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## Class Politics or Democratic Reform: Environmentalism and American Political Institutions

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# CLASS POLITICS OR DEMOCRATIC REFORM: ENVIRONMENTALISM AND AMERICAN POLITICAL INSTITUTIONS\*

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American politics long have exhibited a paradoxical disjunction between rhetoric and reality. They most often are characterized as pragmatic, yet political debate on any significant issue usually assumes the form of a titanic clash between opposing symbols and myths, shedding little light on the pragmatic realities and consequences of the decision in question.

This pattern has been especially evident in American environmental politics. The regulation of air and water pollution, for instance, casts "private property" and "free enterprise" against "the public interest"; public land allocation, depending upon one's point of view, pits either the ecosystem against resource rape or aesthetic preservationists against wise use—or now, in the U.S. Forest Service's new five year plan, an "environmental emphasis" against a "commodity emphasis."<sup>1</sup> An often unspoken reality of environmental politics, in contrast, is a serious and pragmatic struggle over property rights, which has tangible implications both for people and organizations and for the structure of American society. The fundamental issue is who shall receive the benefits, and who suffer the costs, of America's use of its biophysical environment; the proximate issue is who shall control the processes by which that outcome is decided.

Viewed in these terms, the emergence of the so-called environmental movement as an influential political force over the past decade has implications, for better or worse, far more important to American society than the stated substance of most particular "environmental" controversies. The movement's influence is demonstrable at all levels of government in extraordinary quantities of legislation, regulations, and budgetary allocations, as well as in continuing media attention. But in what directions does this influence lead

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1. "Little fish versus big dam," as the press persistently characterized the conflict over the Tennessee Valley Authority's Tellico Dam proposal, and "ecological disaster" versus "progress" are slogans shaping debate over the future directions of the American and world economy.

American society? Will it turn out to be a victory in social class conflict, serving mainly to consolidate privilege in an aesthetic elite,<sup>2</sup> or to enforce the preferences of the suburban upper middle class upon the urban and rural poor?<sup>3</sup> Or is it a broader political or ideological coalition, aligned not against other economic classes but against other organized political forces? And if it is such a political coalition, are the effects of its influence beneficial or adverse with respect to such goals as social justice and democratic process?

The thesis of this paper is that despite upper class bias in some specific controversies, the environmental movement has functioned as a political coalition drawing support across class lines. It is aligned primarily against the centralization of power over material resources in business elites and their patrons in government agencies. Its most sweeping effects have been to broaden the scope of political debate about proposed courses of action, to increase public awareness of the possible consequences of government and corporate decisions, and to diversify access to political decision processes for citizens who may be adversely affected by them. In short, it has contributed significantly to the democratization and pluralization of American politics. That outcome has not been without cost, and leaves unanswered major questions concerning criteria for the resolution of conflict in a heterogeneous society, but it can be viewed only as beneficial to the functioning of American democratic institutions.

#### CLASS INTEREST GROUP?

One common image of the environmental movement is that its members are predominantly young, educated, and relatively affluent, and that it therefore tends to serve the interests of the upper and/or upper middle class at the expense of others such as the poor or working classes. Tucker, for instance, asserts that environmentalism is merely a new and politically effective cloak for the interests of the affluent and aristocratic "leisure class," which uses it to block innovations that clash with its images of propriety in the existing order; others have echoed this charge in various forms.<sup>4</sup>

2. Tucker, *Environmentalism and the Leisure Class*, HARPER'S, Dec. 1977, at 49. Wildavsky, *Aesthetic Power or the Triumph of the Sensitive Minority Over the Vulgar Mass*, 96 DAEDALUS 1115 (1967).

3. Harry, Gale & Hendee, *Conservation: An Upper Middle-Class Social Movement*, 1 J. LEISURE RESEARCH 246 (1969); Krieger, *Social Equity and Environmental Quality*, in ENVIRONMENTAL IMPACT ASSESSMENT: GUIDELINES AND COMMENTARY 55 (T. Dickert & K. Domeny eds. 1974).

4. Krieger, *supra* note 3; Lyons, *Politics in the Woods*, HARPER'S, July 1978, at 27; Tucker, *supra* note 2; P. West, *Environment and Inequality: Sociological Reflections on the Real Tragedy of the Commons* (Sept. 1979) (paper presented at the annual meeting of The American Studies Association, Minneapolis).

[Environmentalism's] major direction... has been to work against the interests of the lower middle class and the poor, and for people at the top end of the scale.<sup>5</sup>

Primary sources of this image include anecdotes and case studies of a few specific controversies, such as the Scenic Hudson/Storm King Mountain issue; the visual memory of "Earth Day" events, since many of the participants did fit that description; and several sociological surveys of environmental activists in the early 1970s.<sup>6</sup>

These surveys generally found that environmental activists came from upper middle class social backgrounds, are urban, very well educated, and are nonconsumptive recreational users of national resources (hikers, skiers, etc.). They are also thought to have developed an ideology about the natural environment, composed of some elements of romantic naturalism, some anti-urban elements, and a view of the world as a delicately balanced ecologically interdependent whole, likely to be harmed by human alteration of natural systems.<sup>7</sup>

The accuracy of this image is open to serious question. First, political activists in many social movements are apt to be drawn disproportionately from upper-middle class backgrounds simply because those are the persons most active and knowledgeable in political affairs; their background and methods do not necessarily mean that they serve only narrow class interests. The civil rights and antipoverty movements also counted many of the upper middle class among both their leaders and members. Recent survey research suggests strongly that:

Whereas the *membership* of environmental groups is drawn disproportionately from the college-educated, higher income segments of

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5. Tucker, *Environmentalism: What Is It Really About?* (Feb. 1979) (speech delivered at The INFO '79 meeting, available from Atomic Industrial Forum).

6. Devall, *Conservation: An Upper Middle-Class Social Movement*, 2 J. LEISURE RESEARCH 123 (1970); Dunlap & Gale, *Politics and Ecology: A Political Profile of Student Eco-Activists*, 3 YOUTH & SOC'Y 379 (1972); Gale, *From Sit-In to Hike-In: A Comparison of the Civil Rights and Environmental Movements*, in SOCIAL BEHAVIOR, NATURAL RESOURCES AND THE ENVIRONMENT 280 (W. Burch, N. Cheek & L. Taylor eds. 1972); Harry, Gale & Hendee, *supra* note 3; Morrison, Hornback & Warner, *The Environmental Movement: Some Preliminary Observations and Predictions*, in SOCIAL BEHAVIOR, NATURAL RESOURCES, AND THE ENVIRONMENT 259 (W. Burch, N. Cheek & L. Taylor eds. 1972).

7. Friesema, *Environmental Group Fragmentation and Administrative Decision-Making* (Apr. 1975) (paper presented at the annual meeting of the American Society for Public Administration, Chicago); Schnaiberg, *The First and Last Dialectic: Social Impacts of Environmental Quality and Societal Scarcity* (Aug. 1974) (paper presented at the Meeting of the Society for the Study of Social Problems, Montreal); Sills, *The Environment as Ideology* (Aug. 1974) (paper presented at the Meeting of the Society for the Study of Social Problems, Montreal).

society, the movement's *supporters* are quite broadly based. . . . At all income levels, 60 percent or more support the movement.<sup>8</sup>

Moreover, the fact that the environmental movement includes aesthetic preservationist groups does not demonstrate that it is limited to such groups.

[O]ne does not need to search very far to find cases of poor Chicanos fighting a highway on environmental grounds; Native Americans invoking NEPA [the National Environmental Policy Act] to contest a power plant location; or Chicago working-class groups effectively organized to stop air pollution (Campaign Against Pollution) or the location of an expressway (Anti-Crosstown Coalition). Moreover, some of the largest and most active of environmental groups are organized sportsmen, such as the National Wildlife Federation and its affiliates, which have a strong blue collar membership base, and the Izaak Walton League, whose membership seems to be located in small towns of America, and is clearly not upper class.<sup>9</sup>

Friesema's research, based on identification of individuals and groups that intervened in or commented on environmental impact statement review procedures or litigation, shows that the environmental movement actually is composed of nine distinguishable types of groups whose concerns sometimes converge but on other matters differ. His research also shows that environmental review procedures have provided a new forum in which additional groups could voice their concerns, such as property and ethnic groups (e.g., Indian tribes and La Raza Unida), farm and labor organizations, recreation clubs, and others previously less represented in decision processes.

Finally, recent surveys suggest that environmental concerns are now so widespread in the American population that identification of them with one socio-economic class is not possible. Mitchell's survey research, based on a national sample just weeks after California's Proposition 13 vote, showed: "Although the respondents are deeply concerned about inflation and taxes, their support for environmental protection is strong and unwavering, and their sympathy with the environmental movement is at a high level, with no sign of backlash."<sup>10</sup>

Mitchell found close to 50 percent support for, and only trivial differences in attitude toward, environmental protection "at any

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8. Mitchell, *Silent Spring/Solid Majorities*, 2 PUB. OPINION 16, 19-20 (Aug.-Sept. 1979). See also Mitchell, *The Public Speaks Again: A New Environmental Survey*, 60 RESOURCES 1 (1978).

9. Friesema, *supra* note 7.

10. Mitchell, *The Public Speaks Again: A New Environmental Survey*, 60 RESOURCES 1 (1978).

cost" among races, sexes, income levels, and education levels. Union members were actually stronger supporters than non-union members, and the only group in which less than 40 percent supported this position consisted of those over 65 years of age. Only six percent of the entire sample of respondents reported themselves "unsympathetic" to the environmental movement; 60 percent counted themselves as either sympathetic or active participants. Nearly half of the respondents whose incomes were under \$6,000 per year supported this position (49 percent), which was almost as high a proportion as those over \$30,000 (52 percent).

Similar findings are reported by VanLiere and Dunlap, who reviewed 21 empirical studies that sought to correlate environmental concern with age, sex, income, occupation, education, political ideology, and other variables. They conclude that the only relationships strong enough to support empirical generalizations are age, education, and political ideology (liberalism): the connections to such usual class indicators as income and occupational prestige were either weak or ambiguous (especially income). "The ambiguous findings for income and occupational prestige suggest that there is not a positive correlation between overall social class and environmental concern."<sup>11</sup>

In short, the common image that the environmental movement is primarily an upper-middle class interest group does not seem to provide an accurate or useful generalization for assessing its significance. Particular issues fought by some groups within that movement may well reflect particular class interests, and middle class political methods have been widely used (for instance, litigation); but the movement as a whole is broadly based, and its perceived benefits widely distributed.

#### CONSERVATION MOVEMENT RENAMED?

A different but also common image of the environmental movement is that it is simply an extension of the 70-year-old conservation movement by another and broader name.<sup>12</sup> This image too is inaccurate, but for subtler and interesting reasons, and these reasons provide the foundations for an alternative perspective on the movement's significance. The context of this perspective is American environmental politics, which has a history considerably longer than the present environmental movement's.

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11. VanLiere & Dunlap, *The Social Bases of Environmental Concerns: A Review of Hypotheses, Explanations, and Empirical Evidence* (1979) (paper presented at the annual meeting of the Southern Sociological Society, Atlanta).

12. Harry, Gale & Hendee, *supra* note 3; West, *supra* note 4.

The environmental movement is a phenomenon only of the past decade or two, but environmental politics—by whatever name—is not. Throughout their history, Americans have sought to achieve better environmental conditions, sometimes by controlling pollution emissions, at other times by storing floodwaters, irrigating arid lands, clearing forests for agriculture, replanting trees for timber or for erosion control. They also have sought to preserve environmental conditions preferable in their view to those that might otherwise ensue, such as freeflowing streams (first for navigation, later for fishing and recreation); wildlife habitat (first for game and subsistence, later for endangered species); and open lands (first for stock grazing, later for wilderness recreation experiences).<sup>1 3</sup>

The instruments they have chosen for these efforts often have been the powers of government. This is not surprising, inasmuch as a principal function of any government is to allocate, adjudicate, and protect the rights of its citizens in material property. And the rights to buy or mine or use public lands, to discharge pollutants into waterways, or to enjoy lands or waters unchanged by human intrusion, are all forms of property rights. The point is that government *always* has been deeply involved in the American environment as well as in the American economy; it is not simply a modern intruder into a golden age free enterprise system.<sup>1 4</sup>

In short, environmental politics is properly defined not as merely a late 20th-century debate over such issues as pollution, wilderness, and aesthetics, but as a continuing sector of the American political agenda which allocates rights over environmental conditions among competing uses and claimants. The significant questions of environmental politics concern what the substance of government's environmental policies will be, how strong a role it will assert relative to individuals and organized economic enterprises, and who will benefit from its decisions.

Two of the most fundamental trends in American history have been the gradual centralization of economic power in the hands of large-scale economic enterprises, chiefly industrial and investment corporations, and the more recent expansion as well as centralization of governmental power in the discretion of mission-oriented agencies of the national government.<sup>1 5</sup> The former can be traced back not

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13. S. DANA, *FOREST AND RANGE POLICY* (1956); S. HAYS, *CONSERVATION AND THE GOSPEL OF EFFICIENCY* (1969); E. Englebert, *American Policy For Natural Resources: A Historical Survey To 1862* (1950) (Ph.D. dissertation, Harvard University).

14. M. JENSEN, *THE NEW NATION: A HISTORY OF THE UNITED STATES DURING THE CONFEDERATION, 1781-1789* (1967).

15. HAYS, *supra* note 13; G. McCONNELL, *PRIVATE POWER AND AMERICAN DEMOCRACY* (1966). Examples of these agencies are the Forest Service, Corps of Engineers, and more recently the Environmental Protection Agency and Department of Energy.

only to early patterns of American commerce and production, but also to such government policies as limited liability for owners of corporations, land grants to railroad syndicates, and court interpretation of riparian water rights allowing water pollution discharges. The latter dates more recently to such events as the Progressive program of government (c. 1902-1920), the income tax, and measures taken to remedy the Great Depression and the two World Wars.

The primary outcome of American environmental politics up through the 19th century was the alienation of vast amounts of environmental resources from public ownership into private hands; or put another way, the preemption of control over access and use of these resources by individuals and economic enterprises.<sup>16</sup> These rights included not only outright ownership of some resources, such as land areas, but also rights to access, extraction, and use of other resources, irrespective of the effects on related environmental conditions. Examples include the rights to use public timber for mining and domestic purposes, to extract minerals from public lands, and to discharge pollutants into the water and air.<sup>17</sup>

There was some sharp division as to who should be the primary beneficiaries of such preemption: early conflicts pitted Thomas Jefferson's vision of agrarian democracy against Alexander Hamilton's plans for commercial and industrial development and squatters against land and canal companies. Later ones matched homesteaders against railroad companies, farmers against stockmen, prospectors against settlers.<sup>18</sup> Some of these conflicts were primarily between early and later users, others between competing uses (e.g. farming and grazing), still others between individuals and organized economic enterprises (homesteaders and railroads). There was widespread agreement, however, that the nation's natural endowment should be disposed of into private hands rather than retained under governmental administration.

The conservation movement challenged the presumption favoring private preemption, and asserted instead a doctrine of public trust with executive stewardship as its agent.<sup>19</sup> Leaders of the movement argued that the nation's environment was a public heritage, to be used for the greatest good for the greatest number in the long run.<sup>20</sup>

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16. *Id.*

17. Act of June 3, 1878, ch. 150, 20 Stat. 88 (current version at 16 U.S.C. § 604-606 (1976)); Act of May 10, 1872, ch. 152, §1, 17 Stat. 91 (current version at 30 U.S.C. § 22 (1976)); T. DONALDSON, *THE PUBLIC DOMAIN* 269 (1884); L. DWORSKY, *CONSERVATION IN THE UNITED STATES: WATER AND AIR POLLUTION* 21 (1971).

18. E. DICK, *THE LURE OF THE LAND* (1970).

19. Wengert, *The Ideological Basis of Conservation and Natural Resources Policies and Programs*, 344 *ANNALS AM. ACAD. POLITICAL & SOC. SCI.* 65 (Nov. 1962).

20. HAYS, *supra* note 13.



What this greatest good was presumably could be judged best by powerful but neutral experts—that is, by professional *government* scientist/administrators untainted by partisan politics or parochial self-interest. Rationality and expertise in government would provide the best check on, and be the arbiter of, efforts of individuals and enterprises to preempt environmental resources for their own short-term profit; multiple purpose management would provide the most efficient means to avoid waste or monopolization of environmental resources.<sup>21</sup>

These tenets of the conservationists were really tenets of the Progressive movement from which they arose, and were embedded deeply in the structure of modern government by Theodore Roosevelt and successive administrations.<sup>22</sup> Several of the agencies with activities most directly affecting the natural environment were created during the Progressive era—the U.S. Bureau of Reclamation, Forest Service, National Park Service, Federal Power Commission—and older ones such as the Army Corps of Engineers, were redirected to serve the same ends.

More recently created agencies, such as the U.S. Soil Conservation Service, Fish and Wildlife Service, Grazing Service (now Bureau of Land Management) and even the Environmental Protection Agency, have been patterned on the same principles. In each case a government administrative agency was established, charged with a specific mission or set of missions with respect to a specified set of environmental conditions, and populated with experts in fields appropriate to those resources and missions.<sup>23</sup>

Progressive conservation in practice, however, recreated in different form the problem of preemption that it was intended to resolve.<sup>24</sup> The administrative sphere of government grew enormously, but the agencies usually were not provided with criteria for their actions other than that they be “in the public interest”—which the administrators as experts were presumed to know. It was assumed that there *was* a single public interest, rather than potentially conflicting interests of many publics, and that the single public interest could be discovered or determined by experts.

Inevitably, with no formal accountability for its judgments and no guides to action other than those of individual administrators, each agency developed its own political ties to the particular constitu-

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21. *Id.*; McCONNELL, *supra* note 15.

22. HAYS, *supra* note 13.

23. R. Andrews, *Environmental Policy and Administrative Change: The National Environmental Policy Act of 1969, 1970-71 (1972)* (Ph.D. dissertation, U. of North Carolina).

24. McCONNELL, *supra* note 15.

encies that stood to benefit from its actions—recreating the very problem Progressivism had sought to resolve. Those constituencies might no longer preempt outright ownership of the resource, but instead they frequently came to assert preemptive power and influence over the policies of the agency and of the relevant congressional oversight committees.

What emerges as the most important reality is an array of relatively separated political systems, each with a number of elements. These typically include: (1) a federal administrative agency within the Executive branch; (2) a heavily committed group of Congressmen and Senators, usually members of a particular committee or subcommittee; (3) a private (or quasi-private) association representing the agency clientele; and (4) a quite homogeneous constituency usually composed of local elites.<sup>25</sup>

By the 1960s, therefore, the conservationists as well as other interest groups had embedded themselves both in public agencies and in a structure of client relationships with public agencies that served their interests. Even most newly emerging conservation issues—what President Kennedy called the “New Conservation”—were treated in this way. The Bureau of Outdoor Recreation was created to manage new demands for outdoor recreation funding, and new agencies were established to administer pollution control programs (later merged into an Environmental Protection Agency in 1970).<sup>26</sup> Congress had delegated increasingly broad authority to administrative agencies, allowing them not only to respond to defined problems but even to define problems and act upon them under rulemaking and multiple purpose management procedures.

Yet those agencies were themselves limited, by statutory missions and the politics of existing clientele and constituency relationships, from considering the full range of interests and values affected by their decisions.<sup>27</sup> Each interest group had a preemptive voice, or at least strong influence, over the policies of its patron agency, and conflicts now were acted out in interagency policy and jurisdictional battles—such as between the U.S. Fish and Wildlife Service and the Soil Conservation Service over stream channelization, or between the Corps of Engineers and the Soil Conservation Service over flood control strategies—rather than simply as direct user conflicts. In what

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25. *Id.* at 244.

26. J. DAVIES, *THE POLITICS OF POLLUTION* (2d ed. 1975); W. ROSENBAUM, *THE POLITICS OF ENVIRONMENTAL CONCERN* (1977); J. SUNDQUIST, *POLITICS AND POLICY: THE EISENHOWER, KENNEDY, AND JOHNSON YEARS* (1968).

27. T. LOWI, *THE END OF LIBERALISM* (1979); Reich, *The Law of the Planned Society*, 75 *YALE L.J.* 1227 (1966); Reich, *The New Property*, 73 *YALE L.J.* 733 (1964).

Gilmour terms "distributive" politics, common interests were sought by cooperative logrolling among these elites, rather than by full discussion and compromise among all affected interests.<sup>28</sup>

The environmental movement, significantly, did not arise from the existing conservation agencies, and it evolved only in part from the existing conservation interest groups. It incorporated many of those groups' traditional concerns, but it also went beyond them in the breadth of its concerns about both environment and man, and about the relationships between the two.<sup>29</sup> Its initial leadership came largely from new sources<sup>30</sup> and its tactics differed substantially from those of the conservation groups.

The coalescence of the environment movement as a *movement*—that is, as a new organized political force—was triggered by factors broader than any of the specific concerns pursued by existing conservation groups. Some of these factors had to do with the climate of American politics in the 1960s. Material goods, after the postwar industrial boom, were becoming relatively abundant, while non-market amenities (such as wilderness and open space) were becoming relatively scarcer. More Americans could afford the time and expense to enjoy their environment, but found it becoming less enjoyable. In addition, by the late 1960s there were large numbers of Americans in their late teens and twenties. They were impressionable because of their age, socially concerned after growing up under the aura of John Kennedy's public service idealism, and frustrated by their apparent inability to bring about real change in either civil rights or Vietnam War policies. In short, they were looking for a cause and easy to mobilize.<sup>31</sup>

Yet another factor was a broadening public perception of the interrelatedness of environmental problems, heightened not only by such lessons as nuclear fallout in human breast milk and DDT in food chains,<sup>32</sup> but also by interagency conflicts over the definition of the public interest in environmental management. The water resource agencies were proposing dams that would flood national parks, the

28. LOWI, *supra* note 27; McCONNELL, *supra* note 15; F. ROURKE, BUREAUCRACY, POLITICS, AND PUBLIC POLICY (1976); Gilmour, *Private Interests and Public Lands*, 59 CURRENT HIST. 36 (1970).

29. L. CALDWELL, ENVIRONMENT: A CHALLENGE TO MODERN SOCIETY (1970); Caldwell, *Environment: A New Focus for Public Policy?*, 22 PUB. AD. REV. 132 (1963); Morrison, *supra* note 6.

30. C. Noah, *The Origins of the Recent Environmental Movement* (1976) (M.A. thesis, Goddard College).

31. SUNDQUIST, *supra* note 26; Andrews, *supra* note 23; R. Shelton, *The Environmental Era: A Chronological Guide to Policy and Concepts, 1962-1972* (1973) (Ph.D. dissertation, Cornell University).

32. R. CARSON, *SILENT SPRING* (1962).

highway agencies' projects were routed through urban parks and natural areas, and nuclear power plants were being licensed although they would discharge heated water to the potential detriment of both fish life and pollution assimilative capacity. In all, at least nine federal agencies had major missions in the management of the physical environment, with little or no effective coordination among them.<sup>33</sup> The goals of the environmental movement, therefore, required changes in (and coordination of) the behavior of existing agencies rather than merely creation of a new one, a factor which required strategies and tactics different from—and potentially opposed to—existing preemptive patterns of distributive politics.

A third factor in the movement's growth was the emergence of new tactical opportunities in the field of administrative law. Prior to the late 1960s, the federal courts generally viewed their role as simply prohibiting government agencies from intruding on private liberties or property rights unless authorized to do so by legislative directives. The courts applied such modest tests as requiring the agencies to show that their decisions were based upon accurate information, rational criteria, due process, and reviewable procedures and reasoning.<sup>34</sup> In the late 1960s, however, with a series of cases liberalizing the requirements for standing to sue, the courts began to broaden the range of claims allowed to include not just economic harm, but also "injury in fact" where the injury was to interests "arguably within the zone" of those intended to be protected by the relevant statutes.<sup>35</sup> With this change of judicial policy, the courts in effect took on the role of ensuring fair representation of all affected interests in administrative decisions.<sup>36</sup> With the ensuing proliferation of environmental laws as statutory causes of action, environmental advocates found in the new judicial receptiveness just the tools they needed—at least so it appeared at the time—to raise effective challenges to agency policies and proposed projects.

If the central problem for environmental advocates was the behavior of existing agencies and their constituencies, and expanded judicial review offered an apparently promising solution, it is hardly surprising that one major source of leadership for the new movement was the legal profession. Many young lawyers were motivated by the spirit of public interest advocacy pioneered in the civil rights

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33. HOUSE COMM. ON SCIENCE AND ASTRONAUTICS, 90TH CONG., 2D SESS., *MANAGING THE ENVIRONMENT*, SERIAL S (Comm. Print 1968).

34. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1669 (1975).

35. *Id.*

36. *Id.*

movement and other issues of the 1960s, and environmental litigation offered not only the challenges of working in an area of evolving legal doctrine, but also the opportunity to influence particular public policies directly.

At best, litigation was seen as a tool to stop a particular course of action that was in dispute, to set precedents against similar actions in the future, and to expand legal doctrines further in the direction of protecting interests previously slighted. At worst, even if the cases ultimately were lost, the litigation still would have served at least to buy time, to force the production of new and broader information about the proposal and its consequences, and to dramatize the issue in the press and before the court of public opinion.<sup>37</sup> A major new source of tactics and leadership guiding the emerging environmental movement, therefore, was the public interest environmental law firms created between 1967 and 1970, of which the best known include the Environmental Defense Fund (1967), Berlin, Roisman & Kessler, the Sierra Club Legal Defense Fund, the Center for Law and Social Policy, and the Natural Resources Defense Council (1970).

The initial direction, leadership and tactics of the new movement, therefore, came principally from three sources: ad hoc grassroots organizers, whose local and regional issues achieved a coalition of labels and principles in the "Earth Day" event and its aftermath; environmentally oriented public interest lawyers; and a number of individuals experienced in the more traditional conservation interest groups who found themselves in sympathy with most of the goals, issues and tactics of the new movement.<sup>38</sup> The environmental movement's leaders differentiated themselves from traditional conservationists as being more concerned with the total environment than with single issues, with the human environment (including health and urban issues) than with strictly outdoor and back country preservation, with grassroots organizing than with national interest groups, and with challenging centralized business and governmental power than with working through that power system to achieve elitist goals.<sup>39</sup>

### THE ENVIRONMENTAL MOVEMENT

The elements of the environmental movement from the start were quite diverse. They included aesthetic preservationists demanding

37. Trubek, *Environmental Defense I*, in PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 151 (B. Weisbrod ed. 1978); Trubek & Gillen, *Environmental Defense II*, in PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 195 (B. Weisbrod ed. 1978).

38. J. MITCHELL, ECOTACTICS: THE SIERRA CLUB HANDBOOK FOR ENVIRONMENT ACTIVISTS (1970).

39. Noah, *supra* note 30.

wilderness protection; city mayors and sanitarians seeking pollution control projects; scientists concerned about nuclear fallout and toxic chemicals in ecological food chains; suburbanites seeking pleasant surroundings for recreation; young, educated activists looking for a meaningful cause to replace the frustrated anti-Vietnam effort; and significantly, many ad hoc local groups—3,000, by one report—opposing particular projects and proposals.<sup>40</sup> Different elements of this coalition might be prominent in particular issues. Thus a wilderness area might be defended primarily for traditional aesthetic reasons, while a stream channelization project might be attacked primarily by ecologists and an urban highway by a neighborhood group. Many controversies involved combinations of these elements.

The binding force among these diverse elements consisted of two common denominators. The first was opposition to large-scale transformation of their environments by large-scale economic and governmental institutions: for instance, air and water pollution by industry, and dams and highway projects by government agencies. In each of these cases, the value of preserving existing environmental conditions seemed to be ignored in the pursuit of narrowly defined goals by powerful institutions: marketplace profits in the case of industry, mission accomplishments in the case of government agencies, and often—epitomized by nuclear powerplants, but present in other cases as well—a distressingly strong alliance of both.

The second common denominator was a realization that government's activities were a central part of the problem, not just the potential solution that the Progressive conservationists had taken them to be.<sup>41</sup> In the eyes of those who conceived and led the environmental movement, the narrow missions and client relationships of government agencies—even the conservation agencies—had become simply new allies or analogs of the narrow profit interests opposed by the original conservation movement itself.<sup>42</sup> What was needed was not what they believed the resource management agencies had become but what the earlier conservationists had called for—comprehensive analysis of the values of resources, not just narrow,

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40. G. BARNEY, *THE UNFINISHED AGENDA* 161 (1977); Noah, *supra* note 30. Cf. L. CALDWELL, *ENVIRONMENT: A CHALLENGE TO MODERN SOCIETY* (1970); L. CALDWELL, S. HAYES & P. MACWHIRTER, *CITIZENS AND THE ENVIRONMENT* (1976); SUNDQUIST, *supra* note 26; Andrews, *Three Fronts of Federal Environmental Policy*, 37 J. AM. INST. PLANNERS 258 (1971); Andrews, *supra* note 23; Shelton, *supra* note 31.

41. Cf. *NIXON AND THE ENVIRONMENT* (J. Rathlesberger ed. 1972), a collection of essays by spokesmen for many of the most well-known national environmental groups, which captures much of this sense of common purpose; J. RIDGEWAY, *THE POLITICS OF ECOLOGY* (1970).

42. G. DE BELL, *THE ENVIRONMENT HANDBOOK* 333 (1970); MITCHELL, *supra* note 38; RIDGEWAY, *supra* note 41; Andrews, *supra* note 23.

sequential, parochial goal fulfillment; a long-term rather than immediate view; and a broad rather than client-centered view of "the public interest."<sup>43</sup>

It is no coincidence, therefore, that the traditional conservation agencies were among the first targets of the new movement: the Federal Power Commission over the Storm King Mountain Pumped Storage Project, the Bureau of Reclamation over the Central Arizona Project, the Army Corps of Engineers over the Cross Florida Barge Canal (and many others), the Soil Conservation Service and Tennessee Valley Authority over dams and channelization projects, and even the Forest Service over clearcutting.<sup>44</sup> The success of these agencies' political systems—logrolling and jurisdictional demarcation—depended heavily on the exclusion of substantial parts of the population and of important interests and values.<sup>45</sup> What the environmental movement did was to unite a new coalition of political interest groups—under leaders generally new to political action, who felt under-represented in one or more of these preemptive power clusters—under a common set of general principles, political labels, and tactics.

The central symbol and instrument of the movement's cohesive force was the National Environmental Policy Act (NEPA), enacted on New Year's Day, 1970.<sup>46</sup> This law was important not because it was the most stringent environmental regulatory law (it was not), but because it was the most pervasively available and versatile political instrument for challenging agency proposals, and meshed well with the emerging strategies and tactics of environmental litigation.<sup>47</sup> It was only in part an environmental policy act. It stated a credo of principles and goals for achieving long-term harmony between human activities and environmental conditions, and it charged the federal government—by overwhelming votes in both houses of Congress—to strive towards those goals. At the least, it thus permitted agencies whose previous missions were more narrowly constrained—such as the Corps of Engineers and Federal Highway Administration (by monetary benefit/cost ratio requirements), and the Atomic Energy Commission (initially concerned only with regulating nuclear safety)

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43. Caldwell, *Environment: A New Focus for Public Policy?*, 22 PUB. AD. REV. 132 (1963).

44. D. CHASAN, UP FOR GRABS (1977); R. LIROFF, A NATIONAL POLICY FOR THE ENVIRONMENT (1976); ROSENBAUM, *supra* note 26; Andrews, *supra* note 23.

45. McCONNELL, *supra* note 15.

46. 42 U.S.C. §§4321-4361 (1976).

47. Caldwell, *Is NEPA Inherently Self-Defeating?*, 9 ENVIR. L. REP. 50,001 (1979); Trubek, *supra* note 37; Trubek & Gillen, *supra* note 37.

—to take account of the nonmonetary environmental consequences of their actions.<sup>4 8</sup>

NEPA was equally, however, an administrative reform law. Its environmental impact statements required public documentation, not just of the proposal's justifications, but of its full consequences before any major action was taken. This documentation then would be available not only to administrators in the agency, but to other federal agencies, to state and local agencies and the public at large, permitting ad hoc response to its factual assumptions and value choices.<sup>4 9</sup> In short, NEPA opened each agency's decision processes to participation by anyone who might be affected by the outcome, rather than just to traditional clients and beneficiaries. It also created timely access to information and decision processes, and a new legal cause of action by which individuals could assert stakes in the outcome.<sup>5 0</sup> As Friesema noted, NEPA has been used constantly by individuals and groups cutting across a broad spectrum of American socio-economic status and political preferences.<sup>5 1</sup>

In recent years the limitations of NEPA-based environmental litigation strategies for administrative reform have become more evident. In some cases, though relatively few, Congress has exempted proposed actions from further NEPA requirements by statute. The Trans-Alaska Pipeline System is the best known of these, but Congress also has exempted pollution control regulatory functions of the Environmental Protection Agency, a small group of nuclear licensing proposals, and several other activities.<sup>5 2</sup> In other areas the courts gradually developed new limiting norms: in reviewing water resource projects, for instance, they appeared to reach a rough consensus that they would review the "adequacy" of environmental impact statements, but would not overrule the substantive balancing of economic and environmental costs and benefits upon which the ultimate decision hinged, on the grounds that legislation prior to NEPA took

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48. Andrews, *NEPA in Practice: Environmental Policy or Administrative Reform?*, 6 ENVIR. L. REP. 50,001 (1976); Caldwell, *Is NEPA Inherently Self-Defeating?*, 9 ENVIR. L. REP. 50,001 (1979).

49. Andrews, *supra* note 48; Caldwell, *supra* note 48.

50. Andrews, *supra* note 48; Caldwell, *supra* note 48.

51. Friesema, *supra* note 7.

52. HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES, 94TH CONG., 2D SESS., WORKSHOP ON THE NATIONAL ENVIRONMENTAL POLICY ACT 136 (Serial No. 94-E 1976); Anderson, *The National Environmental Policy Act*, in FEDERAL ENVIRONMENTAL LAW 238 (E. Dolgin & T. Guilbert eds. 1974). *See also* Act of Nov. 23, 1977, Pub. L. No. 95-203, 91 Stat. 1451; Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1201 (Supp. I 1977); Act of Apr. 7, 1977, Pub. L. No. 95-18, 91 Stat. 36.



precedence and left that balancing to the Congress.<sup>53</sup> Finally, as this is written (Fall 1979) both houses of Congress have voted to create an Energy Mobilization Board that may be given authority to override requirements both of NEPA and of other statutes, where those requirements conflict with the rapid development of major non-nuclear energy supply projects.<sup>54</sup>

It has become clear, in short, that NEPA's procedural requirements and legal possibilities are not a panacea for the structural disadvantages facing diffuse and underorganized interests of the American public—including not only environmental quality but also consumer protection, occupational health and safety, poverty, and many others.<sup>55</sup>

Despite these limitations, however, NEPA remains a central symbol and valuable instrument of the purposes of the environmental movement. NEPA has made a difference: many proposed actions have been modified to reduce environmental damage, some have been dropped, and the analysis of environmental consequences have been woven into the fabric of project evaluation by most major federal agencies. Most agencies also now have found it more often in their own interest to consult early on with individuals and communities and officials potentially affected by proposed actions, rather than simply confronting them with *faits accomplis*.<sup>56</sup>

With the possible exceptions of some "fast track" energy projects, NEPA continues to require all agencies to look beyond narrow missions and cost-benefit calculations to the full consequences of their actions, and to document those consequences for public discussion. While it cannot by itself force all the changes in priorities that environmental intervenors seek, it has at least forced controversial actions into a highly visible arena, where they must be more fully and factually defended if not modified or quietly dropped. However the balance of victories and defeats may shift over time, the essential point here is that NEPA epitomizes the transcendent purposes that bind the environmental movement together, over and above the particular agendas of its subgroups: the need to seek long-term harmony

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53. *Cape Henry Bird Club v. Laird*, 359 F. Supp. 404 (W.D. Va. 1973), *aff'd*, 484 F.2d 453 (4th Cir. 1973); Trubek, *supra* note 37; Trubek & Gillen, *supra* note 37. On the other hand, judicial review of procedure comes very close in some cases to substantive review. OFFICE OF ENVIRONMENTAL AFFAIRS, DEP'T OF HEALTH, EDUCATION & WELFARE, COURT DECISIONS ON NEPA 12 (1977).

54. Cf. H.R. 4862, 96th Cong., 1st Sess. (1979).

55. *Id.*; M. OLSON, THE LOGIC OF COLLECTIVE ACTION (1965); Sax, *The (Unhappy) Truth About NEPA*, 26 OKLA. L. REV. 239 (1973).

56. COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL IMPACT STATEMENTS: AN ANALYSIS OF SIX YEARS' EXPERIENCE BY SEVENTY FEDERAL AGENCIES (1976); Caldwell, *supra* note 47.

between human activities and their environmental conditions, and the need to seek that harmony through reform of organizational decision processes in both the private and public sectors.

The political agenda and achievements of the environmental movement as a whole, therefore, should not be confused with the narrower objectives and philosophies of some of its constituents. The environmental movement, in both philosophy and methods, shares an essential goal with those working for social justice: to increase the accountability of large-scale economic and political institutions to democratic processes. Unemployment and degradation of the physical environment are both "externalities" undervalued by those institutions' sequential, mission-oriented decision processes. The movement's procedural achievements have provided all of these constituencies with new paths of access for asserting their values, and common substantive concerns also are becoming more and more evident as the consequences of recent and proposed energy policies are recognized (for instance, the effects of capital-intensive synthetic fuels development on both inflation and environmental conditions).

#### PRESENT STATUS

The political significance of the modern environmentalists is not primarily the difference in their origins from many of the conservationists, nor the particular environmental conditions they have protected, but their political philosophy and methods. For the conservationists the problem was private preemption of public resources, and the solution was to create powerful government agencies to manage the environment. For the environmentalists, and for other administrative reform advocates of the last two decades, the problem was preemptive alliances between these agencies and narrow client interests, and the solution demanded by the environmentalists was open access to administrative decision processes for all interested persons.

It is no coincidence, therefore, that two chief tools of the environmental movement have been the publication of technical information different, or differently interpreted, from that developed by agencies and private corporations,<sup>57</sup> and lawsuits challenging administrative procedures. The provision of alternative information erodes the agency's claim to be the single legitimate arbiter of the public interest; challenges to administrative procedures provide new means of access by which potential victims of proposed actions can

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57. Hays, *Environmental Values and The Shape of American Policies* (July 1979) (colloquium paper, Woodrow Wilson International Center for Scholars, Washington).

give effective voice to alternative information and values, and increase the visibility of controversial proposals. In open, high-visibility arenas the preemptive power of highly organized pressure groups then can be diminished by the attention of the press and the potential pressure of public opinion, whereas in closed or low-visibility arenas the power of highly organized private interests is maximized.<sup>58</sup>

Both these methods serve to open political decision processes to interests and values previously ignored, including the poor as well as more affluent aesthetic preservationists, and to more robust debate about the nature of the public interest in concrete choices.

This outcome is not without cost, for the process of robust debate is time consuming and often fractious. In many cases, especially complex policy decisions, there well may be no consensus that can be achieved by debate, a conclusion which frustrates and disillusions many participants (including well-meaning administrators). But that is not the point. Consensus is an appropriate ideal to strive for, even though in a heterogenous democracy it is not a realistic outcome to expect. The point is that the next best solution is equitable compromise, in which all affected interests and values have access or representation. This solution is far more defensible on democratic grounds than closed power clusters among mission-oriented administrative agencies and their beneficiaries.<sup>59</sup>

### UNRESOLVED ISSUES

Three current issues, however, pose potential threats to the continuation of the movement's gains. First, the expansion of procedural safeguards has proven a necessary but insufficient condition for the achievement of substantive harmony between human activities and environmental conditions. Decision processes have been opened to a broader range of opinion and values, but many of these points of view continue to differ among themselves: there is still no new coherent vision, and as a result it has often been difficult to move beyond stalemating bad proposals toward developing and implementing an agenda of better ones.

Second, the present administration under President Carter has appointed a substantial number of leaders in the environmental movement to administrative positions in government.<sup>60</sup> It is possible,

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58. Trubek, *supra* note 37; Trubek & Gillen, *supra* note 37.

59. McCONNELL, *supra* note 15; Wengert, *supra* note 19.

60. For instance, Gus Speth of the Natural Resources Defense Council, Dennis Hayes of the Solar Lobby, Lee Botts of Great Lakes Tomorrow, Ruth Cluson of the League of Women Voters, and George Alderson of Friends of the Earth.

some might argue, that the environmental movement has thus become so centralized at the national level, and so closely related to its own patron agencies, that it might become just another special-interest Washington elite and lose touch with larger constituencies and ad hoc citizens' concerns. Some of the movement's subgroups have always had their own narrower agendas in addition to the broad common goals of the movement, and others were nonmembership organizations from the start.

On the other hand, the distinction between the environmental movement and its constituent subgroups applies here as well. The movement as a whole is a coalition, not a single interest group, and it endures because its subgroups each find their narrower interests best served through the achievement of the goals of the movement as a whole. It seems inherent in the nature of their concerns—public goods, whose benefits are diffusely shared and non-pecuniary—that in political debates most of these groups will continue to find themselves structurally disadvantaged relative to private industry interests,<sup>61</sup> and thus they will continue to prefer open to closed political processes. Moreover, the movement's leaders are under a continual obligation to demonstrate their spokesmanship for the broad public interests they claim to represent—for instance, by affecting public opinion and generating press interest in environmental questions—and they are challenged regularly on this point by their opponents. So long as these coalition dynamics continue, it is likely that the movement would simply disintegrate into its constituent groups before it would become a new special interest group itself. More likely, however, the coalition will continue to be active and assertive. Barring such events as a world war or a major internal schism, most of the movement's constituent groups simply have strong stakes in common action against more powerful adversaries.

Third, the environmental movement has in the past tended to rely upon a strategy of increasing centralization of political debate at the federal level of government. National media attention was more readily available, limited resources could be mobilized and focused more efficiently, and the economic power and threats of business were less overwhelming there—during the past decade, at least—than at the state and local levels. Much recent environmental law has been predicated on the substitution of federal for state regulation. It is presently unclear, however, whether the environmental movement can sustain its effectiveness at the federal level against the militant business politics centering on the symbols of energy and inflation.

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61. M. OLSON, *supra* note 55.

A common but simplistic characterization of the issue is that environmental concerns—and even procedural safeguards, which protect social minorities and other disadvantaged constituencies as well as those affected by environmental problems—are low-priority luxuries when society is faced with threats to its fuel supplies and economic stability.<sup>62</sup> On its merits, this contention can be rebutted as a false dichotomy, a Hobson's choice. The contribution of environmental protection to inflation, for instance, is simply trivial compared to that of deliberate federal policy choices to escalate the price of fuels, let alone to military purchases and income transfer programs. The delays often attributed to procedural safeguards, moreover, are both less frequent and more often for good and significant cause than is sometimes alleged.<sup>63</sup>

The nature of this attack, therefore, suggests the need for a more subtle characterization of the issue. The issue is not a choice between environment and energy, nor between environmental and consumer needs. Many combinations of actions are available that involve far less conflict between these goals than the actions now being advanced: contrast conservation measures and existing solar heating and cooling technology, for instance, with proposals for massive federal capitalization of synthetic fuels development.<sup>64</sup>

Rather, the basic political issue is whether public fears and confusion are being effectively exploited by the fuel production industry to recreate a closed system of preemptive politics, in which energy decisions can be controlled by a limited cluster of corporate and government elites at the expense of both environmental and social justice advocates as well as of the democratic process. A disturbing omen for the future is the relocation of major corporate headquarters from New York and elsewhere to Washington: a sign of the times, perhaps, simply affirming the greater significance of national political decisions than the stock market for the company's future, but a troublesome portent of future interconnection, both on and off the job, between corporate and political elites.

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62. For instance, Congress responded to the gasoline shortages which affected the nation in the summer of 1979, and to the threat posed by the nation's reliance on potentially unreliable suppliers of oil such as Iran, by voting—with strong Administration support—to create an Energy Mobilization Board. This action was supported by a massive industry lobbying effort which attacked environmental laws as too costly and time-consuming. The new administrative agency may be armed with extraordinary powers to waive both substantive and procedural requirements of law in order to accelerate non-nuclear production projects.

63. COUNCIL ON ENVIRONMENTAL QUALITY, *ENVIRONMENTAL QUALITY—1978* (1978).

64. A. LOVINS, *SOFT ENERGY PATHS: TOWARD A DURABLE PEACE* (1977); R. STOBAUGH & D. YERGIN, *ENERGY FUTURE* (1979).

As the 1970s closed, the advocates of preemptive politics appeared to have the upper hand, unless some new event—a new environmental crisis, for instance, or 1980 Presidential politics, or a scandal over monopoly corporate power—should intervene to shift the balance once again. In the meantime, the best hope for the environmental movement's future would appear to lie in energetic reaffirmation of its common goals with consumers, workers, minorities, and small businesses—including farmers and ranchers, as well as suppliers of alternative energy technologies—against the resurgence of preemptive control over environmental decisionmaking by centralized corporate and political elites.