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Environmental Justice Activism Against Freeway Proposals in Contemporary America

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ENVIRONMENTAL JUSTICE ACTIVISM
AGAINST FREEWAY PROPOSALS IN CONTEMPORARY AMERICA

Molly Wampler
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Introduction

In December of 2015, the Texas Department of Transportation (TxDOT) signed a surprising resolution agreeing to buy the homes of a historically-black and extremely polluted neighborhood to protect the residents from any further environmental damage that would be caused by the relocation of a bridge into their neighborhood. Not only was the relocation benefit three times higher than the market value was and what is required by federal law, but the resolution came in near record time, only a few months after the community filed a civil rights complaint with the Federal Highway Administration (FHWA) claiming that the proposed rerouting of the bridge was in violation of Title VI of the Civil Rights Act of 1964. The route chosen by TxDOT would run adjacent to the Hillcrest neighborhood, cutting them off from the rest of the Northside community and City of Corpus Christi residents, pushing them into the industrial and much more polluted side of town.¹

Hillcrest residents had been subjected to environmental hazards for decades, including their close proximity to several oil refineries and two freeways which boxed them in on three sides. If the bridge project were accepted by the federal government, Hillcrest would be completely surrounded by industry. Routine chemical leaks and explosions increased the environmental burden on the community, resulting in disproportionately high rates of cancer, birth defects, and respiratory problems among residents. So, when TxDOT released their Draft Environmental Impact Statement (DEIS) in December of 2013 recommending the replacement and relocation into Hillcrest of the aging US-181 Harbor Bridge, an idea that had been in the works and opposed by the local neighborhood association for a decade, legal help stepped in to

¹ Laris, "In Corpus Christi, a Community Cornered," 2017.

represent the community in an ultimately successful attempt to finally hold Texas and the federal government accountable for their actions.

Since the boom in freeway construction across America following World War II, low-income communities and communities of color have been continually targeted in the locations chosen for new freeways. Often, these freeways cut right through neighborhoods, separating vibrant communities or disconnecting residents from business districts. Worse, freeway projects regularly displace hundreds of residents from their homes, leaving former residents with a market rate payout insufficient to attain housing in most other areas of the city. The construction of new freeway can take decades, and the noise and air pollution can cause significant health problems. And when the freeway is finally completed, the surrounding neighborhoods are subjected to high levels of exhaust, often higher than health professionals deem safe for any population. As Robert D. Bullard says in his book *Highway Robbery: Transportation Racism & New Routes to Equity*, freeways “physically isolate residents from their institutions and businesses, disrupt once-stable communities, displace thriving businesses, contribute to urban sprawl, subsidize infrastructure decline, create traffic gridlock, and subject residents to elevated risks from accidents, spills, and explosions from vehicles carrying hazardous chemicals and other dangerous materials.”²

While developers often turn to the excuse of “ideal location” as justification for locating freeways in minority communities, there are several reasons why these communities are consistently asked to bear the burden of community destruction caused by freeways. The most

² Bullard, Johnson, and Torres, *Highway Robbery*, 2004: 4.

prominent is the idea the “path of least resistance,” which explains that affluent communities are more capable of fighting off such projects, leaving the undesirable additions to minority and low-income communities.³ In many cases, this means developers target “communit[ies] with weak social, economic, and political capital.”⁴ Wealthier communities organize against these projects, and project managers are unlikely to consider bisecting affluent areas of cities with freeways. Low-income residents have lower levels of political engagement and resources, are less likely to be able to take time off work or spend their free time speaking at community meetings or submitting public comment. Additionally, inconveniently-scheduled meetings, language barriers, or fears surrounding legal status might prevent working-class or minority residents from attending community forums to voice their opinion.

Further, if eminent domain is used to acquire property and clear land for construction, the historically-low property values of low-income and minority neighborhoods are appealing to states. Jim Crow-era housing legislation and redlining categorized neighborhood quality based on race, allowing for the quick identification of target neighborhoods today.⁵ The urban renewal movement in the mid 20th century was premised on the assumption that low-income neighborhoods needed revitalization, but in practice, it forced residents of entire neighborhoods to find housing elsewhere. In a 1963 interview, James Baldwin critiqued urban renewal, calling it “negro removal,” an act the federal government was not only aware of, but an “accomplice” in executing.⁶ Not only could minority displacement and exploitation be explained by the path of least resistance, but it could be justified in the name of progress.

³ Saha and Mohai, “Historical Context and Hazardous Waste Facility Siting,” 2005.

⁴ Schelly and Stretesky, “An Analysis of the ‘Path of Least Resistance’ Argument in Three Environmental Justice Success Cases,” 2009: 371.

⁵ Avila, “L.A.’s Invisible Freeway Revolt,” 2014: 833.

⁶ James Baldwin interviewed by Kenneth Clark, 1963.

Groups resisting freeway construction projects on environmental justice grounds face real challenges, and they are usually unsuccessful. Yet communities like Hillcrest have succeeded in their efforts. What led to this success? What factors allowed Hillcrest to succeed in receiving substantial relocation allowances when most other civil rights complaints or lawsuits result in apathy or inaction by government agencies? Why are some movements successful while others are not, and what can be learned from the successes and failures of past community movements?

Methodology

In this paper, I discuss the characteristics of freeway project proposals and subsequent opposition movements to identify the primary factors leading to the success or failure of the resistance. I selected three case studies to research in depth – Harbor Bridge, discussed above, the Central 70 Project in Denver, and the South Mountain Freeway Project in Phoenix – in search of patterns or trends that might suggest a way to anticipate the outcomes of other freeway resistance movements.

I set a series of parameters at the beginning of my case selection process to help narrow the case options available to me. The first parameter was based on timing: I needed projects that had released their first environmental impact reports after 1994, the year President Clinton signed Executive Order 12898 requiring all federal agencies to consider environmental justice in their proceedings. This helped by narrowing my analysis to projects in which agencies, planners, and developers were mandated to address environmental justice concerns throughout the project's process. Also concerning timing, I relied on cases that were resolved in one way or another—this meant I had to look past several high-profile and otherwise perfect freeway disputes

that were still in their planning stages or had lawsuits pending. In doing so I was left to focus my efforts on cases where the inputs could be evaluated alongside the outcome.

I also considered the availability of online documentation of a project and resistance efforts, which ended up being one of the most prominent constraints on which projects I was able to choose. Unless projects were suggested and explained in interviews, sparse news coverage, convoluted community websites, and contradicting reports made digging for information that was readily available for other projects an unwise use of limited time. The first two cases I chose—Central 70 and Harbor Bridge—were brought up in nearly every interview and information was readily available online about each. However, finding the third case study was challenging. The South Mountain Freeway Project was suggested in one of the first interviews I conducted, and it seemed to fit the criteria I set for Harbor Bridge and Central 70, but it soon became clear that local news coverage, state DOT documents, and consistent information were significantly harder to find than with the other two cases. The Arizona DOT (ADOT) website was down multiple times for days at a time, “news” articles often had project interest groups on their bylines, and the responses I received to my inquiries from ADOT were often default messages with no follow-up. My request for the state’s response to a civil rights complaint (information that should be accessible without this bureaucratic hassle) was met first with a automatic reply form to pursue a Public Records Request, and then with a community relations project manager who has since stopped responding. Those I did speak to about the project (Sandy Bahr of the Sierra Club and Pat Lawlis of Protecting Arizona’s Resources and Children) were incredibly helpful and I would not have the same understanding of the project without them. Given my relatively short time frame, I did choose to continue research on South Mountain, even after

learning of this challenge. While there was less accessibility to the information I needed, the barricading of public information indicates the priorities of the agency, a factor I took into consideration when evaluating the outcome of this Arizona freeway.

In any future research, I may select to replace the case of South Mountain with a project whose characteristics more closely resemble those of Harbor Bridge and Central 70, but for this paper, I feel that the inclusion of South Mountain provides a glance into the diversity of state and federal agencies running transportation decisions across the country.

Policy Background

One of the most important laws bearing on decision-making about highway projects is the National Environmental Policy Act of 1969 (NEPA), created to ensure that federal agencies considered environmental impacts in planning for new developments. NEPA requires agencies to file Environmental Impact Statements (EISs) with each project proposal that might bring about any type of environmental impact. The work of filing and receiving approval on these reports is referred to as the “NEPA process,” and is often time-consuming and delays projects. After determining if a project poses any risks to the environment, the first step is for an agency (these “lead agencies” include state DOTs) to prepare an EIS which discusses any environmental impacts of the project, as well as proposes and considers alternatives. The first draft of an EIS (a DEIS) is submitted to the EPA for review and to the Federal Register opening it for public comment for at least 45 days. With comments from the public as well as the EPA and other federal agencies, the lead agency responds, makes changes, and publishes a Final EIS (FEIS). Another comment period follows, and after thirty days, they publish a Record of Decision (ROD), which “explains the agency's decision, describes the alternatives the agency considered,

and discusses the agency's plans for mitigation and monitoring, if necessary.”⁷ It wasn't until decades after NEPA's 1969 signing, however, that the NEPA process was forced to consider environmental justice.

In 1994, President Clinton signed Executive Order 12898, called “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which mandated the consideration of environmental justice into the actions of any federal agency. The order called for each agency to create their own agency-wide plan to address environmental justice, and in this way, environmental justice measures were incorporated into the NEPA process.⁸ This order reinforced countless previously-passed laws and regulations, and upheld Title VI of the Civil Rights Act of 1964 (“Title VI”) which prohibits any kind of discrimination in a federally-funded program.⁹ But since the EO was not enforceable, it acted more as a symbolic federal acknowledgement of the environmental justice movement. For activists taking a legal route of resistance against projects, using Title VI for their case is a popular option.

Literature Review

“Environmental justice” is defined by the US Environmental Protection Agency as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹⁰ The contemporary environmental justice movement is thought to have started in North Carolina in 1982 when an African American county decided to protest

⁷ US EPA, “National Environmental Policy Act Review Process.”

⁸ Clinton, Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994.

⁹ Bullard, “Environmental Justice in the 21st Century,” 2001: 152

¹⁰ US EPA, “Environmental Justice.”

the government bureaucrats who planned to relocate contaminated soil into their community.¹¹ Yet the environmental justice movement has not fully joined the mainstream environmental movement, which has been criticized by environmental justice advocates for whitewashing environmental issues. This distinction between environmental justice and environmentalism is apparent throughout my case studies and can be seen as the difference between environmental justice protests which “clearly focus on the eventual outcome and the idea that hazards should be fairly, equitably, and justly distributed, regardless of race or class,” and the NIMBY movement “which epitomizes the principles behind the ‘path of least resistance.’”¹²

I chose to research environmental justice through the lens of modern freeway construction projects because the field is relatively untouched. The United States is also at a unique time politically, with a federal administration taking a stronger stance against environmental justice than presidents have since the term was introduced politically by Clinton in 1994. Under the current administration, “the EPA has begun to walk back already anemic federal environmental-justice work, putting a stop to some civil-rights investigations and replacing or firing many of the scientists with deep technical knowledge of the subject.”¹³

While transportation equity and anti-freeway activism have been studied extensively on their own, there is little existing research on the two fields in relation to one another, specifically covering activism efforts against environmental injustice. The scholars in these fields have all contributed to my understanding of the issues, as well as left me with the questions which inform this research. *Highway Robbery: Transportation Racism & New Routes to Equity*, edited by

¹¹ Taylor, “Introduction: The Evolution of Environmental Justice Activism, Research, and Scholarship,” 2011: 280.

¹² Schelly and Stretesky, “An Analysis of the ‘Path of Least Resistance’ Argument in Three Environmental Justice Success Cases,” 2009: 370.

¹³ Newkirk II, “Environmental Racism Is Real, According to Trump’s EPA,” 2018.

Raymond A. Mohl and other key scholars in the field of transportation and environmental justice, discusses the ways in which transportation is racialized. Most chapters focus on public transit, discussing resistance movements to public transit inequities (the book itself is dedicated: “To Homer Plessy, Rosa Parks, and Freedom Riders worldwide”¹⁴) and it doesn't spend much time on resistance to freeway projects. Despite this, Mohl is one of the only scholars who discussed the fundamentals to resisting freeway construction projects.

In 2004, Mohl published “Stop the Road: Freeway Revolts in American Cities” which outlined the commonalities between successful freeway revolts in the 1950s-70s. First, movements needed “neighborhood activism” with “committed local leaders”; second, it was necessary to have support from “local politicians and from influential newspapers and journalists”; third, movements within cities with “strong and historic planning traditions, such as San Francisco” were more likely to find success; fourth, movements needed “legal action”; and fifth, success would only come with “a final shutdown decision from the courts” or “highest levels of the highway bureaucracy.”¹⁵ Mohl states that a grassroots movement was another important factor to a successful revolt, but “without these other ingredients, there was a very good chance that the freeway would get built anyway.”¹⁶

However, in all of his thirty-three pages on freeway revolts in the mid 20th century, the terms “Civil Rights Act,” “Title VI,” “environmental justice,” “Executive Order 12898” (in any of its titled forms), and “minority”/“Latino”/“Hispanic”/“Mexican” appear zero times. Mohl does spend some time discussing race in terms of the black communities that chose to resist freeway projects in their neighborhoods, but he only briefly touched on the intricacies of power relations

¹⁴ Bullard, Johnson, and Torres, *Highway Robbery*, 2004: vii.

¹⁵ Mohl, “Stop the Road,” 2004: 676.

¹⁶ Mohl, “Stop the Road,” 2004: 676.

that are fundamentally different between white and minority opposition movements. Beyond this gap, I found that many more recent community freeway resistance movements strayed from his framework enough to demand a reevaluation. While Mohl's paper did the work of describing certain revolts of the past, I wanted to understand what activists could do to improve their chances of success going forward. This paper in part works to update Mohl's argument, using modern cases and taking into consideration how and why any formal institutions that have arisen since the revolts in Mohl's piece have changed the dynamics of conflict around freeway projects.

Transportation infrastructure also turned out to be an excellent lens through which to look at environmental justice. There is legislation in place that should prevent or at least draw significant attention to environmental justice, yet new freeways are still being proposed which continue to commit the same environmental injustices as decades past. With grassroots opposition as a primary form of resistance, I was curious what tools were available to activists, and among these, which were most successful in ensuring success of the movement. I also wondered what accounted for the difference in outcomes of the resistance movements, why some community movements are successful in stopping a project or securing adequate mitigation measures while others are not. Is this difference in outcomes due to actions by the activists, factors out of their control, or a combination of both? And what can be learned from these successes and failures that can help inform future community anti-freeway efforts?

Drawing on Charles Tilly's framework for collective action, I analyze the *organization* of each resistance group and *opportunities* open to those groups. Using these three cases and nearly a dozen phone interviews with experts in the field, I found that while the aspects of a group's organization are important in determining the outcome, the

political opportunity available to a group—specifically the attitudes and priorities of the decision-making agency—is most critical to the success of a movement.

Significant Factors

Charles Tilly introduced a framework for understanding collective action, or “people’s acting together in pursuit of common interests,” in his 1978 book *From Mobilization to Revolution*.¹⁷ While his analysis includes five components of a movement (interest, organization, mobilization, opportunity, and collective action itself), I found that *organization* and *opportunity* in particular work to explain the outcomes collective action against a freeway proposal.

<i>Organization</i>	Timing	Did signs of opposition develop early, perhaps even before the NEPA process formally began? Did legal help join in support of the community early? Was there a strong sense of community within the affected area before the project was formally proposed?
	Cohesion	Did the opposition movement collectively represent a singular interest or perspective? Did the opposition movement effectively represent varying perspectives while maintaining the appearance of cohesion?
<i>Opportunity</i>	Project Framing	Was the state DOT unable to frame the project as helping the community? Were there reasonable and feasible project alternatives whose dismissal from consideration could be disputed?
	Local Context	Was there a clear history of environmental injustice in the affected area? Were local politicians, businesses, or socialites on their side?
	State and Federal Priorities	Was the federal administration at the time of resistance conscious of environmental justice issues? Was the federal agency/entity responsible for an investigation conscious of environmental justice issues?

¹⁷ Tilly, *From Mobilization to Revolution*, 1978: 7.

The *organization* of a movement focuses on the actions within the control of the group. As Tilly writes, “clearly one of the problems is to determine which features of an organization *do* make a difference.”¹⁸ The *timing* of efforts and *group cohesion* stand out as important aspects of group organization contributing to the outcome of an opposition movement. Timing is important since early involvement is one of the best indicators of success. Waiting to organize until the NEPA process has formally begun is often too late, because by then developers are usually more invested in their plans making them harder to block. Similarly, the cohesion and structure of the opposition is critical to the outcome of the effort. Splinter groups and the lack of strong leadership to ameliorate local conflicts and communicate demands can weaken the oppositional effort. In short, too many conflicting perspectives detract from others viewing the opposition movement as an organized, cohesive voice and eliminates the possibility of a power in numbers.

While *organization* includes factors mostly in the control of the community, *opportunity* focuses on things beyond the control of the communities: the political, social, and economic context surrounding the community group, and “the relationship between a group and the world around it.”¹⁹ One of these is the *design* of the freeway project and the way it is framed by the state DOT. A project might be framed as a community revitalization project, making it harder for a community to argue is actually hurting them. The *context* of the local community, including their history with environmental injustice and any publicity or allyship which appears, also affects the outcome. A neighborhood with a history of environmental hazards is able to claim that a freeway project would contribute to past trends, which is harder for developers to justify than a singular environmental justice event. Context also refers to local attitudes towards the

¹⁸ Tilly, *From Mobilization to Revolution*, 1978: 7.

¹⁹ Tilly, *From Mobilization to Revolution*, 1978: 7.

project, and whether local politicians or other influential figures have stated their opinions about the project. Whether these individuals bring financial, political, or social power, local icons can have significant sway in the outcome of the resistance. Finally, the *state and federal priorities* (represented in the state DOT, state representatives, and the federal government) not only have significant authority over the project's design/framing, but can expose priorities that help predict the outcome of resistance. Title VI complaints, for example, are filed with FHWA who has the power to dismiss or accept a complaint, and then to determine the findings of any investigation if accepted. Title VI complaints cannot be taken to court, and thus their decisions cannot be appealed, lending significant say in the outcome of complaints to a federal agency, one of the main avenues taken by environmental justice activists.²⁰

In the next section, I will give background to the three cases and apply this framework to each, to ultimately make a claim for the factors most significant to the outcome of a movement.

Harbor Bridge

I use the case of Harbor Bridge in Corpus Christi, Texas as a case study of successful opposition. The features of the organization were well coordinated and the political opportunity was wide open when the group needed it.

Background. The Harbor Bridge proposal wasn't the first environmental injustice Hillcrest or the rest of the Northside community had suffered: the nearby Port of Corpus Christi brought in many sources of pollution, making Corpus Christi home to the highest concentration of oil refineries with nearby residents in the United States,²¹ and the two freeways built through the city all contributed to the industrialization of the once-residential area.

²⁰ Joel Minor, interview 2018.

²¹ Gaines and Haragan, "Complaint Under Title VI of the Civil Rights Act of 1964." 2015. 4.

In December of 2013, TxDOT submitted a DEIS for the Harbor Bridge relocation project, opening the plan up to public comment and federal agency review. The Obama EPA, which proved more open to environmental justice concerns than previous administrations,²² and other federal agencies responded with specific concerns about air, soil, and noise pollution, the impact the project would have on property values, and the mitigation measures proposed.²³ TxDOT revised and published their final EIS in November of 2014, which again the EPA and public critiqued, this time for TxDOT's faulty use of environmental health and demographic statistics in their EIS—instead of using the specific numbers associated with Hillcrest, TxDOT used regional stats which painted a far less severe portrait of Hillcrest than was accurate. In certain areas, the pollution in Hillcrest was four times as intense as the numbers used from the county as a whole.²⁴ The “affected population” was stated in the EIS as being 4.3% African American, accurate for the city of Corpus Christi, but looking at the Hillcrest and Washington Coles neighborhoods, the numbers rise to around 35% African American. For the determination of “minority” percentage in the project area, Corpus Christi was cited at 66.7%, but had the reviewers focused on the Hillcrest and Washington Coles neighborhoods as would have been appropriate the percentages would have been reported as 93% and 94% respectively.²⁵ Because environmental justice legislation is dependent on the demographic makeup of a community, these differences changed the way developers were required to frame their outreach and consider community concerns, ultimately making it easier for the project to succeed.

²² Yehle 2011.

²³ Tamez-Robledo, “EPA: Harbor Bridge study underplays potential Northside impact.” 2015.

²⁴ Tamez-Robledo, “EPA: Harbor Bridge study underplays potential Northside impact.” 2015.

²⁵ Gaines and Haragan, “Complaint Under Title VI of the Civil Rights Act of 1964.” 2015. 6.

In March of 2015, soon after the release of the FEIS, two Hillcrest residents represented by Texas RioGrande Legal Aid, Inc. filed a civil rights complaint with FHWA. The formal complaint made the case that beyond these statistical oversights, TxDOT was in violation of the Civil Rights Act of 1964 on the basis of “disparate impacts suffered by the Hillcrest and Washington Coles neighborhoods,” “inadequate public participation,” and “perpetuation of past discrimination.”²⁶ In response, FHWA assigned an investigator to the case, who quickly facilitated an agreement between TxDOT and FHWA, allowing TxDOT to proceed with their project while also taking into account the specifications of the complaint. In nearly record time, TxDOT agreed to address the complainants’ concerns by offering exceptionally high payouts to a voluntary resident relocation program. If they chose to go, Hillcrest homeowners would be given three times above market rate payout for their homes, and tenants would be offered subsidized rent for three and a half years.²⁷ For those residents wanting to stay, an agreement on air quality mitigation measures was made. This case is seen as an incredible success, and the next section will unpack the aspects of the mobilization’s organization and opportunity which lended themselves to the outcome.

Analysis. *Organizationally*, the timing and cohesion of the movement ensured their success. Long-term opposition to decades of pollution in the community meant that forces fighting for environmental justice were already in place. RioGrande Legal Aid, Inc. had represented the community for decades in challenging industry permits and advocating for mitigation against the the petrochemical companies’ common leaks and explosions, without much success. Even when the community won small victories over individual permits, “it was

²⁶ Gaines and Haragan, “Complaint Under Title VI of the Civil Rights Act of 1964.” 2015.

²⁷ Ryan Fitzpatrick, interview 2018.

like playing whack-a-mole.”²⁸ In short, Hillcrest had seen adverse effects of development decisions for many years, and RioGrande Legal Aid, Inc. had provided the community with reliable advocacy for years and supporting the a core of resistance already in place. The conversation was active, and community members were aware and opposed to the bridge relocation before the project was even officially proposed.

When the EIS was released, community leadership assembled the Citizens Alliance for Fairness and Progress (“The Alliance”) to focus on resisting the project. They met every week for over a year, welcoming a diversity of perspectives and requests from the community. Many of the older residents wanted mitigation measures to allow them to safely stay in their childhood, and often generations-owned, homes, while the younger folks tended to want adequate relocation benefits so they could afford housing outside of their low-cost and very polluted neighborhood.²⁹ According to Kelly Haragan of RioGrande Legal, the Alliance advocated for all voices while maintaining a cohesive, representative, and open organization. They “came together with a unified voice,” and throughout the resistance, the Alliance was direct with what the community wanted from the project. “They had a clear ask,” Haragan explained.

The mobilization’s *opportunity* also set them up for success. While the Alliance did a significant amount of work towards their success, Harbor Bridge is also a great example of the factors out of the community’s control that can also benefit the movement: the project design, local context, and state and federal priorities all contributed to the ultimate success of the Hillcrest opposition movement.

²⁸ Kelly Haragan, interview 2018.

²⁹ Ryan Fitzpatrick, interview 2018.

The Harbor Bridge project was a relocation project; to remove the aesthetic disturbance the bridge provided to downtown Corpus Christi, the project would move the bridge exit into Hillcrest. The bridge needed rebuilding, but choosing Hillcrest couldn't be framed as benefiting the community since the state was choosing to take the disturbance and move it to the only African American neighborhood in the city. There were also several other alternatives besides the alignment through Hillcrest which TxDOT had deemed "reasonable and feasible" but ultimately rejected, which provided leverage for the neighborhood in getting greater benefits in return for choosing the more discriminatory option.

The local context was also conducive to success for the Alliance. The legacy of Jim Crow-era housing laws was evident in Corpus Christi, as Hillcrest was the only African American neighborhood in the city. Their long history of environmental injustice meant RioGrande Legal could make a case that Hillcrest was being subjected to repeated disparate impacts. If the history of environmental hazards in a historically black neighborhood wasn't enough, cornering off the fourth side of their neighborhood was a direct visual indicator of discrimination.³⁰

Finally, the priorities of the federal administration and state government helped Hillcrest succeed. When RioGrande Legal filed the complaint, it was met by a federal administration receptive to environmental justice concerns. The Secretary of the United States Department of Transportation (USDOT) at this time was an Obama appointee and had made his commitment to environmental justice clear. Upon receiving the complaint, USDOT sent investigator Ryan Fitzpatrick to Corpus Christi who immediately put the project on hold. With federal money on

³⁰ Ryan Fitzpatrick, interview 2018.

the line, TxDOT felt pressure to come to a resolution as quickly as possible. The Alliance had rallied support from RioGrande Legal, greater Corpus Christi, and now the federal government, leaving TxDOT to either seriously consider the requests of the Alliance or surrender the project.

In the end, TxDOT signed a resolution with USDOT agreeing on generous relocation allowances for the community members who chose to move, and air quality mitigation efforts for those who chose to stay. Their success is incredibly rare for resistance to freeway proposals, and because of this Harbor Bridge provides an excellent lens through which to view the organization and opportunity of other freeway opposition efforts.

Central 70

The case of Central 70 is important to include in this paper because held in contrast with Harbor Bridge, it begins to unmask which factors of resistance might be more significant in the outcome.

Background. In April 2017, the Colorado DOT (CDOT) received approval from FHWA on a \$1.7 billion project to renovate a ten-mile stretch of Denver freeway. This project, called “Central 70,” would have the most impact on the low-income and minority neighborhoods of Elyria-Swansea and Globeville, where the width of the freeway would be tripled, displacing nearly 200 residents and further subjecting the community to intense air pollution among other effects.³¹ The approval came after a November 2016 formal complaint with USDOT and FHWA from EarthJustice, an environmental advocacy legal group, on behalf of several Elyria-Swansea and Globeville neighborhood groups alleging CDOT of violating Title VI of the Civil Rights Act of 1964. Among the grievances articulated in the complaint were concerns about how public

³¹ McIntosh and Minor, “Complaint Against Colorado Department of Transportation Pursuant to Title VI of the Civil Rights Act of 1964.” 2.

comments were sought out and managed (not well, they said), as well as the inadequacy of the listed mitigation plan.³² The main mitigation measure of the project was to move the freeway below ground through Elyria-Swansea and Globeville. CDOT would build a park on top of it, but given the proximity to Swansea Elementary, air pollution was still an issue. The construction of a below-grade freeway meant that the city of Denver had to reevaluate their drainage system (resulting in a plan called Park to Platte Hill), upsetting the African American neighborhoods of Park Hill and City Park.³³

EarthJustice also brought up concerns about unmitigated air, soil, and noise pollution caused by the project. “Public comments repeatedly expressed concern about air quality impacts, and advocated for the need for a comprehensive health impact assessment,” the complaint stated. “But CDOT failed to conduct such an assessment, and, eight years after releasing the DEIS, still has not done so.”³⁴ The noise pollution caused by the project construction and the freeway itself were expected to be great, and while the neighborhood of Elyria will receive a noise protection wall, Swansea would receive no such benefit. Further, the project was predicted to disturb underground deposits of arsenic and lead from their neighborhood ASARCO smelter, a concern completely neglected in CDOT’s mitigation plans.³⁵

Because displacement was necessary for the project to proceed, CDOT would be required to compensate homeowners for their property, but CDOT calculated the value of Elyria-Swansea’s homes based on statistics more than three years out of date. Considering that

³² McIntosh and Minor, “Complaint Against Colorado Department of Transportation Pursuant to Title VI of the Civil Rights Act of 1964.”

³³ Joel Minor, interview 2018.

³⁴ McIntosh and Minor, “Complaint Against Colorado Department of Transportation Pursuant to Title VI of the Civil Rights Act of 1964.” 11.

³⁵ McIntosh and Minor, “Complaint Against Colorado Department of Transportation Pursuant to Title VI of the Civil Rights Act of 1964.”

Elyria-Swansea already has some of the lowest property values in the area, market value for those homes constitutes only a fraction of what it would cost to purchase a home in any other part of Denver. In other areas of mitigation, CDOT also agreed to contribute \$2 million to affordable housing projects in the area, but compared to the \$1.17 billion endeavor, their effort was “too small a drop in too large a bucket.”³⁶

In response to the complaint, FHWA conducted an investigation and reevaluation of the project proposal and responded in April 2017 with a Letter of Finding picked up by the *Denver Post* with the headline “Denver I-70 project isn’t perfect, but it’s better for civil rights than alternatives, feds say.”³⁷ But a few months later in July of 2017, two lawsuits were filed against FHWA, one claiming that a more just alternative had been wrongfully dismissed as “unrealistic” by CDOT, and the other asserting that the project didn't comply with NEPA, evident in the disproportionate impact on the Latino-majority neighborhoods like Elyria-Swansea.³⁸

But neither of these lawsuits were successful in court, and CDOT successfully secured funding for Central 70 by FHWA. The next section will look at the resistance to Central 70’s organization and opposition on their own as well as in relation to Harbor Bridge to understand which factors of freeway resistance might tend towards success.

Analysis. The *organization* of the Central 70 resistance was inferior to that of Harbor Bridge; activism came in later and the same level of cohesion was not present. While the failure of the opposition to Central 70 cannot be credited entirely to factors of the organization, the actions of the community did not match up to those of Harbor Bridge activists.

³⁶ McIntosh and Minor, “Complaint Against Colorado Department of Transportation Pursuant to Title VI of the Civil Rights Act of 1964.” 29.

³⁷ Murray, “I-70 Project in Denver Less Discriminatory than Other Options, Feds Say.” 2017.

³⁸ Murray, “Two New Lawsuits Challenge I-70 Project Ahead of Legal Deadline.” 2017.

First, the timing of the opposition was too late. Groups didn't organize until the DEIS was released in 2009, and the recent trend of gentrification³⁹ likely divided the community's interests. The lack of a cohesive voice made rallying for a single cause impossible. A large portion of Elyria-Swansea residents wanted to stay in their neighborhood (as compared to the small percentage of the residents of Corpus Christi) which meant mitigation asks were more complicated than a relocation allowance. Divisions also arose over the rerouting alternative and new interest groups formed when the drainage plan mitigating for the below-grade portion of Central 70 would negatively impact nearby African American communities.

While aspects of the organization were certainly neglected, some aspects of their *opportunity* allowed for the chance of a more hopeful outcome. Project design was not one of them. The project was framed as helping by repairing the unsafe infrastructure that the community was burdened with, leaving the challenge of disputing this up to the residents.⁴⁰ Alternatives for freeway realignment out of Elyria-Swansea were ruled out for various reasons, leaving the NEPA process as justification for any disparate impacts.

The local context, however, was partially on the side of the community. Elyria-Swansea, which is 83.8% Latino,⁴¹ had a clear history of environmental hazards. The original I-70 viaduct built in the 1960s split the neighborhoods in half and the pollution caused by the freeway resulted in severe health problems for the residents. Retired smelters left their community's soil contaminated with lead, resulting in a large concentration of Superfund sites in Elyria-Swansea.

³⁹ Schrader, "As Denver's Neighborhoods Gentrify, the Poor Are Pushed to New Pockets of Poverty." 2017.

⁴⁰ "Draft Environmental Impact Statement for the Central 70 Project." 2008.

⁴¹ McIntosh and Minor, "Complaint Against Colorado Department of Transportation Pursuant to Title VI of the Civil Rights Act of 1964." 13.

Now, their community is the “most polluted zipcode in Colorado.”⁴² However, local attitudes towards the project were unfavorable for their success. With Denver potentially considering a bid for hosting the 2030 Winter Olympics, infrastructural improvements like Central 70 were prioritized by city and state leadership.

The state and federal government’s priorities ultimately matched the outcome of the project. Much like Harbor Bridge, the Central 70 formal complaint to FHWA by EarthJustice was received during the Obama administration by an agency receptive to environmental justice issues. Like Harbor Bridge, the agency sent an investigator to Denver. However, President Trump was elected the same month and as soon as he came to office, the community heard progressively less from FHWA, until finally a Letter of Finding indicating the project’s approval was released in April 2017.⁴³

Many factors of Central 70 differentiate the project from Harbor Bridge. That said, it is significant that Central 70 activists reached the stage of a Civil Rights investigation, only to be stopped by a change in administrative priorities. It is impossible to claim that the outcome would have been different had the federal priorities remained the same, but the case of Central 70—like all of these cases—is most helpful viewed in context of the others.

South Mountain Freeway

The case of South Mountain Freeway deviates from the first two cases in terms of their chosen method of resistance. While the activists against Harbor Bridge and Central 70 both filed a civil rights complaint with FHWA, those working against South Mountain Freeway took a legal

⁴² McIntosh and Minor, “Complaint Against Colorado Department of Transportation Pursuant to Title VI of the Civil Rights Act of 1964.” 13.

⁴³ Joel Minor, interview 2018.

approach critiquing the state's compliance with the NEPA process. With variables so different from the other two cases, South Mountain Freeway provides a different perspective of the variables which influence the outcome of a project.

Background. The South Mountain Freeway was proposed to run along the edge of Phoenix, creating a 22-mile connection between two points of the area's ninety-degree angle segment of I-10. Planners claimed this freeway would increase mobility for residents living far from present I-10 access, improving access to employment opportunities. It would also bring jobs to the area through an increased demand for gas stations, restaurants, and attractions along the new route.⁴⁴ The study area had a high percentage of low-income and minority residents, but most significantly, a majority of the proposed freeway would run along the border of the Gila River Indian Community reservation, a sovereign nation who voted internally in support of a "no build" alternative.⁴⁵

The project was first proposed in 1983, and was partially funded by voters a couple of years later. By 1996, however, construction was officially delayed as the voter-approved funding from over a decade prior was now insufficient. But five years later, ADOT began the formal NEPA process anyway and in 2004, voters passed a half-cent tax increase which in part ensured funding of the South Mountain Freeway.⁴⁶

With funding secured, ADOT proceeded with NEPA, releasing their DEIS, FEIS, and ROD for the project in 2013, 2014, and 2015, respectively. After the release of the DEIS, the regional chapter of the Sierra Club and one community group, Protecting Arizona's Resources and Children (PARC), hired a local attorney to assist in providing comments to ADOT in

⁴⁴ "Draft Environmental Impact Statement for the South Mountain Freeway Project."

⁴⁵ GRIN Staff, "Gila River Voters Say No To Loop 202 Extension," 2012.

⁴⁶ "South Mountain Freeway Historical Documents - NEPA Phase."

opposition the chosen route. The Sierra Club and several other opposition groups joined forces with PARC after the ROD was released to file a lawsuit against ADOT, first for a restraining order to halt the project.⁴⁷ At the same time, the Gila River Indian Community filed their own lawsuit, but the courts combined the two into one case.⁴⁸ When they didn't win a restraining order, they appealed to the 9th circuit where, again, their claims lost, this time based on merit.⁴⁹ With the ROD published and the courts on their side after decades of planning, funding uncertainty, delays, and litigation, ADOT began construction on the South Mountain Freeway in early 2017.⁵⁰

Analysis. The *organization*, including timing and cohesion, of the resistance to the South Mountain Freeway project was too lacking to have led to success.

First, the timing of the opposition was too late. The first signs of active, organized opposition to the project came in 2013 with the release of the DEIS, although the regional branch of the Sierra Club can trace their opposition to the project back to the 1980s when the idea was first circled. Before ADOT released their DEIS for the project, they assembled a Citizens Advisory Council to involve the community before decisions were solidified in documents, but Sandy Bahr, Director of the Sierra Club's Grand Canyon Chapter, and Pat Lawlis of PARC echoed each other in feeling that the Council was only a formality so ADOT could check the 'community outreach' box.^{51 52}

⁴⁷ Holstege 2015.

⁴⁸ Humetewa, SMF Motion For Summary Judgement Ruling 08/19/16, 1.

⁴⁹ Hoyt, Fletcher, and Tallman, SMF 9th Circuit 12/08/17 Ruling. 2017.

⁵⁰ "South Mountain Freeway Construction Information."

⁵¹ Pat Lawlis, interview 2018.

⁵² Sandy Bahr, interview 2018.

Additionally, any type of cohesion was entirely absent within the movement. There were around ten community groups opposed, all sharing their own versions of their opposition to ADOT and the press. PARC, led by Pat Lawlis, was the lead plaintiff on the lawsuits against FHWA that failed in district court and again in the 9th circuit. While most of the groups signed onto the lawsuit together in support of the complaints made by PARC, there was an incredible diversity in their goals.⁵³ On the Gila River reservation there were ideological divisions, with some strongly in favor of bringing the freeway onto the reservation (likely reasoning that they would be granted more autonomy in the planning process, with an added bonus of increased casino traffic), a few in support of ADOT's off-reservation plan, and a plurality advocating for a no-build alternative.⁵⁴ Off reservation, PARC and other groups were opposed on the basis of air quality, while the Phoenix Mountain Preservation Council, for example, was in the fight to protect the mountain itself.⁵⁵ These differences made it hard for the opposition to rally on behalf of one fight, and their lack of cohesion ultimately contributed to their failure.

In terms of *opportunity*, community groups and national advocates alike were angered by the outcome and felt as though their objections to the project were disregarded throughout the planning process, NEPA, and by the legal system and state agencies later on.

The framing of the project was executed in such a way that highlighted the alleged benefit to the community. The DEIS explains that “analytical results indicate the proposed action would benefit all populations in the Study Area in general by reducing traffic congestion, enhancing accessibility, and supporting local economic development plans.”⁵⁶ Similar to Central

⁵³ Pat Lawlis, interview 2018.

⁵⁴ GRIN Staff, “Gila River Voters Say No To Loop 202 Extension,” 2012.

⁵⁵ Pat Lawlis, interview 2018.

⁵⁶ “Draft Environmental Impact Statement for the South Mountain Freeway Project,” 2013. 4-38.

70, the burden then fell on the community to explain the ways in which the lead agency was incorrect in this claim. Similarly, there weren't really any reasonable and feasible alternatives to the project, leaving ADOT with the upper hand once they had successfully argued the need for the project at all.

In terms of local context, the history of environmental justice was not as present as it was in the first two cases. While there is no doubt that the reservation makes the area an environmental justice community, there is no history of severe environmental hazards focused on the population like the residents of Hillcrest or Elyria-Swansea suffered. The lack of local support for the opposition also fueled the project forward. Maricopa County is heavily conservative, and while the current mayor of Phoenix is a registered democrat, his promise to oppose the SMF at all costs when he was a city councilman went neglected when he became mayor.⁵⁷ Current and past council members, too, have dodged any accountability to help stop the freeway.⁵⁸

The state and federal context also played a role in determining the outcome of the opposition. The history of unpredictable funding likely made finances a key stressor in the planning process, and might explain why ADOT wanted to move as fast as possible once funding was secured to make sure it didn't run out again. This, combined with the historically freeway-centric vision of ADOT (“the ‘Arizona Department of *Roads*,’” as Bahr calls it⁵⁹) set the resistance up for the eventual failure against the South Mountain Freeway.

⁵⁷ Pat Lawlis, interview 2018.

⁵⁸ Pat Lawlis, interview 2018.

⁵⁹ Sandy Bahr, interview 2018.

Discussion

All three cases represent the diversity of variables at play in the process of resisting freeway construction projects. Harbor Bridge is a good example of a “perfect” resistance in terms of their organization and opportunity, but looking at the case in isolation does nothing to tell us about trends. A departure in characteristics from this successful resistance helps us understand which aspects and variables might matter most in the outcome. Experts closely involved with Central 70 observed that the change in presidential administrative priorities aligned with the project’s approval, rendering federal agency priorities the most influential in the outcome of the resistance.

The priorities of the agency with absolute decision-making power in any investigation are one of the most important factors to the outcome of the community resistance. Hillcrest’s complaint with FHWA was met by a receptive USDOT who quickly dispatched an investigator. Supported by a Democratic federal administration and agency, the investigator’s conclusions ultimately resulted in a mitigation agreement supported by most. Meanwhile, Central 70’s opposition was not nearly as lucky. In response to their Title VI complaint, FHWA sent another investigator down to Denver, but after the change in federal administration and the leadership at the DOT, the community stopped hearing from the investigator until the project was approved.⁶⁰

The South Mountain Freeway is an excellent case to emphasize the importance of resistance method. As Dan Sherman points out in his book *Not Here, Not There, Not Anywhere: Politics, Social Movements, and the Disposal of Low-Level Radioactive Waste*, framing the resistance as an “injustice” helps gain support for the movement because of the accusations and

⁶⁰ Joel Minor, interview 2018.

assumptions associated with the term.⁶¹ Since the South Mountain Freeway initially challenged the NEPA process in the legal system rather than filing a Civil Rights Complaint like Harbor Bridge and Central 70, the decision-making power was held by the courts. While their losses were at the hands of the court, the supposed impartiality might indicate that perhaps the venue pursued for opposition is just as important as the claims made against the project.

Conclusion

In this essay, I applied Charles Tilly's framework of collective action to the politics of freeway resistance movements to understand the characteristics of successful and unsuccessful opposition. I found that while aspects of a group's organizational capacity (namely their timing and cohesion) were important to the outcome, the political opportunity available to them—specifically the attitudes and priorities of federal government—was most critical to the success of a movement.

Every expert I spoke to in the field had a range of critiques and suggestions for how to ameliorate the pattern of exploitative freeways through minority neighborhoods. These, again, fell nicely into Tilly's framework, either addressing the barriers to better organization or barriers to better opportunity. I will first address the barriers to *opportunity* (an institutional problem), followed by a discussion of the barriers to *organization* (a problem with grassroots and real-world application of theoretical knowledge) along with a sampling of the proposed solutions.

The problem of environmental justice represents larger institutional power dynamics. For example, using public comment as the primary (if not only) indicator of dissatisfaction among a

⁶¹ Sherman, *Not Here, Not There, Not Anywhere*, 2011.

community, the federal government ignores the ways that meeting times and locations, language barriers, immigration status, and time demands might prevent residents of minority communities from engaging with the political process. Clinton's executive order prompted the DOT and EPA to introduce criteria for NEPA to help lower these barriers to participation (holding meetings in community hubs like churches, making translators available, providing documents in the languages spoken in the community, etc.), yet there are still barriers.

To improve chances for success in freeway revolts, future institutional changes must ensure grievances are heard, internalized, and incorporated in plans by those in power. For example, NEPA currently doesn't allow public transit alternatives to be considered alongside freeway alternatives in EISs. Transit options are considered "out of the scope" of freeways, even when they address the same needs that a freeway would. Allowing, or even better—requiring, state DOTs to incorporate transit options into their EISs might allow for better vetting of freeway projects. A hurdle to this is the funding source, primarily since gas taxes can only be used to fund freeway construction. If revenue from gas tax was instead allowed to finance public transportation projects, perhaps profitable industry would form around public transportation infrastructure in the way it has with freeways.

Another path of reform considers the legal system which prevents complaints (specifically Title VI complaints to FHWA) from being heard. There is history of federal agencies dismissing complaints with what appears to be limited reasoning, and further, complainants are not permitted to appeal the decisions of civil rights complaints. Allowing Title VI complainants to appeal a decision they feel was wrongfully made is only democratic.

Another way to improve chances of success for environmental justice communities is by addressing organizational flaws in resistance movements. Of the interviews I conducted with activists working on Central 70 and South Mountain Freeway, most echoed feeling completely justified in all of their organizational actions, and blamed the movement's failure on components of opportunity. Teaching the ways in which activists can improve is challenging because, much like power dynamics are solidified in institutions, their habits and beliefs are ingrained.

The first area for improvement is timing. To ensure early involvement in freeway resistance, it is imperative that neighborhoods establish a sense of community or leadership base before a freeway is even proposed, though the methods for approaching this should be different for every community. Second, a lack of cohesion is a major problem facing unsuccessful resistance movements. Drawing from the Alliance against Harbor Bridge, the framing of the opposition's mission should be carefully considered. Finding a common enemy can aid in this process; had the South Mountain Freeway organized the ten or so groups against the freeway project rather than taking on niche areas to oppose perhaps they would have been more able to organize their goals and be taken more seriously by federal agencies.

For at least the next two years, activists are left to face the least environmental justice-conscious federal administration since Clinton acknowledged the issue of environmental justice on a federal level.⁶² If federal receptiveness really is one of the keystone determinants of success for a resistance movement, then freeways might just continue to exploit as they have for decades. Serious pushback to instances of environmental injustice is of course still helpful.

⁶² Azari, "How Trump's Start-Of-Term Strategy Differs From Past Presidents'," 2017.

Media attention or non-partisan bureaucrats in federal agencies can inspire justice, even on a small scale or case-by-case basis. Discussions of environmental and social justice continue to raise awareness, and encouraging popular support for the movement may be what is needed to create systemic change when political opportunity does open up. The next time the United States has the opportunity to seriously address the problem of environmental injustice, however, it is the responsibility of those in power to use that moment for significant growth in ethical legislation and grassroots empowerment.

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