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Dignity: The Most Important Common Resource

Brianna Rosier

INTRODUCTION

As a proselyting missionary, I spent time in many northern Colorado cities. While living in Loveland and Fort Collins, I was occasionally hit by a foul-smelling wind. Citizens of those cities would take a whiff and say, “Smells like Greeley.” The phrase was so prevalent that I picked it up myself, even though I had never been to Greeley, a city east of Fort Collins. In fact, the only thing I knew about the city was that a meat-packing plant located nearby was the main source of the city's scent pollution.

I had come to imagine the city as dirty and undesirable. Embarrassingly, I would sometimes associate these characteristics with the people in the city. I ended up moving to Greeley and lived there for about four months. No longer whiffing just the occasional wind, I found the smell was shockingly worse in the city. I was left with an uneasy feeling, not from the smell, but because the characteristics of the Greeley citizens was not what I expected. Unlike other areas of northern Colorado, I found a large population of low-income, Latino citizens. Immediately, I realized that people outside of Greeley were associating the foul smell with poor people whose brown skin was not unlike my own.

Does this association matter? Yes. Researchers hypothesize that implicit racial bias stems from both direct and indirect negative information individuals have received about a race.¹ While research is unclear regarding exactly how implicit bias affects the biased individual, researchers are concerned that these biases change how individuals act towards members of certain races.² Implicit bias can also increase stereotype threat, a phenomenon where, due to the fear of

1. *Understanding Implicit Bias*, KIRWAN INST, UNDERSTANDING IMPLICIT BIAS (2012), http://kirwaninstitute.osu.edu/docs/implicit-bias_5-24-12.pdf.

2. *Id.*

fulfilling a stereotype, a member of a stereotyped group performs worse than the member would have done otherwise.³

This paper considers the implications of associating negative characteristics of necessary environmental nuisances and facilities, like meat-packing plants and landfills, with the characteristics of people living near those nuisances. One serious implication is the damage those nuisances do to a community's dignity; I argue that the most important resource to consider when making environmental decisions is community dignity, and that when advocates use this framing in decisions, social and economic outcomes improve for people of color and the poor.

First, I will define dignity as a common resource that can be exhausted. I will describe what constitutes a common resource, looking to some nontraditional and abstract examples of common resources. Then I will define dignity as it will be used in this paper, drawing from definitions that have been used by the United States Supreme Court. I will conclude Part II by placing dignity in the common resource framework, identifying its shared nature, as well as the community it affects.

Next, I will illustrate the usefulness of framing dignity as a common resource in the context of the Environmental Justice Movement, a movement focused on equitably dividing environmental burdens and benefits. This framing focuses on the original underpinnings of the environmental justice movement, which stems from the Civil Rights Movement.

I will conclude by describing how framing dignity as a common resource will result in improved social and economic outcomes for communities of color and poor communities.

I. DIGNITY AS A COMMON RESOURCE

To better understand how a community shares dignity, dignity must be reconceptualized as a common resource. This is accomplished by comparing dignity to other nontraditional resources, defining dignity in terms of shared resource, and identifying the community who depletes that resource.

3. *Stereotype Threat Widens Achievement Gap*, AM. PSYCHOL. ASS'N (Jul. 15, 2006), <https://www.apa.org/research/action/stereotype>.

A. Defining a Common Resource

A common resource is a commodity shared by a community. In an infamous essay, Garrett Hardin identified issues that arise when a community uses these finite, common-pooled resources (a community sharing a resource can be called a commons).⁴ One issue is the complete depletion of shared resources, which Hardin describes as the “tragedy of the commons”—individuals using a shared resource have little incentive to restrain usage, and as a result, the resource is eventually depleted.⁵ Hardin presents a hypothetical where herders bring their cattle to an open pasture.⁶ Though land—the resource—is limited and threatened by overgrazing, herders have an incentive to place as many cattle as possible in the open pasture because of individual gain.⁷ Hardin's article also identifies other concrete problems where the tragedy of the commons arises, including the depletion of national parks and the issue of overpopulation.⁸

Hardin illustrates that there are shared resources all around us, but some resources are more readily identifiable than others. Tangible resources, like land and water, can be easily measured. When placed in a commons, depletion of these resources is also easily measured. For example, extensive research has been done examining the tragedy of the commons in the context of shared ground water.⁹ Nontangible resources are more difficult to define but are still subject to tragedy of the commons problems.

In the context of nontangible resources, technology has facilitated the rise of “knowledge commons” or shared “knowledge resources.”¹⁰ These resources differ from typical common resources in that they are nonrivalrous and nonexcludable.¹¹ Knowledge resources include

4. Garrett Hardin, *The Tragedy of the Commons*, 162 *SCI.* 1243 (1968).

5. *Id.* at 1244.

6. *Id.*

7. *Id.*

8. *Id.* at 1245, 1248.

9. See ELINOR OSTROM, *GOVERNING THE COMMONS* 69-88 (1990).

10. Brett M. Frischmann, Michael J. Madison & Katherine J. Strandburg, *Governing Knowledge Commons*, in *GOVERNING KNOWLEDGE COMMONS* 1-2 (Brett M. Frischmann, Michael J. Madison & Katherine J. Strandburg eds., 2014).

11. *Id.* at 6. The resources are nonrivalrous and nonexclusive in the sense that one person using the resource does not prevent another person from using it and that a person cannot exclude others from using the resource.

things like data, information, creative works, etc.¹² An example of these commons is *Wikipedia*, a free online encyclopedia which is open for anyone to read and edit.¹³ Understanding “knowledge commons,” though the resource is amorphous and more difficult to measure, can be crucial in understanding the best approach to intellectual property law, and whether that means more regulation or privatization.¹⁴ Likewise, identifying other amorphous common resources, like dignity, can influence how legislatures choose to approach problems that arise with those resources and how private parties interact with those resources.

Both tangible resources and nontangible common resources can be identified by posing a question offered by Professor Brigham Daniels: “How are the resources shared, created, and used by the community?”¹⁵ This question first requires analysis of potential resources and then the community that is sharing those resources. This analysis is particularly effective when looking at nontangible resources. For example, this analysis was used in the context of making a piece of legislation.¹⁶ The analysis required characterizing the legislation's attributes as one whole—“a collection of ideas, language, reports, transcribed histories, and analysis related to policy, budgeting, and law.”¹⁷ In this example, Professor Daniels looked outside the output of the community—the piece of legislation—and looked instead towards the pooled resources within the community that created the output.¹⁸ So, for a community creating a piece a legislation, he examined how the parties share resources like ideas, language, etc.¹⁹

Upon identifying these shared resources, like ideas and language in making legislation, the community must rally around the resources, instead of focusing energy on things that do not actually contribute to the production of legislation.²⁰ In the legislation exam-

12. *Id.* at 3.

13. *Id.* at 4. See generally WIKIPEDIA, <https://www.wikipedia.org/> (last visited Mar. 3, 2020).

14. *Id.* at 12.

15. Brigham Daniels, *Legispedia*, in GOVERNING KNOWLEDGE COMMONS 445, 448 (Brett M. Frischmann, Michael J. Madison & Katherine J. Strandburg eds., 2014).

16. *Id.*

17. *Id.* at 449.

18. *Id.*

19. *Id.*

20. *Id.*

ple, multiple groups share the resources, like ideas, that are necessary to make legislation.²¹ The individuals influencing legislation—members of Congress, congressional staffers, lobbyists, activists, the executive and judiciary, the press, and concerned citizens—comprise this community or commons.²²

While this example is not completely analogous to dignity as a resource, it illustrates a process that can be used to isolate dignity as a pooled resource. To summarize the process: first, one must look past the output of the community and instead identify what shared resources create that output; then one must identify members of the community so those members can maximize the use of their resources. This process will be used in this paper to define the unquantifiable, abstract concept, dignity, as a common resource.

B. Dignity as a Common Resource

As advocates identify exhaustible resources, and frame both environmental and nonenvironmental issues in terms of those resources, they get at the heart of a matter as opposed to focusing on ancillary matters. This framing can allow advocates to present a powerful, focused platform to policy makers. Recognizing dignity as a common resource could change how issues are approached, particularly issues addressed by the Environmental Justice Movement, a movement focused on remedying environmental inequalities amongst different ethnic and socio-economic groups. The following discussion aims to place dignity in a resource context.

1. Defining dignity

To understand why dignity is a common resource, we must define “dignity.” A layman’s dictionary defines dignity as “the quality or state of being worthy, honored, or esteemed.”²³ However, the word “dignity” has been used inconsistently in legal contexts, particularly in a constitutional context.²⁴ For the purposes of this paper, “dignity”

21. *Id.* at 452.

22. *Id.* at 452-54.

23. *Dignity*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/dignity> (last visited Feb. 27, 2020).

24. See Maxine D. Goodman, *Human Dignity in Supreme Court Constitutional Jurisprudence*, 84 NEB. L. REV. 740, 745-53 (2006).

will be defined as it has been used in First Amendment cases, separate-but-equal cases, and in some foreign settings. In Europe, dignity is often considered a privacy right that includes “rights to one’s image, name, and reputation.”²⁵ This definition, while not used in U.S. constitutional jurisprudence of privacy, can be found in our nation’s libel and defamation cases as well as in segregation cases. At least one scholar has argued that the European definition should be incorporated into our jurisprudence in conjunction with its relationship to environmental rights.²⁶ However, this paper does not argue that dignity is a right, but instead that dignity is a resource.

This paper defines dignity as a principle of recognition: how others view one’s image, name, and reputation.²⁷ This definition differs from other ideas of dignity which focus on human autonomy and disparate treatment by the state.²⁸ Instead, this idea of dignity focuses on the recognition by others of the inherent human dignity and uniqueness of all individuals.²⁹ Thomas Jefferson believed that the dignity of man could be lost when distinguishing individuals by “birth or badge,”³⁰ which aligns with this definition that human dignity is affected by how the individual is recognized.

The Supreme Court has alluded to this type of dignity in multiple cases. For example, the Supreme Court has recognized that “society has a pervasive and strong interest in preventing and redressing attacks upon reputation.”³¹ Justice Stewart, in *Rosenblatt v. Baer*, tied this interest to the concept of liberty by reasoning that the right to protect one’s reputation is a basic element of human dignity and essential to freedom in society.³² That sentiment has been reiterated by other justices in subsequent Supreme Court cases.³³

25. *Id.* at 752.

26. Erin Daly & James May, *Environmental Dignity Rights*, in *THE EFFECTIVENESS OF ENVIRONMENTAL LAW* (Sandrine Maljean-Dubois, ed., 2017), <https://ssrn.com/abstract=2885500>.

27. Neomi Rao, *Three Concepts of Dignity in Constitutional Law*, 86 NOTRE DAME L. REV. 183, 243 (2011).

28. *Id.*

29. *Id.*

30. Leslie Meltzer Henry, *The Jurisprudence of Dignity*, 160 U. PA. L. REV. 169, 200 (2011).

31. *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1996).

32. *Id.* at 92 (Stewart, J., concurring).

33. *See Paul v. Davis*, 424 U.S. 693 (1976) (Brennan, J. dissenting and quoting Powell, J. and Stewart, J.) (internal citation omitted) (“[T]he individual’s right to the protection of his

Dignity, in this sense, is more than an innate, unchanging quality. Instead, dignity can be increased or diminished. The development of libel and defamation law centers on that idea, and is a helpful illustration. Justice White, in his dissent in *Gertz v. Robert Welch, Inc.*, indicates that, originally, winning a libel case meant a court would assume damage to the plaintiff's reputation.³⁴ Though plaintiffs are now required to prove damages or loss to reputation,³⁵ the Court still recognizes that reputation can be lost.

The Supreme Court, in *Brown v. Board of Education*, also recognized that the outside perception or reputation of an individual can negatively impact dignity by creating feelings of inferiority that can have lasting damage on a person's heart and mind.³⁶ This finding was backed by a study the Court cited in a footnote, where children were given black and white baby dolls and then asked about the dolls.³⁷ Black children who attended segregated schools were much more likely to choose the white doll as the "nice doll" and the black doll as the "bad doll."³⁸ Significantly, many black children from segregated schools who were asked which doll was most like them became distressed, with some children leaving the room.³⁹ While the Court never explicitly used the word "dignity" in *Brown*, there is a clear indication the Court was concerned with damage to dignity that would leave irreparable effects on a group of people. Locally, the Supreme Court has described aspects of dignity, including a right to a good name and protection from stigmatizing segregation.

Looking internationally, a United Nations report, states that creating an environment where an individual can develop "a sense of self-worth and security" is essential.⁴⁰ The report recognized violence, injustice, government instability or injustice, poverty, and dis-

own good name 'reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty.'")

34. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 370 (1974) (White, J., dissenting).

35. *Id.*

36. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).

37. Michael Beschloss, *How an Experiment with Dolls Helped Lead to School Integration*, N.Y. TIMES (May 6, 2014), <https://www.nytimes.com/2014/05/07/upshot/how-an-experiment-with-dolls-helped-lead-to-school-integration.html>.

38. *Id.*

39. *Id.*

40. Aung San Suu Kyi, *Human Development and Human Dignity*, in UNITED NATIONS DEVELOPMENT PROGRAMME: HUMAN DEVELOPMENT REPORT 2002 52 (2002), <http://hdr.undp.org/en/content/human-development-and-human-dignity>.

ease as threats to dignity.⁴¹ This list is not comprehensive, but it is representative of the numerous threats to dignity. These threats can completely drain dignity by destroying an individual's sense of self-worth and security. There are multiple political, social and economic threats to dignity,⁴² and facing each threat head-on can potentially result in greater preservation of dignity as a resource. With the understanding that dignity itself can be an exhaustible resource, we must now turn to the scope and characteristics of a community sharing this resource.

2. *Dignity as a community resource*

Defining a common resource requires identification of the community that is sharing the resource.⁴³ While dignity as an individual characteristic and resource seems logical based on court precedent, identifying what makes up the dignity of a community and scaling dignity to a community size requires a couple of considerations. First, is the common resource, in this case dignity, shared on a national, state, or local level, or on more than one level? And, how is that resource being used by the community? Finally, what factors increase or decrease the resource in the community?

There are three main systems governing the use of resources in the United States: national, state, and local systems.⁴⁴ Many resources are shared and governed on all three levels.⁴⁵ When looking to environmental resources, issues like air quality are regulated by the national government,⁴⁶ but obviously affect some states and local communities more than others. In contrast, choosing sites for imposed environmental nuisances (“siting”), like landfills and toxic waste sites, is often conducted by the state and local governments.⁴⁷ Environmental risks are often determined by local governments when making

41. *Id.*

42. *Id.*

43. Daniels, *supra* note 15, at 449.

44. Blake Hudson & Jonathan Rosenbloom, *Uncommon Approaches to Commons Problems: Nested Governance Commons and Climate Change*, 64 HASTINGS L.J. 1273, 1276 (2013).

45. *Id.* at 1277.

46. See e.g. Clean Air Act, 42 U.S.C. § 7410 (2018).

47. DEBORAH HITCHCOCK JESSUP, WASTE MANAGEMENT GUIDE: LAWS, ISSUES & SOLUTIONS 73 (1992).

siting decisions, with the government looking to issues like health effects, exposure to health risk, and the level of the health risk.⁴⁸ The Environmental Justice Movement centers around looking at these unequal risks taken on by certain communities when making environmental decisions like siting an environmental nuisance.

One way to determine the scope of the community that is sharing dignity as a resource, is conducting community comparisons of cities or counties within a state, like environmental justice analyses. If viewed in a vacuum, essentially every local community starts with the same amount of dignity. However, dignity of a city can be lost when crime rates go up, homelessness increases, an environmental nuisance is placed nearby, etc. When one community shifts a negative dignity burden onto another community, like refusing to have a landfill placed in its city, the former maintains its dignity while the latter community experiences a cost to its dignity.⁴⁹

A drain of a community's dignity can also spill over to other similar communities. Like my Greeley example, if a city made up largely of people of color is associated with some negative quality, that quality can be attributed to the members of the community. Implicit biases towards people who look like the members of that community can easily develop. Potentially, decreasing the dignity of a Latino community in Colorado could result in a decrease of dignity of a similar community in Mexico, Chile, or Peru because implicit biases can cause people to associate the members of both communities with a negative quality.

This spillover effect makes dignity seem more like a common resource on a mass scale, not unlike climate change, which is perhaps the ultimate tragedy of the commons.⁵⁰ But because there is no global government, maintaining dignity requires smaller-scale governance. One commons scholar suggests that climate change can be counter-

48. CLIFFORD RECHTSCHAFFEN, EILEEN GAUNA & CATHERINE A. O'NEILL, ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION 88 (2009).

49. Though this paper will treat them similarly, "dignity" and "tangible environmental nuisances" are not completely synonymous when it comes to scope. Take for example, a risk assessment focused on the health effects of a hazardous waste site. When siting, legislative bodies can look to how harmful of chemicals the waste site would emit, how much exposure people would get to the chemicals, and the likelihood the exposure would increase the risk of cancer. A waste site's physical harm can only reach a certain geographical distance.

50. See generally Jouni Paavola, *Climate Change: The Ultimate Tragedy of the Commons?*, in PROPERTY IN LAND AND OTHER RESOURCES 417-29 (2012).

acted with small-scale collective action.⁵¹ Similarly, this paper looks to government action in smaller communities, recognizing that local actions affecting dignity can have an expansive effect on the global community.

Though the courts generally refer to dignity as an individualized resource, there is evidence that community dignity has a direct impact on individual members of that community. For example, as early as the 1960s, researchers found that disorder within a community was correlated with fear of crime.⁵² These studies would support a “broken windows theory,” the idea that small issues within a community that go unfixed, like a broken window, will lead to bigger issues and leave the community in greater fear.⁵³ That fear actually leads to members of the community acting differently, with individuals choosing to avoid certain locations and purchasing guns and guard dogs.⁵⁴

Communities have fought against the decay of dignity by focusing on small harms to the community like drug dealing, abandoned houses, and trash—in other words, managing and regulating dignity by eliminating potential drains.⁵⁵ Some communities have chosen to enforce these issues either publicly through the police force, or privately through security companies.⁵⁶ Community courts, like drug courts, have been established to both manage neighborhood problems and provide help to minor offenders.⁵⁷ These solutions illustrate that dignity can be preserved and restored like other common resources. Communities who have implemented controls on “broken windows” problems have seen crime decline, and that decline directly resulted from communities reclaiming their neighborhoods.⁵⁸

Dignity of a community or neighborhood is also reflected in environmental conditions and design. One scholar noted that adding benches and public restrooms to a neighborhood would increase the dignity of a neighborhood because benches remove the perception of

51. *Id.* at 423.

52. GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 11 (1996).

53. *Id.* at 19.

54. *Id.* at 13.

55. *Id.* at 238-39.

56. *Id.* at 239.

57. *Id.*

58. *Id.*

people loitering, and adding public restrooms prevent public urination.⁵⁹ That scholar suggested including the community in the decision-making process, because public health officials might be concerned with things like food, water, and soil, while the community might be more interested in lighting and litter.⁶⁰ These observations show two aspects of individual dignity: quality of life and autonomy, and how others characterize individuals who lack these things. These two aspects get to the heart of measuring dignity as a common resource: the higher the quality of life and autonomy of individuals within a community means the greater overall dignity.

Communities do not solely derive their dignity from members and policies within their own community. One community can place burdens on another community to preserve its own dignity. For example, many cities do not want to bear the burden of homelessness because it drains dignity. While some cities may implement internal measures, like the environmental planning mentioned previously, many cities bus their homeless to other cities.⁶¹ In an attempt to maintain the reputation of their own cities, they disregard the drain of dignity this puts on other cities.⁶²

While dignity is not easily measurable, it is conceivable that stigmatizing factors can affect dignity. Both physical qualities such as smell and air quality, along with more general issues, like a lack of doctors and frequency of emergency room visits, can damage a reputation of a city.⁶³ Non-environmental factors like crime, homelessness, and unemployment are serious drains on dignity which should be considered when performing environmental planning and siting for undesirable environmental nuisances. Dividing communities into their local units, like cities, allows policy makers to consider which cities are already experiencing large losses in their dignity. Instead of

59. David Fouse, *NPHW Guest Post: Dignifying Neighborhoods to Create Opportunities for Health*, PUB. HEALTH NEWSWIRE (Apr. 4, 2018, 9:00 AM), <http://publichealthnews.wire.org/?p=nphw-dignifying-neighborhoods>.

60. *Id.*

61. *Bussed out: How America Moves its Homeless*, GUARDIAN (Dec. 20, 2017), <https://www.theguardian.com/us-news/ng-interactive/2017/dec/20/bussed-out-america-moves-homeless-people-country-study>.

62. *Id.*

63. Fred M. Jacobs, *U.S. Health Care's Biggest Problem: A Doctor Shortage*, SALON (Sept. 23, 2018, 5:00 PM), <https://www.salon.com/2018/09/23/u-s-health-cares-biggest-problem-a-doctor-shortage/>.

placing more drains on this resource, necessary harms to dignity—like landfills—can be placed in communities where there is a greater amount of dignity.

II. APPLICATION IN THE ENVIRONMENTAL JUSTICE CONTEXT

Defining dignity as a common resource can change how we view a number of public issues. Just one example is the environmental justice realm, which the rest of this paper will frame in the dignity resource context.

A. Dignity and Environmental Justice

Placing dignity as the most important resource within the environmental justice context will result in better social and economic outcomes for poor communities and communities of color. The Environmental Justice Movement focuses on environmental equality—communities and individuals receiving equal burdens and benefits from how humans control the environment. This movement gained momentum in the 1980s when communities of color and environmental advocates began grassroots campaigns to challenge the siting of toxic waste sites, landfills, and other industrial facilities, which had been historically placed near communities with minority white populations.⁶⁴ These grassroots campaigns grew into a national environmental justice movement which incited studies and reports on the issues.⁶⁵ These studies indicated that poor communities and communities of color often experienced more environmental burdens, with their associated risks, than other communities.⁶⁶

Early in the movement, advocates sent a letter to multiple large environmental organizations.⁶⁷ In the letter, authored by "artists, writers, academics, students, activists, representatives of churches, unions, and community organizations," there were descriptions of environmental inequities and accusations of racism.⁶⁸ The main

64. RECHTSCHAFFEN ET AL., *supra* note 48, at 3.

65. *Id.* at 3-4.

66. *Id.*

67. RECHTSCHAFFEN ET AL., *Letter, Circa Earth Day 1990*, in ENVIRONMENTAL JUSTICE, *supra* note 48 [hereinafter *Letter, Circa Earth Day 1990*].

68. *Id.*

theme invoked, however, was that of dignity. For example, the letter writers wrote that these large, environmental organizations were not protecting their communities from environmental nuisances that “disrupt[] [their] cultural lifestyle and threaten[] [their] communities' futures.”⁶⁹ Along with the environmental burdens, the letter also addressed the fact that policies which emphasize a healthy environment could result in the closure of industries that employ more people of color and the lower class, resulting in detrimental economic effects.⁷⁰

This letter was followed a few years later with the Principles of Environmental Justice, released at the First National People of Color Environmental Leadership Summit (“Summit”).⁷¹ This letter was addressed from “The People of Color” and stated seventeen principles intended to start a national and international movement towards environmental equity. The theme of dignity was even more present in this document. Members of the Summit demanded environmental public policy that reflected “mutual respect and justice for all people” and the right to participate in decision-making; and, perhaps even more significantly, the Summit declared that environmental injustice is a violation of the Universal Declaration on Human Rights.⁷²

Clearly, human dignity was a life force running through the early environmental justice movement. However, this focus seems to be lost in present environmental justice rhetoric. This may be because people of color are underrepresented in both legislative and similar decision-making bodies as well as in large environmental organizations.⁷³ Though people of color may focus more on the dignity aspects of environmental justice, advocates and academics instead focus extensively on risk balancing, often examining physical and economic risks like health, land space, and dropping property values.⁷⁴

69. *Id.*

70. *Id.*

71. RECHTSCHAFFEN ET AL., *supra* note 48, at 22.

72. *Id.* at 23.

73. Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787, 820-821 (1993).

74. *Id.* at 793.

For example, the EPA defines “environmental justice” as follows:

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys:

- the same degree of protection from environmental and health hazards, and
- equal access to the decision-making process to have a healthy environment in which to live, learn, and work.⁷⁵

This definition emphasizes environmental and health hazards but does not mention more abstract harms like dignity. While the EPA does seek to establish equal access to the decision-making process, it limits this access to “a healthy environment.”⁷⁶ Having a healthy environment is important, particularly in a country where environmental quality is not evenly distributed.⁷⁷ To many poor communities and communities of color who are the most likely to be affected by environmental injustices, healthy environment is only one of several other concerns (along with violence, job opportunities, transportation, etc. which also affect the dignity of individuals and the community).

Many scholars recognize more holistic approaches to environmental justice that would address more than simply environmental and health concerns.⁷⁸ For example, one scholar identified the law's ability to empower communities to gain access to the decision-making process used in making environmental decisions.⁷⁹ That scholar suggests that environmental issues are just a symptom of a greater problem—limited involvement in the democratic process.⁸⁰ However, even this scholar misses the underlying problem of environmental protection, which is inequality in the dignity of communi-

75. U.S. Env'tl. Prot. Agency, *Environmental Justice*, EPA.GOV, <https://www.epa.gov/environmentaljustice> (last visited Mar. 4, 2020).

76. *Id.*

77. John A. Hird & Michael Reese, *The Distribution of Environmental Quality: An Empirical Analysis*, 79 SOC. SCI. Q. 693, 711 (1998).

78. See Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619, 648-49 (1992).

79. *Id.*

80. *Id.*

ties. That is because increased dignity in communities has the potential to increase involvement in the democratic process.

Does framing environmental justice issues with dignity at the core make a difference? Probably, given that dignity framing has been successful in other settings. A recent example is seen in the Black Lives Matter movement.⁸¹ The movement does not focus on changing law, but instead attempts to reorder society and eliminate the systematic dehumanization of black people.⁸² This movement, in advocating for the dignity of all lives, not only shed light on corruption within police agencies, but also helped many police agencies to reflect on their policies and reform.⁸³ The policy changes correlate with less police shootings overall each year.⁸⁴

Just as the Black Lives Matter movement centralized on the idea of black dignity with positive results, a return to dignity as a core motivator in the Environmental Justice Movement could have a lasting positive change in policy. While there are laws in place that promote environmental justice, they are limited and cannot be enforced by average citizens.⁸⁵ More accessible forms of relief from environmental inequity, like claims through the Fourteenth Amendment, place a difficult burden of proof on plaintiffs, resulting in failure of the vast majority of claims.⁸⁶ Dignity can ignite change in policy makers because the idea resonates with people in a way that cannot often be described in words, but is felt internally by all.⁸⁷

Viewing dignity as a common resource is not a re-framing of the Environmental Justice Movement, but instead a return to the original

81. Frank Leon Roberts, *How Black Lives Matter Changed the Way Americans Fight for Freedom*, ACLU (July 13, 2018, 3:45 PM), <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/how-black-lives-matter-changed-way-americans-fight>.

82. *Id.*

83. *Id.*

84. See Julie Tate, Jennifer Jenkins & Steven Rich, *Fatal Force*, WASH. POST, https://www.washingtonpost.com/graphics/2019/national/police-shootings-2019/?noredirect=on&utm_term=.e6714dcfd1ed (last updated Mar. 4, 2020, 4:20 PM).

85. See Clean Air Act, 42 U.S.C. § 7604(a)(2) (2018). Under the Clean Air Act, the only relief that can come in the form of a citizen's suit is a claim that the EPA administrator is failing in his or her duties. *Id.*

86. Carlton Waterhouse, *Abandon All Hope Ye That Enter? Equal Protection, Title VI, and the Divine Comedy of Environmental Justice*, 20 FORDHAM ENVTL. L. REV. 51, 63 (2009).

87. Donna Hicks, *Why Dignity Matters: The Important Role Dignity Plays in Our Lives and Relationships*, PSYCHOL. TODAY (Aug. 7, 2011), <https://www.psychologytoday.com/us/blog/dignity/201108/why-dignity-matters>.

underpinnings of the movement. While this framework would not change environmental outcomes completely, it could potentially make some change. The potential outcomes, discussed in the following section, may not always be the ideal “environmental” solutions, but they will result in the greatest amount of dignity for communities of color and poor communities.

B. Possible Incentives and Outcomes

While nuisances like meat-packing plants and toxic and solid waste sites are undesirable in most communities because of their negative effects, these sites will be necessary for the foreseeable future. Though black and poor communities have borne the burden of these nuisances for too long,⁸⁸ it appears almost every community is fighting against having these nuisances placed near its neighborhood. This “not in my backyard” phenomenon makes siting undesirable facilities nearly impossible.⁸⁹ However, some scholars have indicated that this sentiment does not stem from the sites alone, but also from the government’s unwillingness to compensate citizens who must take on these burdens.⁹⁰ One scholar indicates that more incentives are necessary to make siting future waste facilities possible because with incentives communities would volunteer to site the facilities.⁹¹

Incentives could include things like money or other natural incentives that flow from these facilities, like a lower cost of living and employment opportunities. However, thinking of incentives in terms of dignity could not only support these incentives, but could also open the door to more possible incentives that would preserve the dignity of a community. What follows is an analysis of these incentives in the terms of dignity and a discussion of innovative incentives to promote community dignity.

The most obvious incentives to counteract a drain on dignity are economic incentives, because communities with the most strain on their dignity are those with less economic resources. Economic incentives already in place should be considered when siting an envi-

88. JESSUP, *supra* note 47, at 250-51.

89. *Id.*

90. MICHAEL B. GERRARD, WHOSE BACKYARD, WHOSE RISK: FEAR AND FAIRNESS IN TOXIC AND NUCLEAR WASTE SITING 71 (1994).

91. *Id.*

ronmental nuisance. While environmental justice advocates would like to limit environmental nuisances as much as possible, they sometimes dismiss the need in certain communities for economic opportunities and low property costs.⁹² When considering a necessary siting, public officials should consider the implications of these residual economic costs on a community that seeks more dignity. While environmental nuisances come with legitimate risks, like health effects, some communities are willing to accept those costs because they recognize that a highly employed community raises dignity.⁹³

That some communities would accept environmental nuisances for the economic benefits could result in a different outcome than expected by many advocates of environmental justice. Some poor communities and communities of color may elect to have an environmental nuisance in their communities. One scholar illustrates that instead of choosing a site and then defending the decision, the public is much more responsive when it has the voluntary choice to take on the nuisance.⁹⁴ The burden is then on the government to work with and convince a community that an environmental nuisance could benefit them. This would require a mixture of public education, compensation, and mitigation measures.⁹⁵ Economic benefits are a huge motivator for a community, and economic circumstances are also a large reflection of a community's dignity.

The above example also shows that economic benefits are not the only source of dignity and that other incentives have the ability to counteract drains on dignity. Research shows that when communities are able to participate in the decision-making process, they feel more comfortable with the result of siting choices.⁹⁶ One scholar argues this is most successful through co-managing the process with the community, allowing the community to be involved in potentially the

92. *Letter, Circa Earth Day 1990, supra* note 67.

93. From a religious view on dignity, the current pope, Pope Francis, has said, "Work is fundamental to the dignity of a person. . . . It gives one the ability to maintain oneself, one's family, to contribute to the growth of one's own nation." AP, CNS, & RNS, *Persistent Unemployment an Affront to Human Dignity*, AM. JESUIT REV. (Aug. 15, 2013), <https://www.americamagazine.org/issue/persistent-unemployment-affront-human-dignity>.

94. Howard Kunreuther, *Voluntary Procedures for Siting Noxious Facilities: Lotteries, Auctions, and Benefit Sharing*, in HAZARDOUS WASTE SITING AND DEMOCRATIC CHOICE 338 (Don Munton ed., 1996).

95. *Id.* at 343-44.

96. *Id.*

“project design, siting, engineering/architectural design, development, operation, decommissioning, or any other issues that are considered locally to be important.”⁹⁷ While this process slows down the beginning of the siting, getting through regulatory barriers later on is easier.⁹⁸ This is a win-win situation in that dignity is preserved, and the government is more efficient in its construction of the facility.

This decision-making process could be enhanced by policy makers offering other buildings or investing in organizations that can increase dignity in communities and allowing the community to have a voice, perhaps through voting, on which benefits they would like with the burden. When negotiating for a place to site an environmental nuisance, government officials could also propose siting places like libraries or parks. They could also fund projects that benefit both the poor and the environment⁹⁹ by expanding or improving upon public transportation. Scholars also suggest that policy makers can compensate organizations that benefit the community.¹⁰⁰ Community organizations that benefit health, employment, civil rights, education, etc., all contribute to the dignity of the community and can compensate for the loss of dignity that stems from a new environmental nuisance.

As with economic considerations, including the community in the decision-making process can change the outcome of siting an environmental nuisance. Communities may accept the environmental burden because of the increase of dignity these communities will receive from other issues negotiated like economic benefits or positive environmental projects. This strategy does raise the concern that poor communities and communities of color will still be targeted for these undesirable facilities, even if they are offered more for taking on the burden. However, by framing the environmental issue in terms of dignity, hopefully other communities will recognize that by not taking on environmental burdens, they are retaining their own dignity at the expense of others. This has happened in the past. Be-

97. Alun Richards, *Using Co-management to Build Community Support for Waste Facilities*, in HAZARDOUS WASTE SITING AND DEMOCRATIC CHOICE 321 (Don Munton ed., 1996).

98. *Id.* at 322.

99. *Transit's Role in Environmental Sustainability*, FED. TRANSIT ADMIN., <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/transit-environmental-sustainability/transit-role> (last updated May. 9, 2016).

100. Kunreuther, *supra* note 94, at 344.

fore the March on Washington, the Civil Rights Movement had little traction with moderate white Americans.¹⁰¹ But when these white Americans saw who they considered to be “credible” white public figures recognizing the plight for black employment opportunities, many moderates joined in support of the movement.¹⁰² When dignity is framed in a way that can resonate with individuals who are not suffering from a loss of dignity, a human recognition of the importance of dignity can drive these individuals to act.

While these examples provide innovative ways to restore dignity to communities that have lost it because of an environmental nuisance are not comprehensive, they illustrate that there are many options in preserving the dignity of a community. Government officials should carefully consider how to best preserve the dignity of a community when determining where and how to site environmental nuisances.

IV. CONCLUSION

The purpose of this paper was to illustrate that dignity is an exhaustible common resource that underlies communal problems, including environmental injustices. First, I put dignity in the context of other nontraditional resources, defining both dignity and the community that expends dignity as a common resource. Then I discussed how dignity was the original purpose of the environmental justice movement. I suggested that a return to this core value, particularly in the resource context, could change environmental policy outcomes. Let's return to Colorado.

During my time in Greeley, Colorado, I would frequently enjoy ice cream from street vendors who would walk around with a small freezer cart and a bell. I served at a refugee center where I could both teach English and make sure refugees had access to food. I was invited into homes for dinner, a glass of water, or a conversation. I was grateful for a library that offered fifty pages of free printing every day which allowed me to bring home hard copies of emails from my fami-

101. Krissah Thompson, *In March on Washington, White Activists Were Largely Overlooked but Strategically Essential*, WASH. POST (Aug. 25, 2013), https://www.washingtonpost.com/lifestyle/style/in-march-on-washington-white-activists-were-largely-overlooked-but-strategically-essential/2013/08/25/f2738c2a-eb27-11e2-8023-b7f07811d98e_story.html.

102. *Id.*

ly. Each day I would walk the streets and was greeted by kind, welcoming people. These people were just like every other person on this earth, deserving of dignity and respect from their fellow men and women; yet the citizens of Greeley deal with the negative consequences that come with living so close to a meat-packing plant. These citizens would benefit directly from policy makers returning to the original purpose of the Environmental Rights Movement, allowing the dignity the community has lost to be restored in full.