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Environmentalism: A Symbiotic Relationship Between a Social Movement and U.S. Law?

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Environmentalism: A Symbiotic Relationship Between a Social Movement and U.S. Law?

By Claire Riegelman¹

“Do I dare Disturb the universe?”²

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² See T.S. Eliot, *The Love Song of J. Alfred Prufrock* (1917), *reprinted in* THE COMPLETE POEMS AND PLAYS 1909-1950, at 4-5 (Harcourt Brace Jovanovich 1980).

Abstract

Social movements are the root of much of the legal history in the U.S. because of their capacity to connect legal norms to the practices and beliefs of society. Without social movements, our legal system would not embrace the changing beliefs of U.S. culture and effectively serve societal needs. The environmental movement elevated the environment to a prominent position in western society and has succeeded in keeping the issue current for the past forty years. Throughout the 1970s environmentalism comprised the traditional elements of a social movement and effected great change in society and the U.S. legal system. This paper presents the argument that, though the environmental movement of the 1960s and 1970s qualifies as a social movement per the commonly excepted elements of social movements, the mature form of the environmental movement present in the 1990s and today is no longer a social movement. This change should be significant to society at large because it is the public who is at the losing end of this change. The modern-day environmental movement no longer has the significant public involvement necessary for qualifying as a social movement. I contend that it is the strong role of the government and private institutions in environmental regulation and protection and the trust placed in those institutions that has both acted as an indication of the changing role of and led to the decline and lack of public involvement in the environmental movement.

I. INTRODUCTION

“Much of our nation’s legal history can be described as the product of social movements, and this perspective might provide new insights into otherwise familiar events.”³ Social movements integrate law and the institutions of civil society by connecting legal norms to the beliefs and

³ Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 64 (2001).

practices of society.⁴ Though social movements do not have formal authority in the legal system, they change the social order “on which the law and courts ultimately depend.”⁵

The role social movements play in shaping our culture and law is vital for effecting the change that allows our culture and law to reflect the evolving beliefs of the people who make up our society. This paper presents the argument that, though the environmental movement of the 1960s and 1970s qualifies as a social movement per the commonly excepted elements of social movements, the mature form of the environmental movement present in the 1990s and today is no longer a social movement. From an academic perspective, the analysis resulting in the conclusion that the environmental movement is not a social movement is interesting in and of itself, but the changes that have occurred in the environmental movement over the past four decades are, or should be, significant to society at large.

The modern environmental movement is institutionalized in our culture, law, and minds. The institutionalization of the environmental movement is the driving factor behind the loss of its title of social movement. Social movements require public involvement; a quality the environmental movement has lost in its maturity. The populace is no longer significantly involved in shaping environmental policy and law. This loss of control means one or more of the following: 1. the public trusts government and private institutions to protect the environment; 2. environmental concerns have been so superseded by other issues that it no longer registers as an important cause in people’s lives; or 3. people are apathetic towards environmental issues.⁶ Though it is likely that all three of these are true to a certain extent, I contend that it is the strong role of the government and private institutions in environmental regulation and

⁴ Jack M. Balkin & Reva B. Siegel, *Principles, Practices, and Social Movements*, 154 U. PA. L. REV. 927, s946 (2006).

⁵ *Id.* at 949.

⁶ I present these three options as generally recognizable ideas for why the public has become disengaged in the environmental movement. I recognize that there are likely several, if not many, other reasons, but as this paper is focusing on the role of government and private institutions in the changed role of the environmental movement, I am not listing other possibilities.

protection and the trust placed in those institutions that has both acted as an indication of the changing role of and led to the decline and lack of public involvement in the environmental movement.

The paper begins with a discussion of what constitutes a social movement in section two. Specifically, the elements of a social movement presented by scholars in the field and an example of an accepted social movement, the environmental movement of the 1960s and 1970s, are discussed in detail. In section three a discussion of the rise of environmental law in the United States is presented in order to note the successes of the environmental movement of the 1960s and 1970s and provide background for discussion of the present day environmental movement. The elements of a social movement are applied to the present day environmental movement and followed by an analysis of whether the environmental movement still qualifies as a social movement in section four. Finally, in section five I conclude with a brief discussion of the importance of social movements to culture and the law, how the environmental movement has been a success, and why we should care that it is no longer a social movement.

II. WHAT IS A SOCIAL MOVEMENT?

Social movements grew out of the rise of politics, democratization, and a changing economic climate in England and North America during the late 1700s.⁷ These dramatic changes occurring throughout western culture brought people together in protest, support, or with a common goal in mind.⁸ Social movements were born out of dramatic change and have grown and reformed numerous times with the perpetual changes in political, social, technological, and economic spheres.⁹

⁷ JOHN MARKOFF, *WAVES OF DEMOCRACY: SOCIAL MOVEMENTS AND POLITICAL CHANGE* 45 (Pine Forge Press 1996).

⁸ CHARLES TILLY, *SOCIAL MOVEMENTS, 1768–2004*, chs. 1-3 (Paradigm Publishers, 2004).

⁹ *Id.*

A. *The Elements of a Social Movement - as presented in academic scholarship*

Social movements have been defined and redefined since their inception in the late 18th century.¹⁰ Charles Tilly, a prominent American sociologist suggests that social movements are a series of contentious actions, displays, and campaigns that allow people to make collective claims on others.¹¹ Tilly suggest that social movements are the result of a revolutionary synthesis of three elements: "1. a sustained, organized public effort making collective claims on target authorities", i.e. campaigns; 2. the social movement repertoire, including organization of associations and coalitions, public meetings, demonstrations, petitioning, statements for the media, and pamphleteering; and "3. participants' concerted public representations of WUNC: worthiness, unity, numbers, and commitments."¹² Tilly believes that social movements provide an invaluable tool for mass participation in public politics.¹³

Further, Tilly explains that social movements combine three types of claims that are not found in other mass actions, such as electoral campaigns or popular rebellions: 1. program claims which show "support for or opposition to actual or proposed actions by the objects of movement claims"; 2. identity claims which "consist of assertions that the claimants constitute a unified force to be reckoned with"; and 3. standing claims that "assert ties and similarities to other political actors."¹⁴ Finally, Tilly presents the importance of political entrepreneurs to social movements for their ability to bring together groups and reduce the influence of local differences and their scale, durability, and effectiveness.¹⁵

Another prominent sociologist, Sidney Tarrow, presents a slightly broadened definition of social movements. He suggests that social movements are collective challenges by people with common purposes

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.* at 3-4.

¹³ *Id.* at 3.

¹⁴ *Id.* at 12.

¹⁵ *Id.* at 13.

and group solidarity in constant contact with opponents and authorities.¹⁶ Legal scholar Edward Rubin proposes the seemingly clearest definition whereby social movements comprise a diffuse group of individuals “within civil society who are linked together by ideology, beliefs, or collective identities.”¹⁷ For example, people involved in the civil rights movement were linked by the singular belief that all citizens of the United States had a right to equal treatment under the law. Further, members of the environmental movement were linked by a similar belief that humans were harming the environment and such activities needed to stop to protect the environment and ourselves as members of the environment.

Social movements challenge the conventions that regulate the application of principles, which can then question the legitimacy of customary practices, such as gender discrimination in pay or racial profiling, or give constitutional value to historically illicit practices, such as same-sex marriage or abortion.¹⁸ Additionally, Balkin and Siegel point out that a virtually ever-present quality of a successful social movement is the presence of countermobilizations that arise to contest them.¹⁹ The back and forth created by the discourse between the two sides makes it truly possible to see the boundaries of what is socially licit and illicit; legitimate and illegitimate.²⁰

Traditionally, social movement theories claimed that mass movements were caused by social frustration, dislocation, or anomie, expressed through a series of spontaneous popular uprisings or blind obedience to demagoguery, and constituted an emergent collective behavior resulting from individual reactions.²¹ Though early social movements followed these trends in causation, modern movements, those

¹⁶ Sidney Tarrow, *Power in Movement: Collective Action, Social Movements and Politics*, Cambridge University Press, 1994.

¹⁷ Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 4 (2001).

¹⁸ Jack M. Balkin & Reva B. Siegel, *Principles, Practices, and Social Movements*, 154 U. PA. L. REV. 927, 929 (2006).

¹⁹ *Id.* at 949.

²⁰ *Id.*

²¹ Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 6 (2001).

beginning in the 1960s and continuing through the present day, have often been described as being linked by their common call for action “on behalf of those who cannot, or will not, protect themselves.”²² Modern movements, or “new social movements” are identity-centered and designed to “recast the very framework of social life.”²³ Modern movements are strongly linked to the identity of the individuals involved and their goals for and connection to the movement.²⁴ Pre-1960s movements, on the other hand, were interest-oriented and hoped to gain power and benefits from the existing system.²⁵ Many sociologists argue about whether a distinction can actually be drawn between new and old social movements on the grounds that the claims described by Tilly -- identity, program, and standing -- can be found in both groups of movements.²⁶ The argument is that the difference between the movement groups is a product of the political, social, and economic times. It may be that new social movements tend to focus on identity based claims while older ones focused on program or standing claims, but all three elements are always present.²⁷

Though, arguably, new social movements can be characterized using the same qualities as older social movements, there have been specific trends that help define eras of social movements. The trends of the 20th century include:

²² *Id.* at 26-27 (2001).

²³ CHARLES TILLY, SOCIAL MOVEMENTS, 1768–2004, 71 (Paradigm Publishers 2004).

²⁴ For example, the women’s rights movement or the welfare rights movement are focused on the identity of the person and people being helped instead of the principle or natural right for which the movement was fighting though those principles and rights are still an important element of the movement. See Peter M. Manus, *The Owl, the Indian, the Feminist, and the Brother: Environmentalism Encounters the Social Justice Movements*, 23 B.C. ENVTL. AFF. L. REV. 249, 288 (1996); Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 9 (2001). The change is one of focus more than in the composition of the elements at issue. See *id.*

²⁵ CHARLES TILLY, SOCIAL MOVEMENTS, 1768–2004, 71 (Paradigm Publishers 2004).

²⁶ *Id.*

²⁷ *Id.*

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- 1.) *routinization of (some) relations between social movement organizers and local authorities, especially police specializing in public order and crowd control;*
- 2.) *evolution of campaigns, social movement performances, and WUNC displays in response to changing means of communication; [and]*
- 3.) *adoption of social movement campaigns by opponents of radical and reformist movements.*²⁸

Social movements aim to effect change in society, culture, and most importantly for this piece of work, the legal system. Social movements have become a focal point for discussing the public's effect on constitutional and other areas of law.²⁹ As social movements seek to change the way others in society view an issue, they are making it possible to change the current constitutional interpretation for that issue. Our constitution, though not changing textually, is interpreted by the courts to be consistent with society's beliefs.³⁰

Under the theory that social movements are intricately connected with the changing interpretation of the law, social movements are seen to effect legal change by "transforming the framework, assumptions and applications of constitutional law discourse."³¹ Movements work to effect such change through several outlets including the political system, a specific incident, media coverage, alliances with other organizations, and competition for the above that results in a leading position.³² Social movements generate "intellectual discourse and theoretical innovation"

²⁸ *Id.* at 81-82.

²⁹ Theodore Ruger, *Social Movements Everywhere*, 155 U. PA. L. REV. 18, 18 (2007).

³⁰ I recognize that it is debatable whether interpretations are actually consistent with society's wishes as a whole, but interpretations often reflect the beliefs of one or more vocal segments of society that often compose a social movement.

³¹ Theodore Ruger, *Social Movements Everywhere*, 155 U. PA. L. REV. 18, 22 (2007).

³² Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 30-32 (2001); *see also generally*, Christopher Coleman, Laurence D. Nee, & Leonard S. Rubinowitz, *Social Movements and Social-Change Litigation: Synergy in the Montgomery Bus Protest*, 30 LAW & SOC. INQUIRY 663 (2005).

that is often necessary to effectuate change in the legal system.³³ By moving an issue capable of being remedied or assisted by the legal system into the public spotlight, social movements engage the public, media, and politics. In doing so, the issue enters legal discourse and is argued in court or before state legislatures, administrative agencies, or Congress.

In short, social movements are based on a drive for social change. Social movements are the confluence of ongoing efforts organized to change the structure of or resource distribution in society.³⁴ Social movements where all or part of the focus is social change through legal reform view the law as a principal instrument for effectuating the sought-after social change.³⁵ Social movements can change the law, which can then effect social change, the actions taken to change the law can effect social change in and of themselves, or social change can occur through both routes.³⁶

B. The Environmental Movement through the 1970s - A Social Movement

The social change effectuated by social movements materializes through two separate but linked spheres of civilization: the social, or cultural, realm and the legal realm. Often social movements use both social and legal mechanisms in the same campaigns, or depending on the goal of the movement, it may focus on one over the other.

The Romantic movement, which grew to fruition in the 18th and early 19th century, is often seen to have occasioned the environmental movement.³⁷ Romanticism presented the idea that wilderness, and nature, was a place to covet and appreciate for its sublime and picturesque value.³⁸ It is this appreciation of nature, or the environment today, from

³³ Theodore Ruger, *Social Movements Everywhere*, 155 U. PA. L. REV. 18, 19 (2007).

³⁴ John D. McCarthy & Mayer N. Zald, *Resource Mobilization and Social Movements: A Partial Theory*, 82 AM. J. SOC. 1212, 1217-18 (1977).

³⁵ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85 at 85 (2001).

³⁶ *Id.* at 86.

³⁷ RODERICK F. NASH, *WILDERNESS AND THE AMERICAN MIND* 44 (Yale University Press 2001).

³⁸ *Id.*

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which the naturalist writings and art of the 19th and 20th century grew. Ralph Waldo Emerson's essay *Nature*, Aldo Leopold's *A Sand County Almanac*, and the Hudson River School painters all espoused the value of the environment.³⁹ It is these roots in the social realm that brought about social change in the view people took of the environment and its value to their everyday lives.

Environmentalism in the United States has gone through several transformations from its beginning in the early 19th century when it consisted of those promoting conservation and preservation of the country's great natural resources and those promoting improvement of urban environmental issues including development of sanitation systems, protecting clean water supplies, and improving living conditions.⁴⁰ The primary focus remained on protecting the nation's natural resources through the first half of the 20th century. The progressive movement in the early 20th century was a driving force in this focus. It resulted in the "creation of regulatory agencies, the enactment of social reform legislation, and the consequent advent of an administrative state."⁴¹ It was the administrative state that paid specific attention to managed use of the nation's resources through the Forest Service, Bureau of Reclamation, Fish and Wildlife Service, and Bureau of Land Management. These agencies and their Organic Acts were the primary environmental regulation for Federally owned land through the middle of the 20th century.⁴²

³⁹ See generally RALPH WALDO EMERSON, *NATURE* (1836); see also generally ALDO LEOPOLD, *A SAND COUNTY ALMANAC* (Oxford University Press 1949); The Hudson River School was an American art movement by landscape painters that began in the mid 1800s. It is characterized by grandiose landscapes with about half the canvas in sky, some body of water in the mid-ground, a weather-beaten tree in the foreground, and an obligatory puny human or representation of humanity somewhere in the landscape. Thomas Hampson – I Hear America Singing: Hudson River School, <http://www.pbs.org/wnet/ihas/icon/hudson.html>.

⁴⁰ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 89 (2001).

⁴¹ Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 68 (2001).

⁴² Fred Cheever, Dir. of Env'tl. And Natural Res. Law, Univ. of Denver Sturm Coll. Of Law, Environmental Law Class Lecture (Fall 2007).

Issues of pollution from private actors was handled by tort and nuisance law on a case by case basis, and it wasn't until the early 1960s, when Rachel Carson published *Silent Spring*, that the national population truly considered the environmental harm being wreaked on the people, land, and organisms of the U.S.⁴³ *Silent Spring* opened the flood gates for making the public aware of impending ecological disasters, and the environmental movement of the 1960s and 1970s grew out of the fantastic grassroots response to the imminent and existing environmental issues.⁴⁴ The result of this response was two-fold: 1. The stalwart Federal environmental laws were enacted including the National Environmental Policy Act, legislation that has been mimicked by countless U.S. States and nations around the world; and 2. Environmentalism was entrenched in American's minds as an important consideration in decision-making processes.⁴⁵

One of the first important environmental cases for the environmental movement was *Scenic Hudson Preservation Conference v. Federal Power Commission*.⁴⁶ The case was brought by an environmental group challenging the Federal Power Commission's grant of necessary permits and licenses to Consolidated Edison of New York.⁴⁷ This case provided a legally enforceable basis for the idea that agencies must take environmental and aesthetic considerations into account in their decision-making processes.⁴⁸ Further, the court explained that this principle should be implemented by requiring agencies to grant special interest groups an opportunity to be heard on matters of interest to them.⁴⁹ The idea of using the legal system to demonstrate and act on people's concern for the environment was born out of this case. Within a few years of this case the

⁴³ RACHEL CARSON, *SILENT SPRING* (Mariner Books 2002) (1962).

⁴⁴ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 91 (2001).

⁴⁵ Fred Cheever, Dir. of Env'tl. And Natural Res. Law, Univ. of Denver Sturm Coll. Of Law, Environmental Law Class Lecture (Fall 2007).

⁴⁶ 354 F.2d 608 (2nd Cir. 1965).

⁴⁷ *Id.* at 611.

⁴⁸ *Id.* at 622-24.

⁴⁹ JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE*, INSTITUTE FOR RESEARCH ON POVERTY 43 (Academic Press 1978).

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three most prominent environmental legal groups were formed: the Environmental Defense Fund, the Sierra Club Legal Defense Fund, and the Natural Resources Defense Council.⁵⁰

The environmental movement started a major transformation of law and society.⁵¹ Our current conception of the proper role of government and the content of due process and equal protection came into existence with the new social movements and specifically environmentalism.⁵² Congress passed the most important environmental legislation in U.S. history, through the present-day, that specifically protected natural resources, required agencies to consider environmental concerns in their decision-making processes, and recognized the intrinsic value of native American plants and animals. Further, the legislation provided new rights for citizens and environmental groups in filing suits to enforce government regulations.⁵³ Finally, and possibly most important to the question of environmentalism's continued place in the pantheon of social movements, the activities of the movement, in the 1960s and 1970s, and the actions of Congress gave the environment a central and long-standing place in social and political realm.⁵⁴

Part of the success of the environmental movement in changing the legal system and the application of constitutional principles was its ability to take advantage of social and technological changes that disturbed prevailing views on the power of constitutional principles in order to realign the proper application of constitutional principles with the

⁵⁰ Environmental Defense Fund: Founded 1967 <http://www.edf.org/page.cfm?tagID=382>; Earthjustice Legal Defense Fund (Formerly Sierra Club Legal Defense Fund): Founded 1971, http://www.earthjustice.org/about_us/index.html; Natural Resources Defense Council: Founded 1970, <http://www.nrdc.org/about>.

⁵¹ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85 at 86 (2001).

⁵² Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 69 (2001).

⁵³ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 86 (2001).

⁵⁴ *Id.* at 87.

movement's and society's values.⁵⁵ John F. Kennedy ushered in a new policy of change when he took office as President in 1961.⁵⁶ His policies and attitude towards government was a tempered reflection of the social unrest and demand for change seen throughout the country. As the U.S. and the world changed their policies to focus on economic expansion as a road to power instead of war, our attitude towards the environment also changed.⁵⁷ People began to see the value of protecting the environment either for their own health or for the intrinsic value of nature because technology driving the economic expansion was taking its toll on the land, animals, and people of the U.S. and world alike. This change in attitude towards the environment put pressure on the government to incorporate those considerations into the laws and regulations of the administrative agencies charged with duties concerning the environment.

The American environmental movement that reawakened in the 1960s has been accepted by both sociologists and legal scholars as a social movement.⁵⁸ To use Tilly's elements, environmental campaigns for specific issues and the environment as a whole proliferated throughout the 1960s and 1970s and many still exist today such as the Sierra Club, Natural Resources Defense Counsel, World Wildlife Fund, and Greenpeace. Second, the environmental movement used every element Tilly suggests as part of the social movement repertoire: environmental organizations formed coalitions, held public meetings, organized national and local groups, held demonstrations, petitioned, and made their case through the media. Third, members demonstrated the worthiness of their cause through writings such as Rachel Carson's *Silent Spring*, Stewart Udall's *The Quiet Crisis*, and dozens of other writings; they showed unity and numbers through the soaring membership numbers and contributions to environmental organizations; and people across the country and

⁵⁵ Jack M. Balkin & Reva B. Siegel, *Principles, Practices, and Social Movements*, 154 U. PA. L. REV. 927, 929 (2006).

⁵⁶ Decades of Change - 1960-1980: The Rise of Culture and Ethnic Pluralism, <http://www.america.gov/st/educ-english/2008/April/20080407123655eaifas0.7868769.html>.

⁵⁷ *Id.*

⁵⁸ See generally Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85 (2001).

industrialized world made commitments to reduced resource consumption and recycling, among many others.⁵⁹

Tilly's elements of a social movement have been fulfilled by the myriad of activities environmentalists and environmental groups performed during the 1960s and 1970s. People committed to unrelenting organization to forward environmentalism in U.S. culture and law. They constantly pushed the bounds of environmental understanding in order to realize the drastic change needed to ward off the perceived impending hazards of toxic waste, air pollution, and species extinction. Whether their belief in the imminent need for change was right or wrong, they achieved social change as reflected in our legal system and the prominence of environmental issues in the public consciousness today.

Since the substantial legal change in environmental law in the 1970s, the environmental movement has significantly modified its tactics. Instead of using protest tactics and pushing for social change and to alter public opinion, the movement has employed "traditional insider political strategy", used the courts defensively, and worked to keep the institutionalized laws of the 1970s strong and functional.⁶⁰ This change requires a brief look at the discipline of environmental law to complete the

⁵⁹ The Sierra Club was founded in 1892 by John Muir, one of the founding fathers of the environmental movement. Sierra Club's membership is about 1.3 million. See <http://www.sierraclub.org/welcome>. NRDC was founded in 1971 to protect the environment through legal actions and grassroots support. NRDC has membership of about 1.2 million. See <http://www.nrdc.org/about>. The WWF was founded in 1961 by a group of Europeans and has grown to an international organization dedicated to protecting the environment and specifically wildlife. WWF membership is about 1.2 million in the U.S. and about 5 million globally. WWF – Who We Are – History, <http://www.worldwildlife.org/who/History/item353.html>. Greenpeace was founded in 1971 with an initial goal of protesting nuclear testing by the U.S. off the coast of Alaska. Its current membership is about 250,000 in the U.S. and 2.5 million globally. See Greenpeace USA, <http://www.greenpeace.org/usa/about>. Earth Day (April 22, 1970) included participation by 1,500 colleges and 10,000 schools across the U.S. holding parades, demonstrations, and protests. See Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 94 (2001).

⁶⁰ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 99 (2001).

foundation necessary to evaluate whether the current environmental movement is a social movement.

III. SOCIAL MOVEMENTS AND THE LEGAL SYSTEM - THE RISE OF ENVIRONMENTAL LAW

“The law is, and can only be,...constructed as an evolving historical consciousness in which politics plays a major role.”⁶¹ When legal reform is the chosen method of social change for a social movement, does the law change society’s values or does the existence of the movement indicate society’s acceptance of those values and a perceived need for reform in the legal system?⁶² The answer is often a combination of both occurrences.

As noted earlier in section II(A), social movements are seen to effect legal change by “transforming the framework, assumptions and applications of constitutional law discourse.”⁶³ The environmental movement accepted and believed in a need to protect, preserve, and clean up our environment. The movement acted as the environmental consciousness for the nation and pushed lawmakers to incorporate those ideals into the U.S. legal system through public demonstration, legal action, media reports, and all of the other traditional means of generating action presented by Tilly. As environmental laws were enacted, more people realized, through the actions of the environmental movement and lawmakers, that the environment was important to their well-being and role as a global-citizen. Actions to further the law reform and the laws themselves acted in conjunction to imbed the environment as an prominent issue in America’s conscience. Environmental law has been around as long as tort law. Before the existence of administrative agencies charged with handling environmental issues and the ambitious environmental laws passed by Congress in the late 1960s and early 1970s, lawyers relied on common law nuisance to prosecute for environmental

⁶¹ Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 81-82 (2001).

⁶² See generally Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85 (2001).

⁶³ Theodore Ruger, *Social Movements Everywhere*, 155 U. PA. L. REV. 18, 22 (2007).

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harms.⁶⁴ A discussion of nuisance law does not pertain substantively enough to the subject matter of this paper to carry it beyond a general mention. It is the law reform that happened in the 1960s and 1970s that is of particular import to the question of whether the current environmental movement suffices as a social movement.

The U.S. has six main environmental laws among a list of dozens: the National Environmental Policy Act (NEPA), Clean Air Act (CAA), Clean Water Act (CWA), Endangered Species Act (ESA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and Resource Conservation and Recovery Act (RCRA). This legislation was created in the 1970s in response to public and political awareness of environmental issues affecting the U.S. Though various other environmental laws were passed in the ensuing decades, it is these laws themselves and the regulations promulgated by administrative agencies implementing these laws that have figured most prominently in litigation activities by environmental organizations.

In the late 1970s and early 1980s environmentalists were hired for top positions in various government agencies.⁶⁵ Environmental organizations expanded their interactions within government.⁶⁶ They increased their reliance on political and legal strategies, legislative and administrative lobbying and strategic use of the media.⁶⁷ Environmental organizations and a large segment of environmentalists focused their attention on working through the government to implement change through national environmental laws and regulations. Though the integration of environmental organizations and environmentalists into the executive and legislative branches of the government has played a crucial role in the environmental movement, the courts have been defining the language of the laws and, some might argue, have had more influence on environmental law than the other branches of government.

⁶⁴ Fred Cheever, Dir. of Env'tl. And Natural Res. Law, Univ. of Denver Sturm Coll. Of Law, Environmental Law Class Lecture (Fall 2007).

⁶⁵ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 100 (2001).

⁶⁶ *Id.*

⁶⁷ *Id.*

Before the environmental movement and the civil rights movement, courts acted to slow social change from “politically accountable legislative bodies.”⁶⁸ The courts took up the role of an agent of social change when environmental groups began using the courts to enforce and maintain the laws already passed by Congress.⁶⁹ “Courts respond to social disruption by social movement rather than initiate it themselves; they reconstitute and reformulate law in light of political contestation, rationally reconstructing and synthesizing changes in political norms with what has come before.”⁷⁰ Handler suggests that the courts are not as powerful and activist as some have suggested because in environmental litigation, courts can only be used for limited purposes.⁷¹ For example, in the case of challenged agency action, the courts will not “substitute their judgment on the merits for that of the agency.”⁷² He also points out though, that the courts have been used successfully for “limited and extrajudicial purposes, such as gaining time and publicity, which can allow the groups to employ means other than litigation to pursue their goals.”⁷³ Handler was writing in 1978 though, and since then, the environmental laws passed in the 1970s have been litigated up through the Supreme Court providing legal precedent that was unavailable to Handler. As a result of three and a half decades of environmental litigation, the law of standing was expanded immensely and the hard look doctrine was

⁶⁸ Thomas W. Merrill, *Forward: Two Social Movements*, 21 *ECOLOGY L.Q.* 331, 332 (1994).

⁶⁹ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 *U. PA. L. REV.* 85, 101 (2001); Thomas W. Merrill, *Forward: Two Social Movements*, 21 *ECOLOGY L.Q.* 331, 331-32 (1994). Civil rights groups also helped usher in the changing role of the courts, but the specific points made here refer to the contributions of the environmental movement only.

⁷⁰ Jack M. Balkin & Reva B. Siegel, *Principles, Practices, and Social Movements*, 154 *U. PA. L. REV.* 927, 947 (2006).

⁷¹ JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE*, INSTITUTE FOR RESEARCH ON POVERTY 69 (Academic Press 1978).

⁷² *Id.*

⁷³ *Id.*

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adopted by the judiciary as a new and aggressive style of judicial review of agency action.⁷⁴

These changes in the law, judicial review, and the move to an activist court have played a huge role in the outcome of environmental litigation, but it has also opened the doors for other social movements to use the changed law of standing and the power of an activist court for their own legal claims. Environmentalism's effects on the legal system were not limited in applicability to the environmental movement.

The activities of the environmental movement in the 1960s and 1970s resulted in social and legal changes. Without the loudly voiced concerns of the environmental movement, political will alone would not have been sufficient to overcome the many obstacles to passing Federal legislation. The public support and pressure made it possible for members of Congress to support the environmental laws discussed above. The public cried out to Congress "Protect our environment!", and because their voice was loud enough, because they had the power of a social movement behind them, Congress heard the call and responded with laws, the potential power of which has not been seen since in the environmental movement.

The environmental laws passed in the 1970s demonstrate the success of the environmental movement. These laws provide not only a clear statement by Congress that protecting the environment is an important role for the government to fulfill, but more importantly, they demonstrate a recognition by Congress that, because the capitalist economy of the U.S. does not give full, if any, economic value to the environment and its resources, if the environment is to be protected for value not recognized in the economy, the government must act through laws controlling its own actions in addition to those of private entities.

Two important questions remain: 1. Is the environmental movement we see today, in 2008 and have seen for the past two and a half decades, a social movement? and 2. Whether it is a social movement or not, why is it important to know? The following two sections attempt to answer both of these questions.

⁷⁴ Thomas W. Merrill, *Forward: Two Social Movements*, 21 *ECOLOGY L.Q.* 331, 331 (1994).

IV. PRESENT-DAY ENVIRONMENTAL MOVEMENT

A. Who cares whether the Environmental Movement is a Social Movement?

Before delving head on into an analysis of the present-day environmental movement, it is important to note why the above question and following analysis and conclusion are important from more than a purely academic perspective. The most necessary element of a social movement is a high amount of involvement by the public. Without public involvement there cannot be a social movement. Analyzing the present-day environmental movement under the lens of social movement requirements clearly illuminates the deficient quality of the movement: a lack of public involvement. This results in the conclusion that the present-day environmental movement is not a social movement. This is a problem for the public. In accepting the government and private institutions as the protectors of the environment, the public has given up its direct hand in changing and reforming environmental law. This problem is not unique to the environmental movement; civic engagement is low in the U.S. across every facet of our society.⁷⁵ Some would argue that people can choose to participate in government as they wish, but without intimate public involvement in government, we have lost sight of one of the founding tenants of our country stated in the preamble to the Constitution:

*"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."*⁷⁶

⁷⁵ See generally MORRIS P. FIORINA, ET AL., CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY (Morris P. Fiorina & Theda Skocpol, eds., Brookings Institute Press 1999).

⁷⁶ U.S. CONST. pmb1.

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We are a “government of the people, by the people, for the people.”⁷⁷ When the public is not involved in government, government loses sight of the interests of the people. In order to adequately address present-day environmental concerns, the public must push for legal reform through a social movement as well as use the institutional mechanisms available as a result of the environmental movement of the 1960s and 1970s.

B. Is it a Social Movement?

Coglianesse does not specifically address this question in her article, but her discussion of the “steady state” of environmentalism today provides significant insight into the changes that have occurred in the movement and a realistic look at the components of the environmental movement.⁷⁸ Coglianesse points out that environmentalism has firmly established itself in American society as evidenced by the commercial success of marketing products, companies, and organizations as green.⁷⁹ She focuses on the institutionalization of the environmental movement as a large constraint of the range of activity and change it can effect.⁸⁰ By working from within the government and legal system to protect the status quo of environmental laws, the movement is limited in the radical change it can accomplish and the support it can garner from the public. Though the entire environmental movement has not been institutionalized, the sector that has can no longer stand up and point to a failure to adopt progressive environmental legislation and fully expect a mass public outcry. People look to government agencies and the institutionalized environmental organizations to take care of environmental issues for them. Many have placed their trust in those groups to do the fighting. There is a

⁷⁷ Abraham Lincoln, 16th President of the United States, Gettysburg Address (Nov. 19, 1863).

⁷⁸ See generally Cary Coglianesse, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85 (2001).

⁷⁹ *Id.* at 108.

⁸⁰ *Id.* at 113.

belief that the “power of the people” is no longer needed to protect the environment.⁸¹

Public support for environmentalism is broad but latent. Unless there is an environmental crisis, it is nearly impossible for the environmental movement to amass popular support and outcry for an environmental issue.⁸² Further, Americans do not tend to support policies that will force them to change their behavior.⁸³ For example, attempts to reduce energy consumption and change peoples’ driving habits have consistently hit brick walls in anything but voluntary action, but when there is an economic incentive to reduce energy consumption or drive less, as occurred with the high oil prices during the summer of 2008, people are easily swayed to implement conservation measures.⁸⁴ This demonstrates how there can be a widespread belief in the principle that protecting the environment is important, but a failure of commitment to that principle when it is not associated with an economic incentive.

The law concerning the environment was reformed in the 1970s. Since then the environmental movement has worked to sustain those laws, but no new significant reform has happened since on a national level. The popular support for the environment is no longer characterized by widespread demonstrations, petitions, and public outcry. There is popular acceptance of the principles of environmentalism and a belief that the system in place is sufficient. In addressing the apparent environmental harms, the environmental movement seems to have added to people’s complacency in dealing with less visible environmental problems.⁸⁵ This does not suggest a social movement under the new social movement concept of fighting on behalf of those who cannot or will not fight for

⁸¹ See generally Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85 (2001).

⁸² Peter M. Manus, *The Owl, the Indian, the Feminist, and the Brother: Environmentalism Encounters the Social Justice Movements*, 23 B.C. ENVTL. AFF. L. REV. 249, 251 (1996).

⁸³ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 111 (2001).

⁸⁴ See, *As gas goes up, driving goes down*, CNN.com, May 27, 2008, <http://www.cnn.com/2008/US/05/26/gas.driving/index.html>.

⁸⁵ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 118 (2001).

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themselves, but the modern conception of social movements is that they can change and all of the elements of a movement must be considered before dismissing it as something other than a social movement. Before moving further in an analysis of whether the present environmental movement qualifies as a social movement, the environmental movement being addressed must be defined as there are two possible, but separate, movements. The institutionalized environmental movement described above is the mature state of the environmental movement that took root in the 1960s and is the subject of this paper. The environmental movement that grew up in the past two decades to counterbalance and respond to the institutionalization of the older movement is not being addressed. Though the newer movement is often times imperceptibly intertwined with the older one, they grew out of separate impetuses, and I believe that they are insular enough as separate movements to be treated as such.

Manus suggests that the “present movement to integrate environmentalism into mainstream market systems is one political response to the waning public concern over nature’s well-being.”⁸⁶ Further, he suggests that though “mainstream Americans” will get up in arms for specific and crisis environmental issues, Americans will not “adjust our preferred behavior as land-conqueror on a broader basis.”⁸⁷ This suggests that the environmental movement that responds to obvious environmental crises will garner strong popular support and likely result in demonstrations and various other activist activities, but there are few obvious environmental crises around today. Today environmental problems are not as easily definable as toxic waste running into a river or smokestacks bellowing chemicals into the air, and mainstream Americans do not rise-up for such imperceptible, though no less problematic, environmental problems.

⁸⁶ Peter M. Manus, *The Owl, the Indian, the Feminist, and the Brother: Environmentalism Encounters the Social Justice Movements*, 23 B.C. ENVTL. AFF. L. REV. 249, 253 (1996).

⁸⁷ *Id.* at 272.

Tilly presents three questions for determining whether a popular mobilization is a social movement that will serve as a more structured means of answering the question presented in this paper.⁸⁸

1. Resemblance: Does this particular campaign, performance or WUNC display resemble those that commonly occur in full-fledged social movements?

The view of the environmental movement put forward by Coglianese paints a bleak picture of the activities of the institutionalized environmental movement. As Coglianese points out, there is little "sustained, organized public effort making collective claims on target authorities."⁸⁹ The general public has taken a step back from organized public efforts and has placed the duty of taking care of environmental issues in the hands of environmental organizations with full time, paid, career staff and the government. Tilly explains that a campaign requires an interaction between "self-designated claimants, some object(s) of claims, and a public of some kind."⁹⁰ The institutionalization of the environmental movement has cut the public out of the picture to a large extent. Though there are some elements of a campaign, the public component is weak at best, but because Tilly admits that though these elements are the way social movements are described, there are exceptions and the definitions change.⁹¹ Therefore it could be argued that though the public element in the environmental movement is small, it is still sufficient to constitute the interaction needed for a campaign.

Environmental organizations are special-purpose associations and form coalitions between themselves and with other environmentally minded organizations. These organizations make statements to the media, prepare and send out information on environmental issues, and petition on

⁸⁸ CHARLES TILLY, SOCIAL MOVEMENTS, 1768-2004 78 (Paradigm Publishers 2004).

⁸⁹ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 118 (2001); CHARLES TILLY, SOCIAL MOVEMENTS, 1768-2004 4 (Paradigm Publishers 2004).

⁹⁰ CHARLES TILLY, SOCIAL MOVEMENTS, 1768-2004 3 (Paradigm Publishers 2004).

⁹¹ See generally *id.*

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street corners for specific environmental causes, though oftentimes those names are gathered to increase membership as well. There are few if any demonstrations, vigils, rallies, or public meetings. Tilly posits that it is when most or all of these performances are integrated into campaigns that the difference between social movements and other politics is apparent⁹² Again, this is not dispositive. The cut-off line for what qualifies as “most” is not given and there is no definitive number of demonstrations, vigils, rallies, or public meetings needed for qualifying as performances.

Demonstrating WUNC (worthiness, unity, numbers, and commitment) seems to be the most difficult element for the environmental movement. Though members of environmental organizations and the government tend to demonstrate the worthiness of the cause through sober and respectful appearance and often include well respected members of society, whether celebrities like Robert Redford or famous politicians like Al Gore, the demonstration of unity and commitment is more difficult. Numbers are easy to demonstrate by looking at membership lists for environmental organizations. Sierra Club has about 1.3 million members, Natural Resources Defense Council has about 1.2 million members, and the Nature Conservancy has about 1 million members.⁹³

Unity can be demonstrated through the many “green” bumper stickers, driving a hybrid car, or carrying around a reusable canvas shopping bag, but one could argue that none of these actually show unity for the environmental movement. The easiest argument is the commercialization and trendiness of being “green”. Many find bumper stickers tacky, and hybrids and canvas shopping bags are extremely trendy. Coglianese points out that “Earth Day 1990 took on a decidedly commercial tone as corporations used the event to tout their environmental records and to promote environmentally friendly products.”⁹⁴ Additionally, even if you can show unity concerning environmental issues

⁹² *Id.* at 4.

⁹³ Welcome to the Sierra Club, <http://www.sierraclub.org/welcome>; About NRDC, <http://www.nrdc.org/about>; About The Nature Conservancy, protecting nature, preserving life, <http://www.nature.org/aboutus/?src=t5>.

⁹⁴ Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 108 (2001).

in general, there is a distinct lack of “coherent vision of the common environmental good that is sufficiently compelling to generate sustained public support for government action to achieve it.”⁹⁵ Few people are wearing “matching badges, headbands, banners, or costumes” on a regular basis.⁹⁶ Further, commitment is severely lacking in the environmental movement. People will sacrifice money to support gorillas in Africa or an annual membership with the Sierra Club, but braving bad weather to protest or ostentatious sacrifice is not present.⁹⁷

After examining the three elements of the question, it could be argued that the modern environmental movement does in fact resemble the elements that commonly occur in “full-fledged social movements”, but it is equally possible, and maybe easier, to argue that it does not resemble a “full-fledged social movement.” In an effort to fully explore these three questions, a balancing of the information supporting and opposing the environmental movement as a social movement will be addressed after an analysis of each question.

2. Combination: Does this particular campaign combine performances and WUNC displays in a recognizably similar manner to social movements elsewhere?

Though the answer to this is, in theory, arguable, it seems clearly evident that the combination of campaign, performances, and WUNC displays are recognizably similar in the US and in other similarly situated countries.⁹⁸ This conclusion is based on the strong international nature of

⁹⁵ RICHARD N.L. ANDREWS, *MANAGING THE ENVIRONMENT, MANAGING OURSELVES: A HISTORY OF AMERICAN ENVIRONMENTAL POLICY* 370 (1999).

⁹⁶ CHARLES TILLY, *SOCIAL MOVEMENTS, 1768–2004* 4 (Paradigm Publishers 2004).

⁹⁷ *Id.* at 4; see also generally Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85 (2001); see also Peter M. Manus, *The Owl, the Indian, the Feminist, and the Brother: Environmentalism Encounters the Social Justice Movements*, 23 B.C. ENVTL. AFF. L. REV. 249 (1996).

⁹⁸ Tilly bases his statements and analysis of social movements on the idea that social movements require true democratization. Therefore, in a comparison of the US environmental movement to social movements everywhere, everywhere implies all places that are democratized in the Western sense, and therefore similarly situated countries.

the major environmental organizations that exist in the U.S. The campaigns are international, and in that respect, look the same in Western countries.

3. Availability: In this setting, is the characteristic combination of campaign, performances, and WUNC displays now widely available for different issues, claimants, and objects of claims?

In the United States, the characteristic combination needed for a social movement is available for any issue, claimant, and object of claims. The environmental movement of the 1960s and 1970s helped make that possible, and accepted social movements in civil rights, feminism, consumerism, and protectionism all flourished with similar characteristic combinations.⁹⁹ Tilly makes the blanket statement, based on social science research and scholarship, that every country where “relatively extensive democratic institutions operated” fulfilled the requirements of the third question.¹⁰⁰ Though some may question whether the institutions of the United States are democratic and extensive, it seems generally accepted that they are.¹⁰¹

The score rests at maybe for question one, yes for question two, and yes for question three. This would appear to settle in favor of the argument that the present day environmental movement is a social movement. This is not the case. Though not explicitly stated, question one does seem to hold more weight than the other two in determining whether a movement qualifies as a social movement, especially in the case of question three, which has for present analysis, and all intents and

⁹⁹ Thomas W. Merrill, *Forward: Two Social Movements*, 21 *ECOLOGY L.Q.* 331, 331 (1994).

¹⁰⁰ CHARLES TILLY, *SOCIAL MOVEMENTS, 1768–2004* 80 (Paradigm Publishers 2004).

¹⁰¹ See generally CHARLES TILLY, *SOCIAL MOVEMENTS, 1768–2004* (Paradigm Publishers 2004); see also Peter M. Manus, *The Owl, the Indian, the Feminist, and the Brother: Environmentalism Encounters the Social Justice Movements*, 23 *B.C. ENVTL. AFF. L. REV.* 249 (1996); see also Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto Era*, 94 *CAL. L. REV.* 1323 (2006); see also Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 *U. PA. L. REV.* 85 (2001).

purposes, been stripped of value.¹⁰² Therefore, a closer examination of the elements of question one is warranted.

The persistent theme running through the three elements of question one is the necessary presence and continued involvement of the public. Though today's environmental movement can claim to satisfy most, if not all, of the other factors that go into each element, the public is inescapably missing. The very nature of a social movement is society and the public. Whether looking at Tilly's elements and questions; Rubin's "diffuse group of individuals"; or Tarrow's people with common purposes; mass public participation is necessary. If social movements exist to effect social change, ought not a large portion of society be a part of that movement? For this reason, the institutionalized modern environmental movement cannot qualify as a social movement.

Coglianesse makes the point that the natural tendency of successful social movements is for them to mature into "an extensive network of interest group organizations with a presence in Washington, D.C., like that of any other political lobby."¹⁰³ Bosso further supports this point through an analysis of American history, which suggests that "no movement has succeeded by remaining entirely out of the mainstream."¹⁰⁴ Bosso suggests that by becoming a respectable representative of legitimate views, organizations and activists become part of the establishment.¹⁰⁵ In essence, a social movement cannot be radical outsiders pushing for change and be respectable representatives of legitimate views at the same time.

C. Will it affect change?

Despite the loss of the title of social movement, the environmental movement still has a great deal of power in effecting change in the legal

¹⁰² See generally CHARLES TILLY, *SOCIAL MOVEMENTS, 1768–2004* (Paradigm Publishers 2004).

¹⁰³ See generally Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85 (2001)

¹⁰⁴ Christopher J. Bosso, *The Color of Money: Environmental Groups and the Pathologies of Fund Raising*, in *INTEREST GROUP POLITICS* 101, 126 (Allan J. Cigler & Burdett A. Loomis eds., 5th ed. 1998).

¹⁰⁵ *Id.*

sphere. Because the institutionalized environmental movement is no longer a social movement in the traditional or even modern sense, one might suggest it is now just another political lobby or special interest group. Though environmental principles are incorporated into agency and legislative decision-making, legislators and agency policy makers look at members of the environmental movement as representatives of another economic special interest.¹⁰⁶ Despite this view by many lawmakers, the environmental movement does not qualify as a special interest lobby either. Rubin describes special interests as “relatively small, self-interested groups that are generated by the economic sphere.”¹⁰⁷ Though the environmental movement might be described as self-interested, it is neither small, nor generated by the economic sphere.

The present day environmental movement, if not just another arm of the government or mass culture, seems to be hovering somewhere between the ideological movement created by civil society and the special interest lobby. The movement’s ability to effect change, though somewhat curbed by its institutionalization, is still strong, especially so because of the continuing, though often peripheral, support in the general public. The environmental movement has the organizational infrastructure to participate heavily in administrative rulemaking notice and comment procedures; the scientific expertise to participate in negotiated rulemaking procedures; and the monetary support from members to effectively litigate environmental issues.

The public cannot continue its passive role in the environmental movement and leave it to function as an institutionalized part of government if there is to be any recognizable progress on the novel environmental issues present today. These issues, such as climate change, may not be as immediately visible to people as toxic waste being dumped in rivers, but they are just as in need of public involvement and innovative legal solutions as the issues of the 1960s and 1970s.

¹⁰⁶ Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 72 (2001).

¹⁰⁷ *Id.* at 72.

V. CONCLUSION

“Social movement literature emphasizes that the ideas and values we care about most-- equality, free speech, religious freedom, due process, the prohibition of slavery and torture-- were fought for, bled for, and died for. They are the glories of our current civilization, not because we possess the pallid virtue of perceiving these principles as they float about in some sort of transcendental nimbus, but because we possess the effulgent virtue of maintaining and re-creating them amid the chaos and danger of ongoing circumstances.”¹⁰⁸

Environmental law is the result of a long history of environmentalism in the U.S. and most specifically, the social movement that grew out of environmentalism in the 1960s and 1970s. Environmentalists fought for social and legal reform across the country and prevailed to a large extent through the environmental laws passed by Congress and the concern for the environment imbedded in the social consciousness. The movement matured into the present-day environmental movement, its continued presence is a sign of its success, and its current state is a sign of its transformation and value to the public.

The present-day environmental movement is not a social movement. The public is not actively involved, there is a distinct lack of pressure for legal reform, and the focus is on protecting the status quo of environmental laws. Protecting the current system from being stripped of power is an important and necessary element of the environmental movement, but the world has changed over the past thirty years, and new environmental issues have arisen, but the social movement charged with effecting change through legal reform has disappeared. There are a few who are still fighting for change and trying to re-energize the public, but the activity remains low. This is our government; this is our country. We need to be involved in our government to protect our interests and the interest of future generations. Choose a cause, get involved, and participate!

¹⁰⁸ Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 83 (2001).

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