SEEKING SPATIAL AND ENVIRONMENTAL JUSTICE FOR PEOPLE AND PLACES WITHIN THE EU[1]

This chapter explores the interaction between solidarity, territorial cohesion and environmental justice within the EU. It considers how the spatial focus at the heart of territorial cohesion, and the funding streams attached, now provide a novel and significant way to address environmental inequality. This is premised on the notion of solidarity between people and places within the territory of the EU. Taken together, environmental justice, territorial cohesion and spatial solidarity embrace a common core: they all suggest that location should not be a disadvantage. Moreover, relying on the still inchoate and contested concept of territorial cohesion, policy makers and advocates are able extend their claims still further. They are able to use cohesion funding, treaty provisions and legal prescriptions to pursue environmental justice *in situ*, creating positively 'just environments' from the ground up. This provides a novel and exciting way to seek spatial and environmental justice for both people and places within the EU.

I   Introduction

Environmental law is spatially situated. Its 'stuckness'[2] ensures that the qualities of each site are as significant to environmental regulation as the nature of the activity itself. Each determination must ultimately be made *in situ*, evaluating how activities and uses impact humans, other species, habitats or ecosystems. This spatial understanding of environmental law patterns EU environmental law in particular. We see it, for example, in Natura 2000[3], with its network of protected sites, conceived of as a series of pan-European ecological places. Similar place-making underpins the use of spatial units as the foci for public governance, particularly the river basin management at the heart of the 2000 Water Framework Directive[4] and the focus on individual European seas that underpins the 2007 Marine Strategy Framework Directive.[5] It is inherent in the drawing of

[2] For the concept of 'stuckness' and its relevance to law see J. Wightman and N. Jackson, 'Spatial Dimensions of Private Law' in J. Holder and C. Harrison (ed) *Current Legal Issues 2002: Law and Geography,* Oxford University Press: Oxford, 2002
[3] Directive 91/244/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7
[4] Directive 2000/60/EC of the European Parliament and the Council, establishing a framework for Community action in the field of water policy [2000] OJ L327/1
[5] Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) [2008] OJ L164/19

nitrogen vulnerable[6] and air quality management[7] 'zones' where environmental obligations are imposed differently either side of the line. Perhaps most significantly of all, this rolling out of environmental law on an explicitly spatial basis is increasingly underpinned by the funding at the heart of EU regional policy. Here €105 billion has been allocated to the 'green economy'[8] including €8.7 billion allocated to territorial cooperation[9] with the 'flagship' Baltic Sea Strategy, which itself draws on over €50 billion of cohesion funds.[10] These strategies provide spatial form to integrative and holistic projects that address environmental concerns within boundary lines.

At the heart of this regional place-making activity is the concept of 'territorial cohesion', an idea that remains inchoate and subject to multiple and contested definitions. Its goal has recently formulated by the Commission as encouraging 'the harmonious and sustainable development of all territories by building on their territorial characteristics and resources'.[11] This calls on principles of economic liberalism as well as drawing on 'harmonisation', importing a form of coherence and equivalence and placing the concept firmly within the EU's pantheon of integrated policy and decision-making. The interpretation is underpinned by the new coupling in Article 3 of the Treaty on the European Constitution, requiring the Union to 'promote economic, social and territorial cohesion' as well as the pursuit of 'solidarity'.[12] These strands of territorial cohesion and solidarity are drawn together in a growing, and rather explicit, territorial project: the creation of the idea of a single European territory. This notion is fostered by the many references in policy documents to '[T]he Territory of the EU' as a given, physical reality.[13]

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[6] Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources [1991] OJ L 375/1

[7] Council Directive 96/62/EC on ambient air quality assessment and management OJ L 296/55

[8] Commission of the EC, (CEC), 'Cohesion Policy backs "green economy" for growth and long-term jobs in Europe' IP/09/369, Brussels, 9 march 2009

[9] Commission of the EC, (CEC), *Working for the Regions: EU Regional Policy 2007-2013*, Brussels: DG Regio

[10] Commission of the EC, (CEC), Communication concerning the European Union Strategy for the Baltic Sea Region COM(2009) 248 final

[11] Commission of the EC, (CEC), *Sixth Progress Report on Economic and Social Cohesion* COM (2009) 295 final, 11

[12] Holder, J, and Layard, A, 'Relating Territorial Cohesion, Solidarity and Environmental Justice', in Ross, M and Borgmann-Prebil, Y eds. *Promoting Solidarity in the EU*, OUP: Oxford, 2010

[13] Committee on Spatial Development (CSD), European Spatial Development Perspective - Towards Balanced and Sustainable Development of the Territory of the European Union (ESDP), Presented at the Informal Meeting of Ministers Responsible for Spatial Planning of the Member States of the EU, Potsdam 10/11 May 1999, 1, Commission of the EC, (CEC), *Unity, Solidarity, Diversity for Europe, its People and its Territory, Second Report on Economic and Social Cohesion*, COM (2001) 24, Commission of the EC, (CEC), *Fifth progress report on economic and social cohesion Growing regions, growing Europe* COM(2008) 371 final; European Parliament, *Territorial cohesion in regional development European Parliament resolution on the role of territorial cohesion in regional development* (2004/2256(INI)), 2004

This spatial delineation of EU territory draws on a normative core in favour of European integration and increasingly on an idea of what the 'Union' entails. Central to these normative claims is the reliance on solidarity, a concept that has for some time now laid at the core of the EU's embryonic social welfare project, yet remains largely unarticulated and frequently rhetorical. While the draft of the Treaty on European Union proposed solidarity between 'Member States and their peoples', the solidarity between people was ultimately relegated to the non-binding, preambular provisions: Article 3 now calls only for solidarity 'between Member States'. Still in the absence of legal precision, the historical and political antecedents of the idea of solidarity remain. It is a principle that hints at communality and *demos*, those fraught ideas within the EU, predicated on an understanding of common interest. Within the EU Treaties and other texts, solidarity has both an internal and an external dimension, characterising aspects both of relationships within the European Union, and of the EU's relations with the outside world.[14] It is not an idea that necessarily needs to end at the borders of the EU.

Moreover, solidarity can exist not only between Member States and people but also, and significantly in light of the objective to achieve territorial cohesion, between places. This spatial component is often emphasised by the linking of both solidarity and territorial cohesion with a commitment to provide 'services of general economic interest', reflecting an understanding by French regional planners of territorial cohesion as founded in support for communities that perpetuate a preferred understanding of place. This represents a French interest in pursuing redistributive policies within a regional context, the so-called 'aménagement du territoire'. Such intervention is based not merely on relative GDP (as in EU cohesion policy) but is rooted within the French administrative model. This reflects a cultural dimension. 'Europeans, it is argued are rooted in the soil... In their desire to continue to live where they have for generations they deserve public support'.[15] This understanding of territorial cohesion as at least partly a cultural mechanism evokes a more emotive landscape than the technical provisions inserted into EU policy-making as a desire to protect the peripheries of the EU. Here Article 174 of the TFEU focuses on geographical difference, requiring cohesion policies to 'pay attention' to 'rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions'.

Compared with solidarity, the idea of cohesion is more clearly understood within EU parameters, primarily through the projects it provides. It is a vehicle for

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[14] Cremona, M. 'EU enlargement: solidarity and conditionality' 30 *E.L. Rev.* 1, 3-22, 2005
[15] Faludi, A. 'From European Spatial Development to Territorial Cohesion Policy', 40 *Regional Studies*, 6, 667 – 678, 2006, 673

funding, one that has long struggled to balance the apparently twin objectives of competitiveness and wealth production on the one hand and social cohesion and convergence on the other with a budget that is set to exceed that for agriculture by 2013. Despite this extensive funding, there is an inherent tension here in that while both the twin objectives of stimulating economic growth and competitiveness and of addressing low levels of wealth and resources both aim at improvement, 'one is about winners and losers while the other is about redistribution'.[16] Nevertheless, these multiple objectives are translated into the contested and still inchoate concept of territorial cohesion that draws on strands of both existing cohesion policy and its legacy in integrative spatial planning, making both emotive and technical claims. While the substantive legal acquis may remain fragmented, cohesion funding, particularly as channelled through the 'territorial cooperation' objective, has the capacity to transform the idea of territorial cohesion into more than merely a territorial dimension to existing social and economic policies on cohesion. Territorial cohesion coupled with a sense of solidarity aims, as the *Third Cohesion Report* put it, to ensure that: 'people should not be disadvantaged by wherever they happen to live or work in the Union'.[17] This embraces a spark of spatial justice[18], suggesting that there could be solidarity between both people and places. Solidarity as a normative claim is underpinned by the practice of cohesion: both are attempting to reduce disparities between people and places within the territory of the EU.

This coupling is significant for environmental law, and claims for environmental justice in particular, since regional policy has a growing, yet often rather under-appreciated[19], environmental strand. The intervention of an EU-wide conception of solidarity and a drawing on the funding streams within cohesion policy to achieve these integrative aims is becoming increasingly significant as a new way 'to do' environmental law. Cohesion policy already provides environmental funding 'carrots' to supplement regulatory 'sticks', and has already been instrumental in ensuring greater and more effective implementation of environmental law.

Now, and perhaps even more significantly, cohesion policy is beginning to influence environmental law in an explicitly spatial way. Cohesion policy has itself been spatial from the outset, dividing up Member States by using the nomenclature of territorial statistics into NUTS 2 regions and then comparing them by reference to economic, employment and other, quantifiable, markers.

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[16] Lawton-Smith, H. et al, 'European Policy and the Regions: An Analysis and a Review of Tensions' 11 *European Planning Studies* 3, 859-873, 2003

[17] Commission of the EC, (CEC), Third Report on Economic and Social Cohesion: A New Partnership for Cohesion: Convergence, Competitiveness and Cooperation COM (2004) 107 final, 2004, 27

[18] Gualini, E, "Territorial cohesion' as a category of agency: the missing dimension in the EU spatial policy debate', 28 *European Journal of Spatial Development*, 1-22, 2008

[19] Scott, J, 'Environmental Compatibility and the Community's Structural Funds: A Legal Analysis' 8 *J Environmental Law* 99-114, 1996

The funding cohesion policy entails and the place-making projects regulators increasingly support, coupled with the inescapably spatial quality of environmental law, creates real possibilities for the environmental justice project within the EU.[20] This movement reflects the broad consensus that despite aspirations for pollution prevention and reduction, harm cannot be eradicated: there is no imminent prospect of an Ecotopian state.[21] Accepting this reality, the environmental justice project raises the question of how environmental risks and harms should be spatially distributed, calling on politicians, administrators and developers to ensure that if exposures cannot be eliminated entirely that they are in some way proportionate. Taken together, the concepts of territorial cohesion, spatial solidarity and environmental justice embrace a common core: they all suggest that location should not be a disadvantage and that sustainable places should be formulated from the ground up within a common environmental acquis.

This is a particularly significant claim for environmental law which has always been spatially situated but now is increasingly cognizant of that fact. Law has conventionally accepted that geography may restrict liability in certain contexts: that location is relevant to determining legal harm to amenity and 'what is a nuisance in Belgravia may not be such in Bermondsey' (*Sturges* v. *Bridgman*, (1879) 11 Ch.D. 852). The substantive premise at the heart of environmental justice is that spatially differentiated exposure to the risk of environmental harm should not exist, even if it has not yet crystallized into liability. While environmental justice has conventionally been conceptualised as a human-centred harm, it is fundamentally a collective concern bound to location.[22] Pursuing environmental justice claims grounded in locality not only entails the harmonisation of substantive standards which continues to remain at the heart of the EU's environmental law project, it also balances the inherent 'stuckness' of environmental law with claims for equality and coherence. The spatial focus at the heart of territorial cohesion, and the funding streams attached, now provide a novel and significant way to address environmental inequality premised on the notion of solidarity between people *and* places within the territory of the EU. It uses funding, treaty provisions and legal prescriptions to pursue environmental justice *in situ.*

II   Territorial Cohesion and Environmental Justice

The pursuit of environmental justice through the concept of territorial cohesion accepts the central tension at the heart of cohesion policy that the disparity

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[20] Capacity Global, *Environmental Justice and Race Equality in the European Union*, London: Capacity Global, 2007, Friends of the Earth, *Environmental Justice: Rights and Means to a Healthy Environment for All*, London: Friends of the Earth, 2001
[21] Callenbach, E., *Ecotopia*, New York: Bantam, 1990
[22] 'Environmental Justice: The American Experience and its Possible Application to the United Kingdom' in Holder, J. and McGillivray, D. (eds) *Locality and Identity:* Ashgate Press, 1999

cohesion aims to redress is itself an inevitable consequence of enhanced competition which its programmes aim to promote.[23] Recently cohesion policy has attempted to reconciled this dilemma by invoking the centrality of economic growth – translated into cohesion policy as an emphasis on 'unlocking' potential.[24] Actors developing cohesion policy have taken up the idea of territory to try to resolve the dissonance between competitiveness and redistribution, echoing OECD policy to emphasise the role of place-based policy approaches in capitalising on territorial assets and locational advantages such as knowledge, skills, specialisation, and proximity between economic agents.[25] This coordination and repackaging has created a new policy language ('territorial cohesion', 'territorial capital', 'territorial assets') supported and communicated by a new (and still shifting) vocabulary, developing an array of acronyms, symbols, metaphors, maps, texts, 'visions and scenarios', and implemented by new 'knowledge building' institutional structures and the setting up of policy networks. The language here is one of territory, rather than spatiality, backed up by significant EU funds, this is a place-making project creating a political and spatial vision of the territory of the EU.

Specifically, there is a suggestion that this concept of territorial cohesion, now inserted into Article 3 of the Treaty EC, gives a territorial dimension to the European social model. If true, this would be a tantalising possibility: suggesting that territorial cohesion extends the idea of a 'European social model' into spatial form, incorporating concerns about *spatial* protection by calling for 'a just distribution of opportunities in space'.[26] Both politicians and the Commission have suggested such a link[27] agreeing, for example that 'territorial cohesion of the EU is prerequisite for achieving sustainable economic growth and implementing social and economic cohesion – a European social model'.[28] There is political support for Davoudi to suggest that territorial cohesion is not only rooted in the European Model, it also 'extends its affiliation with social-protection to incorporate concerns about spatial-protection'.[29]

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[23] Rumford, C, European Cohesion?: Contradictions in EU Integration, London: Palgrave Macmillan, 1999

[24] Commission of the EC, (CEC), Communication to the Spring European Council: Working together for growth and jobs, A new start for the Lisbon Strategy, COM (2005) 24

[25] OECD, The Future of Rural Policy: From Sectoral to Place-Based Policies in Rural Areas, Paris: OECD, 2003

[26] Faludi, A, 'Territorial Cohesion Policy and the European Model of Society' 15 *European Planning Studies* 4, 567-583, 2007, 568

[27] German Presidency, 'Territorial Agenda of the European Union: Towards a More Competitive and Sustainable Europe of Diverse Regions', 2007, Commission of the EC, (CEC), *Third Report on Economic and Social Cohesion: A New Partnership for Cohesion: Convergence, Competitiveness and Cooperation* COM (2004) 107 final, 2004

[28] German Presidency, 'Territorial Agenda of the European Union: Towards a More Competitive and Sustainable Europe of Diverse Regions', 2007, 2

[29] Davoudi, S, 'Understanding Territorial Cohesion', 20 *Planning, Practice & Research* 4, 433 – 441, 2005, 433

Yet allying territorial cohesion to a political model as an empirical observation requires a stable and agreed model of European society in order to have logical force. In political terms, the European social model is often attributed to European vision espoused by Jacques Delors and was referred to in both the 1994 White Paper on Social Policy[30] and the Lisbon Presidency conclusions before being more fully articulated in an annex to the Presidency Conclusions in Nice in 2000 as being 'characterized in particular by systems that offer a high level of social protection, by the importance of the social dialogue and by services of general interest covering activities vital for social cohesion'.[31] The model, it was said, is based 'beyond the diversity of the Member States' social systems, on a common core of values'.[32] Presented thus these criteria go beyond social policy, to include characteristics of state, economy and society.[33] Yet there is consistent agreement that 'the notion of the "European social model" is misleading'[34], that it is contested and hortatory, with empirical heterogeneity undermining claims of an 'historical acquis'.[35] Some have characterised the concept as being best understood as a political project used by the European institutions to increase their own legitimacy.[36]

If the social model is this uncertain can it then be spatialised? European planning traditions are diverse[37] and proponents have offered no explanation of how the social model itself is affected by concrete practices in spatial development policy.[38] Consequently, as an empirical observation it is hard to maintain that territorial cohesion is rooted in the European social model if no single model can be definitively identified. Certainly, *as a normative claim* that the European social model should encompass a core of shared values which when spatialised would promote spatial justice, territorial cohesion provides an effective vehicle, particularly when allied to the emphasis on universal access inherent in the protection of general services of interest under the Treaty. Furthermore, as

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[30] Commission of the EC, (CEC), Social White Paper European Social Policy - A Way Forward for the Union. A White Paper COM (94) 333 final, 1994

[31] Council of the EU, *Presidency Conclusions*, 7-9 December, Lisbon, 2000

[32] Council of the EU, *Presidency Conclusions*: *European Social Agenda*, 7-9 December, Nice, 2000, 4

[33] Alber, J, 'The European Social Model and the United States' 7 *European Union Politics* 3, 393–419, 2006, 394

[34] Sapir, A, 'Globalization and the Reform of European Social Models' 44(2) *Journal of Common Market Studies*, 369–90, 2006 , Aiginger, K. and Guger, A. 'The Ability to Adapt: Why It Differs between the Scandinavian and Continental European Models', 14 *Intereconomics* 1, 14-23, 2006

[35] Jepsen, M. and Serrano P. 'The European Social Model: An exercise in deconstruction' 15 *Journal of European Social Policy* 3, 231–245, 2005

[36] Ibid

[37] Commission of the EC, (CEC), *Fourth Report on Economic and Social Cohesion*, Brussels, COM(2007) 273 final, 2007, Nadin, V and Stead, D, 'European Spatial Planning Systems, Social Models and Learning' disP 172 · 1/2008 35, 2008

[38] Gualini, E, ''Territorial cohesion' as a category of agency' at note 18

Faludi explains, territorial cohesion should also include a visionary element. Such spatial visions 'must conceive of towns and cities and regions, indeed of the territory of the EU as a whole, as more than places of production'. He continues, '[T]erritories need to be conceptualized as cohesive … People should want to attach themselves to territories. Indeed where the process is conducted in transparent fashion, the very act of visioning territories and their futures can contribute to this feeling of attachment'.[39] Faludi's vision might be described as a type of territorial solidarity, with a sense of identity with a territory being forged by the very process of being involved in deliberation about its future structure, linkages and shape.

Moreover the way the EU is being spatialised emphasises a single EU territory within which there is a central normative claim for solidarity which *could* form part of an accepted acquis whether or not this can be categorized as a unitary European social model. This is significant for environmental justice since it has often focused on individual interests, particularly in a corrective context, even though it is essentially a communal, spatial, project. There are good reasons for this: legal mechanisms have often obscured the relevance of any collective interest, for example, formulating corrective justice in terms of individual rights or restricting the ability of NGOs to question the legitimacy of environmentally harmful decisions, even those implemented with cohesion funds.[40] Increasing administrative and legislative inclusion (particularly, but not limited, to initiatives introduced in light of the Aarhus Convention[41]) operate in sharp contrast to the judicial intransigence in allowing environmental NGOs access to justice.[42] Environmental law has consistently struggled to conceptualise the collective interest, particularly in litigation, preferring to consider the interests of individuals and the concerns of the State. The introduction of territorial cohesion is significant then in that it offers new scope to focus on places, as well as people, spatially reframing and rescaling the environmental justice debate at the EU level.

These possibilities for environmental justice emerge as a direct consequence of both the tentative promotion of a claim for EU-wide solidarity and the way territorial claims being made for, and within, the EU. While the environmental legal acquis is increasingly well developed, it is marked by a trend towards flexibility and managerialism, with a growing trend to a rather rhetorical

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[39] Faludi, A, 'Territorial Cohesion Policy and the European Model of Society' at note 25

[40] *Stichtung Greenpeace Council. v EC Commission*, [1998] 3 CMLR 1

[41] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998

[42] Harlow, C, 'Civil Society Organisations and Participatory Administration: Transforming EU Administrative Law?' in S. Smismans (ed) *Civil Society and Legitimate European Governance,* Cheltenham: Edward Elgar, 2006, McGillivray, D, and Holder, J, 'Locating *EC* Environmental Law' 20 *Yearbook of European Law*, 139-171, 2001

proceduralisation.[43] Simultaneously, the Treaty alterations and documents outlining the development of the territorial cohesion concept demonstrate a growing desire to minimise differences in living conditions between places within a framework that stimulates growth and economic development. Environmental law has become more open-textured in part because a growing recognition that it necessarily takes place *in situ* means that administrators on the ground need the ability to implement laws flexibly[44], particularly when developing programmes for conservation, synergistic pollution assessments or determinations of aquatic ecological quality or quantity.[45] There is an overlap between the desire within regional policy to improve quality of life and the efforts of environmental law to promote local environmental quality.

There is a danger here that the intervention is more rhetorical than real. As Pellegrin writes in the cohesion context, attempts to reconcile apparently contradictory objectives often illustrate 'one feature specific to policy-making at EU level, namely that solutions to contradictions are often more discursive than real. Stating that there is no contradiction resolves the contradiction, and naming the solution becomes the solution'.[46] Such a rhetorical, yet ultimately amorphous, understanding of solidarity can already be identified in the treaties[47]. Yet a claim for environmental justice within the context of regional policy can draw on the concept's multiple strands (distributional, procedural, corrective and social) to suggest that there are alternative ways to balance the benefits of economic development and differential exposure to both environmental 'goods' and 'bads' within the EU. The largely unarticulated concept of solidarity provides the key to translate this desire for equivalence between people and places into reality, particularly when coupled with such large tranches of cohesion funding. This possibility is pre-figured in the ability of Member States to provide 'services of general economic interest' to citizens, despite the murky legal waters this produces when viewed in the context of EU competition rules and prescriptions on

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[43] Howarth. W, 'Aspirations and Realities under the Water Framework Directive: Proceduralisation, Participation and Practicalities' *Journal of Environmental Law* 1, 2009, Scott, J. 'Flexibility 'Proceduralization' and Environmental Governance in the EU' in J Scott and G De Burca (eds) Constitutional Change in the European Union, Oxford: Hart, 2000, Lange, B. 'Searching for the Best Available Techniques - Open and Closed norms in the Implementation of the EU Directive on Integrated Pollution Prevention and Control' 67 *Int J L Context* 67 2006, Holder, J. and Lee, J. *Environmental Protection, Law and Policy* Cambridge: CUP, 2007, chapter 9, Macrory, R. and Turner, S. 'Participatory Rights, Transboundary Environmental Governance and EC Law', 39 *Common Market Law Review* 489-522, 2002

[44] Layard, A. 'Environmental place-making in the EU: Evaluating the Spatial Application of Environmental Law', *Conference Paper to Society of Legal Scholars*, Keele, 2009

[45] Ibid

[46] Pellegrin, J. 'Regional Innovation Strategies in the EU or a Regionalized EU Innovation Strategy? Conceptual and empirical underpinnings of the EU approach', 20 *Innovation: The European Journal of Social Science Research* 3, 203 - 22, 2007, 210

[47] Weiler, J. 'A Constitution for Europe? Some Hard Choices' 40 *Journal of Common Market Studies* 4, 563-580, 2002

state aids.[48] The EU project has always been about more than economic liberalism and these interactions are increasingly recognised as spatial tensions as well as political and normative disputes.

III Environmental Justice in the EU

The call for environmental justice began in the 1970s in the United States when community activists highlighted environmental degradation in their neighbourhoods resulting from locally undesirable land uses.[49] While always grounded in place, the United States environmental justice movement built on a strong civil rights tradition, combining the rhetorical force of constitutional protection with concerns for substantive environmental quality. The central claim often elided the interests of communities and individuals, for example Bullard, a leading proponent of claims for environmental justice, argued both that environmental justice is the principle that 'all people and communities are entitled to equal protection of environmental and public health laws and regulations'[50] and that everyone should have the right to live in a healthy environment with access to enough environmental resources for a healthy life.[51] This emphasis on individual rights was frequently articulated within the historical and political narrative of civil rights, allying the United States movement closely with questions of race and the production of 'environmental racism'.[52] It was this that led to two characteristic debates within claims for environmental justice: first, the question of 'class versus race'[53] and second, a debate questioning the correct scale to determine inequity.[54]

Despite the lobbying efforts of individual NGOs and an abundant awareness of environmental justice concerns amongst European scholars, there is within the

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[48] Ross, M. 'healthy approach to services of general economic interest? The *BUPA* judgment of the Court of First Instance' 34 *European Law Review* 127-140, 2009

[49] Williams, R, 'Environmental injustice in America and its politics of scale', 18 *Political Geography*, 49-73, 1999, Bullard, R, 'Overcoming Racism in Environmental Decisionmaking', 36 *Environment* 10-44, 1994, Kurtz, H, 'Scale frames and counter-scale frames: constructing the problem of environmental injustice' 22 *Political Geography* 887–916, 2003

[50] Bullard, R 'Environmental justice: It's more than waste facility siting' 77 *Social Science Quarterly*, 493–9, 1996, 493

[51] Bullard, R, at note 49

[52] Ibid, Agyeman, J and Evans, B 'Just sustainability': The emerging discourse of environmental justice in Britain? 170(2) *Geographical Journal* 155-164, 2004

[53] Brulle, R and Pellow, D 'Environmental Justice: Human Health and Environmental Inequalities' 27(3) *Annu. Rev. Public Health* 2006 1–22, 2006

[54] Williams, R, 'Environmental injustice in America and its politics of scale', 18 *Political Geography*, 49-73, 1999, Bullard, R, 'Overcoming Racism in Environmental Decisionmaking', 36 *Environment* 10-44, 1994, Kurtz, H, 'Scale frames and counter-scale frames' at note 49, Been, V, 'What's Fairness got to do with it? Environmental Justice and the Siting of Locally Undesirable Land Uses' 78 *Cornell L. Rev.* 1001-1085, 1993, Baden, B, Noonan, D, and Turaga, R, 'Scales of justice: Is there a geographic bias in environmental equity analysis?', 50(2) *Journal of Environmental Planning and Management*, 163-185, 2007

EU no systematic attempt to link social status, race or ethnicity to environmental risk exposure.[55] While academics are beginning to engage with the demands of environmental justice in many European States[56], they note a general lack of institutionalized consideration of these issues, even characterising the concept as 'the Anglo-American concept of environmental justice'.[57] Certainly, within Europe, the most systematic developments have taken place within the United Kingdom, particularly in Scotland.[58] The European Environment Agency has recognised only that the 'environment-related share of the burden of disease … depends strongly on socioeconomic aspects such as income, the share generally being higher in lower-income countries'.[59] Significantly, however, an important and growing body of work is being undertaken by the World Health Organization (WHO) in Europe, focusing particularly on the impact of environmental inequity on children.[60] Scientists have argued to the WHO that environmental justice needs to be taken at both the strategic and the local scale since their evidence raises concerns that '[m]arginalized and disadvantaged groups may be disproportionately exposed and vulnerable to environmental risks through a range of mechanisms including limited financial resources facilitating risk reduction, hazardous or unprotected work, or poor and unsafe living conditions worsened by social segregation and stigma'.[61]

As in the United States, there may be a good fit between environmental disparity and racial and ethnic considerations rather than solely being predicated on social class.[62] This 'race versus class' debate is relevant in the EU as well.[63] Academic

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[55] Capacity Global, *Environmental Justice and Race Equality in the European Union* at note 20

[56] Beaumont, J, and Nicholls, W, 'Between relationality and territoriality: investigating the geographies of justice movements in The Netherlands and the United States' 39 Environment and Planning A, 2554-2574, 2007, Jiménez, A 'Is the urban acoustic polution equitably distributed? An assessment of environmental justice in Madrid' 68 *Estudios Geograficos* 263, 595-626, 2007

[57] Laurian, L, 'Environmental Injustice in France' 51 *Journal of Environmental Planning and Management* 1, 55-79, 2008, 55

[58] Health Protection Agency *Health Protection in the 21st Century—Understanding the Burden of Disease; Preparing for the Future*, London: Health Protection Agency, 2005, Walker, G, Mitchell, G, Fairburn, J and Smith, G, 'Industrial pollution and social deprivation: Evidence and complexity in evaluating and responding to environmental inequality' 10 *Local Environment* 361–377, 2005, Slater, A-M and Pedersen, O, 'Environmental justice: lessons on definition and delivery from Scotland' 52 *Journal of Environmental Planning and Management* 6, 797–812, 2009

[59] European Environment Agency (EEA), *Environment and health* EEA Report No 10/2005, 7

[60] World Health Organization (WHO), *Children's health and environment: A Review of Evidence*, Copenhagen:WHO, 2002, World Health Organization (WHO), Children's health and environment: Developing action plans, Copenhagen: WHO, 2005

[61] Braubach, M, et al, 'On the way to Parma: understanding and addressing the influence that social inequities have on environmental health' 20(1) *European Journal of Public Health*, 12–13, 2010

[62] Brulle, R and Pellow, D 'Environmental Justice: Human Health and Environmental Inequalities' 27(3) *Annu. Rev. Public Health* 2006 1–22, 2006

[63] Capacity Global, *Environmental Justice and Race Equality in the European Union* at note 20, The Black Manifesto, *The Black Manifesto: The Price of Race Inequality*, 2010

research here is still incipient, but Harper et al ask rhetorically: 'Why is it that Roma shantytowns are frequently located next to landfills, on contaminated land, or that they are regularly exposed to floods? Why do water pipelines end on the edges of predominantly Roma settlements, so that people have to walk miles every day just to collect potable water for cooking and drinking?' They argue that 'when some landscapes and social groups are perceived as 'beyond the pale' of environmental regulation, public participation and civil rights, it creates local sites for externalizing environmental harms'.[64] These concerns are clearly integral to all strands of environmental justice including access to decision-making. Given the socially-situated nature of many environmental justice concerns, in addition to measures reviewing equity of siting, there should also be an 'ongoing role for community participation in all decisions that fundamentally affect the participants' lives'.[65]

In practice any analysis of environmental justice as simply the spatial distribution of environmental risks has from the outset been characterised as too narrow an approach. Distinctions have long been made between procedural, geographic and social environmental justice assessing how access to decision-making, socio-economic factors and environmental harm are all intertwined.[66] In particular, the procedural strand of environmental justice, focusing on public participation and access to decision-making was central to claims of environmental justice from the outset[67] enabling groups and individuals to question why actually or potentially polluting facilities were more densely located in poorer, less influential residential locations. This procedural strand has become an increasingly influential element in the debate[68] assessing the ability to contribute to decision-making, obtain access to information and the ability to bring legal challenges. Indeed, amongst some lawyers, environmental justice has been formulated primarily in terms of access to (legal) justice.[69] This focus has led to notable successes, in particular

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[64] Harper, K, Steger, T, and Fil ák, R, Environmental Justice and Roma Communities in Central and Eastern Europe' 19 *Environmental Policy and Governance* 251–268, 2009, 262

[65] Foster, S, 'Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement' 86 *Cal. L. Rev*, 775-841, 1998, 779

[66] Bullard, R, 'Overcoming Racism in Environmental Decisionmaking' at note 49 and Bullard, R, 'Environmental racism and invisible communities', 96 *West Virginia Law Review*, 1037 – 1050, 1994

[67] Cap ek, S 'The 'Environmental Justice Frame: A Conceptual Discussion and an Application' 40 *Soc. Probs.* 5-24, 1993

[68] Schlossberg, D, 'Reconceiving Environmental Justice: Global Movements And Political Theories', 13 *Environmental Politics* 3, 517 – 540, 2004, Shrader-Frechette, K. *Environmental Justice: Creating Equality, Reclaiming Democracy*. New York: Oxford University Press, 2002

[69] The Environmental Justice Project, *Cost Barriers to Environmental Justice*, A Report by the Environmental Justice project: London, 2003, DEFRA (2008) *Aarhus Convention Implementation Report*. London: The Stationery Office, Environmental Law Foundation, *Cost Barriers to Environmental Justice*, London: Allen & Overy, 2009

the conclusion 1998 Aarhus Convention[70], with its three pillars of access to information, public participation and access to justice. Throughout the EU, wherever people are located, they have legal rights to gain access to environmental information and to be involved in decision-making, particularly through the environmental assessment procedures when new projects are developed. The actual effectiveness of such involvement, in the context of continuing social and political environments, remains of course highly contested.

Indeed the third Aarhus pillar, aimed at facilitating the making of legal claims for environmental redress has proved extraordinarily contentious and has still to be brought into effect in the EU. This form of 'corrective environmental justice' was also a later addition in the United States[71], particularly under the Title VI of the United States Civil Rights Act 1964[72] and is a significant strand of claims for environmental justice. It has been considered in the context of infringed rights by the European Court of Human Rights (ECtHR). Initially, the ECtHR seemed to take distance effectively as a proxy for causation, in *Lopez Ostra v Spain*[73], for example, the Court declined to engage in a causal analysis, emphasising instead 'the fact that the applicant and her family lived for years only 12 metres away from a source of smells, noise and fumes'. The Court saw an obvious link between location and violation, framing Article 8, the right to a home, as an environmental right in the context of location. In *Lopez Ostra* the ECtHR held that: 'Naturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health'. While in the more recent decisions in *Fadeyeva v Russia*[74] and *Tatar v Romania*[75] the Court has taken a more stringent approach to proving causation in terms of ill-health, in both cases it found a breach of the right to private life and home by virtue of living so closely to an acknowledged environmental harm. Both concerned particularly egregious sets of facts and were thus able to scale the 'high threshold' of environmental harm required by the ECtHR. While the relevance and significance of residential location is recognised, ultimately an action to the ECtHR will lie only in the most exceptional of cases.

One way to move from individuals to a collective concern has been to introduce the idea of 'social' environmental justice, assessing the impact of economic

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[70] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998
[71] Kuehn, R, 'A Taxonomy of Environmental Justice' 30 *Environmental Law Reporter,* 10681-10703, 2000
[72] Cole, L, 'Environmental Justice Litigation: Another Stone in David's Sling' 21 *Fordham Urb. L.J*. 523-545, 1994, Mank, B, 'Title VI and the Warren County Protests' 1 *Golden Gate U. Envtl. L.J.* 73-89, 2007
[73] (1994) 20 *EHRR* 277
[74] (2007) 45 E.H.R.R. 10
[75] Application No. 67021/01, unreported

marginalization, race, ethnicity, class, culture, lifestyles and political power in environmental decision-making.[76] As Martuzzi et al have noted in their review of the siting of waste facilities on health: 'there is a tendency in poorer, less educated, disadvantaged people or ethnical minorities to live closer to waste treatment facilities of any kind and, in addition, that when adverse health effects due to such proximity are detected, these are often compounded (usually multiplicatively) with the adverse effects of social disadvantage'.[77] In this context it is possible to dismiss claims of environmental inequity as simply part of a broader understanding of social inequity or to suggest that to focus on environmental concerns is to miss opportunities for much needed economic development. Yet this engages arguments of spatiality and scale. When, for example, a local campaigning group supported by the national NGO Friends of the Earth, drew attention to the potential toxicity in Hartlepool of 'ghost ships' in a marine breaking yard that had won a £10.6 million contract to recycle the steel and dispose of the pollutants from ex-US Navy auxiliary vessels, the activists' concerns were rejected as being too insular. The real concern, as successfully framed by the company that owned the yard and parts of the national media, was the economic development this remediation would bring to the region and the far greater safety risks workers would face in other parts of the world if they were to dismantle these ships there. Ultimately the company and the national media won the legal argument, redrawing the issue from a local to a regional scale. In practice, scale framing was used by both sides in enrolling allies, building relational power and achieving set political ends. As Agyeman and Bickerstaff note, 'the scaling of injustice … is an integral part of strategies of empowerment and disempowerment'.[78]

It is this re-scaling, long familiar to advocates for environmental justice[79] that is now being implemented at EU level. Territorial cohesion provides a new regional focus for environmental justice, a level at which some NGOs have already specifically decided to engage.[80] Framing environmental justice as a concern throughout the territory of the EU and by recognising its inherent spatiality, places it squarely within the remit of principles of territorial cohesion and solidarity, empowering individuals and communities as well as places. If through funding or delineation these spatial units are conceptualized as 'EU places' then examples of best practice in one part of the region provides political and philosophical leverage to argue that standards should be the same throughout. The very idea of EU places is underpinned by understandings of cohesion and

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[76] Bullard, R, 'Overcoming Racism in Environmental Decisionmaking', 36 *Environment* 10-44
[77] Martuzzi, M, Mitis, F, Forastiere, F, 'Inequalities, inequities, environmental justice in waste management and health' 20(1) *European Journal of Public Health*, 21–26, 2010, 24
[78] Agyeman, J and Bickerstaff, K, 'Assembling Justice Spaces: The Scalar Politics of Environmental Justice in North-east England' 41(4) *Antipode* 781–806, 2009, 797
[79] Towers, G, 'Applying the Political Geography of Scale: Grassroots Strategies and Environmental Justice' 52(1) *The Professional Geographer*, 23-36
[80] Agyeman, J and Bickerstaff, K, 'Assembling Justice Spaces' at note 78

solidarity extending throughout the territory of the EU. A call for spatial justice is a *normative* claim rather than an *empirical* observation yet it is one that can be crafted within the narrative of cohesion funding to focus on a place-based interpretation of environmental justice that focuses on both social and environmental concerns of both people and places.

IV A New EU Paradigm for a place-based interpretation of Environmental Justice

For environmental law this raises the question whether claims for environmental justice within the EU, characterised by principles of solidarity and territorial cohesion and working within an acknowledged spatial environmental law, offer any hope to alter 'business as usual'. Does the conceptualisation of territorial cohesion as importing a sense of spatial justice or territorial solidarity have the potential to bring environmental justice into closer reach? Or does it still perpetuate the differential allocation of both environmental goods (access to clean water, sufficient energy and places of nature conservation) and bads (risks of environmental damage, pollution, degradation of amenity and place)?

One highly effective way to improve environmental quality is to continue the environmental law project on harmonisation and cohesion funds that already focuses intensely on implementation. The sums involved are significant. In the third (2000-2006) budget cycle cohesion funds provided for (supplemented by Member State funds in accordance with the principle of additionality) 828 environmental projects with an average project cost of €29.5 million that included 266 waste-water projects, 190 urban/industrial waste projects and 127 water supply projects as well as 294 transport projects of which 113 were rail projects and 104 were road projects.[81] This is set to be exceeded in the fourth (2007-2013) budget cycle which has allocated €133 million to the 'green economy' including implementation for environmental protection. This is coupled with a growing awareness of the importance of evaluating the environmental impacts of cohesion projects[82] and together the European Environment Agency and the European Network of Environmental Authorities have begun to create a framework for *ex post* evaluation of the negative effects of structural and cohesion funding on the environment. The inter-relationship between the Lisbon Strategy and the Sustainable Development Strategy is clearly making its mark with the EEA emphasising the EU Sustainable Development Strategy's call to gradually eliminate environmentally harmful subsidies criticising, for example, the fact that 'road projects across the EU continue to receive disproportionate funding

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[81] DG Regio, Annual Management Plan, Brusells: DG Regio, 2008

[82] Scott, J, 'Environmental Compatibility and the Community's Structural Funds: A Legal Analysis' 8 *J Environmental Law* 99-114, 1996, European Environment Agency (EEA), *Territorial cohesion: Analysis of environmental aspects of the EU Cohesion Policy in selected countries*, EEA Technical report No 10/2009, 2009

compared to other more environmentally friendly investments'.[83] These projects address some of the substantial failures to implement environmental legislation within the EU, where initially 'a conspiracy of silence prevailed'[84] about non-compliance, which has beset old and new Member States alike.[85]

These existing initiatives are now supplemented with new opportunities to pursue spatial environmental justice through the concept of territorial cohesion, which suggests that location should not be a disadvantage. Such a formulation of spatial environmental justice is congruent with the holistic, integrative approach that territorial concerns bring to cohesion policy and the requirements of sustainable development, particularly an interpretation of sustainable development working alongside a principle of solidarity. Seriously engaging solidarity as a principle for guiding thinking about territorial cohesion and its implementation in policy, beyond the solidarity conditions for equality of access to services and equal participation in entrepreneurial activity, would suggest the need for some reframing of the concept to include ideas of interdependence, shared responsibilities and burdens and even redistribution, but most importantly, the possibility of sharing a set of common values – as well as 'concerns' - at the EU level. This extends the concepts of solidarity and territorial cohesion to environmental concerns: reflecting that notwithstanding the presence and perception of 'competitive Europe', '...the Europe of solidarity and cooperation already exists, embodied in the economic and social cohesion policy'.[86] From this perspective, territorial cohesion and territorial cooperation - and perhaps territorial solidarity - can still give a new impetus to EU integration, not as an abstract ideal, but as the best way to pursue the common good of all EU citizens.

This more holistic, integrative approach to cohesion is clearly compatible with a philosophy of *social* environmental justice applied beyond the urban, pollution context, extending to the ability to access to environmental 'goods', for example, under the 'right to roam'[87], access to decision-making in respect of natural resources such minerals or forestry[88] and access to essential environmental

[83] European Environment Agency (EEA), *Territorial cohesion: Analysis of environmental aspects of the EU Cohesion Policy in selected countries*, EEA Technical report No 10/2009, 2009, 96

[84] Jordan, A. 'The implementation of EU environmental policy; a policy problem without a political solution?' 17 *Environment and Planning C: Government and Policy*, 69-90, 1999

[85] Mastenbroek, E. 'EU Compliance: Still a 'black hole'?' 12 *Journal of European Public Policy* 6, 1103 – 1120, 2005

[86] Doucet, P, 'Territorial Cohesion of Tomorrow: A Path to Cooperation or Competition?' 14 *Eur Planning Studies* 10, 1473-1485, 2006, 1484

[87] Agyeman, J. 'Constructing Environmental (in)Justice: Transatlantic Tales' 11 *Environmental Politics* 3, 31-53, 2002

[88] Mutz, K, Gary, C, and Douglas, S, (eds) *Justice and Natural Resources: Concepts, Strategies, and Applications* Washington, DC: Island Press, 2002,

: Natural England, 2009, CABE, Grey to Green: How we switch funding and skills to green our cities, CABE: London, 2009

services including electricity, clean water or sanitation.[89] In this context it is worth remembering that there are still an estimated one hundred million Europeans (not all within the EU) without access to safe drinking water and adequate sanitation.[90] Environmental justice claims must reflect their locality and there is a growing acceptance that the content of environmental justice will be at least partly locally dictated, that it is 'as a concept and practice … locally grounded' and cannot be universalised even though 'the local definition and use of the term are dependent on its construction at a variety of scales'.[91] The aim here is to work backwards, considering what 'just sustainability'[92] might entail *in situ*.

These calls for a spatially and socially situated form of environmental justice interpret environmental inequity as part of the broader pattern of difference and differentiation. While EU regulators must remain alive to inequalities in siting, especially where because land is cheap or resistance is limited, there is a real opportunity to use cohesion policy to try to build 'just environments'[93] from the ground up. There is a clear overlap here between social and environmental concerns: empirical evidence suggests that the 'everyday concerns' of environmental justice can include fuel poverty, lack of safe outdoor space, social exclusion and concern about pollution.[94] Cohesion funding is well placed to adopt a holistic approach, the premise of differentiation that underpins funding allocation and the principle of solidarity that is closely allied to cohesion's rationale provides ample political and philosophical support for intervention.

Lastly, but significantly, if environmental justice is conceptualised as a means of comparing and improving environmental conditions between places, then a procedural strand would play a part in this.[95] The United States place-based discourse of civic environmentalism holds some possibilities here in its focus on local, devolved decision-making engaging with local communities particularly to make land-use decisions, often relating to natural resources, that are themselves at the root of some of the most intractable environmental problems.[96] While civic environmentalism is not limited to conflicts between private property values and public values, these are typically the situations in which top-down regulation

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[89] Kidd, M, 'Environmental Justice: A South African Perspective' *Acta Juridica* 142-160, 1999

[90] EEA, *Environment and health* at note 29

[91] Debbané, A-M and Keil, R, 'Multiple Disconnections: Environmental Justice and Urban Water in Canada and South Africa' 8(2) *Space and Polity,* 209–225, 2004 , 209

[92] Agyeman and Evans 'Just Sustainability' at note 52

[93] Romm, J, 'Environmental Justice in an Era of Devolved Collaboration' in Mutz, K, Gary, C, and Douglas, S, (eds) *Justice and Natural Resources: Concepts, Strategies, and Applications* Washington, DC: Island Press, 2002

[94] Burningham, K and Thrush, D 'Experiencing Environmental Inequality: The Everyday Concerns of Disadvantaged Groups' 18 *Housing Studies* 4, 517–536, 2003

[95] Agyeman, J, and Angus, B, 'The Role of Civic Environmentalism in the Pursuit of Sustainable Communities' 46 *Journal of Environmental Planning and Management* 3, 345–363, 2003

[96] Judith A. Layzer, 'Citizen Participation and Government Choice in Local Environmental Controversies', 30 *Policy Studies Journal* 2, 193-207, 2002

loses broad popular support and civic environmentalism may have a role to play.[97] In the United States there is genuine excitement about the potential for collaborative land management to stimulate local civic engagement in environmental affairs[98], where participants are said to transform their affection and local knowledge of a place into a force for sustained change. Its strength is said to lie 'in tapping the creative abilities of citizens to solve the problems of a place that matters to them'.[99]

Yet as with all participatory mechanisms, involvement can only be effective if barriers to participation are truly overcome.[100] Possibilities for participation and involvement need to challenge the interests of decision-making and environmental elites who have traditionally not included the more excluded communities or individuals.[101] Civic environmentalism is itself limited by the disparate resources available to developers and local stakeholders[102] and the difficulty of applying its tenets to large scale, complex environmental problems.[103] Like environmental justice, the civic environmentalism discourse has itself been characterised by sharply divergent views on public involvement, distinguishing between participation to improve existing decision-making processes and legitimise government and a more radical approach that is deeply sceptical of the promise of stakeholder governance.[104]

Just as the environmental justice movement in the United States criticised existing environmental lobby groups for focusing on the interests of the elite, so it is important that the NGOs monitoring the implementation of cohesion funding also take into account the interests of the most environmentally disadvantaged within Europe. This should supplement campaigning for those interests that appeal to the more powerful, notably climate change and the protection of biological diversity after all, 'if you're only concerned with clean streams and whales, then that limited view smacks people of color in the face'.[105] Clearly, there is no need

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[97] Debra S. Knopman et al, 'Civic Environmentalism: Tackling Tough Land-Use Problems with Innovative Governance', 41 *Environment* 10, 24, 1999

[98] Mason, R, Collaborative Land Use Management: The Quieter Revolution in Place-based Planning, Lanham: Rowman & Littlefield, 2008

[99] Debra S. Knopman et al, 'Civic Environmentalism' at note 98

[100] Abel and Stephan 'The Limits of Civic Environmentalism' 44(4) *American Behavioral Scientist*, 614-628, 2000

[101] Romm, J, 'Environmental Justice in an Era of Devolved Collaboration' in Mutz, K, Gary, C, and Douglas, S, (eds) *Justice and Natural Resources: Concepts, Strategies, and Applications* Washington, DC: Island Press, 2002, Agyeman and Evans, 'Just Sustainability' at note 52

[102] Judith A. Layzer, 'Citizen Participation and Government Choice' at note 97

[103] Morris, M 'When it Works and Where it Fails: Spatial, Temporal, and Budgetary Constraints to Civic Environmentalism', 89(5) *Social Science Quarterly* 1252, 2008

[104] Backstrand, K, and Lovbrand, E, 'Planting Trees to Mitigate Climate Change: Contested Discourses of Ecological Modernization, Green Governmentality and Civic Environmentalism', 6 *Global Environmental Politics* 1, 50, 2006

[105] Kidd, M, 'Environmental Justice: A South African Perspective' at note 90

to distinguish needlessly between the two: both improve environmental quality.[106] The outstanding and vital issue is how to interrelate such evaluations with socio-economic criteria such as 'quality of life' or a 'decent standard of living' so that for example enhancing biodiversity may be recognised as one means of fostering a positive sense of identity with a place, or that visions of that place in the future may flow from local knowledge and a desire to conserve. There is, in other words, the possibility of a meaningful type of territorial cohesion, alert to local conditions, and rooted in community. But clean technology, home insulation and fuel poverty, safe open spaces, access to clean water and waste and sewerage regulation are also key concerns of environmental justice as implemented through the principles of solidarity and territorial cohesion.

V   Conclusions

The evaluation of cohesion policy suggests that there are real substantive advances in transposition and implementation of EU environmental law.[107] The promotion of environmental justice is more difficult to measure but includes not only the advantages of greater economic development and growth, including equal opportunities to engage in entrepreneurial activity and to receive services, but also a concern for an equitable distribution of environmental protection and access to environmental services, pursued and made meaningful locally, *in situ*.

These new claims for environmental justice flow directly from the emerging EU territorial project. The narrative of territorial cohesion invokes the notion of EU territory and EU places, creating a new way of visualising the European Union, amplified by cohesion funding. This level of activity on matters spatial and territorial suggests a departure for the EU in terms of the development of concepts and policies and 'the acknowledgment and valorisation of knowledge on spatial issues'.[108] But then, the entire EU project has always been defined by space and territory because its primary intent is to override boundaries, be they legal or physical impediments to the free movement of good, peoples, services and capital. From this perspective, the EU's spatial planning project, now presented as directed towards territorial cohesion, might be viewed not so much as an indicator of an organisation latterly seeking to impose a purposeful grip on the environment of its territory, but rather a reasonably successful attempt to co-ordinate (and repackage) its existing and persuasive, though admittedly indirect, influence over spatial matters and development, for example through structural funding decisions. Such a spatial approach overlaps with an understanding of

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[106] Capacity Global, *Hard to Reach*, London: Capacity Global, 2009, Capacity Global, *Every Action Counts: The Diversity Report*, London: Capacity Global, 2009

[107] DG Regio, 'Ex Post Evaluation of Cohesion Policy Programmes 2000-2006 financed by the European Regional Development Fund in Objective 1 and 2 Regions: Synthesis Report', Brussels: DG Regio, 2010

[108] Gualini, E. 'Territorial cohesion as a category of agency' at note 18, 7

environmental justice, at least within the EU, as being place-based and *in situ* rather than characterised as a claim for individual rights.