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**MIKE LIVERMORE:** Welcome to the Free Range podcast. I'm your host Mike Livermore. This episode is sponsored by the program on law, communities, and the environment at the University of Virginia School of Law. With me today is Gerald Torres who's a professor of environmental justice and a professor of law at Yale University.

He's also the director of the Yale Center for Environmental Justice and Gerald's really one of the folks, especially amongst legal academics, who's been thinking in a deep way about the connection between environmental law and social justice for a long time, both from a scholarly and from a practical perspective. Gerald, thanks so much for joining me today.

**GERALD TORRES:** Well, thank you, Mike. I'm grateful for you to give me the time.

**MIKE LIVERMORE:** So maybe just to kind of start us off, I would love to hear about some of the work that the center's been up to. What kind of things does the Yale Center for Environmental Justice do?

**GERALD TORRES:** Well, one of the things we've been trying to do or one of the things we're going to do a number of things. The first thing is to try to link together all of the initiatives across the University that are working in environmental justice. Whether or not they characterize as environmental justice, in our view, if it is work that can be addressed to the issues that are raised by environmental justice concerns, I want to have those faculty affiliated with the center. So the first thing was to get as many faculty across the University affiliated with the center as possible.

The second was to work closely with local, regional, and state environmental justice groups and just do outreach. And so what we did is we met with groups and just like when we were working on the executive order in the Clinton administration, what we did is we wanted to take some leadership from the people who are actually out there in the field and experiencing the environmental injustice and trying to understand how they characterize. So that's the second thing we're doing.

The third thing we're doing is reaching out to tribes. One of the things we want to do is we want to have a much deeper connection with American-Indian native nations. Both to incorporate their concerns into the environmental justice calculus, but also to try to explicate how they're different from ordinary environmental justice.

And the last thing is to have a clinic where we're working on co-management issues and to get students involved through internships with state local, regional, and actually national, now, organizations. So we're trying to do a lot of things but those have been our main areas of concentration.

**MIKE LIVERMORE:** Wonderful. Yes, it's such incredibly interesting important work. In your description of that, and actually think at some point, we need to probably take a step back and explain what some of these terms are, but just right out of that, right out of the gate, there's something that I think is really interesting that may be worth exploring a little bit. So you've worked at several different institutions over the course of your career. You've been at Yale for several years now but you were at Texas. You've been at other institutions.

And one question I have, as you mentioned, kind of, working with tribes, working with tribal governance presumably is something that has always struck me and I would just be curious about your perspective on this. So I grew up in upstate New York, and on the East Coast, there just seems to be a very different relationship between environmental groups, and state and local governments and so on, and tribal governance versus out in the West Coast.

And not really even the West Coast just kind of throughout the rest of the country. The Western portion of the country. Both Northwest and on the coast. And I'm curious if you just, in your experience working on these issues over the years and now that you're on the East Coast on the ground working with some of these groups. What you think about the regionality of that particular set of issues?

**GERALD  
TORRES:**

Well, there's a couple of points that are really important. One is most of the territory that is trust land and/or under tribal ownership or control is off the East Coast, right? So when you think of the larger reservations or land basis for the tribe, you think mainly of Western tribes. So this one thing.

The second thing is a lot of the resources issues that tribes deal with are treaty-based. So if there's not a treaty that speaks directly to resource management, then it really does emerge through the cooperation between state and local governments and tribal governance. Now, one of the things that's just true, and is true in the East and it's true in the West, is that the issues, while you can think of tribal issues as being in some measure really fundamental, that is they emerged when the nation emerged, they manifest as local issues.

So from your part of the world, you're from upstate New York or central New York really, I think, aren't you? The fishing issues and trust land issues were big and the finger lakes remain a place where some of these resource issues relating to Aboriginal land that is not technically under tribal control still remain live. So that's the one big difference.

Where you have a treaties, like say, the Stevens treaties, the tribes in the Pacific Northwest, there have specific obligations that govern fishery resources, whether shellfish or finned fish, land and water usage, a lot of timber issues. So you have those kinds of issues. And when I say West, in my imagination I'm thinking from the Midwest West, West.

**MIKE  
LIVERMORE:**

The Mississippi.

**GERALD  
TORRES:**

Mississippi West, exactly. But that doesn't mean that these issues aren't live in the East. One of the things that's emerged, and you're probably sensitive to this actually down in Virginia, is there are tribes with Aboriginal claims that are not within the legal control of tribes or the federal government. Sometimes they're in control of the state government. But a lot of times they're in private hands. And so one of the questions for the Eastern work is, how do you navigate those issues? And I think that's one of the things that makes it considerably different.

**MIKE  
LIVERMORE:**

Yeah, I mean, it's a fascinating set of issues and we could probably spend the whole podcast talking about this. But maybe just to take a step back, you were mentioning that part of the work of the center is pulling together work that's happening across the University that is related to environmental justice. And I know universities in many places, including here, often have lots of different work but people aren't necessarily coordinating with each other and communicating.

But one of the things that occurs to me is, I don't know, maybe an initial challenge or an initial opportunity of doing that kind of work is having a chance to reflect on, what do we mean when we think about environmental justice? What makes someone's work, kind of, environmental justice adjacent, or related, or in the core versus work that might have to do with environmental science or some other broadly environmental or sustainability, but maybe doesn't fit cleanly under the rubric of environmental justice?

Is there a mental model that you have when you're thinking about how, presumably you're casting a relatively wide net but how do you say, who are the people that we and what's the kind of work that we want to make sure that we bring into the ambit of environmental justice?

**GERALD  
TORRES:**

Well, the one group I clearly wanted to work with is the School of Public Health. Because the School of Public Health, while they may not conceive of the work they're doing as environmental justice work, of course it is. I mean, because what they're concerned about are the prevalence of health related issues and then the social mechanisms that produce the harms and the extent to which they affect identifiable communities. So the School of Public Health, for example, is a big one.

Well, one of the things that's emerged, and when you think about casting the mental net, is, and I think perhaps COVID accentuated this, is the impact of lack of access to environmental amenities. The impact that has on mental health and stress and then the related physical infirmities that are tied to excess stress. And so you see things that people wouldn't think of as being strictly environmental but they're tied to the way we manage our resources and our environmental amenities. So that's one.

The second thing, of course, is to work with people who are doing environmental science and to ask questions about the application of the work they're doing to particular communities. So the work in the natural sciences but also in the work in economics. How do you apply discount rates? How do you think about regulatory issues and should the disparate impacts of one strategy or another affect the way they think about this?

Now, the last thing I'm going to say which is probably not thought of as an environmental justice issue exactly but I think it's becoming more and more to a broad awareness is the impact of migration that is driven by environmental issues. Primarily climate migration, but, in fact, migration around the country and what impact that has on both locating people and recognizing that the environment has something to say about all this.

Now, one of the interesting things about that is I've been able to work with some of the local land trusts who did not conventionally view their work as environmental justice work but now see that one of their missions is to make green space more broadly available. In fact, I've worked with a couple of land trusts, not local, but landowners across the country who are interested in exploring land back issues.

So that means you could think of land use people in the law school, for example, actually being involved in environmental justice issues. You can think of finance people. How is property financed? What is the impact of the wealth disparities that have been historically built up and how should you think about that in the context of environmental justice issues?

So there are a lot of things that faculty members are doing across the University that are even, to use your term, environmentally adjacent. Not strictly speaking environmental, but have consequences on the way in which we think about the place we live and the kinds of access to the amenities that a lot of us take for granted, but, in fact, ought not.

One last thing and I apologize for yakking on and on, but the impact of heat stress is not evenly pushed across communities. And so I want to work with people who are looking at climate issues and how those climate issues have a kind of local impact.

**MIKE  
LIVERMORE:** Yeah, so that's a big net, right? There's a lot of different kinds of work happening there. And one question that I sometimes ask my students, I would just be curious what your thinking is on this is when you think about environmental justice, environmental justice issues, do you think of these as kind of a subset of the broader social justice set of claims or just justice claims more generally?

And then we're asking, OK, we have a social justice mindset and we're interested in applying that to land or to property, real property, or to environmental pollution or pollution control, et cetera, et cetera. Stuff that's broadly environmental but we're applying a social justice frame. The same way that we could apply a social justice frame to ask about policing, or about education, or about health care disparities, or whatever else we might be interested in.

And so is it a subset of that broader concern or do you see environmental justice as kind of somehow distinct and different? So it's not parallel to justice in the housing context, or in the policing context, or in the educational context, or whatever else, it has something a special sauce in some sense that separates it or makes it distinctive from these other areas.

**GERALD  
TORRES:** Well, I think the one thing that I would say that makes it distinctive is that when you study the environment, and you know this as well as anyone, one of the things that immediately emerges is the linkages across media, across areas of interest. So, for example, let's take housing.

You might think of that as mainly issues of social justice but then you think about, OK, what's the impact of poor housing on energy use? How is that going to drive issues of energy efficiency? Or people are now talking about energy transition, how should we understand the linkage between housing and energy, and what's the what's the impact of that on justice issues?

And so it's a subset but it's also driven by the special concerns that the environment raises. So I mean, you could think say toxics regulation. Broadly speaking, one of the things you want to do is, through environmental regulations, is to limit the number and kinds of toxins that people are exposed to. So then you have to ask, are there issues with the regulatory structure that mean that certain communities are going to be more subject to the hazards of toxins than others?

Now, is that just a social justice frame? Sort of, but it's also a question about regulatory structure. That is, what were we trying to achieve with this regulation and does the regulation actually do it? So it actually provides a lens on the way law works, apart from the social justice part of it, on whether the law is doing the kind of things that we intended them to do.

So I think the short answer to your question is, yes, in some parts, it's a subset. So things like participation. That's a clear social justice issue, but it's also a general issue related to governance, and to regulation, and who should have a say, how do we make decisions? So those are in some ways derivative of social justice claims, but I think the environment, what it does is it asks you to take a broader look and sometimes a deeper look at particular issues.

So the impact of heat, for example, that I talked about earlier, if you look at the public health research these days, what you're discovering is, again, it has significant psychological and mental health impacts. Well, what are the effects of those impacts on other aspects of social behavior and how should we be thinking about that to build the kind of society we want to live in? So yes, it's adjacent but it's not just a subset.

**GERALD  
TORRES:**

Yeah, I mean that makes perfect sense to me. So when I think of the distinction between environmental justice and there's lots of different ways of slicing and dicing these issues. I also think of distribution, like concerns about the distribution of the cost of environmental harm and the ways that exemplar heat stress is inequitably distributed or exposure to pollutants are inequitably distributed. And that kind of concern is an environmental justice concern.

But what you were just mentioning, I've always been impressed by and just noticed, and it's I think just an important part of the movement, that it does have this process orientation. Who's at the table. Who gets to say who's being consulted. And I've always thought that was a very distinctive feature of the environmental justice movement.

Is that it wasn't just or wasn't exclusively focused on outcomes. Even if somehow we were to reduce and/or eliminate all of those disparities, that wouldn't be sufficient if the process was a kind of top down process where the communities weren't consulted and those kinds of things. I wonder if you agree that that's something that's distinctive about the environmental justice movement.

I absolutely agree with that. I mean, depending where you date, the origins of the environmental justice movement, early on, it was concerned primarily with distribution. The distributive impacts of pollution. Who's going to carry the burden of our modern industrial economy and are there communities that are more heavily freighted with the burden of our industrial economy? That's one.

But simultaneously, early on, and this arose in the context of what used to be called the environmentalists for full employment, which were Union based environmental justice groups, where they clearly early on said one of the things we've got to be concerned about is the impact of the decisions we make on the economy and making sure that we take economic benefit, broadly speaking, into account, one, and second that we take exposure in the workplace as an environmental issue. And it's often an environmental injustice that ought to be fitted within the environmental justice rubric.

As the movement went forward, the question of how decisions get made became central. And I don't think there's anybody in the environmental justice movement today who would say that, equally distributing the pollution load it means that we've achieved justice.

First of all, we want to look at how those decisions are made, who's at the table, and we've got to be committed to a reduction of exposure for all people. So it's definitely moved beyond that. But the process piece has, in early on, emerged as a really critical piece. Because without people being at the table or being aware of how decisions are getting made, they wouldn't feel that their issues and their interests had been adequately protected.

**MIKE  
LIVERMORE:**

Yeah. Speaking of the and thinking about the longer scope of environmental justice and just over the course of the time that the movement's been active, you mentioned earlier, executive order 12898, which was Bill Clinton's executive order as you well know on environmental justice.

We're coming up on the 30th anniversary of that document and I'm curious about both whether you see that executive order, I think many people do as an important inflection point in this history that we've just been briefly surveying and looking back at that executive order, if you have thoughts on its importance, and if some of the promises that haven't been fulfilled, or just reflections on that important document.

**GERALD**

Well, having worked very hard on that document, I shouldn't let pride of authorship interfere with my judgment.

**TORRES:**

In some ways, it was a first cut at the federal level and what we were attempting to do initially was to get the federal house in order. And so besides doing an important thing, which was creating some definitions for environmental justice communities so that we would know who we're talking about. I mean, that was the first thing and I think that's been refined. And the most recent efforts at incorporating environmental justice into environmental policy take a hard look at that. That's one.

The second, it was to ask how can the agencies themselves start to incorporate environmental justice concerns in their basic processes. Now, the problem we faced way back when was that many agencies initially considered that beyond their mandate. But what President Clinton required was for the agencies to begin to structure a strategic plan for integrating environmental justice concerns in their decision making. Now, the theory behind the executive order, I think, was important.

Looking back now 30 years, could we have done a better job? Absolutely. Do I wish we knew then what we now? Absolutely. but the theory I think is probably still a good theory. I don't, when you teach NEPA, the National Environmental Policy Act, I'm not sure if you teach it, but when you can--

**MIKE**

You have to teach it, yeah.

**LIVERMORE:**

**GERALD**

Right. It turns out it's one of the most important environmental statutes that people use both to get information about projects but also to intervene in processes where they can.

**TORRES:**

But remember initially, or maybe you're too young to remember this, you're not an old guy like me, when it was adopted, early environmentalists basically thought, oh, this is meaningless, right? There's no substantive law to apply here. This is not going to be an effective statute. We can't enforce it. But in fact, what it did do is it integrated environmental thinking into the decision making processes of government agencies.

And when I went back and looked at NEPA decisions, NEPA has not substantively stopped any project. But what it has done is it's improved the decision making of government so that the government now takes environmental issues at the beginning of a project rather than as an add on at the end. The environmental justice executive order was designed to try to do the same thing.

What we want to do is to put the calculus of environmental justice in the initial thought processes of agencies so that over time, we would improve the decision making from the perspective of environmental justice of agencies that are undertaking activities that have an impact on environmental justice communities. I think that hasn't been a rip roaring success but it has been more than just window dressing. And I think that's important.

**MIKE LIVERMORE:** Yeah, I mean, thinking back, it was also just the recognition that this was a real movement. It's an important constituency and that it was something that it needed to be addressed. I mean, there just hadn't been, at the federal level, any statement along those lines. It's certainly not at the same level of provenance before the executive order.

**GERALD TORRES:** Oh, absolutely. I mean, There's two things. One is what I teach environmental justice, what I like to tell people, and it's probably true about the environmental movement too, but certainly true about the environmental justice movement is that it was movement-based. It grew out of social activism of communities of non-experts mobilizing to try to address harms that they were experiencing and to get people to be held accountable for those harms.

So the initial process was to take what people were experiencing that they've experienced, translate it into legal principles and legal mechanisms that would address those concerns, and then to refine those legal tools as we gained more experience and more understanding. But it really fundamentally was movement-based.

But for the environmental justice movement, Bill Clinton would never have initiated an executive order process for environmental justice. And I think that needs to be underlined because, I hate to joke about politicians, but the one thing that every politician can do is count. And when you have an expanding constituency for a particular issue, it starts to matter. And I think that's what environmental justice did.

**MIKE LIVERMORE:** Yeah, and it's absolutely, absolutely right, or it strikes me as absolutely right. One kind of question I think thinking about the environmental justice movement and as you said, like a real movement that kind of comes and has grassroots foundations and isn't driven by funders, in fact, they scraped for funding very long time before the funders--

**GERALD TORRES:** I think they tell you they're still scraping for funding, but.

**MIKE LIVERMORE:** That's right. That's right. That's absolutely right. And just the broader political world. So one of the things, just thinking of 1994 as an inflection point, 1994 was also, I pin the origins or an important inflection point, anyway, I don't if origins is the right word in the situation we find ourselves in now of hyper partisanship over environmental issues. Right around 1994 and the contract with America election, which was actually after the executive order, and they're not really related but just to happen in the same year.

But these days, one of the biggest challenges that we face in dealing with environmental policy is just this extraordinary partisanship over pretty much every environmental issue. And that's not the way things always were. There was always differences between the parties. But there was a lot of overlap and a lot of disagreement within the parties and things are just more polarized now.

And one of the things that has struck me about these two things that have been unfolding simultaneously is greater attention to environmental justice and a policy level and also within environmental organizations, again, slow, hesitating but growing, and environmental polarization. And you also mentioned the Union connection as well as the environmental justice groups and have been an important point of contact, I think, in a way between that constituency of the Democratic Party and environmental groups, more traditional environmental groups. And I wonder if you have any just any thoughts about the fact that these two things have unfolded simultaneously. Is there a causal connection there?

I'm not sure which way it would run, but it seems striking to me that as the environmental movement has become somewhat more diverse and somewhat more oriented towards environmental justice concerns, and its advocacy, and its emphasis. At the same time that's been happening, there's just been this ever ratcheting up of polarization over environmental issues and I wonder if there's any deeper connection there. It's also possible it could just be happenstance.

**GERALD  
TORRES:**

Yeah, I hesitate to suggest that there's a direct link. Remember the main point of contestation, certainly at one juncture and around the time, at the same time were the, probably dating back to Reagan, was the elevation of property claims to a central point in the environmental debate. And I think that ignited a parallel grassroots movement that is not necessarily responsive to the environmental justice concerns, but responsive to what some critics thought were an overly aggressive environmental state, let's call it.

Now, so having said that, it's important to step back a little bit further and remember that environmental protection is one of those issues that really had traditionally been bipartisan. The original Earth Day was and I think still remains the largest single civic mobilization moment in American history. I mean, over 20 million people gathered in their communities across the country on Earth Day leading Richard Nixon.

People don't think of Richard Nixon as being the environmental president, but they should to a certain extent because he in fact led him to create the Environmental Protection Agency and to lead the Congress to adopt what we now think of as the landmark environmental bills, the Clean Air Act, Clean Water Act, at least amended in their initial modern form.

And then to pay more attention to issues related to toxics but also to building on, one of the things that emerged from LBJ's presidency, which was the cleaning up of roadsides and the beautification of America as it was called so the environmentalist, in fact, the conservation movement, historically, had firm kind of Republican roots. If I can use partisan language.

Now, the environmental justice movement, I really don't think it has played a role in the way that environmentalism has become so partisan. I think it really is tied more closely to the idea that environmental protection requires a strong regulatory hand and it's a debate about the extent of regulation and what kind of regulation ought to be put in place.

So I mean, the one area where I guess where you could say the environmental justice movement got kind of crossways with the mainstream environmental movement was with AB32 in California, the cap and trade plan, where the environmental justice community said, look, we're all for reducing greenhouse gases and other airborne pollutants but you can't do it in a way that creates environmental hotspots. That is to make the older plants, which were located primarily in environmental justice communities, to enable them to continue to pollute it at higher levels.

And so what that ended up resulting in is the community benefit fund, which would take some of the funds generated by the cap and trade program and reinvest them in environmental justice communities. And so I don't think the environmental justice movement itself has contributed in any significant way to the kind of bare knuckles partisanship that we're seeing these days.

**MIKE  
LIVERMORE:**

Yeah, I mean I don't want to be heard to say that I blame the environmental justice movement for--



**GERALD TORRES:** Mike, don't worry. I was not trying to put words in your mouth. I wanted to be clear that the opposition to environmentalism is, as a partisan issue, I think it's tied much more to the regulation of business enterprises than anything else.

**MIKE LIVERMORE:** Yeah. No, it's very interesting. I have a very hard time thinking about the degree of partisanship that we have over environmental issues these days, what the causes are, and it does strike me there's almost something irrational about it. I like that idea that you're offering, which I find it hopeful that it's mostly about environmental regulation and concerns about overly intrusive government influence on the economy. The reason I find that hopeful is because I think that's the kind of thing that could potentially be addressed.

**GERALD TORRES:** Absolutely.

**MIKE LIVERMORE:** Smarter policy. I tend to favor market-based mechanisms when they're designed properly. Those kinds of concerns. I guess the worry that I have is that doesn't seem to have satisfied anybody in the Republican Party these days. That it's not like when the current debate is over, oh, should we have command and control style more of a heavy handed government approach versus more of a light touch market-based approach?

I think that's the way the debate used to shake out and now it's more between the Democrats approach whatever that looks like and, no, we just aren't going to do anything on the other side.

**GERALD TORRES:** It's actually really disheartening to me too because if you could point to successes we've had that have benefited everyone, it's been the improvement of the environmental quality. The improvements we've made in clean water, Jackson, Mississippi not to the contrary notwithstanding, the improvements nationally that we've made to the accessibility of clean water have been dramatic. When you look at the reduction in air pollution, it's been dramatic. Everyone has benefited from that.

In some ways, I used to joke that I'd like to teach a course sometime called memory because people forget what the baseline quality of the environment was before the environmental movement. And what they take for granted now is the relatively clean baseline.

Relatively clean baseline is the result of environmental activism and environmental work, both inside and outside of government over the last two generations. I worry that the partisan nature of the debate, we will obscure the successes that have actually been achieved.

**MIKE LIVERMORE:** Yeah. Yeah, and it's sad because, as you said, this is something that we all appreciate that we all collectively did together and it wasn't a single party and it wasn't a single actor and it's an incredible accomplishment. And it's sad in a way if we forget about that or if we downplay it for whatever kind of partisan reasons that we have today.

**GERALD TORRES:** I completely agree with you. I completely agree with you. The loss of the momentum for improving the environmental conditions within which we live, if it's permitted to be viewed as a purely partisan issue, we're going to lose sight of the, what I can only say are the empiricists of the challenge and the empiric of the regulatory approach.

So it has been uneven? Yes. That's what the environmental justice movement-- one of the things the environmental justice movement has told us, look, the overall progress has been good, but it's been uneven. Let's see if we can get more people to benefit from the improvement in environmental quality. That's a good thing, right?

Second, how should we make these decisions? We think that the people who are affected by the decision should have some impact. That's a good thing. The idea that either of those issues can be used as partisan cudgels is heartbreaking in some ways.

**MIKE**  
**LIVERMORE:** Yeah. Yep, absolutely. So maybe just to switch gears a little bit to something that we popped on earlier in the conversation which is NEPA. Obviously, there's quite a bit of talk of NEPA reform, which periodically comes up. But it does seem to be maybe even more part of the conversation in the last six months.

And part of that and something that when I teach NEPA and when people talk about NEPA, there's this potential tension these days between steps that we want to take to address climate change and we might think of as traditional environmental law or traditional environmental law approaches like the National Environmental Policy Act. And just to be clear, this is the law that then sets up the requirements that federal agencies identify and understand the environmental impacts of their decisions before they make major important impactful decisions.

And some of the tensions just to kind of get it on the table that you'll know is between environmental impact assessment and renewable energy development. The concern that having these environmental assessments is going to slow down our ability to transition to clean energy more at a local level.

But if you take the state of California and other places that have state environmental protection or Environmental Policy Act, NEPA, analogs, there's a concern around, say, housing density that people use Nepa as a protectionist essentially to protect, quote, unquote, "Protect their neighborhoods" from high density housing, from low income housing that people could afford. And that low income is not even what we're even talking about that anyone who's not super rich could afford.

But then at the same time, so these pushes for reform. But NEPA, as you noted, has been an incredibly important tool over the years and including for in the environmental justice context in local fights about specific like factories or citing decisions that are going to have negative impacts for local communities.

So I'm curious if you've got any thoughts about this general question of how we think about these, perhaps, I mean, they are older in the sense that they've been around for longer, environmental statutes, are they still important? Is there a place for reform? And then this tension between local-- and it's a bigger tension, as you noted with respect to California, between the local impacts of transitioning to clean energy and the kind of broader need to decarbonize the economy. That's a big question, but I'd be curious about--

**GERALD**  
**TORRES:** Which part of that you want me to address?

**MIKE**  
**LIVERMORE:** Any part you think is interesting

**GERALD TORRES:** Yeah, no, I agree. I mean, one of the things, now I'm going to sound like I don't what, but one of the complaints that has always been lodged is that the procedural parts of environmental protection slowed down decision making such that it increases the cost of projects and ultimately leads some projects not to be done. All that's likely true. All that's likely true.

But the other side of the equation is what are the benefits of the slower process? And one question you might ask say as to CEQA, the California Environmental Quality Act, and NEPA is, are they answering the same question? If they are, why can't we think about ways to consolidate the answers? But you also might think that one thing that, in American politics, has always been important is that local concerns get have some weight.

You and I have spoken in the past and I don't think anyone is insensitive to the cost implications of regulation. The question is whether warranted by the benefits that accrue. And here, I'm not just talking about the actual physical benefits, I'm also talking about the procedural and participatory benefits because there is something about maintaining the health of the polity. That is the idea that we can still operate as a Democratic decision making people. There's something that we ought not short change when we think about that.

So I worry a little bit about that, but then you also recognize that it has been used. As you pointed out, as a NIMBY, not in my backyard a tool, but you're then developing interesting local responses to that. So what you have in California, and I suspect it will be legalized, I'm not sure, is that the right word? But the idea that you can increase the density of urban properties and not run afoul of authorities, even if it's not strictly legal. And we've seen that happening.

SDU, is that what they're called? Supplemental development units often called a mother-in-law apartments or--

**MIKE LIVERMORE:** Yeah. Yeah. These things, yeah. No, I'm a little familiar with this. That's interesting, yeah. We'll work around the law basically

**GERALD TORRES:** Work around the law a little bit. And we've seen that happening in California and then you see what has happened in the Twin Cities in Minneapolis, where Minneapolis has basically eliminated the restriction on multifamily units in single family residential areas. So they've essentially legitimized the building of supplemental development units in what were thought of as single-family residence communities.

Now, that was hard fought in Minneapolis as you might imagine. But the community decided. And that issue is probably best decided at a local level, but it can't be laid at the feet of environmental protection as such, right? There are many things that affect housing and housing costs. But let's look at one other which is interesting to me, which is the net metering dispute.

**MIKE LIVERMORE:** Yes, there isn't. It raises very interesting environmental justice issues--

**GERALD TORRES:** Important environmental justice issues because what you want to do is we want to the extent possible encourage solarization, especially distributed solar, right? But you also have these incredibly significant sunk costs on the infrastructure. And typically the way that was paid for is by ratepayers paid down the cost of maintaining the grid.

Well, to the extent that you create incentives for people to defect, that is to have solar and batteries and defect from the grid, well, that means the cost of paying for the infrastructure that led to the development of the economy that people are benefiting from is going to be borne by the people who can't afford to solarize. That is an environmental justice issue. And it needs to be viewed that way.

And is there an easy answer? Probably not, but it's something that ought to be discussed and ought to be discussed in the open and talked about. In some ways, both about what we promised when we built out our initial energy system and how we're going to transition to a non-fossil fuel based just energy system.

**MIKE  
LIVERMORE:** Yeah, I mean, it's a really interesting example of something I was curious to hear your thoughts on as well is and I remember, at least these days, I think it's somewhat more broadly recognized that there's some serious justice issues that we have to address in policy. But in the early days of net metering, it was basically like, please be quiet, we're trying to fix the environment. And if you raise those kinds of issues, you were just seen as, you're just in bed with the industry. You're just trying to protect incumbents.

**GERALD  
TORRES:** It's funny because the environmental justice community, when they oppose cap and trade and now when they're getting engaged in the net metering debate are tarred exactly the way you just framed it, which is, oh, come on, you're carrying the water for industry. And said, well, it might look like that but there are also other issues at stake and let's look at those other issues as well.

**MIKE  
LIVERMORE:** Yeah, that's actually an interesting, I mean, that would be an interesting study in some ways. It's just look at the ways that environmental justice organizations specifically, that has been leveled against them. But just maybe thinking that criticism has been leveled because it has, as you say, it's something that comes up periodically. But thinking broadly, I would just be curious about your reflections on that interface between environmental organizations and environmental justice, the environmental justice movement and maybe specifically environmental justice organizations.

There was a period of time where there was a pretty substantial amount of conflict, and conflicts periodically flare up, but I think there's a lot more working more closely together on these issues these days than in the past, although there are still sources of conflict. But I'd be curious what your thinking is on how that relationship has evolved and what environmental groups, maybe the traditional environmental groups have done successfully, and where is there room for them to improve in their relationship to environmental justice, the movement to groups in particular or to environmental justice issues we might say.

**GERALD  
TORRES:** Well, I guess I should say as a form of confession and avoidance. I'm a trustee for NRDC and so I'm most familiar with NRDC and what it has done. I'm also on the board of Earth Day. The people who bring you what the largest non-religious holiday in the world.

But both those organizations, both Earth Day and NRDC, have recognized that what they've got to do is to integrate environmental justice concerns in the way they think about the environment. And that a failure to do so means that they are going to both perhaps make the wrong decisions, in some cases, but certainly they'll minimize their capacity to build political support for the changes that need to happen.

And because when you think of NRDC, you mainly think about the tremendously successful litigation practice that they've had in the environmental context. But of course, it's not just litigation, it's also policy formation and creation. And so being able to build the constituency for the kinds of environmental changes that have to occur, I think that has occurred to all of the big green organizations, when all of them are in one form or another attempting to address it. NRDC got it, I want to say, almost 20 years ago, right?

This explicitly took on an environmental justice mandate and have attempted to integrate it into their decision making. And it has both domestic and international components as well. So I think big green, if I can use that term, is not unaware, I know that not un is a terrible construction, but, is not unaware of the importance of the justice aspects of environmental protection. And certainly, when you see the President of the United States basically standing up for environmental justice, you recognize that, yeah, this has gone this has gone mainstream.

**MIKE  
LIVERMORE:** Yeah, yeah, absolutely. And so maybe the final question I'll ask you, we could talk, I think, for a very long time but we have to wrap it up at some point. So the question is, I'm actually giving a part of an event in a few weeks that students are organizing on, it's an eco grief, kind of, climate grief like the feeling that a lot of young people have, I think, and others, not just young people.

People all ages that we've really failed on this big issue and that we've gotten ourselves into a terrible hole and they look at progress both domestically and globally and they don't see it. They don't see it at the rate that they think is absolutely necessary. And I guess my question for you is, what gives you hope in this context? What perspectives allows you to stay optimistic or to say hopeful in the face of the many serious challenges that we face on these issues?

**GERALD  
TORRES:** It depends what day you get me I guess. One of the things that does give me hope is the broad recognition that we've got to do something. And I actually think it's not paralysis that's inspiring activism. So that's one thing.

Second, the commitment to environmental education. So many of our young students come to us more deeply educated about the environment than say, either you or I might have when we went to college or left college to go to law school. So they come broadly informed and committed. So they give me hope.

I also think that they see the interconnectedness of issues and don't commit themselves to be paralyzed by the interconnectedness, but see that there are many points at which they might intervene to produce action. And they know that even though the issues are broad and global that they have to act in ways that have local impact.

So I think that those are the kinds of things that give me hope. Working with environmental justice communities has given me a lot of hope because these are communities that have suffered some of the worst of our pollution excesses and remain committed to producing the change that we need.

**MIKE  
LIVERMORE:** Great. Well, those are all good solid reasons for hopes, which is always nice to have these days. So it's been a really fun conversation, Gerald, and thanks so much for joining me and for all your work over the years on these issues.

**GERALD  
TORRES:** Mike, you've been doing important work yourself and so I thank you for hosting me and I look forward to interacting with you in person soon.

**MIKE**

Me too.

**LIVERMORE:**

[MUSIC PLAYING]