

**Carmen Gonzalez, *Beyond Eco-Imperialism: An Environmental Justice Critique Of Free Trade*, 78 *University of Denver Law Review* 979 (2001)**

As trade ministers from 135 nations gathered in Seattle for the Third Ministerial Conference of the World Trade Organization (WTO) in late November 1999, over 50,000 protesters, including farmers, trade unionists, and environmentalists, joined forces in a raucous demonstration of opposition to the current organization of the global economy. The massive protests, which quickly became known as the "Battle in Seattle," featured teach-ins, rallies, marches and other events designed to draw attention to the WTO's impact on labor, environmental, food safety, human rights and consumer protection measures.

Media coverage of the issues underlying the protests emphasized the WTO's threat to U.S. environmental and labor laws, and posited a conflict between developed countries' concerns for workers' rights and environmental protection on the one hand, and developing countries' needs for unfettered economic growth on the other. In so doing, the media portrayed environmentalism as a new form of imperialism, whereby the wealthy, developed countries of the North impose their environmental preferences and priorities on the poor, developing countries of the South. While this carefully constructed media image contains a kernel of truth, it also perpetuates two powerful myths that obscure the relationship among free trade, environmental protection and social justice. The first myth is that environmental protection is a luxury that developing countries can ill afford. The second myth is that industrialized countries have generally played a leadership role in the protection of the global environment. This article attempts to deconstruct these myths in order to critique the environmental consequences of trade liberalization from an environmental justice perspective. ...

I. Environmental Protection: Luxury or Necessity?

The myth that environmental protection is a luxury that developing countries can ill afford rests on the assumption that environmental protection is an obstacle to economic development and is irrelevant to the immediate needs of the poor. This Part critically assesses this myth by contrasting the environmentalism of the rich with the environmentalism of the poor, and by examining the impact of environmental degradation on the Southern poor and on the natural resource base required for economic development.

A. Environmental Justice: North and South

The environmental movement in the United States has long been perceived as white, middle class, suburban, and concerned first and foremost with the protection of parks, wilderness areas and endangered species. The environmental justice movement, which emerged in the 1980's, challenged the priorities of the traditional environmental movement by making an explicit connection between environmental degradation and issues of poverty, racism, and democracy. Environmental justice activists argued that the traditional environmental movement and the government agencies charged with environmental protection neglected the distributional consequences of environmental degradation and failed to effectively incorporate in

environmental decision-making the communities bearing the greatest environmental risk....

Northern environmentalists have typically adopted a technocratic approach to environmental protection, emphasizing global management of the environment based on scientific principles while neglecting Southern aspirations for social justice, cultural rights, self-determination and democracy.... Southern environmentalists have charged that Northern development policies and consumption patterns are the primary causes of resource depletion and global pollution and that the world economic order has institutionalized Southern poverty, which places additional stress on the environment....

The allegations of Southern environmentalists have been supported by studies commissioned by the United Nations Development Program, and are explored below in the context of two specific environmental problems: the export of hazardous wastes and deforestation....

## B. Toxic Colonialism: the Export of Environmental Hazard

The North-South distribution of the environmental consequences of liberalized trade is perhaps most apparent in the context of the export of polluting industries and hazardous wastes from the North to the South....

Hazardous waste generators in the North export wastes to the South because strict environmental regulation and citizen opposition to the location of waste disposal facilities have increased the cost of waste disposal in the North. By contrast, hazardous waste disposal is significantly cheaper in the South due to weak environmental regulation, lax enforcement, and government corruption. Moreover, poverty and debt create powerful incentives for developing countries to accept hazardous waste shipments from other nations in order to earn badly needed foreign exchange.

Notwithstanding attempts to regulate the waste trade by treaty, and despite the decision of many developing countries to impose unilateral bans on the importation of hazardous wastes, the hazardous waste trade continues to flourish. Government officials have intercepted illegal shipments from the United States destined for Ecuador, Guinea, Haiti, Malaysia, Mexico, Panama, and Sri Lanka. East European countries have intercepted thousands of deceptively labeled waste shipments from Western Europe, including shipments labeled as humanitarian aid. Environmentalists have rightfully denounced this practice as "toxic colonialism."

However, it is not only the illegal waste trade that imperils the health of people in the South. The expansion of the legal waste trade in recyclable materials is also a significant factor. The export of wastes for recycling is believed to account for 90 percent of the North's total hazardous waste exports, and can be as harmful as the illegal waste trade. While recycling is generally viewed as environmentally beneficial, many recycling operations in the South are extremely hazardous due to improper waste management and lack of adequate worker protection.... In addition, sham recycling is a growing problem. In many instances, hazardous waste generators label wastes "for recycling" in order to circumvent bans and restrictions on hazardous waste disposal, thereby blurring the line between the legal and illegal hazardous waste trade. Whether legal or illegal, the hazardous waste trade has imposed significant health and safety costs on the

South.

The consequences of improper waste disposal have been devastating for developing countries. Improper waste disposal poses particular health and safety risks in the South because many developing countries lack the legal and administrative infrastructure to regulate waste disposal. Dumpsites are often located near population centers, and poor people are exposed to hazardous wastes when they scavenge for items to use or sell. In addition, the climate of many developing countries may increase the risk of human exposure to hazardous wastes. For example, heavy rainfall in tropical countries may cause wastes to leach into groundwater, thereby harming people who drink untreated water. The dumping of wastes into rivers kills fish and injures both those individuals who earn their livelihoods through fishing, and those who rely on the rivers for drinking water. Developing countries that receive hazardous wastes often experience soil and groundwater contamination, air pollution and threats to natural resources. While Southern elites can insulate themselves to some extent from the consequences of the waste trade by moving into more pristine communities with better access to clean air and water and uncontaminated land, it is the poor who must suffer the consequences of environmental degradation. Far from being a luxury, environmental protection is necessary to preserve the health, safety and well-being of the Southern poor.

While the South bears the environmental costs of the hazardous waste trade, the North reaps significant economic benefits. The shipment of hazardous wastes from North to South allows developed countries to maintain a level of economic activity that exceeds domestic waste disposal capabilities. The waste trade thereby reduces incentives to minimize waste generation, maintains the illusion of unlimited economic growth, and imposes the costs of industrialization on developing countries without the corresponding benefits of industrial production.

### C. Deforestation: Clearing the Forest for the Trees

... Northern environmentalists have depicted deforestation as a global problem, and have urged the South to protect its tropical forests in order to reduce global warming, preserve resources needed for biotechnological and medical research, and preserve the beauty of nature. However, the North's depiction of forest preservation as a universal concern of all humankind masks both the underlying causes and the distributional consequences of deforestation.

Commercial logging is the major contributor to global deforestation, and it threatens both the tropical forests of the South and the temperate and boreal forests of Canada, the United States, and Russia. Indeed, while Northern environmentalists have focused on the protection of tropical forests, approximately 80 percent of the documented international timber trade comes from the temperate and boreal forests of the North. Industrialized countries also account for approximately 80 percent of the value of forest product imports. The North's demand for forest products and the North's failure to protect its own forests account for a significant percentage of global deforestation attributable to the international trade in forest products. However, as demand for forest products grows, the South is rapidly increasing its share of global forest product exports. Brazil, Indonesia and Malaysia are now in the ranks of the top 10 forest product exporters.

Notwithstanding the serious levels of deforestation presently being experienced, a controversial proposed agreement championed by the United States at the 1999 WTO Ministerial Conference in Seattle could increase the pressure placed by global commerce on the world's forests. The proposed agreement, denounced by environmentalists as the "global free logging agreement," would eliminate both tariff and non-tariff trade barriers on pulp, paper, furniture and other forest products. Such non-tariff barriers may include border restrictions to prevent entry of invasive species, export bans to reduce logging, and government procurement and eco-labeling practices designed to promote the use of recycled paper and sustainably harvested wood products. The proposed agreement would accelerate the process of deforestation by promoting the expansion of trade in forest products.

...For many years, timber companies from the North have been conducting commercial logging operations in developing countries. For example, European firms have been cutting down timber in Africa, and Japanese firms joined forces with local companies to clear the forests of Indonesia, Malaysia, and other Southeast Asian countries. With their own forests depleted, timber companies from Indonesia, Malaysia and other Asian countries have, in turn, purchased logging rights in other developing countries, including Brazil, Cameroon, Guyana, Papua New Guinea, and Suriname. Transnational timber corporations have also joined forces with local investors to set up related wood-products operations, such as sawmills and pulp and paper operations, that utilize locally supplied wood.

A significant factor promoting over-exploitation of forests in the South is debt. The World Bank and the International Monetary Fund have accelerated deforestation in the South by promoting export-led structural adjustment policies designed to ensure loan repayment. These policies have resulted in the unsustainable export of forest products and in the clearing of tropical forests to produce export commodities such as coffee, cacao, and cotton. Declining terms of trade for primary commodities have caused developing countries to attempt to increase their output by clearing additional forests as well as using existing agricultural lands more intensively. The World Bank and regional development banks have also funded energy, mining, resettlement and transportation projects in the South that have contributed greatly to deforestation, and have resulted in the massive displacement of indigenous and local people from their traditional lands. Mining, energy development and related activities represent the second largest threat to forests after logging.

While transnational corporations and Southern timber, mining, and agribusiness companies reap the benefits of deforestation, the costs are often borne by the Southern poor. The commercial exploitation of tropical forests has had significant social and economic consequences. Commercial logging operations as well as mining, ranching and agribusiness, displace indigenous and local communities, destroying their social structure and economic base, driving them to survive on smaller parcels of land, and ultimately creating an exodus to the cities. Deforestation produces flooding and soil erosion, and harms both subsistence and commercial farmers and fishermen as rivers fill with silt from the erosion of terraces and hillsides. Deforestation has been at the root of catastrophic events in Asia, Africa and Latin America that have caused massive injury and economic dislocation....

Deforestation also has global consequences, and the costs and benefits are likewise unevenly distributed between North and South. Deforestation degrades the global environment through loss of biodiversity, release of greenhouse gases and loss of carbon sinks. The North is responsible for 90 percent of the anthropogenic greenhouse gas emitted during the past 150 years, and it has, therefore, benefited from its ability to use the global atmosphere as a sink for the harmful by-products of industrialization. However, Southern countries will bear a disproportionate share of the environmental consequences of global warming, including droughts, floods, rise in sea level, and more frequent storms and hurricanes, due to their more vulnerable geographies and economies. Loss of biodiversity will also have disproportionate impacts in the South. Tropical forests contain most of the world's biodiversity, providing habitat for 70 percent of all known species. For the North, loss of biodiversity constitutes foregone opportunities for biotechnology, agribusiness and pharmaceutical industries to commercially exploit the valuable raw materials of the South. For local and indigenous communities in the South, biodiversity represents food, medicine, clothing, shelter, and cultural integrity. Conserving biodiversity is essential to the physical and cultural survival of the more than 500 million people who depend on tropical forests for their well-being, and includes fighting to protect rights to land, natural resources and cultural knowledge.

As the hazardous waste and deforestation examples illustrate, the current organization of the global economy enables the North to reap the benefits of expanded trade while imposing the environmental costs on the South. In general, it is the Southern poor who bear the consequences of environmental degradation and whose health, safety and livelihoods are thereby jeopardized. Contrary to the myth that environmental protection is a luxury that the South can ill afford, environmental protection is necessary to the preservation of the natural resource base upon which the population of the South relies for its survival. It is therefore not surprising that Southern environmental movements are rooted in material conflicts and in the struggle for social justice.

## II. The North: Global Leader or Global Looter?

The second myth underlying the media image of environmental imperialism is that the North is a global leader in environmental protection. It follows from this myth that the North's efforts to incorporate environmental protection into the international trade regime are designed to protect the global ecosystem by elevating the environmental standards of developing countries. While the North in general and the United States in particular have made significant progress in the protection of the domestic environment during the last three decades, the North's role with respect to the global environment is far more problematic....

Environmentalists have pointed out that the North's consumption patterns can only be maintained through the appropriation of the natural resources (timber, petroleum, metals, agricultural commodities, biodiversity) and waste sinks (forests, waste disposal facilities) of the South... The researchers found that the Netherlands, United States, Belgium, Germany, Switzerland, United Kingdom, Japan, and Israel were among the highest per capita importers of natural capital. In other words, these countries utilized far more natural capital (both natural resources and waste sinks) than they possessed. ...

The ability of the North to internalize the benefits of economic growth while shifting the environmental externalities to the South, and to the global commons, has masked the limits of the North's growth-oriented development model. Proponents of the North's development model argue that free trade promotes economic growth and thereby provides developing countries with the financial means to increase expenditures on environmental protection. This model assumes that economic growth is a positive-sum game and that it is possible for all countries to achieve the level of development of the North. However, as the ecological footprint study illustrates, natural resources are finite, and over-consumption by one country requires under-consumption by another. The North is living far beyond its ecological means, and the South cannot "catch up" without exceeding the limits of the global ecosystem. Because it is impossible for both North and South to be net importers of ecological goods and services, economic growth can no longer be viewed as the solution to the problem of poverty and environmental degradation in the South. Ecological economists have warned that the global economy is rapidly approaching the limits of the global ecosystem's ability to sustain continued economic expansion. Far from lifting all boats, the rising tide of globalization threatens to burst through the banks.

Globalization has obscured the fact that the ecological limits of local ecosystems have already been exceeded because production and consumption are physically separated.... The separation between production and consumption creates disincentives to the conservation of local resources and the inability to assess or manage distant sources of supply. This problem is exacerbated by the failure of commodity prices to incorporate ecological damage and human health costs incurred in the production process. As a result, all countries maximize global resource exploitation, which increases total economic production and accelerates the depletion of natural resources....

### III. Beyond Environmental Imperialism

#### A. Unilateral Trade Restrictions: The Empire's New Clothes?

The United States has long used trade sanctions to compel other nations to implement environmental conservation measures. However, the legality and legitimacy of unilateral trade restrictions to protect the environment did not become the subject of intense international debate until 1991, when a GATT dispute resolution panel found that a U.S. embargo on Mexican tuna caught with dolphin-killing "purse seine" nets violated the GATT. The tuna/dolphin decision exposed the previously obscure link between trade and the environment, and represented the first volley in a long battle over the legality under GATT/WTO of unilateral trade restrictions designed to protect the environment....

Northern environmentalists argue that incorporating the costs of resource depletion and pollution into product prices can mitigate many of the environmental harms arising from liberalized trade. They claim that goods produced under inadequate environmental standards should be viewed as goods being sold for less than their true cost of production--a phenomenon they call environmental dumping. Northern environmentalists contend that it is appropriate for governments to respond to environmental dumping by imposing unilateral trade restrictions, such as embargoes, or by equalizing the terms of trade through "countervailing duties" or "antidumping tariffs" on imports from nations with lower environmental standards. Northern

environmentalists have also advocated upward harmonization of environmental standards across jurisdictions through multilateral agreements as a more long-term approach to the problem of environmental dumping.

Developing countries have expressed concern that Northern environmentalists' demands for incorporation of environmental costs in product prices are merely disguised protectionist measures designed to maintain the economic dominance of the North by limiting the South's access to Northern markets.

Developing countries have condemned unilateral trade restrictions, eco- duties, and international agreements designed to harmonize environmental standards as intrusions on their sovereign resource management and pollution control decisions. Many developing countries view the North's attempt to impose its pollution control and resource conservation standards on the South as paternalistic and hypocritical given the North's historic and ongoing over-exploitation of the planet's resources. Furthermore, the North tends to prioritize longer-term and more global issues, such as ozone depletion, climate change, and wildlife conservation, and to neglect issues of immediate, local concern to developing countries, such as basic environmental infrastructure (water systems and sewers), the dumping of outmoded technologies and banned products in developing countries (such as pesticides), the hazardous waste trade, poverty, food security and desertification. Confronted with environmental demands from the North that reflect Northern interests and priorities, many developing countries have denounced the North's use of unilateral trade restrictions to promote environmental protection as environmental imperialism.

There are three fundamental flaws in the North's proposals to reconcile free trade and environmental protection. First, these proposals attempt to change the behavior of the South without addressing the far more ecologically damaging behavior of the North. Environmental trade restrictions thereby become yet another tool for dictating the terms of the North's appropriation of the South's natural resources while the root cause of global environmental degradation, the unsustainable consumption of the North, remains unchallenged. Second, the North's proposals fail to address the activities of the most powerful actors in international trade, Northern transnational corporations. As described more fully in Part B below, transnational corporations account for a significant percentage of international trade and operate in a variety of polluting and hazardous industries in the South. Third, the North's proposals reinforce North-South power relations via top-down solutions driven by the North's environmental and economic agenda. Rather than developing a collaborative approach to the resolution of global environmental problems that takes into account the needs and priorities of developing countries and of local communities most affected by environmental damage, the North's proposals to reconcile trade and environmental protection seek to impose Northern environmental standards on the South as a one-size- fits-all solution to global environmental degradation.

## B. Alternative Approaches: North and South

### 1. North

...It is the over-consumption of the North that poses the greatest threat to the global environment

while imposing the environmental costs on the South. Environmental law has traditionally emphasized pollution control and protection of natural resources while ignoring the ultimate cause of pollution and resource degradation: the over-consumption of the planet's resources.... Moreover, efforts to regulate domestic consumption have thus far focused on the quality of consumption (improving product design to reduce environmental impacts during production, use, or disposal) rather than the quantity of consumption (the total amount of products consumed). While it is important to address both issues, gains in the quality of consumption can quickly be eroded by the ever-expanding quantity of products consumed. For example, today's automobiles are far more fuel-efficient (with the exception of sport utility vehicles, popularly known as SUV's) and far less polluting than in the past. However, the increase in both the total number of automobiles and the total miles driven has outpaced the efficiency gains.

A second approach is to regulate the activities of transnational corporations. Transnational corporations are the key actors in the global economy and the primary beneficiaries of liberalized trade. Transnational corporations control 80 percent of foreign investment. The vast majority of transnational corporations have parent corporations that are based in the North. However, transnational corporations operate in a wide variety of hazardous and pollution-intensive industries in the South, including mining, petroleum, and agribusiness. Their activities have the potential to produce significant impacts on human health and the environment. Transnational corporations also account for a significant volume of international trade. The trade/ environment debate should therefore include an analysis of the role of transnational corporations in environmental degradation and of possible strategies to regulate their conduct. Such strategies might include strengthening environmental enforcement capacity in developing countries, regulating the extra-territorial environmental conduct of corporations headquartered in the North, developing multilateral agreements imposing standards of conduct on transnational corporations, and expanding the rights of foreign victims of environmental abuse to sue Northern corporations in Northern courts for acts committed in other countries.

## 2. South

...Indeed, one of the most important lessons of the environmental justice movement in the United States is the importance of paying attention to grassroots struggles in order to understand the precise social and economic forces that produce environmental injustice and to identify the types of policy reforms likely to promote environmental justice. This insight is particularly significant in the era of globalization because it is at the local level that ecosystem limits have already been exceeded. By spatially separating the economic benefits of production from the environmental costs, trade liberalization masks the overshooting of local environmental constraints until they become global crises. Consequently, both social justice and environmental protection imperatives call for close attention to local environmental struggles and for environmental policy-making from the ground up.

Focusing on local struggles reveals the relationship between environmental degradation and other forms of social injustice, and the unique issues that must be addressed to promote environmental justice in each context... Environmental injustice manifests itself in different ways for different groups and along a variety of axes (racial, ethnic, gender, class), and calls for

different solutions at both the global and local level. For indigenous groups in the North and the South, for example, sovereignty issues with respect to natural resource use may be paramount. In Central America, where women have borne the brunt of environmental degradation, the struggle to protect the environment is inextricably intertwined with the struggle to improve the status of women. Consequently, a one-size-fits-all solution to the problem of environmental degradation that does not pay heed to local conditions and to other axes of oppression is likely to exacerbate rather than relieve environmental injustice.

Human rights law can serve as an important vehicle to link the environmental struggle with the struggle for social justice. As the foregoing discussion suggests, environmental degradation in the South is often accompanied by human rights violations. Indeed, environmental degradation is itself a violation of the emerging right to a healthy environment. Civil and political rights (such as freedom of expression and freedom of association) can be deployed to allow groups and individuals to voice their objections to environmentally damaging activities, to organize resistance movements, and to seek official redress. The right to self-determination recognizes the rights of indigenous people to sovereignty over their natural resources. Economic and social rights (such as the rights to health and livelihood) may require governments to prevent environmental degradation....

### C. Reconciling Environmental Protection and Social Justice

The critique of trade liberalization presented in this article gives new meaning to the term "environmental imperialism." While this term traditionally refers to the North's imposition of its ecological agenda on the South, it is also an apt description of the North's systematic and ongoing appropriation of the South's natural resources. The North reaps the benefits of liberalized trade while imposing a disproportionate share of the environmental costs on the South. While this may be efficient from the standpoint of some proponents of neoclassical economics, it is ethically problematic and ecologically unsustainable. Liberalized trade accelerates global pollution and resource depletion, masks ecological harm by shifting it to the South, and increases the likelihood that the global economy will exceed the limits of the global ecosystem.

The North's consumption-oriented development model is the primary cause of global environmental degradation. This article therefore recommends that Northern environmentalists and policy-makers focus their energies on scaling back the North's appropriation of the world's resources rather than imposing their environmental preferences on the South through unilateral trade restrictions or through demands for harmonization of environmental standards. Regulating the conduct of transnational corporations and adopting strategies to promote sustainable consumption are two possible approaches to achieve this objective.

An environmental justice critique of trade liberalization also suggests that it is important to focus on local environmental struggles in order to understand the precise social and economic forces that promote environmental degradation and social injustice and to develop effective policy responses. Top-down solutions driven by the North's environmental and economic agenda exacerbate environmental injustice by reinforcing Northern economic and political dominance, and by failing to take into account the needs and priorities of those most affected by

environmental degradation.

Finally, it is important to recognize that trade, human rights, and the environment are inextricably intertwined, and that policy proposals to address global environmental degradation must take into account their complex relationship. Northern initiatives to reconcile trade and environmental protection must be carefully scrutinized to ensure that they promote environmental justice and do not become yet another instrument for transferring resources from the South to the North under the guise of environmental protection.