

## **Why Economics Does Not An Ethics Make: A Case Study**

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### **Abstract**

**This essay is a multidisciplinary case study of environmental injustice. It demonstrates that misuse of the environment can ultimately impact humans unjustly and further that attempts to remediate injustice in one area merely shifts the burden of injustice to others. After providing the historical, sociological and scientific facts surrounding the 50-acre site, an ethical assessment is presented. It was determined that the actors in this case study were not employing any ethical valuing in their decision making process, but rather relied upon economic values to make their choices. The authors then suggest that judging them from within their own economic valuing system that the actors' decisions had failed to meet their own values, i.e. good economics.**

### **Introduction**

This project is the culmination of University of North Florida students' working as a team to produce an extensive study regarding the current state of a 50-acre site located north of West 33rd Street, west of Pearce Street and southeast of Moncrief Creek in Jacksonville, Florida. Utilizing a multidisciplinary research approach, the students assess the human use of the land at that location and the results that such treatment affected upon humans and the environment in the specific area. Located upon this site are the Bessie Circle apartments west of Mary McLeod Bethune Elementary School (also located on the site), the Moncrief Village and Palm Terrace apartment complexes which lie in the northern part, the Moncrief Creek running through the northwestern section, and an electrical substation.

The main concern of this study is to ascertain whether recent past events occurring on this land site are an instance of environmental injustice. Environmental injustice might be a misnomer, as it does not mean that the land itself is the recipient of unjust behavior, but that the land use generated unjust treatment to other humans. The fact that low-income housing and schools provided for such families are built on "cheap" land provides the framework for the assumption of partial treatment. The land is "cheap" because there is something wrong with it. Hence, human misuse of land leads to further misuse of humans. This is the position the writers support by considering the historical use of the land, the economic and scientific factors generated from such use and finally providing an ethical appraisal.

The initial use of the land as a waste dump site was the first problematic choice made, prior to establishing a school upon that very land later. Yet, waste management is a crucial human need. The first solid waste management system in the United States emerged in the 1890s to counteract the sanitation problems of an industrializing and urbanizing nation. The most popular methods of waste disposal were land-filling, ocean dumping, and incineration. Prior to 1968, the core city of Jacksonville had separate waste management systems than the other areas of Duval County. Much of the solid waste operations were maintained by the city's municipal collection agency while the rest of the county depended on a franchise system. There were two municipal solid waste incinerators (MSW) serving the city: The 5th and Cleveland Street MSW incinerator and the Forest Street MSW incinerator. Both of the incineration sites were operational from the 1940s until the 1960s. After consolidation of the city and the surrounding county in 1968, the Utility Regulatory Board assumed control of the solid waste collection on January 1, 1973 and terminated the franchise contracts that continued to serve older sections of the county.<sup>1</sup> The Florida Solid Waste Management Act of 1988 provided the framework for the future management of solid waste in Florida. A fundamental provision of the Act is the establishment of the Department of Environmental Regulation (DER) as the agency with primary responsibility for developing the state program, adopting all regulations and standards, permitting facilities, and managing a number of grant programs.<sup>2</sup> Currently, consolidated Duval County employs both public and private solid waste management systems to serve certain portions of the county. The Solid Waste Division is responsible for disposing of trash, planning, building and operating sanitation and solid waste management facilities, and manages solid waste removal. Franchise agreements provide services ranging from solid waste collection, hauling, and disposal waste from residential, commercial, and industrial customers. Jacksonville/Duval County has contracts with three private garbage haulers for residential collection of garbage, yard waste and recycling services throughout the General Services District. Disposal Operations of the Solid Waste Division manages landfill operations, the Household Hazardous Waste program, landfill closures, and maintenance of closed landfills. Sanitary Services monitors and collects litter and illegal dumping along the streets and public rights-of-way.<sup>3</sup>

There is a 50-acre Brown's Dump site that is located north of West 33rd Street, west of Pearce Street and southeast of Moncrief Creek in Jacksonville. The area includes Mary McLeod Bethune Elementary School, an electrical substation and several single

and multi-family residences. From 1949 to 1953, the site was an active landfill used for the disposal of ash from the City's municipal solid waste incinerator. Investigations have shown elevated levels of hazardous substances that include lead and arsenic. EPA has concluded that surface soil, sediment, surface water and groundwater have been impacted by releases at the site. The City of Jacksonville operated a municipal waste incinerator at the site from 1943 to 1969. Reportedly, ash was disposed of in several areas including what is now Emmett Reed Community Center. The area includes Emmett Reed Park, the community center containing a Head Start School with an associated playground, a baseball diamond and basketball courts and residential areas. Lonnie C. Miller, Sr. Park is located on Price Road near the intersection of Moncrief Road and Soutel Road. The Park includes a playground, public restrooms and several picnic shelters. Contaminants of concern include but are not limited to lead and arsenic.

This case study should provide somber reconsiderations of land use given the hidden 'costs' when trying to restore biotic integrity. All the more so given that superfund sites are fast becoming a gold mine for housing due to the low cost of the land. "At Jacksonville's Federal Superfund Sites - polluted so badly they qualify for specialized government attention - everything from water pipes to barbed-wire fences have been built to prevent human exposure to the chemicals. But even after decades of clean-up in some cases, site managers say it could be years before the Environmental Protection Agency will be able to close the books and consider the areas safe for redevelopment. That hasn't stopped land buyers from looking nearby. A Times-Union real estate record analysis shows sales prices are growing within one mile of the Superfund Sites."<sup>4</sup>

### **Mary McLeod Bethune Elementary – A Case Study**

The prevailing racial attitude of Jacksonville, Florida in the 1950's was that of any typical town in the 'Deep South'. Segregation was the norm and African-American's were treated with severe disrespect, and often experienced brutal treatment. The racially loaded term "Negro" was used to denote anyone of African descent and typically used in a derogatory way. There were not many citizens who opposed this behavior and those who did were often perceived as outcast. Throughout the rest of this essay the terms 'negro' and 'white' are used in order to convey the historical context of the past participants.

Around the time the Mary McLeod Bethune Elementary School was constructed the city and school board of Jacksonville, FL as well as school boards around the country were dealing with the consequences of *Brown v. Board of Education*. The historical case of *Brown* took place in Topeka, Kansas where segregation was the norm. Within the Topeka School District there were only four 'negro' schools compared to the eighteen 'white' schools, leaving African-Americans little choice as to where they went to school, which lead African-American parents and citizens to file suit.<sup>5</sup> The case went all the way to the Supreme Court of the United States where a court decision was made in 1954:

Segregation of white and Negro children in the public schools of a State solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal

protection of the laws guaranteed by the Fourteenth Amendment—even though the physical facilities and other “tangible” factors of white and Negro schools may be equal.<sup>6</sup>

The Supreme Court of the United States also concluded that:

Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other “tangible” factors may be equal. The “separate but equal” doctrine adopted in *Plessy v. Ferguson*, 163 U.S 537, has no place in the field of education.<sup>7</sup>

The result of *Brown* severely threatened the status quo of many American cities, including Jacksonville, Florida. There are some instances that point to retaliation of ‘whites’ against ‘Negros’. Schools were named for Civil war “heroes” like J.E.B. Stuart, Robert E. Lee and even the founder of the KKK Nathan Bedford Forest. There is, on the record, a suggestion of a member of the school board to build a new “Negro” school in a swamp and evidence of sabotaging the budgeting process to make it impossible to build a school in Baldwin. In general, there are regular assaults on African-Americans by local redneck youth with tacit police approval, common police brutality and even outright murder. Though nothing as obvious as lynching was occurring at this time, it is common knowledge, and clear from the documentation of the time that the powers in the city and most of the white people living in this otherwise beautiful city were racist.

Given the mood of the 1950’s in Jacksonville, that the Duval County School Board would build a school intended for minority use on a toxic ash dump seems unsurprising. Another example of a school being built on a controversial site can be found in Jacksonville Beach where the school intended for African-American students was built on what the locals referred to as “the hill”. All of the segregated African-American community, including all of the public housing, was built here. It is referred to as ‘the hill’ because it is the site of all the landfills in the city of Jacksonville, Florida.

The minutes of Duval County School Board meetings at this time include instances of racism prior to this particular situation at Mary McLeod Bethune Elementary, which is consistent with the history of 1950’s in Jacksonville, Florida. Within the minutes there are references to several African-American schools that were kept in unsafe conditions. The school board decided to make minor repairs, rather than acquire new land for to completely rebuild these schools, whereby offering a permanent solution to many of the problems. An example can be found within the minutes of January 5, 1950: The Duval County School Board discusses the possibility of building another school "through the Government Slum Clearance Program." During the same meeting, the president of the Urban League, VC Johnson, stated that the Negro Schools were fire hazards, and kept in unsafe conditions. The School Board told Johnson, it would be far easier and more cost-effective to simply repair the schools, because acquiring land was such a hassle.

In addition to the enforcement of the implications from the *Brown* decision, the Federal Government also implanted the Government Slum Clearance Program. The term

'slum' was defined in April 1950, and revealed that these areas were detrimental in more ways than one:

"The term 'slum' means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals".<sup>8</sup>

The Duval County School Board decided that the Slum Clearance Program would be both economically and socially beneficial: "a Slum Clearance and Urban Redevelopment Plan in The City of Jacksonville...would result in the greater benefit to our community at the least cost." The School Board could acquire land through the program in "slum" areas to build low income schools. Later, in the same meeting, board member Mrs. DeWitt stated that "it isn't up to the Board to decide whether or not the slum clearance program is approved, but it is up to the Board to take advantage of any situation where tax-payers money can be saved." Mrs. DeWitt's statement indicates that there were some concerns about the program. The School Board decided it was not for them to decide whether something is good, regarding health or safety, but only based on what is fiscally responsible.<sup>9</sup>

In another meeting, the School Board decides to build a "Negro School" next to an incinerator. During the "Special Meeting," held October 18, 1950, the School Board spoke of an effort to swap property for a parcel of land near an incinerator for a "Negro School."<sup>10</sup> Whether or not the 1950 School Board was aware of a possible health risk, they were aware that there was an incinerator being used on the land. The referenced school was not Mary McCloud Elementary, yet the information reveals the social injustice consistent within the 1950 Jacksonville School Board.

The Duval County School Board acquired 14 acres of land in 1955 through condemnation procedures, the land became the site of the Mary McLeod Bethune Elementary School. The land they acquired had been previously used as an "operating land fill used to deposit ash from the City of Jacksonville's 5<sup>th</sup> and Cleveland municipal solid waste incinerator...when the incinerator was not functioning, municipal waste was brought directly to the site".<sup>11</sup> It has not been confirmed whether the Duval County School Board, or the city of Jacksonville, were aware of a possible health hazard being risked from building a school upon a former landfill. However, "in May 1999, the Environmental Protection Agency (EPA) sent Special Notice Letters to the City of Jacksonville, Duval County School Board, and JEA identifying them as Potentially Responsible Parties (PRPs) to the Brown's Dump site".<sup>12</sup>

There was another problem in addition to the hazardous conditions of the school. A delegation of African-American citizens complained of the speed at which the schools were being built, and were quickly brushed aside. At a Duval County School Board meeting held September 19, 1951: "A delegation of Negro citizens, led by S.D. Hull, complained of the slowness in getting new schools under way, especially a new high school. Both Mr. Boyd and Mr. Lechner assured the group that all possible was done to expedite the matter."<sup>13</sup> There were other problems as well, "African-Americans in suburbs often traveled long distances to school. Some students lived so far away that the school district financed their daily travel on Greyhound buses."<sup>14</sup>

The history of Jacksonville, Florida and the minutes of the Duval County School Board meetings show that African-Americans were undeniably treated different, often in a degrading fashion. This is proven through the School Boards attempt to build African-American schools on questionable land, such as swamps, landfills and ash sites. It is further proven by the racial history of Jacksonville, FL where numerous examples of racism can be found.

In the 1960's, (the functioning time of Mary Bethune Elementary) there was a considerable discrepancy between the incomes of black and white families. "Whites earn considerably more than African-Americans in 1960, the median income for whites was \$5,340, but for African-Americans it was only \$3,102."<sup>15</sup> "The period from 1960 to 1967 saw some Whites convinced that things had to change. If demographic trends continued, Blacks would become the majority in the cities by the mid-1970s. Also, the urban core was rapidly deteriorating as the economic base left and moved to the rapidly expanding suburbs. The increase of Black political power in Jacksonville concerned the remaining Whites. By 1967, Jacksonville's voters possessed a system racked with political corruption, financial instability and the specter of minority domination." "Like most Southern school systems, Duval County ran a totally segregated program. Of the 100,351 students in the county's school system in 1960, about one quarter were black."<sup>16</sup>

Thirty years later the discrepancy still exists and has grown tremendously. The median family income for Brown's Dump Site was \$17,814 compared with the average white American family who has incomes ranging from \$55,000-65,000. Today 3,930 people reside at the 50-acre site. Out of those people, 6% are white, 90 % black, 1.5% Hispanic, and 2.5% are other.<sup>17</sup>

Schooling and teacher salaries for 'negro' schools around the functioning time of Mary Bethune Elementary were lower than the comparable 'white' schools averages. "Duval county spent just \$ 253.04 per-pupil in 1960-1961, the lowest expenditure in the state."<sup>18</sup> Florida allocated \$800 per teacher for annual salaries in 1938. However, African-American teachers averaged \$510, with some receiving as little as \$30 per month. In 1941 the *Baltimore Afro-American* reported that Floridian African-American teachers earned 48 percent of White teachers.<sup>19</sup>

Residential Facts and Comparisons regarding 45th and Moncrief (the general real estate area of Brown's dump site) and a very similar neighborhood, Royal Terrace show that while the land values and annual salaries between the two areas are largely similar, school district, per pupil expenditures still remain unequal. The types of housing that can be found in the Brown's dump area are mostly apartments and individual housing. The average sale price of a home in this area is around \$50,000.<sup>20</sup> This particular area houses approx 4,000 residents with an average income for residents of approximately \$17,000 per year.<sup>21</sup> The grade school in this area was Mary Leod Bethune Elementary. This school had a budget of \$3,227 per pupil for instructional expenditures in 1990. Royal Terrace housing is also around \$50,000 and houses almost exactly the same amount of people.<sup>22</sup> Sixty-five percent of the residents in Royal Terrace have low to moderate income around \$22,000 per year.<sup>23</sup> The only difference in these two neighborhoods is the elementary schools. The children that live in Royal Terrace attend John E. Ford Elementary School. In 2003 their pupil expenditures were \$7,476 per student.<sup>24</sup>

In 1999 after a concern from parents about their children's health, a loss of \$385,000 in funding occurred because many students were transferring. Students were given a choice of relocation between: Beauclerc, Mandarin Oaks, Norwood, Rufus Payne, Andrew Robinson, Susie Tolbert, Twin Lakes academy and Carter G. Woodson elementary school. Two teachers from Bethune were expected to help alleviate some of the financial burden placed on the school. One-hundred-sixty-two students were expected to transfer from Mary Bethune.<sup>25</sup> It took several years for the school to be shut down after findings concluded that the land was indeed a health hazard. Regarding the reason for school closure, in a December 8, 2000 letter from the City to the School Board, the City made the following recommendation:

"[t]he present schedule would require remediation efforts to start this summer, with no guarantees that work would or could be completed before the start of the school year. Accordingly, it is my recommendation that the school not be opened for the 2001-2002 school year."<sup>26</sup>

Some community members expressed concern that their minority community is being treated differently with regard to the proposed cleanup approach. In January of 2005, a group of 50 protestors from Citizens Organized for Environmental Justice gathered outside of Jacksonville's City Hall to protest the city's failure to clean-up five severely contaminated sites located in African-American neighborhoods.<sup>27</sup> The protestors claimed that "although the city in 1999 acknowledged dumping highly toxic incinerator ash throughout Jacksonville's black neighborhoods, little or nothing has been done in the interim to reduce the risk to residents living with the pollution."<sup>28</sup> The Mary McLeod Bethune Elementary School is located on one of the five sites, the Brown's Dump Site, and citizens argued that although the lead levels at that site are "170 times above those accepted by the federal government in residential neighborhoods...the daily exposure continues. Families still live on the ash site. Children play there."<sup>29</sup> The African-American community of Jacksonville feels that the clean-up efforts are substandard because the sites are in minority neighborhoods. The EPA's response to the community states that the EPA "is committed to the fair treatment 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. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear disproportionately high and adverse human health or environmental effects resulting from Federal agency programs, policies, and activities. The remedy selection process has been undertaken in full, compliance with this definition of fair treatment."<sup>30</sup> Aside from concerns that minority groups were being treated differently regarding clean-up, there were a few other community concerns. Some community members expressed concern that contamination above the RGs would remain—at depths below 2 feet and underneath trees, houses, and roads—after installation of the soil cover and associated soil excavation was complete. The EPA responded that the prevention of human exposure to surface soil is provided by the 2 feet of uncontaminated soil, and along with the Institutional Controls, constitute a protective remedy by eliminating and/or managing future human contact with subsurface or sub-structure contaminated soil. "Use of a thickness of 2 feet of clean soil to break the exposure pathway is actually very

protective.”<sup>31</sup> If contamination above the RGs is not removed to the full depth of contamination above the RGs on a property, “. . . a permanent barrier/marker that is permeable, easily visible and not prone to frost heave, should be placed to separate the clean fill from the contamination. . . Examples of suitable barriers/markers include snow fencing (usually orange), a clean, crushed limestone layer, and geofabric.”<sup>32</sup>

In order for the Environmental Protection Agency (EPA) to declare any location that is suspected of being a Brown’s Site they require many tests to prove it. Some of the tests include soil boring, which is when soil is extracted from the ground for chemical, biological or analytical testing. They also take samples of sediment to test for toxicity levels. Other approaches the EPA use for tests are from water samples. They make collections from groundwater, surface water and install shallow monitoring wells. Mary McLeod Bethune Elementary School in Jacksonville, Florida has been subject to these evaluations since the initial assessment in November 1985. The EPA Environmental Services Division conducted a Site Screening Investigation (SSI), and collected three surface and subsurface soil samples, three sediment samples, three groundwater samples and two surface water samples. The results produced were high levels of lead. Laboratory work was conducted but on the Hazard Ranking System, Mary McLeod Bethune Elementary School was ranked to be low priority. Ten years later, in April 1995, the Roy F. Weston, Inc., Technical Assistance Team (TAT) was brought in and collected eight soil samples, and one surface water sample. These samples showed a rise in the levels of lead from the previous SSI. In November a more thorough contamination investigation was conducted. The Jacksonville Solid Waste Division collected sixty-two soil boring samples, installed eight shallow monitoring wells and collected surface water and sediment samples. The Correction Action Report (CAR) concluded that a health risk evaluation was in order from the results they received from the tests. The evaluation however, showed that there was not a significant health risk, thus they could not support the idea of removing the contaminated soil. Alternate plans were made, such as fencing in the contaminated area to restrict access and exposure to the area.

Three of the contaminants found in Brown’s Dump Site can cause neurodevelopmental deficits— lead, arsenic and dioxin. While the majority of deficits occur due to prenatal exposure, many deficits can be seen due to postnatal exposure as well.<sup>33</sup>

When a pregnant mother is exposed to arsenic or especially lead; it can affect a child’s language skills, motor skills and intelligence. Since this is the time period where the greatest physical changes occur, prenatal exposure generally leads to more significant neurodevelopmental deficits than postnatal exposure, such as mental retardation or cerebral palsy.<sup>34</sup> The human’s nervous system is plastic, changeable, so what happens outside of the womb can also affect its development. Many of the cell types in the brain have different windows in which they can be affected with varying sensitivities to environmental agents. This means that the time that a child is exposed to the contaminants can be more important than the levels to which they are exposed (to a certain point).<sup>35</sup> The prefrontal lobes of the brain primarily develop during childhood, exposure during this time period can have harmful impacts. The prefrontal lobes are responsible for executive functioning, a mental process that works to apply past

experiences with present action. This can include activities such as planning, organizing, working with detail-oriented tasks and strategizing.<sup>36</sup> Executive functioning plays a huge role in learning. This shows why exposure to lead, arsenic or dioxin can be detrimental to a child's abilities.<sup>37</sup> Exposure does not only effect executive functioning, it also affects a child's intelligence overall, leading to reduced IQ's. Also, in areas where there are larger quantities of lead, the rate of autism is significantly increased.<sup>38</sup> The ability to pay attention develops all the way up to age five; children who are continuously exposed to lead or arsenic have been shown to have an increased incidence of Attention deficit hyperactivity disorder (ADHD).<sup>39</sup> While, exposure to dioxin seems to have the least severe effects, it can impact a child's abilities all the way up to age six.<sup>40</sup> It has even been shown that post natal exposure to lead in very low levels produces neurodevelopmental deficits in the areas of intelligence, attention, reaction time, visual-motor integration, fine motor skills, and executive functioning among other things. The effects corresponded specifically to attention, motor skills, social behavior, executive function and visual-motor integration. There have been deficits shown from levels of lead as low as 3µg/dl. This has suggested that there is not an apparent lower bound threshold for the postnatal exposure to lead.<sup>41</sup>

Lead is a highly toxic substance, exposure to which can produce a wide range of adverse health effects. Both adults and children can suffer from the effects of lead poisoning, but childhood lead poisoning is much more frequent. Over the many years since we have known about the hazards of lead, tens of millions of children have suffered its health effects. Even today there are still at minimum more than four hundred thousand children under the age of six who have too much lead in their blood.

There are many ways in which humans are exposed to lead: through deteriorating paint, household dust, bare soil, air, drinking water, food, ceramics, home remedies, hair dyes, and other cosmetics. Much of this lead is of microscopic size, invisible to the naked eye. More often than not, children with elevated blood levels are exposed to lead in their own home. Children and adults too can get seriously lead poisoned when renovation and remodeling activities take place in a home that contains lead paint. Anytime a surface containing lead paint is worked on, the debris and the dust created by the work must be contained and thoroughly cleaned up, and those doing the work must have adequate personal protection to prevent them from breathing in any lead dust generated by the work. It is therefore of critical importance that lead painted surfaces be identified prior to the commencement of any renovation or remodeling work, and that lead-safe work practices are used during such activities. Of course, steps must also be taken to ensure that children, pets, and personal belongings including furniture are protected from exposure to lead while work is ongoing, as well.

There are many different health effects associated with elevated blood lead levels. Young children under the age of six are especially vulnerable to lead's harmful health effects, because their brains and central nervous system are still being formed. For them, even very low levels of exposure can result in reduced IQ, learning disabilities, attention deficit disorders, behavioral problems, stunted growth, impaired hearing, and kidney damage. At high levels of exposure, a child may become mentally retarded, fall into a

coma, and even die from lead poisoning. Within the last ten years, children have died from lead poisoning in New Hampshire and in Alabama. Lead poisoning has also been associated with juvenile delinquency and criminal behavior.

In adults, lead can increase blood pressure and cause fertility problems, nerve disorders, muscle and joint pain, irritability, and memory or concentration problems. It takes a significantly greater level of exposure to lead for adults than it does for kids to sustain adverse health effects. Most adults who are lead poisoned get exposed to lead at work. Occupations related to house painting, welding, renovation and remodeling activities, smelters, firing ranges, the manufacture and disposal of car batteries, and the maintenance and repair of bridges and water towers, are particularly at risk for lead exposure. Workers in these occupations must also take care not to leave their work site with potentially contaminated clothing, tools, and facial hair, or with unwashed hands. Otherwise, they can spread the lead to their family vehicles and ultimately to other family members.

One group of concerning compounds found at the Brown's dump site is called *dioxins*. Dioxins refer to a group of chemical compounds that share certain chemical structures and biological characteristics. Several hundred of these compounds exist and are members of three closely related families: the chlorinated dibenzo-*p*-dioxins, chlorinated dibenzofurans and certain polychlorinated biphenyls. Sometimes the term dioxin is also used to refer to the most studied and one of the most toxic dioxins, 2, 3, 7, 8-tetrachlorodibenzo-*p*-dioxin. These products can be produced naturally or like some of these are manufactured. Most of the time dioxins are not created intentionally, but are produced inadvertently by a number of human activities although they are no longer produced in the United States.<sup>42</sup> Dioxins are formed as a result of combustion processes such as commercial or municipal waste incineration and from burning fuels (like wood, coal or oil). Dioxins can also be formed when household trash is burned and as a result of natural processes such as forest fires. Chlorine bleaching of pulp and paper, certain types of chemical manufacturing and processing, and other industrial processes all can create small quantities of dioxins. Cigarette smoke also contains small amounts of dioxins. It is important to note that dioxin levels in the United States environment have been declining for the last 30 years due to reductions in manmade sources.<sup>43</sup> However, dioxins break down so slowly that some of the dioxins from past releases will still be in the environment many years from now. Because dioxins are extremely persistent compounds, levels of dioxins still exist in the environment from both manmade and natural sources. A large part of the current exposures to dioxins in the United States is due to release of manmade dioxins that occurred in the past, even decades ago. Even if all human-generated dioxins could somehow be eliminated, low levels of naturally produced dioxins will remain, as will reservoirs. The EPA is working with other parts of the government to look for ways to further reduce dioxin levels entering the environment and to reduce human exposure to them.<sup>44</sup> Studies have shown that exposure to dioxins at high enough doses may cause a number of adverse health effects. Since dioxins from natural and other human sources have been widely distributed throughout the environment since the early 1900's, almost every living creature, including humans, has been exposed to dioxins. The health effects associated with dioxins depend on a variety

of factors including: the level of exposure, when someone was exposed and how long and how often.<sup>45</sup> Since dioxins are so widespread, we all have some level of dioxins in our bodies.

The most common health effect in people exposed to large amounts of dioxin is *chloracne*.<sup>46</sup> Chloracne cases have typically been the result of accidents or significant contamination events. Chloracne is a severe skin disease with acne-like lesions that occur mainly on the face and upper body. Other effects of exposure to large amounts of dioxin include skin rashes, skin discoloration, excessive body hair, and possibly mild liver damage. One of the main concerns over health effects for dioxins is the risk of cancer in adults. Several studies suggest that workers exposed to high levels of dioxins at their workplace over many years have an increased risk of cancer. Animal studies have also shown an increased risk of cancer from long-term exposure to dioxins. Finally, based on data from animal studies, there is some concern that exposure to low levels of dioxins over long periods (or high level exposures at sensitive times) might result in reproductive or developmental effects.<sup>47</sup> In the EPA report for the Brown's dump site it was stated that no adverse side effects were expected from dioxin contamination.<sup>48</sup> The estimated dose from all dioxin contaminations were put below the minimum risk levels and also the EPA's reference dose and cancer potency factors.

Some community members expressed a desire to be relocated. The EPA responded that the EPA's preference is to address the risks and choose methods of cleanup which allow people to remain safely in their homes and businesses. However, the National Contingency Plan stated that its primary reasons for conducting a permanent relocation would be to address an immediate risk to human health (where an engineering solution is not readily available) or where the structures (e.g., homes or businesses) are an impediment to implementing a protective cleanup. EPA had an engineering solution ready. In August 2006, they said that Brown's Dump Site was cleaned up without the need to permanently relocate residents and businesses. EPA has successfully excavated contaminated soils from approximately 5,000 residential properties down to levels of contamination that no longer pose unacceptable risks. By addressing the risks at these Sites through cleanups, people were able to remain in their homes and entire communities were kept intact.

The community was also opposed to the proposed clean up plan developed by the EPA. The community comments on August 31, 2005 are provided verbatim:

The disruption that such an operation would subject our citizens to is unconscionable! This callous disregard for the protracted human suffering that our people have endured is a national disgrace. We believe that there is a much better way of addressing this problem.

. . . The "cleanup" as proposed, would create a living nightmare for residents. While this so called cleanup is in progress (which will take several years), contaminated dust will be flying everywhere, muddy and filthy conditions will be a daily reality, the old, the sick and the dying along with the innocent children would be forced to live in the mist of 32,000 truck loads of hazardous waste being hauled down our residential

streets at the rate of at least 60 trucks per day. We're talking about 60 filthy truck loads every single day for at least two years.

. . . Unreasonable restrictions on activities will remain after "cleanup." A treeless community in the hot climate in which we live would be criminal (planting trees could breach the barrier). The contamination that you would leave behind under houses, sidewalks, streets, schools, driveways, parking lots and apartments will continue to migrate, thereby risking recontamination. Given the population density of Brown's Dump, what becomes obvious to even the casual observer is that cleanup, as proposed, is unfeasible. Redevelopment on the other hand is both economically feasible and provides the maximum protection to our citizens. Our community is in dire need of redevelopment. This is a once in a lifetime opportunity for all parties to come out winners.<sup>49</sup>

The EPA responded to these concerns:

Regarding the concern over extensive truck traffic, EPA acknowledges that truck traffic hauling the contaminated soil above the RGs out of the community will increase in the area during cleanup. However, EPA views the truck traffic as a necessary aspect to the cleanup and should be analogous to a similar sized development project in that construction equipment must be used in order to complete the job. There are management schemes which will be used to eliminate contaminated dust from leaving the trucks during transport. The cleanup approach does include Institutional Controls to protect the public against exposure to residual contamination above the RGs remaining after cleanup. However, EPA does not view these as unreasonable restrictions. In fact, it is not envisioned that these controls will restrict actions in the community. Rather, they will allow actions to occur with the knowledge that contamination above the RGs exists in certain areas along with appropriate management controls. The cleanup approach is designed to remove contamination above the RGs and should aid the real estate marketplace by removing uncertainty which exists due to the existing contamination.<sup>50</sup>

EPA believes that the cleanup approach does not preclude and may even lead to redevelopment in the area. EPA believes that a more balanced approach is to retain the community structure by providing the community with a protective clean-up; thereby allowing the community to remain cohesive and strong and ready to work toward redevelopment.

*Brown* was a pivotal step towards equality. However, it did not stop the Duval County School Board from building an African-American school on a contaminated site. As of 2007, there are state statutes in effect that serve to prevent school placement in hazardous sites such as the Brown's Dump site. Specifically, these statutes provide for rules governing against schools being built upon sites that are detrimental to the overall safety, wellbeing and health of those attending the school. Had such statutes been in effect at the time of the initial construction of the Mary Bethune Elementary School, the construction of the school would not have been legally permissible. Additionally, there is

currently in effect a well developed approval system requiring many organizations to review the construction plans of the school prior to the start of construction. The most relevant statutes are listed below: The first section (1) outlines the building code, whereas the section (3) outlines the approval process.<sup>51</sup>

(1) UNIFORM BUILDING CODE.--A uniform statewide building code for the planning and construction of public educational and ancillary plants by district school boards and community college district boards of trustees shall be adopted by the Florida Building Commission within the Florida Building Code, pursuant to § [553.73](#). Included in this code must be flood plain management criteria in compliance with the rules and regulations in 44 C.F.R. parts 59 and 60, and subsequent revisions thereto which are adopted by the Federal Emergency Management Agency. It is also the responsibility of the department to develop, as a part of the uniform building code, standards relating to:

(a) Prefabricated facilities or factory-built facilities that are designed to be portable, re-locatable, demountable, or re-constructible; are used primarily as classrooms; and do not fall under the provisions of §§ [320.822](#)-[320.862](#). Such standards must permit boards to contract with the Department of Community Affairs for factory inspections by certified building code inspectors to certify conformance with applicable law and rules. The standards must comply with the requirements of § [1013.20](#) for re-locatable facilities intended for long-term use as classroom space, and the re-locatable facilities shall be designed subject to missile impact criteria of § 423(24)(d)(1) of the Florida Building Code when located in the windborne debris region.

(b) The sanitation of educational and ancillary plants and the health of occupants of educational and ancillary plants.

(c) The safety of occupants of educational and ancillary plants as provided in § [1013.12](#), except that the fire safety criteria shall be established by the State Fire Marshal in cooperation with the Florida Building Commission and the department and such fire safety requirements must be incorporated into the Florida Fire Prevention Code.

(3) INSPECTION OF EDUCATIONAL PROPERTY BY OTHER PUBLIC AGENCIES.--

(a) A safety or sanitation inspection of any educational or ancillary plant may be made at any time by the Department of Education or any other state or local agency authorized or required to conduct such inspections by either general or special law. Each agency conducting inspections shall use the standards adopted by the Commissioner of Education in lieu of, and to the exclusion of, any other inspection standards prescribed either by statute or administrative rule. The agency shall submit a copy of the inspection report to the board.

(c) The district school board or the community college board may not occupy a facility until the project has been inspected to verify compliance with statutes, rules, and codes affecting the health and safety of the occupants. Verification of compliance with rules, statutes, and codes for non-occupancy projects such as roofing, paving, site improvements, or replacement of equipment may be certified by the architect or engineer of record, and verification of compliance for other projects may be made by an inspector certified by the department or certified pursuant to chapter 468 who is not the architect or engineer of record. The board shall maintain a record of the project's completion and permanent archive of phase III construction documents, including any addenda and change orders to the project. The boards shall provide project data to the department, as requested, for purposes and reports needed by the Legislature. (a) Before a contract has been let for the construction, the department, the district school board, the community college board, or its authorized review agent must approve the phase III construction documents. A district school board or a community college board may reuse prototype plans on another site, provided the facilities list and phase III construction documents have been updated for the new site and for compliance with the Florida Building Code and the Florida Fire Prevention Code and any laws relating to fire safety, health and sanitation, casualty safety, and requirements for the physically handicapped which are in effect at the time a construction contract is to be awarded.

## **Remediation**

Brown's Dump is located near a school, homes, apartments, and an electric substation. The site was assessed as having actual or threatened releases of hazardous substances to the environment. In accordance to several health acts, amendments and plans, e.g., *Comprehensive Environmental Response, Compensation, and Liability Act of*

1980 (CERCLA), *Superfund Amendments and Reauthorization Act of 1986* (SARA)), this site has been identified to be cleaned for the protection of inhabitants of the surrounding area. Remedial action objectives are specific goals and standards to be met, which are expected to satisfy all health and ecological concerns. Limiting exposure to terrestrial biota and proper disposal of hazardous materials are the final goals. Specifically, one paramount goal is to limit human exposure to hazardous materials (e.g., soil, water, food). Another goal is to limit certain ecological risks (e.g., soil erosion, transport of soil with ash and hazardous materials to nearby Moncrief Creek). Remedial goals were based on a feasibility study conducted prior to this.

**3.1-Alternative One** consists in no further action to clean soil or water. It was used as a baseline by which to compare all other alternatives. "The No Action alternative was evaluated as a baseline option for comparison to the other alternatives. Under this alternative, no remedial action would be performed to control exposure to COCs exceeding the RGs. Any reduction in soil or sediment contaminant concentrations would be due to natural dispersion, attenuation, and degradation processes." Obviously, in regard to this alternative, the capital cost will be zero dollars. However, due to containment of the land from human access, there is an annual operation and maintenance cost of 5200 dollars. In regard to this alternative, estimates of land value if this alternative were to be put into action calculate a worth of 70,000 dollars.<sup>52</sup>

**3.2 Alternative Two** consists in providing a .5-foot cover of uncontaminated soil over all contaminated surfaces. The purpose of this cover is to limit exposure to all terrestrial biota. This process may need to be preceded by soil excavation to prevent water drainage problems or surface grade problems. Notices and restrictions would be posted limiting excavation of subsurface soil. Soil below existing structures and roads would not be cleared. Erosion of soils along the Moncrief Creek would be controlled by the stabilization of river banks. Moncrief Creek banks would be cleared of vegetation and if banks were judged to have an excessive slope, it would be properly graded. About 30,000 cubic yards of soil would be removed with this alternative. "The remedial objectives would be met by Alternative 2 (Soil Cover with Excavation and Offsite Disposal) primarily by providing a 0.5 foot cover of uncontaminated soil over all parcels exceeding RGs. This soil cover would prevent direct contact, ingestion or inhalation of surficial soils by people while also preventing impacts to terrestrial biota. Some excavation would be needed to allow for placement of the soil cover without creating storm water drainage problems or surface grade problems with fixed surface features or structures. Potential exposure to contaminated subsurface soil above the RGs is to be addressed through administrative notices and restrictions on excavation of subsurface soil. Upon implementation of alternative 2, the land worth would rise to 11.4 million dollars. Capital costs for implementation of alternative 2 are estimated at 10.9 million dollars with an annual operation and maintenance cost of 35000 dollars.

The main components of this alternative are:<sup>53</sup>

- Administrative notices and restrictions (i.e., Institutional Controls)

- Soil cover (with excavation where required) and offsite disposal at an appropriate landfill
- Solidification/stabilization, as needed for proper offsite disposal in an appropriate landfill
- Moncrief Creek bank stabilization"

**3.3 Alternative Three** consists in shallow excavation, offsite disposal and a 2-foot cover of uncontaminated soil over all contaminated surfaces for the same purpose as listed above. This process would include the same excavation to prevent water drainage or surface grade problems. The same notices and restrictions would be posted. As with alternative two residential parcels currently designated for industrial land uses are to be remediated to industrial cleanup standards. Erosion of soil along the Moncrief Creek banks would be handled in the same manner as alternative two. Additionally, residence who request temporary offsite relocation will receive it. About 85,000 cubic yards of soil would be removed for offsite disposal with this alternative. The RGs would be met under Alternative 3 (Shallow Excavation, Offsite Disposal and Soil Cover) by providing at least 2 feet of clean soil over all parcels and surface soil areas exceeding the RGs and application of administrative notices and restrictions on excavation of subsurface soil remaining above RGs. The purpose of the cover soil would be to prevent direct contact with contaminated soil above the RGs, prevent erosion of contaminated soil above the RGs and minimize impacts to terrestrial biota. The Remedial Design will address selection of an appropriate "warning mesh" for installation prior to placement of any cover or clean fill material. The estimated volume of soil to be removed is 85,000 cys. The estimated time to complete this alternative is 24 months. The capital cost of this alternative has been estimated to be 20.5 million dollars with an annual operation and maintenance cost of 35000 dollars. The land worth has been calculated to be 21,000,000 dollars.

The main components of this alternative are:<sup>54</sup>

- Administrative notices and restrictions (i.e., Institutional Controls)
- Shallow soil excavation, offsite disposal and soil cover in residential area
- Soil cover with excavation as needed in select non-residential areas [i.e., former school property (developed land), former school property (undeveloped land), and remaining undeveloped land (mostly found adjacent to the creek)], and industrial areas
- Solidification/stabilization of excavated soil pursuant to RCRA treatment standard requirements at 40 CFR § 268, as needed for proper offsite disposal
- Moncrief Creek bank stabilization

- Temporary Relocation will be provided to eligible residents upon their requested

**3.4 Alternative Four** consists in deep excavation above the water table with offsite disposal. All other directives and institutional controls remain the same as alternatives two and three. Stabilization of Moncrief Creek banks and offsite disposal of hazardous material would also take place. About 290,000 cubic yards of soil would be removed for offsite disposal with this alternative. The selected course of action is alternative three. This involves removal of 2 feet of contaminate surface soil and installation of 2 feet on uncontaminated surface soil. Residence may receive temporary relocation. Stabilization of the banks of Moncrief Creek would occur as described above. Gravel would be placed in crawl spaces to prevent access below buildings. Groundwater monitoring would also occur. Institutional controls would also be in place as described above.<sup>55</sup> "The RGs would be met under Alternative 4 (Deep Excavation and Offsite Disposal) by excavation of all soil exceeding RGs above the water table. Digging below the water table is deemed infeasible. Soil below existing structures and roadways would not be removed. To address subsurface soil remaining below structures, roadways, etc. and above RGs, administrative notices and restrictions on excavation would be utilized. With removal of all soil exceeding RGs along stream banks, stabilization of the banks of Moncrief Creek would be needed. The estimated volume of soil to be removed is 290,000 cys. The estimated time to complete this alternative is 32 months. Capital costs of alternative 4 are estimated at 43.4 million dollars. Annual operation and maintenance costs are estimated at 5,200 dollars. The land worth of this superfund site has been estimated at 43.470 million dollars if alternative 4 would be implemented.

The main components of this alternative are:<sup>56</sup>

- Administrative notices and restrictions (i.e., Institutional Controls)
- Soil excavation and offsite disposal
- Solidification/stabilization of excavated soil, as needed for proper offsite disposal

The EPA is currently working on the Brown's dump. At the completion of their investigation and assessment, EPA will be responsible for selection of the remedy that will be implemented at each site. Additionally, the respondents have agreed to reimburse EPA for all response and oversight costs.

### **Ethical Assessment of Case**

In attempting to make an ethical assessment concerning the events of the building and sustaining of Mary McLeod Bethune Elementary one is immediately confronted with the difficulties inherent in passing moral judgment on a culture that, while not too temporally distant, is clearly distant in very important fundamental areas. When retroactively evaluating the actions of a society, it is deceptively easy to make normative claims about the bases of their decisions – but in doing so, without acknowledging the

crucial differences between the culture that fosters the critical perspective and the culture being morally appraised, we risk oversimplification and groundless evaluation.

So, it becomes necessary to set boundaries that will prevent philosophical folly – boundaries that will allow for the expression of clear ethical evaluations that avoid the pitfalls of cultural relativism. Ultimately, we want to understand the ethical implications of what occurred in 1950s Jacksonville without the luxury of perfectly informed retrospection. While it is not poor form, philosophically speaking, to evaluate an action or a mentality from a more deeply informed position, if case can be made that these actions were morally questionable – given the limited scientific knowledge of the time, and given the inherently racist underpinnings of the societal infrastructure – then that case will be a much stronger one. In other words, if we can show that the actions surrounding this school are morally reprehensible even from the perspective of someone without the benefits of hindsight, then we will avoid assigning moral condemnation from a backward-looking vantage point.

One last preemptive point needs to be made: There are a variety of ways one could approach these events (even apart from retrospectively commenting on their value system, as mentioned), however ecocentric and biocentric approaches here are irrelevant. While it is true that were they concerned with the integrity of the land initially, then the problems of building a school atop a reservoir of contaminated land would have been a non-issue (they simply would not have done it because the contamination would never have taken place); the fact is, the true nature of this event can only be viewed anthropocentrically if we are to attend to the ultimate implications of their actions.

We have then three principle questions: 1) What are we to make of the social practices at the time the school was built—specifically, the fact that black students were placed in a school that was built on contaminated land? 2) As a result of these social practices the students and faculty were left in a school on contaminated land for 40 years; what was the likely motivation for this deception—what ethic were they applying? 3) Now that the school has been shut down and there are millions of dollars in repairs impending, can we say anything about the fact that the school was shut down only because students were being withdrawn, not because anyone recognized it as a potential health risk?

Concerning the first question, Duval County opened Mary Mcleod Bethune Elementary, an African American elementary school in the early 1950's on the north side of racially-segregated Jacksonville, Florida. The school was built in compliance with a government mandate after it was discovered that many of the city's twenty-three black schools were fire hazards.<sup>57</sup> The county in turn bought cheap land previously used as an ash-dump site to house the school. Although not discovered until the mid-80's, the land contained toxins such as PCB, lead, arsenic, mercury, etc., that cause a variety of health and developmental hazards, especially in children.

The difficulties here rest in determining how exactly to view this event without passing undue judgment on those involved. The 1950s were an inherently racist time, and while much could be said about the immorality and irrationality of racism, this is beyond the scope of our endeavor – we are proceeding with the racism unchallenged and accepted as a way of life for 1950s Jacksonville. So what then can be said? It is unknown but doubtless that the county knew of the land's toxic composition at the time of construction, so the main ethical implications lie in the county's willingness to build

an institution for children on such questionable land. The reduced-price was the driving factor behind the decision, as the county considered the school no more than a last minute fix for a tense situation. Traditionally, from an economic perspective, a piece of land derives its worth from its potential to be used. A plot rich in healthy minerals and fertile soil will be valued more for farming purposes than an arid location—this is because the fertile land carries with it a greater propensity for growth. So the value of a piece of land for which the principle use has been to serve as a repository for burnt garbage will be understandably qualitatively and quantitatively lower than other areas. Following a Lockean view (in which the labor mixed with natural resources determines its worth), by changing the function of the land (in this instance, by building a school rather than placing more garbage), one can effectively change the land's corresponding worth.

This method began a long pattern of substituting economics and indifference for a more appropriate ethical system that considered the citizens' health and welfare—but more on this below. Both the fact that the county was forced to build a new school and the condition of the land the school was built on show an inherent problem in the way Duval approached the black community, and indicates possible racism (which we've decided to ignore) and even environmental classism. What's particularly troubling here is that even with the inherent racism of the time, we see a blatant disregard for the value of a child. Philippa Foote notes, "both charity and the special duty of care that we owe to children give us a positive obligation to save them, and we have no particular reason to say that it is 'less bad' to fail in this than it is to be in dereliction of the negative duty by being the agent of harm."<sup>58</sup> Whatever one's stance is on the conflict between acts of commission and omission, it cannot be doubted that to do both simultaneously is somehow inherently worse than doing one or the other—in this instance they have abandoned both their positive and negative duties—and were in fact both the organizers of this event, as well as the ones that complacently watched.

The events concerning Mary McLeod elementary are almost perfectly, indirectly addressed by Peter Wenz in "Just Garbage: Environmental Injustice." In his mind, "Environmental racism is evident in practices that expose racial minorities in the United States, and people of color around the world, to disproportionate shares of environmental hazards."<sup>59</sup> Wenz sees that often times (as it will be in this case no doubt) the specifics of a scenario are defended by an almost trivial allusion to the Doctrine of the Double Effect (when the negative impacts of a positively directed action are accidental, then the action is a morally justifiable one). But to use this defense ignores the origins of those 'accidental' negative outcomes—namely, existing classism (Wenz has a more severe charge of racism) is generated by a system or from a collection of institutions in where those that are subjected to the negative consequences of an act can not help but to be as such – and this is wholly unethical, "even if the only discrimination is economic."<sup>60</sup> This moral culpability is found in that there is no choice for those subjected, and that those who are suffering the consequences of negative environmental decisions are not also reveling in the positive economic or educational gains.

Ultimately, the school caused an influx of families into the surrounding polluted areas; as Mary McLeod was one the first schools built in a predominately black area, causing further exposure to those in the surrounding houses and apartment complexes- and further casualties of the county's decision. There is no way to evaluate their ethical system, quite simply, because they didn't have one—but even within their economically-

based and inherently, culturally classist framework we will soon see that their actions fail even by their own standards.

The second question addresses the act of leaving students and faculty in a school found to be constructed upon contaminated land for 35 years for an additional 15 years; what was the likely motivation for this deception—more specifically, what ethic were they using? It is understood (from our perspective) that no moral culpability can be assigned for possessing a deficiency in information. Aware of its potentially hazardous qualities or not, the Duval county school board's decision to build on a trash dump site resulted in students and faculty of the Mary McLeod Bethune Elementary School being exposed to contaminated land for approximately 40 years. However, it is clear that to assign moral blame to involved parties for this prolonged exposure when there was no notion that this exposure was dangerous would be a mistake. The operational principle here is that one cannot be accountable for an action if one had no good means or reason to do otherwise (this is similar to the Kantian notion that one cannot be held morally accountable if one is not free). However, for fifteen of those forty years (from 1985 on), the EPA was aware of the contamination, as well as the various contaminants' possible effects on children. So, there is unquestionably something troubling here – but why?

What is reasonably clear in this event is that it concerns the relationship between two particular groups of people – those attending the school/residing in the community surrounding the school (which was on the same compromised land) and those who built the school. In this particular situation, the 'group' that built the school can be identified as a singular entity: the government. The government can most easily be identified under the Hobbesian moniker of 'the sovereign,' as elaborated by Hobbes in Chapter XVIII in *Leviathan*.<sup>61</sup> The basic principle here rests on the supposition that because we have forfeited certain 'natural rights' and effectively bestowed them on the sovereign, this entity has the same duties to the people which it governs as they do to one another – there is an indispensable and inherent trust built into this exchange. So, if we cannot find moral accountability in their actions insofar as they were reasonably unaware of the consequences of their actions, then what can or should be said when they are aware? Simply: there was a violation of the social contract.

While it is unclear whether or not the EPA informed the school board at some point before the information was finally made public, (in which case, the responsibility of informing the students' parents would be passed from the EPA to the school board upon their being notified) the responsible party's ethical reasoning must be questioned; and ultimately it is almost irrelevant which particular group or agency is culpable, when the attitudes of whichever responsible party were fostered or inculcated with dispositions set by the majority society itself. We know that this piece of land was selected because of its low cost; that should come as no surprise—in the world of business there is a fairly reliable understanding of what will ultimately be the bottom-line. But, the most striking facet of these events and their apparent rationale is the utter lack of ethical concern and justification—it seems apparent that the only "ethical system" which would logically allow this information to be withheld for such a length of time is one primarily concerned with economics, and therefore not an ethical system at all.

But to explain: A typical ethical system follows the 'discovery' of the intrinsic value of the thing to be assessed. What is to be considered 'right' and 'wrong' regarding a given thing is based on its discovered values, and the ethical system is comprised of

principles which are complimentary to these ideas of ‘right’ and ‘wrong.’ For instance, in Kant’s moral theory the only intrinsic good is the good will, which acts in accordance with duty and reason. Reason, for Kant, is the foundational element in his moral system, and thus all ethical actions must be those that are based in reason from the motivations of this good will. In Mill’s utilitarianism we see a similar recognition of the inherent worth of something as the basis for a moral system (though clearly immensely different from Kant), namely: that which is good is pleasure (happiness) and so the ethical action is that which maximizes this good for the greatest number of people. Again, for Aristotle, there is a similar phenomenon. The good or ethical is that which results in eudemonia (happiness/wellbeing). In ethical theory we see a clear trend – the discovery of an intrinsic value, followed by a description of a particular set of actions in relation to that value. However, an “economical ethical system,” as afore mentioned, requires no assessment of a thing’s value, but simply an assignment of value. In economics a thing’s value is its worth – a thing’s value is based solely on its monetary worth at a given time, and this is ever-changing. (If a bottle of water is worth a dollar at the store would it be worth the same to a man in the desert?). It is simply bad form to say that a thing’s value is how much it is worth; this is circular reasoning, but in ethics it is plainly absurd. Further, we learn from Leopold that, “One basic weakness in a conservation system based wholly on economic motives is that most members of the land community have no economic value.”<sup>62</sup> And while we are not principally concerned with the integrity of the land (though perhaps we should be), this notion speaks volumes in the context of Mary McLeod Elementary.

The motives behind the actual closing of the school should also be addressed. It seems safe to argue that it was not the welfare of the children which prompted the final closing of the school, being that it remained open for over a decade during which time the hazardous qualities of the land which it was resting on were known or at least suspected (if not by both the school board and the EPA, then at least by the EPA). This event very closely resembles the events that served as the impetus for the creation of this school in the first place. Originally, many of the black schools were considered to be fire-hazards, and it was not until there was significant pressure to relocate that Mary McLeod was conceived. This time the school was closed only once parents withdrew their children from the school in overwhelming quantities due to knowledge of the grounds’ hazardous qualities being made public. It was only when the school’s student population was no longer such to warrant its remaining open that it was closed. This too, seems undoubtedly economically based.

We see as an actual consequence in 1999, when the school was closed, what they were clearly trying to avoid by not telling the public in the first place. Presumably, had they alerted the public in 1985 when they had the information there would have been a similar reaction, but by withholding the information they gained an extra fifteen years of use out of the school. To be quite fair, it seems clear that there would be some negative ethical implications in creating a false sense of panic through disclosing unconfirmed potential risks. However, the speculation cannot be resisted that the immediate adverse reaction that was demonstrated by the parents in removing their children, was a partial— if not totally unconscious—reaction to the blatant violation of the trust aspect of the social contract.

The third question considers the rationale for closing the school. The closure seems to be based upon the fact that students were being withdrawn by parental decision, rather than because of an official decree of a recognized, potential health risk. The dumping of ash onto the site and the later building of Mary McLeod Bethune Elementary School can be viewed clearly only from an economical perspective. The land was cheap and any savings were viewed to be a 'good' thing. However, saving money doesn't present an ethical concern, but neglecting principle duties in order to save money seems to. However, after the evidence started to show that the site had above average levels of iron and other toxins (in fact, eight students tested positive for blood-lead content above normal) and they still withheld this information from the students and parents there are some ethical violations that can be seen.

We've already addressed the problems of basing an ethical system on economics, so it seems that their endeavor was plainly wrong at the onset; however, even if we did accept their economically-based ethical system the results are not much better. The presumed reasoning for withholding this information is the corresponding loss of funding that would result from students being pulled out of the school – more students mean more money, and clearly fewer students mean less money. So, if in an economically-based ethic the 'good' is directly related to profit and loss then we can see (apart from the fact that this system rests on a problematic foundation) that by the county's own ethical system the project failed. The initial costs of acquiring the land are far outweighed by the projected costs of repairing it (even with inflation it seems), and what's more, the possible costs of acquiring decent land at the time would have ultimately been less expensive than the combined costs of relocating the displaced students and excavating the compromised land.

The term social contract describes a broad class of philosophical theories whose subjects are the implied agreements by which people form nations and maintain a social order. In the case involving Mary McLeod Bethune Elementary School the students and parents were under the assumption that the land the school was built on is safe – this assumption is so strong that there is, in general, no need to even articulate it – there is no need to explicitly state (at any point) "by the way, the school won't poison your children." It is a social contract between the parents and students and the government. The students give up some rights (i.e. they must go to school) in exchange for a good safe education. The land and grounds are assumed to be safe. By building a school on the contaminated lands and not telling those who will be spending time on that land there is a clear breach of the social contract.

In the end, the results are identical—the school is shut down and the students are relocated. Are the motivations or origins of this end of any concern? The answer to this question relies heavily upon which ethical perspective one takes; if we evaluate it from a consequentialist position, then perhaps not. However, the motivations do beckon for some weight, in that we have to attend to the original motivations for this event. Additionally, there does seem to be some intuitive difference in the closing of the school because it was viewed as a health risk as opposed to the closing of the school because it was a financial blight. Needless to say there is a high degree of consistency in the county's motivations, and while we may want to claim that their motivations were of the wrong sort, their project fails even if their motivations were right.

Ultimately, it becomes reasonably clear that by our standards the project was a failed endeavor to begin with – their ethical system was deformed the classism (and most likely, racism) that undoubtedly existed, and which in fact served part of the basis of justification for their actions, are abhorrent. And the repeated violation of the contract speaks to their moral culpability. But, most importantly, even by their own standards and under their own value system, they failed. They spent more capital than they would have otherwise (had they bought better land), and if any part of the motivation for this project was to maintain social, racial or economic segregation, then this goal was destroyed when the school was shut down and the students dispersed to potentially non-black schools.

### **Epilogue**

"In September, 2005 the city announced that it had settled a class action lawsuit with more than 3,800 city residents who claimed that they had been exposed to the toxic ash. The amount of the settlement sounds vast: \$75 million dollars. But the settlement, although it prevents future lawsuits against the city by these homeowners, actually settles very little."<sup>63</sup> What can be established is that value judgments made strictly from economic concerns results in environmental injustice not only to the ecosystem but also to humans who live in these areas.

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