that their children were being exposed to toxic pesticides. Because they felt that the state government had not done enough to protect the school children, they asked the US Environmental Protection Agency to intervene. Unfortunately, the ultimate outcome fell far short of their expectations. And in that, the case provides some important lessons for what not only the federal government but anybody responsible for making environmental decisions can do better to help achieve environmental justice.

I had heard a lot about the Angelita C case when I worked at EPA some years ago. But I had never been substantively involved in the case. But I had also gotten to know one of the lawyers, Brent Newell, who had represented the families in the case, who was also active on other environmental justice cases. And so I decided to explore this case for this podcast.

So, what happened in the Angelita C case? In June 1999, Maria Garcia and other parents of a number of school children in Ventura County and Monterey County sought the US EPA's assistance over their fears that the children were being exposed toxic and cancer-causing pesticides that were being applied to nearby agricultural fields.

In places like Ventura and Monterey, and other agricultural parts of California, pesticide spraying affects not only the farmworkers who may be directly exposed because of their work in the fields, but usually also anybody nearby. That's because the chemicals that are sprayed or that are used as fumigants can drift outside of the field and expose people in close-by communities. Fumigants like methyl bromide, the pesticide of main concern when the Angelita C case started in 1999, are similar to household pesticides that create something like a fog when released. Pesticide drift is obviously a problem when the people exposed are the children going to schools

located next to such fields and when many agricultural pesticides are exceedingly toxic and can cause long-term adverse health effects like cancer.

In the Angelita C case, Maria Garcia and the other Latino parents had been particularly concerned that on the agricultural fields close to the kids' schools, farmers had been applying methyl bromide. And Methyl bromide happens to be one of those pesticide that is a serious cancer-causing fumigant. Because state regulations seemed to allow this, the parents asked EPA to intervene.

Their request to EPA for help was ultimately filed as an administrative complaint against the state of California under Title 6 of the U.S. Civil Rights Act. The complaint was essentially a formal request for EPA to intercede because California was not doing enough to protect those children. More importantly, for purposes of the Civil Rights Act, the families alleged that the failure of the State to do more had created health risks for Latino school children that resulted in an illegal discriminatory effect. That is because these school children, similar to kids in other schools in the agricultural communities of California, were predominantly Latino. In other words, Latino school children were being exposed to greater levels of toxic chemicals than schools in comparable white communities. Hence, a discriminatory effect.

EPA accepted the complaint in 2001 for investigation and then formally initiated its own inquiry into these issues.

Now, fast forward to 2011. After an exhaustive investigation, EPA found that there was a discriminatory impact on Latino school children from methyl bromide fumigation near those schools. However, it also found that since 1999, California had made significant changes, including imposing limitations on fumigation activities, monitoring of drift, and imposing other requirements. Also, by that time, methyl bromide use had been nearly phased out in favor of other pesticides. As a result, EPA ultimately decided to enter into a settlement agreement with the state of California to resolve the investigation. California did not admit wrongdoing as part of the settlement, but it did agree to place an additional air quality monitoring machine at Rio Mesa High School in Oxnard, Ventura County, one of the schools at issue.

On its face, some thought this to be an appropriate resolution, maybe even a success. It was the first time that EPA had ever made a preliminary finding of a discriminatory impact in an environmental justice matter. Yet, the families in the Angelita C case were far from happy about the outcome.

So, I asked Brent Newell, the lawyer for the families, why the outcome was not satisfactory.

BRENT NEWELL [AUDIO CLIP]: The EPA's resolution of the Angelita C Civil Rights complaint exposed three major problems with EPA's enforcement of the Civil Rights Act. First, EPA took over 12 years to make its first ever preliminary finding of discrimination, when it should've done so within six months of accepting that complaint for investigation. Second, EPA excluded the complainants from the settlement negotiations it did have to resolve the complaint, after taking 12 years to decide that there was a Civil Rights violation. And finally, that settlement didn't address any of the substantive issues or provide substantive protections for the children. EPA found that they were suffering a Civil Rights violation, yet it failed to provide any protections from methyl bromide or any of the fumigants that had replaced methyl bromide during the 12 year period it took EPA to resolve the complaint.

TSEMING YANG: How do we explain or understand these issues by Brent? Here's my take on them: First, on the 12 year delay. Yes, that's correct. From the time that the Latino families filed their Title 6 complaint in 1999, to the resolution in 2011, took 12 years. Excessive by any measure, even to a degree that agency officials have been embarrassed about it. In fact, by the time of the resolution, the children at Rio Mesa High, whose health and welfare was the initial motivation for the filing of that complaint, had long since graduated and were thus no longer exposed to the pesticide at issue there.

But unfortunately, the delay was also a manifestation of an agency investigation process that was dysfunctional. As many will understand, justice delayed too much can simply amount to justice denied.

But the reasons for "why" all of this happened are not so simple. Even an outside consultant's 2011 independent evaluation of this process indicated as much. It identified a mix of personnel

issues, insufficient top-level attention, and unresolved substantive issues underlying the complaints about discriminatory effect, as the main culprits for serious delays in cases like Angelita C. Since then, there have been significant substantive changes instituted by the agency, but it remains to be seen whether they will be enough to clear the investigation delays.

Another serious concern was the dissatisfaction with the substantive outcome, the settlement itself. It's difficult to explain this problem without getting into a lot of technical legal details, something that would take much, much longer than I have for this podcast. My way of summarizing is that it's probably best to say, and this is consistent with the outside consultants 2011 report finding, there's simply some serious outstanding substantive questions about how EPA should address disparate impacts. It's a set of issues that EPA and others will still need to continue working on in the coming years. In many respects, however, the substantive issue is also connected to another one, the second one that Brent mentioned, exclusion from the settlement process.

That issue provides one of the most valuable lessons from the Angelita C case. The exclusion of Maria Garcia and other families was, in my view, probably the most important problem in how the case was resolved. It's at the heart of what the environmental justice movement has been about: the exclusion of the voices, views, and concerns of marginalized communities, especially racial minorities and the poor, from environmental decision-making.

Let me put this into context. Oftentimes, when I discuss the broader question of what environmental justice is about with my students, we quickly focus on the 3 primary perspectives that help to understand what the EJ activists are most interested in. First, there is what is referred to as "distributive justice," the idea that everybody is entitled to a fair share of our societies benefits and should bear a fair share of the burdens. It is the substantive part of what environmental protection is all about. With regard to the environment, that includes the claim that the poor and racial minorities should have the same access to environmental amenities, like a nice city park, and air that is as clean and healthy as that enjoyed by their wealthy or non-minority counterparts. At the same time, no one should have to tolerate disproportionate amounts of pollution or other environmental burdens.

The second form of justice that we usually then discuss is that of corrective justice. That idea is especially relevant in our country due to its history and continuing legacy of slavery, racism, discrimination and racial exclusion. From a corrective justice perspective, EJ activists are looking to undo the lingering effects of racial discrimination with regard to pollution and environmental amenities.

Finally, there's also procedural justice, the idea that regardless of their race, class or other background, everybody should have equal access and rights to participate in government processes and matters that affect them. In the US, this issue has been associated with some of the most serious and insidious forms of racial discrimination generally: deliberate efforts, especially by parts of the government in the past, to disenfranchise African-Americans and other racial minorities, and to prevent them from participating in elections and other democratic processes. Translated to the environmental justice movement, activists have complained about the failure of government to simply ask the affected communities for their views and to take their input into account when making decisions about pollution and toxics.

Settling the Angelita C investigation without consulting or involving Maria Garcia and the other families was disrespectful, especially in light of the 12 years that it took to resolve the complaint. Ensuring that affected communities are consulted and involved in the resolution of such investigations, is probably one of the most important lessons coming out of this case. Attempting to solve problems raised by the community without their substantive input is not only disrespectful of their stake in these issues and the ultimate outcome, but also presents a huge risk of missing important pieces of the solution.

And that's one of the fundamental lessons about public participation. Environmental activists have actually always clamored for more public input and transparency – simply because it has a concrete benefit of helping to craft better solutions and ensuring that everybody's legitimate concerns are addressed.

And so making sure that even the voices of marginalized populations are heard and considered by the government is of benefit to everybody. It is because a government and a system that is responsive to all is ultimately of value to all. Like the proverbial canaries in the coal mine, the

Latino school children, and children generally, are among the most vulnerable populations to be exposed to environmental risks, toxic risks that may eventually affect everybody else, whether in the form of pesticide residues on fruits and vegetables or the risks of injury and disease that chemicals may pose to others. In the end, environmental justice matters, because the environment matters to everybody.

THERESA LADRIGAN-WHELPLEY: Thanks for listening to INTEGRAL, a Bannan Institute podcast of the Ignatian Center for Jesuit Education at Santa Clara University. Special thanks to Professor Tseming Yang for his contribution to today's episode.

Coming up next week is Chris Bacon, Associate Professor in the Environmental Studies and Sciences department at Santa Clara, who will be exploring food justice and food insecurity in the Americas.

Technical direction for INTEGRAL was provided by Fern Silva. Our Production Manager is Kaylie Erickson. Our Production Assistant is Manuel Sanchez. Thanks to Mike Whalen for advisory and editorial support. You can find us on the web at scu.edu/integral, or subscribe via iTunes, SoundCloud, Stitcher, or Podbean.