

Boston College Environmental Affairs Law Review

Volume 28 | Issue 2

Article 7

1-1-2004

The American Environmental Movement: Surviving Through Diversity

Stacy Silveira

Follow this and additional works at: <https://lawdigitalcommons.bc.edu/ealr>



Part of the [Environmental Law Commons](#)

Recommended Citation

Stacy Silveira, *The American Environmental Movement: Surviving Through Diversity*, 28 B.C. Env'tl. Aff. L. Rev. 497 (2004),
<https://lawdigitalcommons.bc.edu/ealr/vol28/iss2/7>

This Comments is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Environmental Affairs Law Review by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact abraham.bauer@bc.edu.

THE AMERICAN ENVIRONMENTAL MOVEMENT: SURVIVING THROUGH DIVERSITY

STACY J. SILVEIRA*

Abstract: This Note examines the transformation of the American environmental movement into a social movement. First, it provides a history of the American environmental movement. The environmental movement is traced from its origins as an upper-class movement with a wilderness-centered ideology, to its transformation into a richer more diverse membership and an ideology inclusive of the urban environment. Next, the theoretical underpinnings of the environmental movement in social movement theory are highlighted. Finally, the question of whether grassroots environmental groups should protest or litigate, and how the legal system can be strategically used by grassroots environmental groups, is examined.

INTRODUCTION

The rise of grassroots environmentalism within the environmental movement illustrates the transformation of environmentalism as an ideology into a full-fledged social movement. As a social movement, the environmental movement has reached its apex with the rise of grassroots environmentalism.¹ Grassroots environmentalism, fueled by anger, energy, and a commitment to democratic processes, has strengthened the environmental movement by introducing diversity and expanding the concept of environmentalism.² Indeed, these groups have emerged to impact both the environmental movement

* Managing Editor, BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW, 2000-01. This Note is dedicated to David Chavous.

¹ Robert Gottlieb, *Reconstructing Environmentalism: Complex Movements, Diverse Roots, in OUT OF THE WOODS: ESSAYS IN ENVIRONMENTAL HISTORY* 145-47 (Char Miller & Hal Rothman eds., 1997).

² See MARK DOWIE, *LOSING GROUND: AMERICAN ENVIRONMENTALISM AT THE CLOSE OF THE TWENTIETH CENTURY* 207 (1995).

and the public consciousness through direct action and protest strategies.³

This Note examines the complex interplay between grassroots environmentalism, protest strategies, and the legal system. Part I provides a history of the evolution of the environmental movement. This section conceptually divides environmentalism into four eras: (a) conservation and preservation; (b) modern environmentalism; (c) mainstream environmentalism; and (d) the rise of grassroots environmentalism.⁴ In Part II, the theoretical underpinnings of the environmental movement are discussed. First, the endurance of the environmental movement as a social movement is examined, focusing on the structure of the environmental movement. Second, grassroots environmentalism is situated within social movement theory's dominant paradigm, New Social Movement theory. Finally, Part III discusses the strategies and tactics of grassroots environmentalism, focusing on the complex interplay of direct action protests and the legal system. The legal system, rich in symbolism and cultural resonance, can be used to communicate a movement's message to the American public and to increase the legitimacy of that message.

I. THE EVOLUTION OF THE AMERICAN ENVIRONMENTAL MOVEMENT

The American environmental movement encompasses a variety of environmental organizations, ideologies, and approaches.⁵ Indeed, the evolution of environmentalism from an ideology into a social movement illuminates the existence of the essential elements of movement formation.⁶ These elements include: (1) the growth of preexisting communications networks; (2) co-optable ideas; (3) a series of crises that galvanize individuals into action; and (4) subsequent organizing efforts to weld spontaneous groups together into a movement.⁷ As the following history illustrates, these elements appear throughout the course of the four eras of the American environmental movement.

³ See Edwards, *Liberty and Environmental Justice*, in *ECOLOGICAL RESISTANCE MOVEMENTS* 35–52 (Bron Raymond Taylor ed., 1995).

⁴ See DOWIE, *supra* note 2, at 8.

⁵ See GOTTLIEB, *supra* note 1, at 145.

⁶ See Jo Freeman, *On the Origin of Social Movements*, in *WAVES OF PROTEST: SOCIAL MOVEMENTS SINCE THE SIXTIES 19–20* (Jo Freeman & Victoria Johnson eds., 1999) [hereinafter Freeman, *Origin of Social Movements*].

⁷ See *id.*

A. *The First Era: Conservation and Preservation*

*Far from being that one place on earth that stands apart from humanity, [nature] is quite profoundly a human creation—indeed, the creation of very particular human cultures at very particular moments in human history. It is not a pristine sanctuary. . . . Instead, it is a product of that civilization, and could hardly be contaminated by the very stuff of which it is made.*⁸

American environmentalism narratives usually begin with tales of wilderness and the West, whose spectacular landscapes encountered dramatic changes due to urbanization and industrialization.⁹ By the 1870s, resource exploitation dominated development patterns in the West.¹⁰ Natural resources were devoured by destructive practices in mining, overgrazing, timber cutting, monocrop planting, and speculation in land and water rights.¹¹ To protect America's natural resources, environmental organizations arose in support of conservation and preservation.¹² The philosophies of conservation and preservation, the roots of American environmentalism, continue to be an influential institutional presence today.

Conservation groups emphasized the efficient use and development of physical resources to combat inefficient land management.¹³ Conservationists put forth a developmental strategy based on efficiency, scientific management, centralized control, and organized economic development.¹⁴ This strategy was exemplified by management systems, which were created to emphasize the balance between immediate and long-term production necessary to sustain a continuous yield.¹⁵

Conservationists established a foothold in American politics in 1901, when President Theodore Roosevelt delineated plans for re-

⁸ See William Cronon, *The Trouble with Wilderness; or Getting Back to the Wrong Nature*, in *UNCOMMON GROUND: RETHINKING THE HUMAN PLACE IN NATURE* 69 (William Cronon ed., 1996).

⁹ See GOTTLIEB, *FORCING THE SPRING: THE TRANSFORMATION OF THE AMERICAN ENVIRONMENTAL MOVEMENT* 19 (1993).

¹⁰ See *id.* at 20–21.

¹¹ See *id.*

¹² See Samuel Hays, *From Conservation to Environment: Environmental Politics in the United States Since World War II*, in *OUT OF THE WOODS: ESSAYS IN ENVIRONMENTAL* 102–07 (Char Miller & Hal Rothman eds., 1997); DOWIE, *supra* note 2, at 17.

¹³ See HAYS, *supra* note 12, at 102.

¹⁴ See GOTTLIEB, *supra* note 9, at 24; Hays, *supra* note 12, at 102.

¹⁵ See HAYS, *supra* note 12, at 102.

source management to Congress.¹⁶ Conservation became the dominant resource strategy of the government during President Roosevelt's tenure, as illustrated by the policies of the new governmental agencies.¹⁷ Moreover, regional and industry-related interest groups emerged as lobbying organizations and agency support groups.¹⁸

In 1902, for example, the Reclamation Act established the Reclamation Service, whose mission was to accomplish "the reclamation and settlement of the arid lands."¹⁹ The Reclamation Service promoted scientific methods like irrigation, storage, power generation, and flood control.²⁰ Its emergence as a key institution in western resource development signified a policy shift towards scientifically-based resource management and away from the resource exploitation associated with land monopolization and private resource development.²¹ Similarly, the establishment of the U.S. Forest Service under the Department of Agriculture in 1905 bolstered resource development strategies.²² Comprised of several different existing agencies, the U.S. Forest Service's mandate was to "coordinate private development through government regulation and management."²³

During the Roosevelt Administration, however, the first divisions between the conservationists and preservationists emerged.²⁴ These divisions are best personified by the legendary split between Gifford Pinchot,²⁵ champion of conservation and efficient land management, and John Muir, co-founder of the Sierra Club.²⁶ Muir's philosophy embodied natural land management through 'right use' of wilderness resources.²⁷ Preservationists, who believed wilderness preservation to be imperiled by the forces of urbanization and industrialization,

¹⁶ See GOTTlieb, *supra* note 9, at 23.

¹⁷ See *id.* at 24. As President Roosevelt stated in his December 2, 1901 address to Congress: "The fundamental idea of forestry is the perpetuation of forests by use. Forest protection is not an end in itself; it is the means to increase and sustain the resources of our country and the industries which depend on them. The preservation of our forests is an imperative business necessity." *Id.* at 23.

¹⁸ See *id.* at 24.

¹⁹ *Id.* at 23. The Reclamation Service was renamed the Bureau of Reclamation in 1923. See GOTTlieb, *supra* note 9, at 22.

²⁰ See *id.* at 22.

²¹ See *id.* at 23.

²² See GOTTlieb, *supra* note 9, at 23; DOWIE, *supra* note 2, at 16.

²³ See GOTTlieb, *supra* note 9, at 23.

²⁴ See *id.* at 24.

²⁵ See *id.* at 21. Pinchot, who returned to the United States after studying forestry practices in Germany, became the leader of the conservationist movement. See *id.*

²⁶ See *id.* at 24.

²⁷ See GOTTlieb, *supra* note 9, at 22-23.

viewed traditional conservationist strategies of 'right use' and efficient land management as promoting industry needs.²⁸

Preservation flowed easily from American frontier ideology and notions of the environment as defined in terms of wilderness.²⁹ According to Muir, it was wrong to view wilderness as simply resources for human consumption; rather, wilderness had an independent value as a "fountain of life."³⁰ Moreover, the preservationists' vision of nature was romanticized by the poems of William Wordsworth and Henry David Thoreau, which analogized wilderness with religious sacredness, and by Frederick Jackson Turner's classic description of the settling of the frontier and the concomitant rise of a vigorous and independent American democracy.³¹

Many environmental organizations that are considered "mainstream" today were formed during the late 1800s, by conservationists and preservationists who desired to protect the natural environment and conserve wildlife.³² In addition to the Sierra Club, which was founded in 1892 by John Muir and Robert Underwood Johnson,³³ the National Audubon Society opened chapters in New York and Massachusetts in 1896.³⁴ The Boone and Crockett Club, founded in 1886 at a dinner party given by Theodore Roosevelt, drew its elite members from political, military, and professional circles and required them to be "American hunting riflemen."³⁵ According to Muir, these groups put forth a complementary vision of preservation and 'right use' of wilderness resources by combating waste and spoilage associated with unregulated private development and by suggesting that science and technology would enhance the values of preservation and the "necessity" of wilderness.³⁶

²⁸ See *id.* at 24. Indeed, preservation included such diverse approaches as: "nationalism ([n]ature as national treasure); commercialism (wilderness available for tourism and recreation); spiritualism (wilderness as regeneration in an urban and industrial age); ecology ([n]ature as biological richness and diversity); and a kind of elite aestheticism ([n]ature as beauty and experience, especially for those presumed to be most capable of appreciating it)." *Id.* at 26-27.

²⁹ See CRONON, *supra* note 8, at 72.

³⁰ See GOTTLIEB, *supra* note 9, at 24.

³¹ See CRONON, *supra* note 8, at 72-77. The preservationist view was also similar to the romanticized vision of Jean Jacques Rousseau who envisioned that the cure to the evils of industrial life was a return to nature. See *id.* at 76.

³² See DOWIE, *supra* note 2, at 15.

³³ See *id.*

³⁴ See *id.*

³⁵ See GOTTLIEB, *supra* note 9, at 327 n.15.

³⁶ See *id.* at 23.

When considering the American environmental movement's origins of conservation and preservation, however, it is essential to note the utter lack of diversity among these early organizations. Both types of organizations were comprised of members harboring anti-urban and class biases.³⁷ Members of these groups were generally wealthy, white, Anglo-Saxon males who enjoyed outdoor activities, such as hunting, fishing, and camping.³⁸ Indeed, their debates were primarily "disputes among elites—between those who wished to leave the natural environment in a pristine state and those who viewed it as a place for recreation and pleasure."³⁹

Consequently, early environmentalism was not a social movement but rather an attempt by privileged classes to preserve a place for outdoor recreation.⁴⁰ Working class individuals and ethnic minorities were generally excluded from conservation and preservation organizations.⁴¹ Moreover, urban, industrialized areas, viewed by early preservationists and conservationists as areas of pollution, degradation, and squalor, found no home in early environmentalism.⁴² Consequently, environmentalism did not evolve into a social movement until the 1960s—when diversity entered the fight to protect the environment.⁴³

³⁷ See *id.* at 29–30.

³⁸ See DOWIE, *supra* note 2, at 2.

³⁹ See GOTTLIEB, *supra* note 9, at 30–31.

⁴⁰ See DOWIE, *supra* note 2, at 2.

⁴¹ See *id.* During this time, national parks often posted "whites only" signs. See *id.* Moreover, leaders of environmental organizations espoused racist views. For example, Madison Grant, founder of the Zoological Society and the Save the Redwoods League, condemned the hunting practices of the "inferior southern European races" and warned that "swarms of Polish Jews . . . and other worthless race types . . . with their dwarf stature, peculiar mentality and ruthless concentration on self interest [were] being grafted upon the stock of a nation." *Id.*

⁴² See WILLIAM A. SHUTKIN, *THE LAND THAT COULD BE: ENVIRONMENTALISM AND DEMOCRACY IN THE TWENTY-FIRST CENTURY* 96 (2000).

⁴³ See DOWIE, *supra* note 2, at 23.

B. *The Second Era: The Rise of Modern Environmentalism in the 1960s*

*The most alarming of all man's assaults upon the environment is the contamination of air, earth, rivers and sea with dangerous and even lethal materials. . . . For the first time in the history of the world, every human being is now subjected to contact with dangerous chemicals, from the moment of conception until death.*⁴⁴

Modern environmentalism differs from the conservation and preservation era in two salient respects. First, whereas the first era emphasized the protection or efficient management of the natural environment, the primary policy of modern environmentalism is based on the cleanup and control of pollution.⁴⁵ Second, modern environmentalism displayed "social roots" decidedly absent from the first era.⁴⁶ Charted by numerous citizen groups and studies of public attitudes,⁴⁷ this change parallels the infusion of particular social values into the public arena and the widespread expression of those values in the environmental arena.⁴⁸ Moreover, the approach of modern environmentalism transformed from top-down control by technical and managerial leaders into bottom-up grassroots demands from citizens and citizen groups.⁴⁹

The publication of Rachel Carson's *Silent Spring* in 1962 marked the beginning of modern environmentalism.⁵⁰ Carson, known as the "godmother of modern environmentalism,"⁵¹ impacted the American

⁴⁴ RACHEL CARSON, *SILENT SPRING* 4 (1962).

⁴⁵ See GOTTLIEB, *supra* note 1, at 146.

⁴⁶ See HAYS, *supra* note 12, at 104. "Earlier one can find little in the way of broad popular support for the substantive objectives of conservation, little 'movement' organization, and scanty evidence of broadly shared conservation values." *Id.*

⁴⁷ See *id.* at 105.

⁴⁸ See *id.* at 104.

⁴⁹ See *id.* at 105.

⁵⁰ See DOWIE, *supra* note 2, at 23. In addition to *Silent Spring*, "Paul Ehrlich's *Population Bomb*, a neo-Malthusian tract on human population, and Barry Commoner's *Closing Circle*, which rephrased ecological verities like 'everything is connected to everything else' and 'everything must go somewhere'—alarmed, angered, and aroused a broad new constituency of middle-class activists." *Id.* at 23.

⁵¹ DOWIE, *supra* note 2, at 21. It has been argued that this title actually belongs to Dr. Alice Hamilton. Born in 1869, Dr. Hamilton was a medical doctor whose professional career investigating and writing about industrial disease and occupational hazards spanned some five decades. See GOTTLIEB, *supra* note 9, at 47–55. Dr. Hamilton joined Jane Addams and other social reformers at the Hull House settlement in Chicago, where she worked for "improved sewage systems, garbage collection, and clean water, and against typhoid, carbon monoxide pollution, tetraethyl lead, and horse manure on city streets (a troubling effluent of the time)." DOWIE, *supra* note 2, at 21.

public's consciousness with her detailed exposition on the dangers of environmental pollution to human health.⁵² By examining the ecological impacts of hazardous substances that pollute both the natural and human environments, like pesticides, Carson fundamentally altered the way Americans perceived the environment and the dangers of toxins to themselves.⁵³ Emphasizing the problems associated with industrial society, Carson argued that science and technology had been effectively removed from any larger policy framework and insulated from public input and opinion.⁵⁴ Carson's controversial thesis not only made *Silent Spring* an epoch event in the history of environmentalism, but also helped to launch a new decade of rebellion and protest in which the concept of "nature" was broadly construed to include quality-of-life issues.⁵⁵

The Environmental Movement differs markedly from other American social movements because it was saddled, from its inception, with conservative traditions.⁵⁶ Indeed, some activists were initially cautious about the association of environmentalism with population control and anti-urban elitism.⁵⁷ Nevertheless, the Environmental Movement flourished in the 1960s amid an era of social activism which fostered the rise of the Civil Rights, Peace, and Women's movements.

Most activists linked environmentalism with novel values that could restructure society and form alternative institutions and lifestyles.⁵⁸ Increasing ecological awareness in the areas of organic gardening and urban and rural communal living grew in popularity and were popularized by the underground press.⁵⁹ Moreover, "[s]everal New Left ecology collectives were organized in the late 1960s to focus

⁵² See DOWIE, *supra* note 2, at 21.

⁵³ See *id.* at 21. Carson's research in pesticides arose in large part from a friend whose birds in her bird sanctuary died during a mosquito eradication plan utilizing DDT in Duxbury, Massachusetts. See GOTTLIEB, *supra* note 9, at 83.

⁵⁴ See GOTTLIEB, *supra* note 9, at 86. In Carson's view, the rise of pesticides, as indicative in America, had entered an era in which industry, primarily interested in making money, dominated the American landscape and was rarely challenged. See *id.* at 344 n.12.

⁵⁵ See *id.* at 81.

⁵⁶ See DOWIE, *supra* note 2, at 28.

⁵⁷ See GOTTLIEB, *supra* note 9, at 97.

⁵⁸ See *id.* at 97.

⁵⁹ See *id.* at 100. "The underground press, which included at its height in 1969 as many as 500 papers reaching more than 4.5 million readers, was especially significant in establishing sources of alternative information—including information not being reported, or being reported differently, in the established press—and as a framework for new ideas and action." *Id.* at 99. Many of these papers focused on personal liberation, which they termed a "green" activity and associated it with the counterculture. See *id.* at 99–100.

on the waste issue and were pivotal in the formation of community-based recycling centers."⁶⁰

Furthermore, the Environmental Movement was precipitated by two major social changes in American culture.⁶¹ First, citizens began searching for improved standards of living and amenities, beyond necessities and conveniences, due to increased personal and social "real income."⁶² Rising standards of living allowed Americans to view nature as an essential provider of recreational activities.⁶³ Second, increasing levels of education spawned values associated with personal creativity and self-development, including involvement with the natural environment.⁶⁴ Both of these societal changes allowed individuals to think broadly about the natural habitat in which they lived, worked, and played.

Moreover, by the late 1960s, activists began to link the destruction of the natural environment to the complex interplay of new technology, industry, political power, and economic power.⁶⁵ Grass-roots community groups arose to support family and community autonomy against the powerful institutional forces of corporate industry and government bureaucracy.⁶⁶ In addition, concerns regarding human health led to demands for increased activism to make natural environments more available for use and to ward off threats from industrial production.⁶⁷

The emergence of these shifts created novel political opportunities⁶⁸ through a heightened degree of consumer action not previously known to American politics.⁶⁹ New forms of consumption provided focal points of organized activity in common leisure and recreational interest groups.⁷⁰ "[B]y emphasizing community organization to protect community environmental values against threats from external developmental pressures, consumer impulses went through a degree of mobilization and activity which they had not previously enjoyed."⁷¹

⁶⁰ See GOTTlieb, *supra* note 9, at 96.

⁶¹ See HAYS, *supra* note 12, at 108.

⁶² See *id.*

⁶³ See *id.* at 109.

⁶⁴ See *id.* at 108.

⁶⁵ See GOTTlieb, *supra* note 9, at 96.

⁶⁶ See HAYS, *supra* note 12, at 111.

⁶⁷ See *id.* at 110.

⁶⁸ See *id.* at 112.

⁶⁹ See *id.* at 113.

⁷⁰ See *id.* at 112.

⁷¹ See HAYS, *supra* note 12, at 112.

Finally, a series of dramatic environmental catastrophes in the 1960s galvanized environmentalists into action. These events included the 1965 power blackout and garbage strikes of New York City, the 1969 burning of the Ohio River along the industrial sections of Cleveland, and the 1969 Santa Barbara oil spill.⁷² Symbolic protests on college campuses across the nation, which included letter writing campaigns and "guerrilla theater-like" events, brought students into the Environmental Movement.⁷³ At Columbia University, for example, sit-ins were organized initially to protest the conversion of parkland in a neighboring black community into a university gymnasium.⁷⁴ Similarly, the 1969 People's Park protests at Berkeley, designed to prevent the bulldozing of a spontaneous community garden into a university parking lot, further heightened environmental awareness.⁷⁵ In all, both these catastrophes and protests served to heighten awareness of environmental issues in America.

Environmentalists responded to these events by demanding government protection from environmental degradation and pollution.⁷⁶ Environmental activists helped to draft legislation, including the Wilderness Act (1965); the Clean Air Act (1967); National Trails Act (1968); and the Wild and Scenic Rivers Act (1968).⁷⁷ Their efforts and the increasing momentum of the environmental movement culminated in the Earth Day celebration on April 22, 1970.⁷⁸

⁷² See GOTTLIEB, *supra* note 9, at 102–03.

⁷³ See *id.* at 106.

⁷⁴ See *id.* at 102.

⁷⁵ See *id.* The events of People's Park in 1969 are particularly instructive of how environmental concerns emerged in the 1960s. See *id.* at 102–03. People's Park, originally a vacant lot owned by the University of California at Berkeley, was seized by "[h]undreds of young people [who] planted seeds, trees, and sod and constructed a swing set, tables, and benches." GOTTLIEB, *supra* note 9, at 102. Governor Ronald Reagan sent in the National Guard to retake People's Park, injuring hundreds of protesters and killing one former student with a teargas canister in the confrontations that followed. See *id.* at 102–03.

⁷⁶ See DOWIE, *supra* note 2, at 23.

⁷⁷ See *id.*

⁷⁸ See *id.* at 24–25.

C. *The Third Era: Mainstream Environmentalism*

*Our country is stealing from poorer nations and from generations yet unborn We're tired of being told we are to blame for corporate depredations . . . institutions have no conscience. If we want them to do what is right, we must make them do what is right.*⁷⁹

Earth Day 1970, widely hailed as the beginning of the third era of American environmentalism, directly resulted from the infusion of social values of the 1960s into environmentalism.⁸⁰ Designed to challenge the environmental status quo through peaceful mass mobilization,⁸¹ Earth Day 1970 brought twenty-million Americans together in celebration of quality-of-life issues and concern for the environment.⁸² Unfortunately, in the celebrations since 1970, the ad-hoc, participatory nature of Earth Day has been supplanted by an increasingly corporate influence.⁸³

Although Earth Day 1970 enjoyed broad public support and was attended by the spectrum of grassroots interests, it did not escape criticism.⁸⁴ It alarmed both radical activists and established conservationist and preservationist organizations.⁸⁵ Radical activists believed the organizers of Earth Day had pandered to the press, government, and corporate elite.⁸⁶ The Sierra Club, the National Wildlife Federation, the Audubon Society, and other traditional conservative clubs feared that Earth Day would distort the notion of wilderness protection in favor of urban and social justice issues.⁸⁷ Their fears were realized, and Earth Day 1970 ushered in a new political atmosphere, one reacting against the adverse effects of industrial growth.⁸⁸

⁷⁹ *Id.* (quoting Dennis Hayes, Harvard Law Student, Earth Day Rally 1970 in Washington, DC, *PR Watch*, Second Quarter (1994)).

⁸⁰ *Id.* at 23. Originally conceived of as a teach-in by Wisconsin Senator Gaylord Nelson, Earth Day 1970 expanded into its own event. See DOWIE, *supra* note 2, at 25. Earth Day celebrations have been held every year since Earth Day 1970 on April 22nd. See *id.* at 26.

⁸¹ See GOTTLIEB, *supra* note 9, at 107.

⁸² See DOWIE, *supra* note 2, at 24.

⁸³ See *id.* at 27. According to *Time* magazine, Earth Day 1990 was "a commercial mugging." Priscilla Painton, *Greening from the Roots Up: The Fanfare Masks a Quiet Revolution (Earth Day 1990)*, *TIME*, April 23, 1990, at 76.

⁸⁴ See DOWIE, *supra* note 2, at 24-25; GOTTLIEB, *supra* note 9, at 105.

⁸⁵ See GOTTLIEB, *supra* note 9, at 107.

⁸⁶ See *id.*

⁸⁷ See *id.* at 106-08.

⁸⁸ See HAYS, *supra* note 12, at 117.

The 1970s also marked the emergence of new issues regarding toxic chemicals, energy, and the possibilities of social, economic, and political decentralization.⁸⁹ A seemingly endless series of toxic chemical episodes brought greater publicity, energy, and momentum to the movement. The American citizenry heard about polychlorinated biphenyls (PCBs) in the Hudson River, abandoned chemical dumps at Love Canal and near Louisville, Kentucky, and disasters at Kepone in Virginia.

Moreover, the energy crisis during the winter of 1973 to 1974 alarmed the American public.⁹⁰ Shortages of oil etched into the American experience the natural limits of human consumption.⁹¹ Environmental concerns were largely ignored by government entities, however, which favored corporate and technical advocates in an effort to develop new energy sources.⁹²

During this period, a shift from legislative to administrative environmental regulation also occurred.⁹³ President Nixon's plan creating the Environmental Protection Agency (EPA), which was submitted to Congress on July 2, 1970 and went into effect sixty days later, received no opposition from Congress.⁹⁴ Nixon's plan called for the reorganization and consolidation of many administrative agencies into the EPA.⁹⁵

With the establishment of the EPA and the passage of a variety of environmental laws and policies in the 1970s, environmental issues themselves became "mainstream."⁹⁶ Primarily comprised of attorneys, engineers, and economists, the EPA developed a complex regulatory structure that categorizes and addresses environmental issues by pollutant and medium.⁹⁷

⁸⁹ See *id.* at 118.

⁹⁰ See *id.*

⁹¹ See *id.*

⁹² See *id.*

⁹³ See MARC K. LANDY ET AL., *THE ENVIRONMENTAL PROTECTION AGENCY: ASKING THE WRONG QUESTIONS FROM NIXON TO CLINTON* 22 (1990).

⁹⁴ See *id.* at 32–33.

⁹⁵ See *id.* The agencies that were reorganized and consolidated include: the Federal Water Quality Administration and the Office of Research on Effects of Pesticides on Wildlife and Fish; the Department of the Interior; HEW's Bureau of Water Hygiene, Bureau of Solid Waste Management, National Air Pollution Control Administration, Bureau of Radiological Health and the Office of Pesticides Research; the Pesticides Regulation Division from the Department of Agriculture; the Division of Radiation Standards from the Atomic Energy Commission; and the Interagency Federal Radiation Council. See *id.* at 33.

⁹⁶ See SHUTKIN, *supra* note 42, at 99.

⁹⁷ See *id.* at 99–101.

Moreover, the primary emphasis of the legislation during this era was the harmful impact of pollution on ecological systems.⁹⁸ "During its first sixty days, EPA brought five times as many enforcement actions as the agencies it inherited had brought during any similar period."⁹⁹ In addition to water quality legislation, air pollution laws were passed in 1965, 1970, and 1972.¹⁰⁰ Growing concern over pesticides led to the revision of the existing pesticide law, resulting in the Pesticides Act of 1972.¹⁰¹ Likewise, the Coastal Zone Management Act of 1972 was passed in direct response to concerns during the previous decade regarding dredging and filling, industrial siting, and offshore oil development.¹⁰² It was only later that the environmental movement advocated for legislation emphasizing the harmful effects on human health. Still, environmental laws do not prohibit pollution. As developed, environmental laws control pollution according to health-based standards.¹⁰³

By the 1980s, however, "mainstream environmentalism" emerged in the wake of the Reagan Administration's anti-environmental deregulation policies.¹⁰⁴ Based primarily on a system of market-based incentives to entice companies to stop polluting, this approach frustrated progressive environmental protection advocates.¹⁰⁵ "From the beginning of that administration, the new governmental leaders made clear their conviction that the 'environmental movement' had spent itself, was no longer viable, and could be readily dismissed and ignored."¹⁰⁶ Consequently, while grassroots environmental groups were

⁹⁸ See HAYS, *supra* note 12, at 117.

⁹⁹ See LANDY, *supra* note 93, at 36. The EPA brought many suits for violations of water quality, primarily because it was easier to sue under water quality legislation than under the pre-1970 air quality statute. See *id.* For example, the EPA sued entities as diverse as: the cities of Atlanta, Cleveland, and Detroit for illegal sewage discharges; U.S. Plywood-Champion Papers for polluting the Ohio River; ITT Rayonier for dumping pulp waste products into Puget Sound; the Reserve Mining Corporation for dumping taconite filings into Lake Superior; and Armco Steel for polluting the Houston Ship Channel. See *id.*

¹⁰⁰ 42 U.S.C. § 7401 (1970).

¹⁰¹ Pesticides are now regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 (1990).

¹⁰² 16 U.S.C. § 1451 (1972).

¹⁰³ See *id.* at 100.

¹⁰⁴ See DOWIE, *supra* note 2, at 66-67.

¹⁰⁵ See *id.* at 68.

¹⁰⁶ See HAYS, *supra* note 12, at 119. "During the campaign, the Reagan entourage had refused often to meet with citizen environmental groups and in late November it made clear that it would not even accept the views of its own 'transition team' which was made up of former Republican administration environmentalists who were thought to be far too extreme." See *id.*

ignored by the Administration, mainstream environmentalism evolved into a cluster of public interest groups specializing in lobbying, legal expertise, scientific expertise, and the art of compromise.¹⁰⁷

These mainstream organizations formed the "Group of Ten" (G-10), which included the CEOs of the ten largest environmental organizations.¹⁰⁸ During the Reagan years, the membership in the G-10 organizations increased from four to seven million.¹⁰⁹ These professionalized organizations utilized scientific and legal expertise, and primarily initiated lobbying and legislative strategies.¹¹⁰ Most importantly, however, these traditionally conservative, national organizations took a primary place in the American public's perception of the environmental movement during this decade.¹¹¹

Unfortunately, the G-10 alienated many environmental groups by considering environmentalism to be a Beltway affair, played within the confines of Washington, D.C. and focused on the federal government through legislative strategies.¹¹² Groups such as Greenpeace and Environmental Action, which defined action more broadly and distrusted federal government, were excluded.¹¹³ Moreover, apolitical groups like World Wildlife Fund and the Nature Conservancy were eliminated.¹¹⁴ The G-10 "clearly sought to exclude groups conducting, supporting, or advocating direct action against polluters, whalers, the military, and, even more troubling, against corporations."¹¹⁵

However, other citizen environmental groups did respond to the Reagan Administration's challenge to prove their depth and persistence.¹¹⁶ These groups mobilized and joined together in opposition to Administration policies.¹¹⁷ A 1981 Harris poll illustrates this point, finding that some eighty-percent of Americans favored either main-

¹⁰⁷ See DOWIE, *supra* note 2, at 6.

¹⁰⁸ See *id.* at 68–69. These organizations include the: Environmental Defense Fund; Environmental Policy Center; Friends of the Earth; Isaac Walton League; National Audubon League; National Parks and Conservation Association; National Resources Defense Council; National Wildlife Foundation; Sierra Club; and the Wilderness Society. See *id.* at 69.

¹⁰⁹ See *id.* at 70. "Toward the end of the decade most mainstream groups experienced additional surges in membership, which were stimulated by reports of ozone destruction, global warming, images of oil on the beaches of Alaska, and medical wastes on the beaches of New Jersey." *Id.* at 70–71.

¹¹⁰ See GOTTlieb, *supra* note 1, at 145.

¹¹¹ See DOWIE, *supra* note 2, at 70.

¹¹² See *id.* at 5.

¹¹³ See *id.* at 69.

¹¹⁴ See *id.*

¹¹⁵ See *id.*

¹¹⁶ See HAYS, *supra* note 12, at 120.

¹¹⁷ See *id.* at 119.

taining the Clean Air Act or making it stricter.¹¹⁸ Moreover, by the late 1980s, grassroots organizations emerged that were critical of mainstream environmental groups' issue-by-issue strategy.¹¹⁹

D. *The Fourth Era: Grassroots Environmentalism*

*The environmental movement has not been practicing one of the laws of nature: strength in diversity.*¹²⁰

Reaction to Reagan Administration anti-environmental policies produced a backlash of grassroots environmentalism.¹²¹ Grassroots environmentalism embraces the principles of ecological democracy, and is distinguished from mainstream environmentalism by its belief in citizen participation in environmental decision making.¹²² Perceiving mainstream environmental organizations as too accommodating to both industry and government,¹²³ grassroots groups utilize "[c]ommunity right-to-know laws, citizen-enforcement provisions in federal and state legislation, and local input in waste clean-up methodology and siting decisions."¹²⁴ Consequently, although mainstream organizations do perform necessary functions such as educating the middle class to environmental concerns, litigating, and fighting the industrial lobby, grassroots groups create the real movement on issues and force environmentalism onto the public agenda.¹²⁵

These new citizen-based groups reflect the evolution of environmentalism from a narrow, wilderness-centered philosophy to a richer, more inclusive ideology encompassing both rural and urban environments.¹²⁶ Philosophically, the fourth era encompasses a spectrum of ideologies, including: deep ecology,¹²⁷ social ecology, bio-

¹¹⁸ See *id.* at 120.

¹¹⁹ See EDWARDS, *supra* note 3, at 36.

¹²⁰ See DOWIE, *supra* note 2, at 140 (quoting John Cook, Environmental Careers Organization).

¹²¹ See *id.* at 206.

¹²² See *id.* at 135.

¹²³ See *id.* at 136-137.

¹²⁴ See *id.* at 135.

¹²⁵ See DOWIE, *supra* note 2, at 211.

¹²⁶ See CRONON, *supra* note 8, at 81-90. Cronon views a central paradox in "wilderness" ideology in that "to the extent we live in an urban-industrial civilization but at the same time pretend to ourselves that our *real* home is in the wilderness, to just that extent we give ourselves permission to evade responsibility for the lives we actually lead." See *id.* at 81 (emphasis in original).

¹²⁷ Deep ecology groups primarily reflect the following philosophy:

regionalism, feminist ecology, spiritual ecology, native ecology, and Not in My Backyard (NIMBY) groups.¹²⁸ Moreover, grassroots environmentalism cuts across ethnic, racial, and class barriers to introduce a diversity previously absent from the environmental movement.¹²⁹

Grassroots groups can be conceptually separated into four areas: (1) splinter groups; (2) the new conservation movement; (3) environmental justice groups; and (4) NIMBY groups.¹³⁰ The variety of environmental issues addressed by these groups include: toxic abatement; ecological economics; civil rights; human rights; secular and religious issues; and wilderness preservation.¹³¹ The following discussion delineates each type of grassroots group and the challenges faced by that group.

1. Splinter Groups

Splinter groups are formed by individuals who leave mainstream organizations when their personal ideology and organizational vision clashes with establishment views.¹³² The process, called "segmentation," occurs when groups divide and spin off from major organizations because of struggles over personal power, preexisting cleavages, competition among members, and ideological differences.¹³³ Many splinter groups are formed by individuals who leave bureaucratic organizations that lack the ability to sustain their original visions.¹³⁴ In such cases, where preservation of the institution takes precedence

(1) the inter-relatedness of all life (biotic community), (2) the essential equality of all organisms as part of an overall system of biotic relationships (biodemocracy), (3) the rejection of human-centered arguments (anti-anthropocentrism), (4) the conception of the 'intrinsic value' of nature (ecocentrism), and (5) the goal of humanity as a fundamental identification of nature (self-realization, reimmersion).

Jerry A. Stark, *Postmodern Environmentalism: A Critique of Deep Ecology*, in *ECOLOGICAL RESISTANCE MOVEMENTS: THE GLOBAL EMERGENCE OF RADICAL AND POPULAR ENVIRONMENTALISM* 259, 261–62 (1995).

¹²⁸ See DOWIE, *supra* note 2, at 226–35.

¹²⁹ See *id.* at 207.

¹³⁰ See *id.* at 208.

¹³¹ See *id.* at 207.

¹³² See *id.* at 208–09.

¹³³ See LUTHER GERLACH, *The Structure of Social Movements: Environmental Activism and Its Opponents*, in *WAVES OF PROTEST*, *supra* note 6, at 86–87.

¹³⁴ See DOWIE, *supra* note 2, at 211.

over preservation of the environment, individuals leave to form organizations more responsive to environmental concerns.¹³⁵

There are many examples of environmental splinter groups.¹³⁶ One prominent example occurred when the Sierra Club fired radical David Brower in 1969.¹³⁷ Brower went on to form three distinct organizations: Friends of the Earth (FOE), the League of Conservation Voters, and the Earth Island Institute.¹³⁸ Moreover, Brower's departure from the Sierra Club also initiated the splinter Sierra Club Legal Defense Fund (SCLDF).¹³⁹ Formed by Rick Sutherland, the goal of SCLDF was to remedy the Sierra Club's perceived deficiency as being "too slow and conservative for an effective litigative strategy."¹⁴⁰

2. The New Conservation Movement

The New Conservation Movement consists of thousands of small, local and regional groups formed by dedicated activists to save America's forests, especially ancient forests, one at a time.¹⁴¹ The primary threat to these forests is posed by the U.S. government, which not only supplies trees to the timber industry but also subsidizes the construction of roads needed by the loggers to remove the timber.¹⁴²

For years, the traditional conservation organizations, such as the Sierra Club and the Wilderness Society, told their members that they were in a unique position to protest the nation's forests on federal land in the West.¹⁴³ However, these organizations all but abandoned their national effort to save the remaining five percent of America's old growth forests to local organizations.¹⁴⁴ Consequently, local and

¹³⁵ See *id.* at 208–09.

¹³⁶ See *id.* at 210. Other notable splinter groups include: the Native Forest Council started by Sierra Club dissident Tim Hermack in Oregon; Restore: The North Woods, founded by former Wilderness Society employee Michael Kellett; the Sea Shepherd Society established by former Greenpeace skipper Paul Watson; and the Oregon Natural Resource Council, an authorized splinter of the Wilderness Society. See *id.* at 211. The founders of Earth First!, an extremely controversial group which practices eco-sabotage, including tree-spiking, and whose members have used racist xenophobia in written and spoken remarks, previously worked for the Wilderness Society. See *id.* at 210.

¹³⁷ See DOWIE, *supra* note 2, at 209.

¹³⁸ See *id.*

¹³⁹ See *id.* The SCLDF kept its name because the name "Sierra Club" brings with it valuable name recognition and fundraising power. See *id.*

¹⁴⁰ See *id.*

¹⁴¹ See DOWIE, *supra* note 2, at 213.

¹⁴² See *id.* at 212.

¹⁴³ See *id.*

¹⁴⁴ See *id.*

regional groups arose in direct response to the failure of mainstream organizations on this issue.¹⁴⁵

3. Environmental Justice and NIMBY Groups

The final two categories—environmental justice and NIMBY groups—seek to address the uneven distribution of the costs of pollution and the benefits of environmental protection by framing environmental issues within the larger context of social justice, civil rights, and the democratic process.¹⁴⁶ These organizations diversify the environmental movement by including environmental activists of all colors and social classes.¹⁴⁷ Moreover, both environmental justice groups and NIMBY groups generally arise in reaction to the general disregard of the poor, the disadvantaged, and those classically underrepresented in the political process.¹⁴⁸ However, the formation of each movement is different.¹⁴⁹ Whereas environmental justice groups usually arise in response to communities of color shouldering a disproportionate burden of environmental pollution, NIMBYs are generally locally-formed antitoxics groups, in reaction to perceived health risks to families and communities.¹⁵⁰

a. *Environmental Justice Groups*

Environmental justice groups recognize that neither the costs of pollution nor the benefits of environmental protection are evenly distributed throughout society.¹⁵¹ Furthermore, they argue that such uneven distributions of environmental hazards stem from inequalities of socio-economic and political power.¹⁵² For example, many studies have found that those who live in close proximity to locally unwanted land uses (LULUs), are disproportionately people of color or low income.¹⁵³

¹⁴⁵ See *id.* at 213.

¹⁴⁶ See EDWARDS, *supra* note 3, at 36.

¹⁴⁷ See DOWIE, *supra* note 2, at 219–20.

¹⁴⁸ See EDWARDS, *supra* note 3, at 37–38.

¹⁴⁹ See *id.* at 38.

¹⁵⁰ See *id.*

¹⁵¹ See *id.* at 36.

¹⁵² See *id.* at 37.

¹⁵³ See *id.* Studies that reviewed fifteen reports published since 1971 examining air pollution, solid waste, noise, hazardous waste, consumption of chemically contaminated fish, and the risk of rat bite, concluded that six of the nine reports cited race as the most important predictor while three of the other reports cited income. See *id.* at 52 n.2.

Some environmental justice groups that are supported by communities of color are able to draw from the tradition of the Civil Rights movement.¹⁵⁴ The political resources of the African-American community, for example, have enabled certain environmental efforts "to mobilize quickly without the substantial investment of time and energy needed first to build movement infrastructures and communications networks."¹⁵⁵ These groups are sometimes able to utilize established lines of communication, skilled activists, black elected officials, and a national network of civil rights advocacy organizations.¹⁵⁶ Of course, since many minority groups do not receive adequate mobilizing structures or aid from pre-existing Civil Rights networks, such groups are simply disadvantaged by a lack of resources.

In the 1960s, Dr. Martin Luther King, Jr. worked on classic environmental justice issues through his Poor People's Campaign¹⁵⁷ and marches for improved working conditions for garbage workers of Memphis.¹⁵⁸ The Warren County, North Carolina demonstrations in 1982, however, have been identified as the first large-scale civil disobedience efforts by the environmental justice movement.¹⁵⁹ In Warren County, which had been sited for a toxic waste dump, hundreds of predominantly African-American residents blocked trucks from dumping PCB-laced dirt in their community.¹⁶⁰ By illuminating the disproportionate impact of environmental pollution on minority communities, the Warren County experience put the largely unstudied concept of "environmental racism" on the national agenda.¹⁶¹ Indeed, at the urging of Warren County protestors, the 1987 United Church of Christ's Commission for Racial Justice conducted a survey which found that forty percent of the American toxic landfill capacity

¹⁵⁴ See EDWARDS, *supra* note 3, at 39.

¹⁵⁵ See *id.* at 40.

¹⁵⁶ See *id.* at 39.

¹⁵⁷ See ANDREW YOUNG, *AN EASY BURDEN: THE CIVIL RIGHTS MOVEMENT AND THE TRANSFORMATION OF AMERICA* 443 (1996). The Poor People's Campaign, conceptualized and organized by Dr. King before his death, began on May 12, 1968, when people flooded Washington, D.C. to create "Resurrection City." See *id.* at 479-81.

¹⁵⁸ See *id.* at 443. The Memphis garbage workers' strike protested the disrespectful treatment of garbage workers, and began after two African-American garbage collectors were accidentally crushed by their own garbage truck when they were forced to take shelter in the back of the truck during a rain storm because they were not allowed to take shelter in the cabs of their trucks. See *id.* at 449.

¹⁵⁹ See CRONON, *supra* note 8, at 303.

¹⁶⁰ See EDWARDS, *supra* note 3, at 40.

¹⁶¹ See CRONON, *supra* note 8, at 304.

was concentrated in three communities, each of which was at least seventy-eight percent minority.¹⁶²

In the early 1990s, grassroots leaders came together to place grassroots groups, their constituencies, and their method of organizing at the forefront of the environmental discourse.¹⁶³ The 1991 National People of Color Environmental Leadership Summit brought together the following delegates: "African-Americans from the petrochemical industry corridor in Louisiana; Latinos from urban and rural areas of the Southwest; Native American activists like the Western Shoshone protesting underground nuclear testing on their lands; organizers of multi-racial coalitions in places like Albany, New York, and San Francisco."¹⁶⁴

b. *Antitoxics Groups*

While historians often trace the origins of environmentalism to wilderness conservation and preservation, a more thorough account of environmentalism must also conceive of nature as the human environment, including cities and industry.¹⁶⁵ The antitoxics movement has a long tradition that has been ignored in most environmental histories.¹⁶⁶ In particular, urban critic Lewis Mumford's discourses on the excesses of the industrial city and the need to link city and countryside at the regional scale, Dr. Alice Hamilton's work identifying occupational health hazards and new industrial poisons,¹⁶⁷ and Florence Kelly's advocacy for improved urban and industrial conditions for the poor, have been largely ignored.¹⁶⁸

Occupational health and urban pollution did not become a central concern of American environmentalism until the 1970s and 1980s.¹⁶⁹ Initially, these protests were scattered and disorganized, lack-

¹⁶² See *id.* The full name of the 1987 United Church of Christ Commission for Racial Justice study is: *Toxic Waste and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites. Id.*

¹⁶³ See GOTTlieb, *supra* note 1, at 144.

¹⁶⁴ See *id.*

¹⁶⁵ See *id.* at 146.

¹⁶⁶ See *id.*

¹⁶⁷ See *id.* Born in 1869, Dr. Alice Hamilton was a medical doctor and professor of pathology at the Women's Medical School of Northwestern University whose professional career investigating and writing about industrial disease and occupational hazards spanned some five decades and culminated in publishing the classic text, *Industrial Poisons in the United States* in 1920. See GOTTlieb, *supra* note 1, at 150-53.

¹⁶⁸ See *id.* at 146.

¹⁶⁹ See DOWIE, *supra* note 2, at 22.

ing the necessary organizational infrastructure, communications networks, and sufficient representation in the political process to become full-fledged social movements.¹⁷⁰ However, with the establishment of the Citizen's Clearing House for Hazardous Wastes (CCHW) in 1981 (now known as the "Center for Health, Environment, and Justice"), and other national organizing centers, the grassroots groups became more cohesive.¹⁷¹

The antitoxics campaigns, a self-described "movement of housewives,"¹⁷² are usually spearheaded by average citizens, oftentimes women with little political experience.¹⁷³ Many organizers of these campaigns view their initial involvement as a naïve faith in government's willingness to address environmental problems.¹⁷⁴ These activists are not motivated by political ideology, but rather by a desire to protect their families and communities from toxic contamination arising from waste dumps, incinerators, ground water contamination, and air pollution.¹⁷⁵

The premier example of an antitoxics movement is the Love Canal campaign, which galvanized individuals across the nation to get involved with grassroots campaigns.¹⁷⁶ Love Canal was a housing development built on a landfill operated by the Hooker Chemical Company, which had been dumping highly toxic industrial chemicals into the landfill for several decades.¹⁷⁷ The health impacts on the local residents were severe.¹⁷⁸ Children complained of burning feet while playing barefoot in their yards, many residents had skin irritations, and pets lost their fur.¹⁷⁹

Angered by community health problems, as well as the respiratory ailments of her young son, neighborhood resident Lois Gibbs organized the Love Canal Homeowners' Association (LCHA).¹⁸⁰ The LCHA, consisting primarily of lower-middle class women, was a con-

¹⁷⁰ See EDWARDS, *supra* note 3, at 38–39.

¹⁷¹ See *id.* Love Canal was not an isolated incident; leukemia clusters in Woburn, Massachusetts and the Kepone poisoning of wells in Hopewell, Virginia both added national media coverage and increased national awareness of pollution issues. See DOWIE, *supra* note 2, at 128.

¹⁷² See EDWARDS, *supra* note 3, at 38.

¹⁷³ See *id.*

¹⁷⁴ See *id.* at 45.

¹⁷⁵ See *id.* at 38.

¹⁷⁶ See DOWIE, *supra* note 2, at 127–29.

¹⁷⁷ See *id.* at 127–28.

¹⁷⁸ See *id.* at 127.

¹⁷⁹ See *id.*

¹⁸⁰ See *id.* at 128.

temporary model of community empowerment.¹⁸¹ Community residents and local leaders devised their own strategies and tactics, including: (1) a community-initiated health survey; (2) direct confrontation of political operatives as opposed to mere lobbying; and (3) dramatic protests, including taking EPA officials hostage.¹⁸² In the end, the LCHA succeeded in prompting public officials to acknowledge the impacts of the landfill on community health, and in forcing the government to buy back the homes located on the dumpsite.¹⁸³

After the Love Canal struggle ended, Gibbs continued the fight against toxic contamination in communities by founding the CCHW in 1981.¹⁸⁴ The CCHW was joined by another prominent antitoxic networking group, the National Toxics Campaign Fund, a spin-off group from Massachusetts Fair Share.¹⁸⁵ These organizations have provided the local groups with national support, including management services, financial support, and legal counsel.¹⁸⁶

II. THE ENVIRONMENTAL MOVEMENT AS A SOCIAL MOVEMENT: SURVIVING THROUGH DIVERSITY

A. *The Structure of a Social Movement: The Endurance of the American Environmental Movement*

The endurance of the American environmental movement has puzzled social movement scholars.¹⁸⁷ A social movement is neither a disorganized mass of people nor a highly formalized organization.¹⁸⁸ Rather, a social movement encompasses both short-term mobilizations of individuals pursuing a common cause, and actual communities of individuals assembled by such mobilizations.¹⁸⁹ Social movements are distinguished from other groups by common characteristics such as: spontaneity and structure;¹⁹⁰ heightened consciousness of a

¹⁸¹ See GOTTlieb, *supra* note 9, at 187.

¹⁸² See *id.*

¹⁸³ See *id.* at 186–87.

¹⁸⁴ See *id.* at 189. CCHW is now called the “Center for Health, Environment, and Justice.”

¹⁸⁵ See *id.*

¹⁸⁶ See DOWIE, *supra* note 2, at 128.

¹⁸⁷ See *id.* at 205.

¹⁸⁸ See WAVES OF PROTEST, *supra* note 6, at 1.

¹⁸⁹ See *id.* at 3. This distinction is important because although the initial mobilization will eventually decline, the organizational and communication lines forged by that mobilization often perseveres. See *id.*

¹⁹⁰ See *id.* at 1.

particular social issue; and the desire to increase that social issue's visibility.¹⁹¹ Indeed, a social movement's message "specifies discontents, prescribes solutions, justifies a change from the status quo, and may also identify the agents of social change and the strategy and tactics they are to use."¹⁹²

Why do social movements end? They lose momentum.¹⁹³ The once loosely organized groups evolve into formalized interest groups staffed by "activists-turned-bureaucrats" and their leaders either burn out or are co-opted by government to staff new agencies. As media interest wanes, so too does public interest.¹⁹⁴ "Efforts to revitalize the movement and avoid stagnation and co-optation may lead to rancorous infighting and fragmentation, with 'die-hard activists' disavowing those co-opted by government or seduced into working 'within the system'."¹⁹⁵ And government agencies, once well-intentioned, begin to fail.¹⁹⁶ Typically, the agencies are "captured" by industry, the very interests they were designed to regulate.¹⁹⁷

To avoid this fate, successful social movements must be segmentary, polycentric, and reticulate.¹⁹⁸ The best organizational structures are decentralized and flexible, rather than highly centralized and bureaucratic. This approach highlights the emergence of new splinter groups, supports multiple centers of leadership, and utilizes an integrated network to exchange ideas and information.¹⁹⁹

The environmental movement has endured, puzzling social movement scholars, precisely because of its structure.²⁰⁰ Segmentation in the environmental movement has created four distinct branches: (1) regional branches of the older, bureaucratically structured national organizations; (2) national alternatives to the older groups formed in the 1960s; (3) ideologically and tactically radical groups; and (4) the grassroots environmental groups.²⁰¹ Put simply, the variety of ideologies and organizational structures of groups within the

¹⁹¹ See *id.* at 3.

¹⁹² See Freeman, *Origin of Social Movements*, *supra* note 6, at 3.

¹⁹³ See Riley Dunlap & Angela Mertig, *The Evolution of the United States Environmental Movement from 1970 to 1990*, 4 Soc'y & Nat. Resources 211-12.

¹⁹⁴ See *id.*

¹⁹⁵ See *id.*

¹⁹⁶ See *id.*

¹⁹⁷ See *id.*

¹⁹⁸ See GERLACH, *supra* note 133, at 86-90.

¹⁹⁹ See *id.*

²⁰⁰ See DOWIE, *supra* note 2, at 205.

²⁰¹ See GERLACH, *supra* note 133, at 86.

movement make the environmental movement difficult to suppress.²⁰² The diversity of organizations "affords maximum penetration of and recruitment from different socioeconomic and sub-cultural groups, contributes to a system of reliability through redundancy, duplication, and overlap, maximizes adaptive variation through diversity of participants and purposes, and encourages social innovation and problem solving."²⁰³

Consequently, the environmental movement is surviving in the same manner nature usually triumphs—through diversity. Environmental organizations run the gamut from multi-million dollar operations led by professionals and staffed by experts, to ad hoc neighborhood associations organized by regular citizens in response to local environmental concerns.²⁰⁴ However, this is not the only type of diversity necessary to bind a movement together. Rather, the spontaneity and diversity of the environmental movement comes from grassroots environmentalism, which is "rooted in communities and constituencies seeking to address issues . . . of where and how people live, work, and play."²⁰⁵

B. *Locating the Environmental Movement in Social Movement Theory*

Every mature academic discipline has paradigms that provide models for further research.²⁰⁶ In his seminal work, *The Structure of Scientific Revolutions*, Thomas Kuhn defined a paradigm as the model exemplar that includes "accepted examples of actual scientific practice—examples which include law, theory, application, and instrumentation together—[that] provide models from which spring particular coherent traditions of scientific research."²⁰⁷ According to Kuhn, a paradigm is the equivalent of common law precedent because the paradigm is "an object for further articulation and specification under new or more stringent conditions."²⁰⁸ Thus, para-

²⁰² See *id.* at 96.

²⁰³ See *id.*

²⁰⁴ See *id.*

²⁰⁵ See GOTTlieb, *supra* note 1, at 147.

²⁰⁶ See THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1962) (discussing paradigm shifts prompted by changes in technology and researchers' search to find the answers to anomalies in a dominant pattern that need to be explained and incorporated in scholarship).

²⁰⁷ See *id.* at 10.

²⁰⁸ See *id.* at 23.

digm shifts occur when researchers change their basic approach to studying the subject matter of the field.²⁰⁹

Social movement theory, like any mature discipline, underwent paradigm shifts before reaching the current dominant paradigm, New Social Movement (NSM) theory.²¹⁰ Grassroots environmentalism is situated within NSM theory.²¹¹ However, since the environmental movement encompasses a broad array of organizational structures and ideologies, prior paradigms of social movement theory provide an opportunity to think about the origins of the environmental movement and to analyze why different organizational strains of the movement have arisen.

The first paradigm of social movement theory, called "Social Strain" theory, attempted to answer the question of why individuals engage in protest.²¹² Approaching the study of social movements through social psychology, collective behavior, and mass society theory, leading theorists concluded that social protest resulted from structural weaknesses in society that created abnormal and disruptive psychological states in citizens.²¹³ The underlying structural strain was believed to result from two distinct origins: (1) "mass society phenomena," which suggested that citizens developed feelings of alienation and anxiety due to the dearth of intermediary groups in society available to socialize and integrate individuals into their communities; and (2) structural strain, which was believed to arise from increased industrialization, urbanization, unemployment, changes in voting patterns, and the strain of status incongruence.²¹⁴ This model failed, however, because it: focused on the individual, and not the group; failed to indicate the level of structural strain necessary to induce protest; assumed protesters were irrational; and assumed that normal political channels were meeting the protestors needs.²¹⁵

Next, the paradigm shifted to "Resource Mobilization" theory, which focused on the group. Resource Mobilization theory, which

²⁰⁹ See *id.* at 17.

²¹⁰ See generally ROBERTA GARNER & JOHN TENUTO, *SOCIAL MOVEMENT THEORY AND RESEARCH: AN ANNOTATED BIBLIOGRAPHICAL GUIDE* 1-48 (1997) (discussing the rise of dominant paradigms in social movement theory).

²¹¹ See ENRIQUE LARANA, *NEW SOCIAL MOVEMENTS* 1 (1994).

²¹² See generally NEIL SMELSER, *THEORY OF COLLECTIVE BEHAVIOR* (1963); WILLIAM KORNHAUSER, *THE POLITICS OF MASS SOCIETY* (1959).

²¹³ See MELVIN F. HALL, *POOR PEOPLE'S SOCIAL MOVEMENT ORGANIZATIONS: THE GOAL IS TO WIN* 3 (1995).

²¹⁴ See *id.* at 3-4.

²¹⁵ See *id.* at 5.

viewed social strain as constant over time, posited that social movements occur when external parties infuse movement groups with resources.²¹⁶ Utilizing social movement organizations (SMOs) as the primary elements of social movements,²¹⁷ the model portrayed protest as rational when the normal political channels are malfunctioning.²¹⁸ Moreover, it gave careful attention to preexisting social infrastructure, including the political system, other movement organizations, socializing institutions, media, and political opportunity structures.²¹⁹ Finally, Resource Mobilization theory distinguished social movement organizations, which are public interest groups, from social movements, viewed as currents, ideologies, discourses, motivations and actions of individuals.²²⁰ With regard to the environmental movement, the mainstream groups would be considered SMOs, because they are highly professionalized and function more like public interest groups and movement groups.

Unfortunately, Resource Mobilization theory does not explain the cognitive shift that people undergo when they think of themselves as protestors.²²¹ Moreover, since it is predicated on an infusion of resources to the protesting group, it implies that disadvantaged groups cannot protest without the support of elites.²²² Finally, and most importantly with regard to the environmental movement, the model fails to address the problem of co-option.²²³

²¹⁶ See *id.* at 6.

²¹⁷ See GARNER & TENUTO, *supra* note 210, at 22.

²¹⁸ See FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* 24 (1977). The Resource Mobilization model is predicated upon an external infusion of resources to enable groups to mobilize, but since collective action is both risky and expensive, sufficient resources are usually unavailable to poor and disadvantaged groups who lack time and money. The success rate for the mobilization of poor and disadvantaged groups depends on the *amount*, not the *type*, of resources available to those groups. See *id.* Additionally, "resources" come in many forms, including: information; social organizations; repeat protesters; the recruitment of friends; established lines of communication; help placing an issue on the public agenda; and whether the public is ready to accept the issue as legitimate. See *id.*

²¹⁹ See GARNER & TENUTO, *supra* note 210, at 23–24. "A major component of the environment is the political opportunity structure, which includes the form of political institutions in the society, the behavior of incumbent elites, the level of social control and repression of movements, and intended and unintended reductions in the level of social control exercised against movements." *Id.* at 24.

²²⁰ See *id.* at 22.

²²¹ See PIVEN & CLOWARD, *supra* note 218, at 24.

²²² See *id.* This ignores the reality that poor people can protest successfully by refusing to conform to institutional roles (i.e., by striking or refusing to pay rent). See *id.*

²²³ See HALL, *supra* note 213, at 8–9.

Co-option occurs when the level of the contentiousness of collective action is influenced by significant funding from corporate sponsors, foundations, and grants.²²⁴ Mainstream environmental organizations often allow corporate lawyers, directors, and presidents to sit on their boards.²²⁵ In this case, co-option occurs when these mainstream organizations decide to have policies of "cooperation" and "partnerships" with business and industry.²²⁶ Such policies necessarily change the baseline stance of an organization from zero tolerance of pollution to pollution within reasonable limits for that industry.²²⁷

The next paradigm, Karl Marx's Historical Materialism, supported the precept that protest (called "revolution" by Marx) is rational and natural.²²⁸ Historical Materialism is based on the premise that the proletariat class, a product of the conditions of capitalist society, would rise up and revolt against the bourgeoisie. According to Marx, social revolution begins when,

[a]t a certain stage of their development, the material productive forces of society come in conflict with the existing relations of production or—what is but a legal expression of the same thing—with the property relations within which they have been at work. . . . With the change of the economic foundation the entire immense superstructure is more or less rapidly transformed.²²⁹

A compelling argument for applying Historical Materialism to the environmental movement is put forth by Carol Merchant in her essay *The Theoretical Structure of Ecological Revolutions*.²³⁰

Merchant's thesis is that ecological revolutions "are major transformations in human relations with nonhuman nature," which arise from "changes, tensions, and contradictions that develop between a society's mode of production and its ecology, and between its mode of production and reproduction."²³¹ These tensions produce new forms

²²⁴ See *id.*

²²⁵ See DOWIE, *supra* note 2, at 53–59.

²²⁶ See *id.*

²²⁷ See *id.*

²²⁸ See KARL MARX, PREFACE TO THE CRITIQUE OF POLITICAL ECONOMY (1859) in THE MARX-ENGELS READER, SECOND EDITION 5 (Robert C. Tucker ed., 1978).

²²⁹ See *id.* at 4–5.

²³⁰ See Carolyn Merchant, *The Theoretical Structure of Ecological Revolutions*, in OUT OF THE WOODS, *supra* note 1, at 18–27.

²³¹ See *id.* at 19.

of consciousness, ideas, and worldviews.²³² Thus, according to Merchant, new paradigms of environmental consciousness—how societies experience the natural world—arise when the mode of production develops to such an extent that it conflicts with the natural resources it utilizes. Thus, “environmental change in American history has been dictated by the dynamic market economy developed in the eighteenth century, the European idea that civilized societies are morally superior to wild nature and indigenous cultures, and the rise of science and technology, which has enabled and justified environmental depredation.”²³³

Another paradigm, the Party Failure model, is a systemic perspective that alternative organizations form to fill a gap created by the decline of traditional party politics.²³⁴ This model was designed to comprehend the decline of citizen participation in contemporary parties, and to foster an understanding of the new political groups that have arisen to vie for citizen loyalty.²³⁵ According to Kay Lawson and Peter Merkyl in *When Parties Fail: Emerging Alternative Organizations*, alternative organizations arise when parties fail to provide their traditional linkages, including participatory and electoral connections between citizens and their government.²³⁶ Thus, major parties are viewed as failing when they can no longer perform their traditional functions, like mediating major group interests, structuring elections, educating and mobilizing citizens, and devising public policy.²³⁷ Environmental organizations, which accounted for six of Lawson and Merkyl’s case studies, are among those types of alternative organizations that commonly arise to challenge parties as the mediating institution between state and citizen.²³⁸

Finally, the current dominant paradigm of social movement theory is NSMs.²³⁹ Popular in Europe in the late 1970s and 1980s, NSM theory arose to explain issue-oriented movements, including the envi-

²³² See *id.*

²³³ See SHUTKIN, *supra* note 42, at 24.

²³⁴ See WHEN PARTIES FAIL: EMERGING ALTERNATIVE ORGANIZATIONS 13–21 (Kay Lawson & Peter Merkyl eds., 1988).

²³⁵ See *id.* at 13.

²³⁶ See *id.* at 18–21.

²³⁷ See *id.* at 31–37.

²³⁸ The other types of alternative organizations are supplementary, communitarian, and antiauthoritarian organizations. See *id.* at 18–30. However, because alternative organizations are often absorbed by parties, or have their issues co-opted, they generally exist merely to supplement traditional party organizations. See *id.*

²³⁹ See GARNER & TENUTO, *supra* note 210, at 30–37.

ronmental, peace, antinuclear, feminist, and gay and lesbian movements.²⁴⁰ Generally, these groups arise from structural changes in advanced capitalist societies whereby industrial productivity is pushed to the periphery, while material affluence, urbanization, communication, and technological innovations increase.²⁴¹

In America, the proliferation of petrochemicals, nuclear weapons, and trends towards over-production and mass consumption since World War II all contributed to the rise of NSMs.²⁴² Unlike the decidedly left-leaning European NSMs, however, NSMs in America have produced a backlash of single-issue right-wing groups supporting causes like anti-busing, anti-abortion, and anti-gun control groups.²⁴³

The traditional role of government in American society, including the regulation of the private sector and unions, social services, and a welfare state, is viewed negatively by NSMs.²⁴⁴ Indeed, NSMs perceive government as a highly intrusive form of social control, or at best, as a manner of ameliorating capitalism.²⁴⁵ However, as one scholar notes, the "new social movements can be considered the archetypal form of postmodern politics—grassroots, protest from below, solidarity, collective identity, affective processes—all in the struggle against the established order outside the 'normal' [political] channels."²⁴⁶ Indeed, the emergence of the fourth era of environmentalism—grassroots environmentalism—dovetails with the NSM paradigm.²⁴⁷

Like other NSMs, grassroots environmentalism focuses on both identity and symbolic cultural issues, emphasizing non-material needs as mobilizing factors.²⁴⁸ By appealing to value and issue-based cleavages instead of group-based cleavages, NSMs advocate a new form of citizen politics based on direct action, participatory decision-making, decentralized structures, and opposition to bureaucracy.²⁴⁹ Similarly, the diversity of the grassroots environmentalism, which cuts across racial, ethnic, and class divides, promotes participatory decision-

²⁴⁰ See LARANA, *supra* note 211, at 4.

²⁴¹ See *id.*

²⁴² See GOTTLIEB, *supra* note 1, at 147.

²⁴³ See GARNER & TENUTO, *supra* note 210, at 34.

²⁴⁴ See *id.*

²⁴⁵ See *id.*

²⁴⁶ See Joel Handler, *Postmodernism, Protest, and New Social Movements*, 26 LAW & SOC'Y REV. 719 (1992).

²⁴⁷ See GOTTLIEB, *supra* note 1, at 147.

²⁴⁸ See GARNER & TENUTO, *supra* note 210, at 34.

²⁴⁹ See Handler, *supra* note 246, at 719.

making and democratic ideals. Most importantly, however, NSM theory promotes transformational goals by seeking to turn political success into long-term societal change.²⁵⁰ Similarly, grassroots environmentalism embraces the NSM focus on quality-of-life issues, and attempts to transform America's conception of nature from a wilderness-centered ideology to a richer vision that includes the urban environment as well.²⁵¹

III. THE STRATEGIES AND TACTICS OF ENVIRONMENTAL GRASSROOTS GROUPS

Grassroots groups generally protest against environmental harms. Oftentimes, however, it seems the American public's perception of the environmental movement includes only protests and objections to the manner of development and the shape of technology.²⁵² Indeed, the media portrays environmentalists as individuals who complain of pollution harms and block important projects, like dams, highways, and industrial plants.²⁵³ Such a picture of environmental activism ignores the underlying truth.

Environmentalists react to the "environmental impact" mode of analysis. The environmental impact mode of analysis identifies the "adverse effects" of development and attempts to either avoid or mitigate those effects.²⁵⁴ Instead of asking what the most beneficial environmental outcome would be, the question presented by the environmental impact mode of analysis is how development can progress with the "least" adverse environmental effects.²⁵⁵ Consequently, environmentalists who wish to preserve the environment are faced with laws inherently structured towards promoting development.

Thus, since environmental laws merely control pollution, rather than prohibit it, communities must fight to ensure that they do not bear a disproportionate burden of environmental harms.²⁵⁶ Grassroots environmental groups form to protect low-income and minority

²⁵⁰ See *id.* Unfortunately, a primary critique of NSM theory is that it lacks a larger strategy to implement this precise societal transformation it seeks. See *id.* Moreover, it has been argued that new social movements are incapable of using the language of the liberal and the socialist traditions because they lack an institutional design for a new society. See *id.* at 720.

²⁵¹ See GOTTlieb, *supra* note 1, at 147.

²⁵² See HAYS, *supra* note 12, at 108.

²⁵³ See *id.*

²⁵⁴ See *id.*

²⁵⁵ See *id.*

²⁵⁶ See SHUTKIN, *supra* note 42, at 124.

neighborhoods from environmental harms.²⁵⁷ These groups attempt to cure the inherent disadvantage that low-income and minority communities face due to their lack of political clout. Direct action, litigation, and utilizing the legal system through collective action framing are three strategies grassroots groups can employ.

A. Direct Action

Direct action is the most democratic method for social change.²⁵⁸ Consequently, the dominant template for protest politics in America is the repertoire of disruptive, confrontational, and direct action tactics.²⁵⁹ However, as mainstream environmental organizations pursued federal environmental policy goals, these organizations failed to promote "bottom-up citizen involvement."²⁶⁰ The rise of grassroots environmentalism reflects the voice of those interests that were marginalized by the mainstream groups.

In general, grassroots groups find protest activities that increase issue awareness to be more successful in helping them achieve their goals than lobbying and litigation.²⁶¹ Grassroots groups have found "the outsider politics of rude and crude confrontation far more effective than the polite protest of going through [political] channels."²⁶² These groups generally view lobbying and litigation as a reflection of the belief that the political process is not neutral, but rather inherently biased and unresponsive to the new group needs of marginalized citizens.²⁶³

Usually, attempts to get accurate information about locally unwanted land uses (LULUs) from government sources are futile.²⁶⁴ For although grassroots activists are allowed to express their views to official bodies in public hearings, they are seldom taken seriously by those same officials.²⁶⁵ In the end, when grassroots groups focus on working through government bureaucracy, this effort often contributes to its failure to accomplish its objectives.

²⁵⁷ See *id.*

²⁵⁸ See e-mail interview with Jonathan Leavitt, Lawrence Grassroots Initiative (Nov. 9, 1999) [hereinafter Leavitt II] (on file with author).

²⁵⁹ See EDWARDS, *supra* note 3, at 45.

²⁶⁰ See SHUTKIN, *supra* note 42, at 110.

²⁶¹ See Leavitt II, *supra* note 258.

²⁶² See EDWARDS, *supra* note 3, at 47.

²⁶³ See Leavitt II, *supra* note 258.

²⁶⁴ See EDWARDS, *supra* note 3, at 44.

²⁶⁵ See *id.*

As Jonathan Leavitt of the Lawrence Grassroots Initiative (LGI) explained, "[l]obbying is a rich man's business. So is playing by the rules, because the rules are set by the rulers."²⁶⁶ The LGI, which acts as the fiscal sponsor to both the Lawrence Environmental Justice Council (LEJC) and the Merrimack Valley Greens (MVG), employs any strategy that creates movement on an issue but focuses primarily on direct action and protest activities.²⁶⁷ The LEJC provides leadership development, training, and a public voice for communities of color and low-income neighborhoods in Lawrence, Massachusetts.²⁶⁸ Recently they completed a signature drive to get an ordinance passed that prohibits the release of mercury, lead, or dioxin within the city limits.²⁶⁹ The MVG primarily engages in direct action, demonstrations, marches, and "in your face kind of stuff."²⁷⁰

Using a repertoire of confrontational and disruptive direct action tactics serves to personalize such attacks against specific public officials, rather than faceless agencies, and to gain media attention and publicity.²⁷¹ Direct action protest activities are especially salient in the environmental arena, where the media attention and publicity generated can put a personal "face" or identity on the entity, often a company, engaging in environmental harm.²⁷²

B. *Litigation*

Litigation is a common tactic employed by grassroots movements.²⁷³ However, legal action is generally effective in grassroots mobilization only in concert with other tactics, like demonstrations, lob-

²⁶⁶ See Leavitt II, *supra* note 258.

²⁶⁷ See e-mail interview with Jonathan Leavitt, Lawrence Grassroots Initiative (Nov. 7, 1999) [hereinafter Leavitt I] (on file with author).

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ See EDWARDS, *supra* note 3, at 47. In addition to destroying two million dollars of mining equipment in the coal fields of Eastern Kentucky, one activist handcuffed herself to a governor's chair for four hours. See *id.* "Activists have blockaded landfills, delivered large samples of toxic waste to state legislative bodies, and seized control of hearings turning them into community interrogations of officials. They have marched, boycotted, held Mother's Day 'die ins,' mock funerals, and at times have 'blown up' public hearings by disrupting the proceedings so thoroughly that official decisions they considered harmful to their communities could not be made." See *id.*

²⁷² See *id.*

²⁷³ See EDWARDS, *supra* note 3, at 46.

bying, collective bargaining, and media mobilization.²⁷⁴ Moreover, repeated clear victories in court are not necessary for effective legal mobilization.

The litigation tactics common among large professionalized groups are often considered an ineffective mechanism for social change at the grassroots level.²⁷⁵ While many organizations file restraining orders to stop environmental harms and sue polluters for damages, utilizing both statutory remedies and the common law, litigation is too long and costly for most grassroots groups.²⁷⁶ Consequently, while litigation may be a useful means to secure compensation for an environmental loss, it is often an inadequate way to achieve societal change.²⁷⁷

The law is more successfully used by those groups with increased resources.²⁷⁸ However, when grassroots groups do have resources to litigate, there are certain benefits. The threat of litigation may enhance the bargaining power of the movement by bringing in an impartial outside party (e.g., a judge), mobilizing other social advocacy groups and non-judicial state officials, and possibly enhancing public sentiment.²⁷⁹ Leveraging tactics, including actual or threatened litigation, may help movement activists establish a voice, position, and influence in the process of reform policy implementation.²⁸⁰

For the defendant, litigation brings with it the possibility of substantial transaction costs, including direct expenditures and long-term financial burdens.²⁸¹ Court costs in major public disputes, including unsafe workplaces and environmental damage, may run into millions of dollars and economically bind vital operations for years.²⁸² Moreover, both public and private interests often fear losing control of decision-making autonomy to outside parties, such as a judge, and prefer to cut potential losses by negotiating settlements with movements.²⁸³

²⁷⁴ See SOCIAL MOVEMENTS AND AMERICAN POLITICAL INSTITUTIONS 201–07 (Anne N. Costain & Andrew S. McFarland eds., 1998) [hereinafter SOCIAL MOVEMENTS].

²⁷⁵ See EDWARDS, *supra* note 3, at 46.

²⁷⁶ See *id.*

²⁷⁷ See *id.*

²⁷⁸ See generally PIVEN & CLOWARD, *supra* note 218 (noting different types of resources available to the poor for mobilization).

²⁷⁹ See *id.* at 208.

²⁸⁰ See SOCIAL MOVEMENTS, *supra* note 273, at 207–09.

²⁸¹ See *id.*

²⁸² See *id.* at 207–08.

²⁸³ See *id.*

C. *Utilizing Collective Action Framing of Legal Symbolism in Grassroots Protest*

Collective action framing, which involves the use of symbols and language to express a movement's message, is essential to a movement's success.²⁸⁴ Collective action frames accentuate a movement's message, at once "underscor[ing] and embellish[ing] the seriousness and injustice of a social condition or redefin[ing] as unjust or immoral what was previously seen as unfortunate but perhaps tolerable."²⁸⁵ Thus, framing involves selectively coding events through socially constructed cultural symbols, which are then interwoven with the actual movement in the cultural matrix.²⁸⁶

To be successful, grassroots environmental groups should use legal symbolism in collective action framing.²⁸⁷ Utilizing the law's easily identifiable established system of cultural and symbolic meanings, social movements can easily communicate ideologies and issues through legal references.²⁸⁸ Rich with cultural resonance, the law "affects us primarily through communication of symbols—by providing threats, promises, models, persuasion, legitimacy, stigma, and so on."²⁸⁹ By using the law symbolically, grassroots groups can increase the legitimacy of their message, thus gaining media attention and disseminating their positions more widely.²⁹⁰

In particular, as a "master frame," American social movements of the 1960s and 1970s successfully utilized the "master frame" of "rights."²⁹¹ For example, both the Pro-choice and Right-to-life movements have framed their issues in terms of rights: the abortion debate centers around a woman's "right to choose" or a fetus's "right to life."²⁹² By using such language, social movements attain legitimacy with the general population, and can often use the legal system to compel change without ever gaining the support of the courts through litigation.²⁹³

²⁸⁴ See SIDNEY TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS, COLLECTIVE ACTION AND POLITICS* 118–34. (1994).

²⁸⁵ See *id.* at 122.

²⁸⁶ See *id.*

²⁸⁷ See *id.*

²⁸⁸ See SOCIAL MOVEMENTS, *supra* note 273, at 202–03.

²⁸⁹ See *id.* at 202.

²⁹⁰ See *id.* at 202–03.

²⁹¹ See TARROW, *supra* note 283, at 131.

²⁹² See SOCIAL MOVEMENTS, *supra* note 273, at 210.

²⁹³ See *id.* at 212.

"Rights" rhetoric also helps to ensure the continuing salience of public policy issues, which are often defined as legal injuries or legal wrongs.²⁹⁴ Specifically, legal discourse can be used to appeal to a variety of interests, including: moral censure from the general public regarding the actions of specific powerful groups; moral sensibilities of dominant groups; and interests of dominant organizations in maintaining cooperation with victimized groups, such as workers or consumers.²⁹⁵ In the case of environmentalism, "rights" rhetoric could be used powerfully.

For example, the notion of Nature itself is laden with religious and moral overtones.²⁹⁶ From early on, American frontier ideology has equated the settling of the frontier with the rise of America's vigorous and independent democracy.²⁹⁷ Whether it be the right of a child to grow up without the increased risk of getting asthma from poor air quality, or the right of indigenous populations to fish in ancestral fishing grounds without increased risks of cancer from toxins in the fish, rights rhetoric can be used by environmentalists to both personalize and broaden the appeal of their message.

The environmental justice movement, for example, has successfully utilized collective action framing and rights rhetoric.²⁹⁸ Environmental justice advocates have been quick to recast environmental justice as "environmental racism," thus extending the traditional civil rights and social justice frames and producing a message that is easily identifiable and understood by the general public.²⁹⁹ Moreover, by using "rights" as a cultural symbol, environmental justice groups are redefining a range of grievances over quality-of-life issues in communities of color in the way that quality-of-life interests have been generally understood throughout American history.³⁰⁰

CONCLUSION

In the end, although legal conventions often place limits on social resistance and transformation, legal actions can also transform social movements. It has been argued that the most significant point at which law has mattered for American social movements was during

²⁹⁴ See *id.*

²⁹⁵ See *id.* at 208.

²⁹⁶ See CRONON, *supra* note 8, at 69–80.

²⁹⁷ See *id.* at 72–77.

²⁹⁸ See SOCIAL MOVEMENTS, *supra* note 273, at 208.

²⁹⁹ See *id.*

³⁰⁰ See *id.*

the earliest phases of organizational and agenda formation. Here, groups can (1) draw on legal discourse to name the challenge (i.e., rights); and (2) shape the overall opportunity structure.³⁰¹ Indeed, formal legal action and the potential publicity generated by an exciting case creates the idea that the status quo may be vulnerable. Furthermore, victories in court by a movement organization imparts legitimacy to both specific formulations within broad legal traditions and general categories of claims.³⁰² Moreover, "legal resources often provide a series of more refined tools—a template of procedures, standards, and practices—along with blunt leveraging tactics for shaping the 'structure' of ongoing administrative relations at the 'remedial' stage of struggles over policy."³⁰³ Indeed, grassroots environmentalism is best served by protest politics. Capitalizing on the legal system's symbolic value, and if the resources exist, utilizing legal action—actual or threatened—will also provide grassroots groups with powerful tools in their fight to prevent environmental harms.

³⁰¹ See TARROW, *supra* note 283, at 85. Tarrow argues that to be successful, movements must utilize "political opportunity structures," which are opportunities in the political environment which increase the chances for movement success, thus providing incentives for people to undertake collective action. *See id.* at 81. Generally arising from either disagreements among elites or shifts in the ruling alignment, political opportunity structures allow disadvantaged citizens to participate by lowering the costs of collective action, identifying potential allies, and illuminating the weaknesses of the elites. *See id.* at 18.

³⁰² See SOCIAL MOVEMENTS, *supra* note 273, at 205.

³⁰³ *See id.* at 213.