ACHIEVING ENVIRONMENTAL JUSTICE:
APPLYING CIVIL RIGHTS STRATEGIES TO ENVIRONMENTAL JUSTICE

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Environmental justice is both a distributive and participative issue. Distributive environmental justice involves fair allocation of environmental risks (like poor air quality, hazardous work environments, and toxic run-off) and resources (like clean water, lead-free playgrounds, and pollutant free air) where people live, work, and play, regardless of race, ethnicity, national origin, etc. Participative justice involves the meaningful inclusion of all stakeholders in the environmental decision making process, from needs identification to planning, building, maintenance, and enforcement, again regardless of race, ethnicity, national origin, etc.

This paper argues that the environmental justice movement has reached a tipping point, and that the issues of distributive and participative justice would greatly benefit from new and enforceable federal legislation protecting minority communities from disproportionate harm. Academic and scientific foundations have been laid for a new swell in enthusiasm for change, and local communities have asserted their voices into the decision-making process and fought for justice across the country. The current environmental approach at the local, state, and federal levels, however, has proven insufficient to counter the pervasive and often subtle and institutionalized environmental injustices.
The movement must adapt in order to ensure that real justice in environmental affairs for all commences. Environmental justice victims, leaders, and advocates can learn from the adaptive progress of the civil rights movement. Forced to develop new techniques when a traditional method, legal action, was threatened, civil right activists organized a movement based on community organizing and symbolic leaders. The example of adaptability is a good one for any movement, and the change agents developed in the civil rights movement compose a specific framework from which the environmental justice movement can learn.
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PROLOGUE: Before the Movement

Louisiana Case Study #1: Claiborne Avenue and I-10

In 1973, nearly a decade before the inception of the environmental justice movement, four contiguous neighborhoods along Claiborne Avenue in New Orleans became a part of a planning process that involved meaningful local citizen participation. The Claiborne Avenue Design Team (“CADT”), authorized by the Louisiana State Highway Department, involved individuals, businesses and community leaders “to devise a comprehensive plan for redevelopment of the rights-of-way and of the neighborhoods adjacent to the I-10 Expressway between Poydras Street and Peoples Avenue.”¹ For three years, CADT worked with city and urban planners, architects, economists and lawyers to devise technical alternatives. Simultaneously, they worked with local historians, artists, musicians, entertainers, residents, students and community groups to understand the needs and land-use preferences of the neighborhoods within this 75-acre study area.

The impetus for CADT and their multi-use study was that a once thriving black community in New Orleans had been devastated by the construction of a 6-lane elevated highway. The Claiborne Avenue neighborhoods, the 3rd Ward /Battlefield section, 6th Ward/Treme, 7th Ward and 8th Ward/St. Roch, are arguably the oldest black community in the United States,² and they were home to hundreds of black-owned businesses, middle

² Nancy Cantor, “Moving Together: the Arts in Higher Education,” (lecture, University of Maryland, College Park, MD, October 21, 2003).
class families, deep cultural pride, and an oak-lined median used for picnics, parades and meeting grounds. In 1966, the Claiborne Avenue neutral ground, an environmental feature cherished by the community, was destroyed in the building of the overpass. The oak trees and grass were hauled away, and in their stead were delivered concrete slabs and pillars.

Iconic highway architect Robert Moses was hired by the Louisiana Highway Department in 1946 to help New Orleans with its traffic problems. The solution he proposed included two elevated highways, one at the northern end of the city along Claiborne Avenue, and one along the riverfront through the French Quarter. It wasn’t until the mid-1960’s, however, with federal funding for interstate highway construction available and eminent domain at their disposal, that New Orleans began to pursue these projects. Construction at the northern end of the city began immediately, and by 1966 the way of life of the Claiborne Avenue community would be altered forever, without public hearing, protest, or delay.

The other half of Robert Moses’ solution to New Orleans’ traffic problems was a second elevated highway along the riverfront through the French Quarter. This highway was planned to relieve stress from unstable roads, and free up congestion in the wealthy, white business and residential areas near Tulane University and the Garden District. Although it was an up-hill battle nearly the entire way, a well-funded group of highly-educated citizens launched a ten-year “falling out among gentlemen.”\(^3\) In 1966, the

young, white activist leaders, backed by financial support from a Sears-Roebuck heir (who also owned New Orleans’ first television station), studied highway battles in cities like Philadelphia, Memphis, Washington D.C, San Francisco, New York and Boston. The expertise they gathered helped them expand their activist repertoire to include protest, litigation, use of written and television media, and scientific/technical studies. In 1969, Secretary of Transportation, John Volpe cancelled the highway. In his formal announcement on July 9, Volpe said, “the public benefits from the proposed highway would not be enough to warrant damaging the treasured French Quarter.”

In describing what could have happened if the riverfront expressway had been built through the French Quarter, author Tom Lewis writes as follows:

Anyone who wondered … had simply to drive over to Claiborne Avenue … There had been virtually no opposition to building I-10 … not from the residents, who did not possess the political power to resist the demand that they yield their land for ‘progress;’ not from preservationists … Preservation then was a local matter … This was a black neighborhood that few white people entered until I-10 took them through it at fifty miles per hour … It was after the easterly segment of I-10 opened in March 1968, that residents could understand the full destructive effect of this urban expressway.

Although the Claiborne Avenue community was notably self-sufficient, they were still powerless to the local government of New Orleans, the state government of Louisiana, and the federal government of the United States, all of which were dominated by white

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4 Ibid., 209.
6 Lewis, Divided Highways, 187-188.
men. In an oral history interview in April 2007, the owner of Rudy Smith Service, a black owned multi-generational business on Claiborne Avenue, was quick to point out the context of the times. “Today,” he said, “the voting base in New Orleans is black and lower class and politicians have to listen, but it wasn’t the same then … .”
INTRODUCTION AND PROBLEM STATEMENT

Environmental justice is both a distributive and participative issue. Distributive environmental justice involves fair allocation of environmental risks (like poor air quality, hazardous work environments, and toxic run-off) and resources (like clean water, lead-free playgrounds, and pollutant free air) where people live, work, and play, regardless of race, ethnicity, national origin, etc. Participative justice involves the meaningful inclusion of all stakeholders in the environmental decision making process, from needs identification to planning, building, maintenance, and enforcement, again regardless of race, ethnicity, national origin, etc.

In theory, the protection of rights in Title VI of the Civil Rights Act of 1964 should extend to environmental justice in the United States, granting minority populations equality in both distributive and participative aspects of environmental justice. In order to win a complaint under Title VI in federal court, a plaintiff must prove discriminatory intent. This is very difficult to do, however, and thus far environmental justice victims and advocates have failed to win a case in the federal court system.

A second recourse for environmental justice activists has been to file complaints against state agencies in court under federal agency Title VI regulations that were promulgated without requiring discriminatory intent, but instead disparate effect. Precedent set by Alexander v. Sandoval, a civil rights Title VI case decided in 2001, in which Justice Antonin Scalia’s majority opinion held that “there is no private right of
action to enforce disparate-impact regulations promulgated under Title VI" has discouraged environmental justice advocates from pursuing this option. Filing complaints directly to the United States Environmental Protection Agency ("EPA") under its Title VI regulations (again requiring discriminatory effect, and not intent) has been a common action for environmental justice activists. Through 2003 however, the EPA had not ruled in favor of any of the complainants, though some have resulted in concomitant benefits for environmental justice communities in their states.\(^2\)

As described in Toxic Waste and Race at 20, an analysis of the state of environmental justice 20 years after the United Church of Christ issued its first study, environmental justice is still a major issue in the United States. The Executive branch issued an executive order in 1994 (Executive Order 12898) requiring federal agencies to incorporate environmental justice into their missions. But the law, as it is written, is not sufficient to win environmental justice cases in the current Supreme Court, and to date the EPA has failed to fully implement the intent of Executive Order 12898, leaving environmental justice victims with little recourse. The United States can take dramatic action towards environmental justice by passing a law in Congress codifying Executive Order 12898 and prohibiting disparate effects of environmental decisions on minority populations. Such legislation was introduced in both chambers in the 110\(^{th}\) Congress, though it died after subcommittee hearings in the House of Representatives. Successfully

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1 Alexander v. Sandoval, 532 U.S. 275 (2001)

passing legislation specific to environmental justice that will be enforceable in court will require a full court press by the environmental justice movement.

The civil rights movement was a social and legislative revolution in the United States, and it provides an example for any oppressed community of how to bring about change in one’s circumstances and destiny. Equality for all races has improved tremendously since the civil rights movement, but minority communities still suffer with environmental disenfranchisement. The values implied in the Civil Rights Act of 1964, values fought for by millions, namely equality, justice, fairness, freedom, and self-determination will continue to be undermined as long as environmental injustices persist. It took ten years for the civil rights movement to progress from its first landmark court case to passage of the Civil Rights Act of 1964, and the environmental justice movement can learn valuable lessons from the ways in which the civil rights movement leveraged the court system, its great leaders, and community organizers on its road to victory.

The aim of this paper is to argue that the environmental justice movement has reached a tipping point. Academic and scientific foundations have been laid for a new swell in enthusiasm for change, and local communities have asserted their voices into the decision-making process and fought for justice across the country. The current environmental approach at the local, state, and federal levels, however, has proven insufficient to counter the pervasive and often subtle and institutionalized environmental injustices. The movement must adapt in order to ensure that real justice in environmental affairs for all can be achieved. Environmental justice victims, leaders, and advocates can learn from the adaptive progress of the civil rights movement.
Chapter one of this paper tracks major milestones as well as research demonstrating the frequency and stark resistance to making real progress in environmental justice practices in the United States. By citing specific cases in North Carolina and Louisiana, and referencing aggregated studies of environmental procedures within the federal Environmental Protection Agency, chapter one seeks to illustrate both the level of injustices in environmental decisions in America as well as reasons for interested parties to hope for change towards justice in the future. The movement has faced obstacles in both environmental clean-up projects as well as recourse avenues for communities experiencing disproportionate environmental hardships. Major declarations such as President Clinton’s Executive Order 12898, however, have opened up the dialogue on environmental justice and affirmed its position as an issue of civil rights.

In chapter two, this paper argues that the environmental justice movement has reached a tipping point in its momentum. Because of widely publicized disasters such as Hurricane Katrina, and refreshed research finding that environmental injustices may be of greater frequency and magnitude than previously determined, advocates have come further in lobbying for environmental justice specific legislation in Congress. Chapter two asserts that the Civil Rights Act of 1964 has proven insufficient to protect minority populations from disproportionate environmental harm. Minority communities also continue to be marginalized in the environmental decision-making process, though this chapter hypothesizes that minority voices have never been louder in environmental policy and that the movement is close to making a break-through towards its goals.
In search of a strategy or set of strategies that will effectively lobby for the federal legislation that this and other authors assert will adequately protect minorities from both distributional environmental injustice and ensure opportunity for meaningful participation in the environmental decision-making process, chapter three of this paper looks back into history to find models for change as developed in the civil rights movement of the 1950s and 1960s. Chapter three explores the origins of the civil rights movement as well as how the three major change agents, the courts, great leaders, and community organizing, rallied support for civil rights and lobbied congress to pass new federal laws. The change agents studied are legal action in the courts, great leaders, and community organizing, and this chapter emphasizes that these agents of change were not isolated from one another, but intricately interconnected, each relying on the effectiveness of the anothers.

In conclusion, this paper seeks to draw lessons from the civil rights movement as models for change in the environmental justice movement. Specifically, the conclusion argues that today’s Supreme Court, with two conflicting decision-making processes, may not be the agent of change for movement organizers to dedicate the bulk of their resources. Instead, a model of leadership that is community based and reflects recent national trends towards responsibility, sustainability will be more effective. Environmental justice activists will gain momentum by capitalizing on the new practical interest in environmentalism, recent economic recession, and new leadership in the White House with the election of Barack Obama.
CHAPTER ONE

1982 TO 2006

Every movement has an origin, and this chapter is designed to describe the circumstances that led individuals and community to identify and express desire for changes in social environmental policy as well as early actions taken by activists, scholars, and politicians to develop the environmental justice movement. First, this chapter will describe what is commonly credited as the instigator for the environmental justice movement, namely protests in Warren County North Carolina. Secondly, it postures the environmental justice movement within the larger context of civil rights. Then it grounds the environmental justice movement in academic research, citing the first major report on environmental justice and two case studies where communities protested their environmental circumstances. Finally, this chapter seeks to demonstrate that scientific reports and leadership summits have put pressure on government officials to make substantial changes in American policy, and that headway has been made, as evidence by an executive order issued by President Clinton that was specific to environmental justice. And though the movement has countered resistance from academics, business, and state and federal agencies, advocates and scholars built considerable momentum for environmental justice in just over a 20 year time span.

From Hugging Diner Stools to Hugging Trees: North Carolina Leads the Movement

In 1982, residents of the small rural town of Afton in Warren County North Carolina were told that they would shoulder the burden of a landfill for 40,000 cubic
yards of PCB-contaminated dirt. PCB (polychlorinated biphenyls) is a persistent, bioaccumulative, and toxic pollutant, and a massive quantity of it had been illegally sprayed along 210 miles of North Carolina roadsides by a Raleigh company, becoming a state environmental and health crisis. After surveying 93 sites in 13 counties, the Governor of North Carolina selected, and the EPA permitted, Afton to become the site for this landfill even though geological and hydrological studies suggested it was a poor placement for hazardous waste. The water-line at the site ranged between five and ten feet below the surface, and the majority of Afton residents in 1982 relied on well-water.\(^1\) In 1982, the majority of Afton residents were also black: according to 1980 census data, the population of Warren County was 60 percent black, over twice the state average of 27 percent.\(^2\)

According to Robert Bullard, Director of the Environmental Justice Resource Center at Clark University Atlanta, Afton was not chosen as the landfill site because it made scientific sense, but instead because it was expected to be the political course that would meet the least amount of resistance and result in the fewest political consequences.\(^3\) In other words, this small, rural, and black town was chosen because it was presumed to be politically impotent.

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\(^3\) Bullard, “Environmental Racism.”
In September, dump-trucks began to drive PCB-contaminated earth towards Afton, but instead of submitting to the PCB landfill, the residents of Warren County became the initiators of a national movement through grass-roots protesting. Although their protests did not prevent the landfill from being constructed, the people of Warren County (over 500 of whom were arrested through the protests) became a dramatic symbol of the nascent environmental justice movement. Their grievances were framed as issues of civil rights and human rights, expanding the scope of environmentalism to include justice for all people, regardless of race, in addition to conservation concerns.

National media attention prompted the Congressional Black Caucus to begin asking questions about the citing of hazardous waste sites in the South. This protest also became the impetus for numerous federal inquiries (including a United States General Accounting Office, now called the General Accountability Office (“GAO”) report, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*) and non-governmental organization studies into the prevalence of environmental injustices (or environmental racism, as it was first couched) in the United States. Although the landfill was detoxified in 2003, removing health and safety threats in the community in Afton, the spirit of the Warren County protest continues in black, hispanic, Appalachian, native American, and other minority communities across the country.

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4 Bullard, “Environmental Racism.”
The Heritage of Environmental Justice: The Civil Rights Movement

The environmental justice movement is a direct outgrowth of the civil rights movement of the 1950’s and 60’s. The civil rights movement, which resulted in legislation that ended overt segregation and racial discrimination in the United States,\(^5\) empowered a generation of Americans to begin breaking down long-institutionalized forms of racial oppression. Civil rights movement organizers, supporters, lobbyists, and plaintiffs achieved victories in landmark court decisions such as *Brown v. Board of Education of Topeka* and in new legislation such as the Civil Rights Act of 1964 and Voting Rights Act of 1965. Working at the local, state, and national levels of government, this movement resulted in victorious campaigns for enforced desegregation and voter registration, and its organizers and activists also tested and developed a powerful strategy for challenging the status quo: non-violent direct action.

The family of non-violent direct action strategies was first developed by pacifist organizations\(^6\) as a protest technique. True to its name, although disruptive and confrontational in nature, non-violent direct action techniques require strict adherence to non-violence. They rely on the philosophy that love is more powerful than hate and that peaceful disruption of the status quo, especially interference affecting commerce and

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economic gains, gives voice to the oppressed masses in a way that neither violence nor verbal persuasion can.\textsuperscript{7}

Civil rights organizers lobbied for sweeping legislation and major changes in systems such as education in America, and major changes flourished across the country, but as author Carl Anthony describes, “many middle-class African-Americans managed to get some benefit from [civil rights] in the 1960s and left behind folks who were not able to get access.”\textsuperscript{8} And so symptoms of racial oppression and discrimination have persisted into the 1970s and today. On paper the Civil Rights Act of 1964 and subsequent Amendments eliminated discrimination against individuals and groups based on their skin color or any other demographic characteristic, but the United States struggles to fully realize the values implicit in the goals of the civil rights movement, namely equal protection of rights and freedom to meaningfully engage in democracy.

Discrimination with regard to environmental hazards is one such form of inequality based on race that was not eradicated by new legislation in the 1960s. Defined by Kristin Shrader-Frechette as occurring “whenever some individual or group bears disproportionate environmental risks … has unequal access to environmental resources … or has less opportunity to participate in environmental decision-making,”\textsuperscript{9} environmental \textit{injustice} can be viewed as an unfinished work of the civil rights

\textsuperscript{7} Ibid.

\textsuperscript{8} Carl Anthony, “The Environmental Justice Movement: An Activist’s Perspective, in Pellow and Brulle, 94.

movement. Today, the United States does not have adequate procedural measures in place to protect all communities from environmental hazards, and minority communities are most often adversely affected by this failure. The civil rights movement advocated equal protection by law and equal opportunity to participate in a democratic government, but these goals have not yet been realized in decision-making regarding the natural and human-made environments.

At the same time as environmental justice is a remainder in the equation of the civil rights movement, it has also been strengthened by the long struggle towards civil rights that preceded it. As seen in the Warren County protests in 1982, the first major environmental protest of its kind, the early environmental justice movement adopted civil rights rhetoric and strategies, and many of the first champions of environmental justice issues were in fact civil rights activists. In the Warren County protest, instrumental leader Dollie Burwell was a member of the Southern Christian Leadership Conference, a civil rights organization. Many leaders in the Warren County protests belonged to the United Church of Christ, a denomination that had been active in the civil rights movement and soon would publish a major analysis on the issue of environmental justice. Community activists also used the same nonviolent direct-action strategies implemented throughout the civil rights movement, resulting in a substantial increase in awareness of the issues across the country.¹⁰


In 1987, the United Church of Christ, a faith-based civil rights organization, departed from its “traditional protest methodology” in publishing Toxic Waste and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites (“Toxic Waste and Race 1987”). After conducting two national studies designed to evaluate the relationship between toxic environments and race using census and environmental data (one on commercial hazardous waste facilities and one on uncontrolled toxic waste sites), the United Church of Christ summarized its findings, including the following results:

- “Race proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities. This represented a consistent national pattern.
- “Communities with the greatest number of commercial hazardous waste facilities had the highest composition of racial and ethnic residents.
- “Although socio-economic status appeared to play an important role in the location of commercial hazardous waste facilities, race still proved to be more significant.
- “Three out of every five Black and Hispanic Americans lived in communities with uncontrolled toxic waste sites.”

The authors of Toxic Waste and Race 1987 concluded that race has been a factor in the citing of commercial hazardous waste facilities and that uncontrolled toxic waste sites are heavily concentrated in areas where minority populations live, work, and play. The paper furthermore strongly urged all levels of government to make addressing the strong correlation between hazardous waste sites and race a priority. Specifically, the


12 Ibid., xiii-xiv.
authors urge the President of the United States to sign an executive order that would direct all federal agencies to “consider the impact of current policies and regulations on racial and ethnic communities,” and it urged the EPA to formally organize an office specifically designed to “insure that racial and ethnic concerns regarding hazardous wastes … are adequately addressed.”

20 Years of Progress: Environmental Justice on the Move

In the years since the residents of Warren County protested the PCB landfill in their community and Toxic Waste and Race 1987 was published, environmental justice activists, academics, and victims have continuously confronted injustices across the nation. Grass-roots organizations have formed coalitions with environmental groups, anti-nuclear groups, public interest lawyers, academicians, and civil rights organizations to prevent new environmental hazards and seek redress for risky environments in minority communities. Two cases in Louisiana show both progress and frustration for environmental justice activists in the 1980s and 90s.

Louisiana Case Study #2: CANT Stands Up to LES

In one of the first major environmental justice victories, a coalition in Claiborne parish, Louisiana organized to fight a multi-national company, Louisiana Energy Services (“LES”), that sought approval for a proposed uranium enrichment facility near the County seat, Homer. The two town closest to the site, Center Springs and Forest Grove,

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13 Ibid., xv-xvi.

were both century-old African-American communities within a mile and a quarter of the proposed plant. These two towns were not referenced in the Nuclear Regulatory Commission’s (“NRC”) draft Environmental Impact Statement for the facility; the residents were not involved in the community meetings leading up to the designation of the site. Until a core group of twelve families organized to create Citizens Against Nuclear Trash (“CANT”), these two towns (whose racial composition was 97 percent black) was “rendered invisible” in the citing decision.

Pledging just $100 per family per month, the members of CANT (which also included white residents of Homer living on a lake downstream from the proposed facility) worked with the Sierra Club Legal Defense Fund (now called Earthjustice), Greenpeace, the Nuclear Information Research Service, and a total of 182 local and nationally based non-profit groups to pressure the NRC, lobby state and federal congresses, exploit divisions in federal agencies, and capitalize on Executive Order 12898 (described below) which requires federal agencies to consider environmental justice in all actions (much like the executive order suggested in the recommendation of Toxic Waste and Race 1987). For approximately ten years, CANT engaged in a “strategic delay tactic,” increasing the cost of the project until it became economically unfeasible and LES retreated. In response to the last NRC ruling before the company withdrew its

16 Ibid.
application, community leader Essie Youngblood, the 77 year old granddaughter of a Georgia slave, spoke to the impact of CANT in the outcome, “they thought nobody here had an education, and that we wouldn’t know what to do. Well, we banded together and we won.” Reflecting on the victory, Sierra Club Legal Defense Fund lawyer said, “it's the first time in the nation that judges have recognized that blacks have a valid claim in a case of environmental racism.”

Louisiana Case Study #3: Living on a Landfill

Less than a year after the residents of Center Springs, Forest Grove, and Homer claimed victory over LES, citizens in the City of New Orleans concluded a phase in their own battle for environmental justice at the Agriculture Street Landfill. In contrast, environmental justice advocates considered this battle for a safe living environment to be lost. Beginning in 1910, and running for 60 years just three miles from New Orleans’ French Quarter, the Agriculture Street Landfill was used to store, incinerate and bury waste from across the city, including refuse from disastrous Hurrican Betsy in 1956. When it closed the site was 17 feet deep and 95 acres in area, and the New Orleans and federal housing authorities selected it to be the site for a new public housing development. By 1975, one-half of the old landfill was developed with 167 public housing units, 67 single-family homes, a senior housing facility, some businesses, and an

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20 Ibid.

elementary school, and in 1985, residents met with city officials for the first time to express complaints about the safety of their neighborhood and request relocation services.\textsuperscript{22}

Over the next 13 years, residents petitioned the city and national housing authorities for relocation, worked with other non-profit groups in information gathering, lobbied the EPA to include soil contamination in criteria for Superfund designation, engaged in letter writing campaigns, and filed lawsuits. The goal of the Agriculture Street residents was to receive assistance in moving out of the landfill area, but their strategies did not work to achieve their goals.\textsuperscript{23} Even though the whole area is listed as an EPA Superfund site, only the undeveloped portion is considered to be too hazardous for habitation. In 1998 the EPA financed a decontamination project which included removing top-soil, laying a protective barrier and adding new top-soil. At the turn of the twenty-first century, residents still live in the area with fears about the sanitation of their land, and the effects of living in immediate proximity to the undeveloped hazardous Agriculture Street section.

For nearly a decade, the residents of Agriculture Street lived defeated by red tape, poor planning, and insufficient clean-up of their neighborhood build on a landfill. Flooded in the wake of Hurricane Katrina, the Agriculture Street Landfill area was again testing high in toxicity in soil samples, and residents revived their concerns about the

\textsuperscript{22} Ibid., 86.

\textsuperscript{23} Ibid., 87.
justice in refusing to relocate the neighborhood. Perhaps galvanized by the loss of their homes after the breech of the levees, thousands of residents of the Agriculture Street Landfill filed suit against the City of New Orleans, the school board, and housing authority for knowingly building their businesses, elementary school, and homes on the old landfill. In deciding the case in the citizen’s favor, Judge Nadine Ramsey expressed her shock at the initial decision to build atop the old city landfill, and determined that the city officials willfully ignored “mounting evidence” that these residents were living on contaminated land. Judge Ramsey awarded payment for those pre-1994 homeowners whose properties lost value when the property was identified as a Superfund site. The judge also awarded payment to Agriculture Street residents “for emotional damages” according to how long they were affiliated with the site.

First National People of Color Environmental Leadership Summit, 1991

At the same time as individual communities organized in defense of their rights to equality in environmental resources and participation in the environmental decision-making process, the environmental justice movement began solidifying within a larger framework. In 1991, over 650 representatives gathered in Washington D.C. for a four-day summit on race and the environment. According to a movement leader, Robert Bullard, the First National People of Color Environmental Leadership Summit was the most


25 David Hammer, "Court upholds dump housing payout: Agriculture Street landfill site used,” Times-Picayune, July 1, 2008.

26 Ibid.
important event in the movement’s history because it both “broadened the environmental justice movement beyond its early anti-toxics focus to include issues of public health, worker safety, land use, transportation, housing, resource allocation, and community empowerment” and “demonstrated that it is possible to build a multi-racial grassroots movement around environmental and economic justice.”

Delegates to the First National People of Color Environmental Leadership Summit adopted 17 Principles of Environmental Justice on October 27, 1991. The preamble states:

WE THE PEOPLE OF COLOR, gathered together … to begin to build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities … to insure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and, to secure our political, economic and cultural liberation.

Bullard asserts that the Principles of Environmental Justice were adopted with the goal that they would serve as “a guide for organizing, networking, and relating to government and nongovernmental organizations.” The principles adopted express values including self-determination, interdependence, respect, and justice. They call for universal protection from toxic, hazardous, and unhealthy living, working, and playing environments. Among other goals, the 17 principles demand the right for all persons and


populations to participate as equal partners in environmental decision-making at all levels, from needs assessment to planning and evaluation.

**Executive Order 12898, 1994**

The Principles of Environmental Justice adopted by the First National People of Color Environmental Leadership Summit describe what environmental justice looks like when it is developed and enforced. Broad in scope, they could be applied not only to site-specific hazards, but also to less tangible environmental hazards such as air and sound quality, workplace safety, and sustainability. They added clear values statements to the literature of environmental injustice cases and reports (such as the PCB landfill in Warren County, the proposed uranium enrichment plant in Claiborne County, and Toxic Waste and Race 1987), and as a united group, the First National People of Color Environmental Leadership Summit impressed upon Washington D.C. a set of ways in which the goals of the 35 year old Civil Rights Act of 1964 had not been fully realized.

In 1994, the first and second urgent recommendations in Toxic Waste and Race 1987 were implemented through President Clinton’s Executive Order 12898 and the inception of an Interagency Working Group on Environmental Justice led by the EPA. On February 11, the goals of the environmental justice movement were validated by this executive order which instructed all federal agencies as stated:

> Make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.\(^\text{30}\)

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\(^{30}\) Executive Order no. 12898, 59 Federal Register 8113 (February 17, 1994).
Executive Order 12898 acknowledges that federal agencies have failed to guarantee environmental justice for all (regardless of whether intentional discrimination has been involved or not), and it instructs federally funded agencies and projects to address environmental justice through developing action plans and becoming accountable to the Interagency Working Group on Environmental Justice. As with all executive orders, Executive Order 12898 is an internal management tool for federal agencies, and it is not a new law. In a contemporaneously issued memorandum, President Clinton underscored that “certain provisions of existing law … can help ensure that all communities and persons across this Nation live in a safe and healthful environment.” He instructed agencies to implement and enforce existing laws immediately to correct injustices in environmental decisions.31

Specifically, agencies could look at Title VI of the Civil Rights Act of 1964 as legislation prohibiting environmental discrimination in communities of color.32 Title VI states that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”33 Encouraged by Executive Order 12898, advocates have filed suits in federal courts and


complaints with the EPA about violations of Title VI, but these have been “largely thwarted attempts.”

Nay-Sayers and Frustrations on the Road to Justice

While reports, research, advocates, and filed complaints continue to build momentum, not all citizens share the sentiment that environmental justice is a problem and needs to be rectified. One think-tank, the National Center for Policy Analysis succinctly presents studies that are meant to be interpreted as conflicting with the findings of Toxic Waste and Race 1987 and subsequent articles. On its website, the National Center for Policy Analysis references reports by the University of Massachusetts, Washington University of St. Louis, and the EPA which call into question the deliberate nature (or racist intentions) of environmental injustice or causality in the correlation between race and environmental risks.

Matters of causality (for example showing that one’s illness is caused by the hazardous materials in one’s well water) are difficult to scientifically pinpoint. Similarly evasive to advocates of environmental justice is proof of decision-makers’ intention to be racist in the development of distribution patterns, responsiveness (or lack thereof) to environmental clean-up requests, or consideration of minority communities’ participation. Although the beginning of the environmental justice movement was fueled in part by Civil Rights leaders who sensed racism incarnate in environmental policies and citing decisions, by the early 1990s, environmental justice advocates had begun to change

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their strategies to include more pragmatic arguments for upholding justice, using fewer racially loaded terms and relying more on cooperation with state and federal agencies.

In the 1980s, the environmental justice movement grew out of the civil rights movement and made national press with high profile cases in African-American communities such as the PCB landfill in Warren County and Agriculture Street Landfill in New Orleans. These environmental justice issues were primarily concerned with toxic products and solid and hazardous waste. With the development of the 17 Principles of Environmental Justice and issuing of Executive Order 12898, the movement expanded to include other minority groups including Hispanic-American and Native American populations, and the range of issues also widened. While this broadly defined movement is inclusive and has empowered communities across the globe to identify with the cause and begin grass-roots organizations to address local issues, the far-reaching conceptualization also risks the original mobilizing power of its origin. Robert Benford has identified over 50 distinctive issues that environmental justice groups describe as current issues on their agenda. Benford furthermore asserts that many of these social problems “require some elaborate connecting of the dots in order to clarify their relationship to environmental justice.” Benford concludes that a movement seeking to champion such diffuse issues cannot be effective, and the following section describes some of the stunted growth in the environmental justice movement over the past two decades.

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35 Robert Benford, “The Half-Life of the EJ Frame,” in Pellow and Brulle, 47.

36 Ibid., 48.
Recent studies on the EPA’s treatment of Superfund sites and decisions regarding Title VI complaints question the effectiveness of Executive Order 12898 in achieving environmental justice. Each of the following studies supports the argument that the distributive and participative goals of environmental justice are not being achieved within the current agency procedures.

Frustrations in Superfund Clean-Up Projects

In July 2007, Sandra George O’Neil published *Superfund: Evaluating the Impact of Executive Order 12898* ("the Superfund Study"),\(^{37}\) a study on the effectiveness of Executive Order 12898 in the administration of Superfund projects. O’Neil used event history analysis to identify if demographic qualities of proposed Superfund sites correlated positively or negatively with the likelihood of a site being added to the EPA’s national priority list. In researching the equitability of the EPA’s Superfund program as a remediation measure and an environmental resource, O’Neil distinguished cleanup justice from the larger environmental justice discussion. In her study, O’Neil tested the theory that “minority and low-income groups are underrepresented in such programs”\(^{38}\) as Superfund, despite living in hazardous environments in greater proportions across the county.

The Superfund Study analyzed the demographics of each site in the Superfund program that had reached the proposal stage to “to determine if population characteristics

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\(^{38}\) Ibid., 1088.
influence the Superfund listing process.”

The study further broke out the proposed Superfund sites to those which were proposed before Executive Order 12898 and those that were proposed in subsequent years. The results of this study support the environmental cleanup justice theory that marginalized populations do not receive equitable treatment in the Superfund listing process and that some marginalized populations have had less of a chance of making it onto the national priority list since Executive Order 12898 was passed.

The Superfund Study found that as the percentage of American Indian, minority, and below the poverty line populations increased (among others), the less of a chance the community had to get their site listed on the national priority list. Additionally, the study found that the proposed sites with higher-ranking hazard scores had proportionally less of a chance of being listed than those with lower ranking scores both before and after President Clinton issued Executive Order 12898. Some communities’ chances of getting listed increased with the rise of certain populations; as the percentage of Hispanic and female-headed households in communities increased, so did the chance of getting listed before and after Executive Order 12898. Communities with a potential responsible party that may have been liable to contribute to cleanup activities have consistently seen their chances of being listed be higher than all other communities, though the disparity has decreased since 1994.

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39 Ibid., 1089.

40 Ibid., 1091.
These results suggest that scientific information is not the determining factor in listing Superfund sites. Instead, it appears that other influences such as effective lobbying or deep pockets may sway the listing process in favor of those communities with the time and resources to persuasively make their case to the EPA. More subtle factors affecting the listing process include long institutionalized biases against those who are powerless, marginalized, and oppressed, communities such as the lower class black communities that reports like Toxic Waste and Race 1987 show carry a disproportionate burden of environmental risks in the United States.

Regardless of the cause, O’Neil asserted that “marginalized and poor populations are less likely to benefit from a cleanup program such as Superfund despite their overrepresentation in proximity to environmental hazards.”⁴¹ Within Superfund, this is a critical relationship to recognize because the national priority list is directly connected with federal funding for cleanup projects. If very poor and minority communities are disproportionately represented in the national priority list, and instead “working class communities with fewer minorities” are receiving a greater proportion of the benefits of the federal program,⁴² then the Superfund program is not being administered equitably and the EPA is not upholding the environmental justice demands of Executive Order 12898.

⁴¹ Ibid.
In describing the history of Executive Order 12898 and the years between its issuance and the date of the Superfund and census data, O’Neil applauds many of the regional EPA offices that had been “working tirelessly on programs to increase environmental equity.”\(^{43}\) O’Neil simultaneously argues that at the federal level, the EPA has failed to comply with Executive Order 12898. Citing both GAO and EPA Office of the Inspector General ("OIG") reports (described in more detail in Chapter Two), O’Neil questions the degree to which the federal EPA has implemented the Executive Order.

O’Neil emphasizes the language in Executive Order 12898 which specifically mentions minorities and low income groups, and contrasts it with text written by former EPA Administrator Christine Todd Whitman in a memorandum to assistant administrators in 2001. In this document Whitman defines environmental justice “to mean the fair treatment of people of all races, culture, and incomes.”\(^{44}\) Although Whitman’s memorandum ultimately expresses the same end result, that all races will receive justice with regards to environmental decisions and effects, this new definition of environmental justice conflicts with President Clinton’s insistence that agencies specifically target minority and low-income communities to ensure quality. As O’Neil points out, this new definition of environmental justice “disregards the historically


\(^{44}\) Christine Whitman, “EPA’s Commitment to Environmental Justice: Memorandum to Assistant U.S. EPA Administrators,” August 9, 2001.
inequitable treatment and burden that minorities and the poor have born and the reason why the order was constructed initially."\(^{45}\)

Without strong leadership at the federal level of the EPA, regional offices have lacked guidance in their own environmental justice endeavors, including definitions for classifications such as “minority”, “low-income”, and “disproportionate”, leading to inconsistency in programs across the regional offices. While some differences among the approaches taken by regional offices may be appropriate to local culture, history, or economy, an OIG report concluded that this failure to standardize definitions and criteria has resulted in a system in which the “implementation of environmental justice actions is dependent not only on minority and income status but on the EPA region in which the person resides."\(^{46}\)

Frustrations in EPA Complaint System

After failing to win suits in state and federal courts, environmental justice advocates began to use a recourse option available in the EPA, namely filing complaints under the agencies environmental justice procedures, provisions that do not require complainants to prove discriminatory intent, but rather disparate effect only. In a 2003 article analyzing the outcomes of environmental justice complaints filed with the EPA under Title VI of the Civil Rights Act of 1964 however, Michael Gerrard argues that the EPA has been ineffective for its stated purpose. Gerard studied 143 considered


complaints filed since 1993, none have been decided in the complainants favor. After discarding 82 complaints immediately for reason such as the complaint was filed after the 180-day statute of limitations or the accused party was not a recipient of EPA funding, the EPA had ruled on 20 complaints. Gerrard acquired the decisions for each of these complaints through the Freedom of Information Act, and published that the EPA has not ruled in favor of a single citizen complaint filed under Title VI.\textsuperscript{47} In the next year, the OIG report would assert that the EPA was not doing enough in the affirmative direction for environmental justice and instead returning to pre-Executive Order 12898 mission statements, that it was failing to evaluate regional office performance against environmental justice goals and objectives,\textsuperscript{48} and that other federal agencies such as the Department of Transportation and Department of Defense were more effectively incorporating environmental justice into their missions.\textsuperscript{49}

Beginning in 1982, the environmental justice movement began to build momentum. Through nationally known cases, and effective use of non-violent direct action, environmental justice activism spread and researchers systematically analyzed the state of distributive and participative justice in America. While building momentum, the movement has faced opposition by corporations wishing to construct hazardous facilities without safeguarding or properly compensating host communities and intellectuals who

\textsuperscript{47} Gerrard, “EPA Dismissal,” 1.


\textsuperscript{49} Ibid., 14.
deny the problem or contest its causes. Though for a time it seemed the environmental justice movement was making headway across federal agencies, recent studies show that the agency established to tend to environmental protection has failed to make ensuring justice in distribution of environmental resources and risks a part of its mission. Further, the EPA has consistently rejected minority complaints asking to be included as meaningful participants in the decision-making process.
CHAPTER TWO
THE TIPPING POINT TOWARDS LEGISLATION

Beginning in 1982, individuals and communities began fighting for more environmental equity in both distribution of resources and risks and participation in environmental decisions. Although facing powerful intellectual, political, and economic opponents, the movement has gained considerable momentum, solidified its goals, and tested various tactics. The work of environmental justice advocates is uncompleted however, and as this chapter shows, three milestones in a timeline of environmental justice magnify both the need for changes in American priorities and policy, as well as illustrate how the United States is close to overcoming an important challenge in implementing environmental justice. The challenge for the movement has been securing enforceable legislation that insists only on distributional patterns and not on discriminatory intent. The United Church of Christ’s anniversary report on toxics in America, the concern expressed by the public in the wake of Hurricane Katrina, and legislation introduced in the 110th Congress all serve as indicators that the movement has reached a tipping point in its growth.

United Church of Christ Issues Urgent Reminder in 20 Year Anniversary Publication

In 2007, twenty years after its first landmark study, the United Church of Christ published Toxic Waste and Race at 20: 1987-2007 (“Toxic Waste and Race at 20”) to mark the anniversary of the first dramatic publication, and to call for a continuation of the
“struggle for environmental justice.”\(^1\) In reviewing census and environmental data regarding lead and other toxins, the United Church of Christ reported that in relation to white communities, black and other minority communities are still statistically more likely to reside among or near harmful environmental risks such as lead poisoned homes, brownfields, or facilities reporting toxic emissions, and it “reveals that racial disparities in the distribution of hazardous wastes are greater than previously reported.”\(^2\) In support of the OIG’s analysis that EPA regional offices have addressed environmental justice unequally, Toxic Waste and Race at 20 concluded that nine out of the ten EPA regional offices show disparities in the racial composition of the host communities of hazardous waste facilities, with Region 3 (the Mid-Atlantic region) being the only region with proportionality among host communities.

The United Church of Christ used a “distance-based” method to compare the EPA’s databases for hazardous facilities in the United States (413 sites) with U.S. Census demographic data from 2000. Supporting its argument that minority populations serve as host communities for hazardous waste facilities, the distance-based analysis found that the percent of minority populations living between three and five kilometers of a hazardous waste site was 36 percent, within one to three kilometers of a hazardous waste site, the population of minorities increased to 46 percent, and within one kilometer the study found that the average percentage of the community that was minority was 48


\(^2\) Ibid., xi.
percent.\textsuperscript{3} Compared to the United States as a whole (which according to 2000 Census data, 24.9 percent of the United States population is minority),\textsuperscript{4} Toxic Waste and Race at 20 determined that minorities live in nearly twice their concentration within host communities of hazardous waste facilities than in non-host communities. When hazardous waste facilities are clustered, meaning that there is more than one facility in the neighborhood, Toxic Waste and Race at 20 reports that minority populations are even more heavily populated in host communities: between three to five kilometers from the site: 30 percent, between one and three kilometers: 51 percent, and within one kilometer: 69 percent.

Toxic Waste and Race at 20 acknowledges the groundswell of activism across the country since the 1980s: new academic research, Summit declarations and even an executive order. The research presented show that disparities among races in their proximity to environmental risks still exists today, perhaps in greater magnitude than described in Toxic Waste and Race 1987. In juxtaposing the goals of the environmental justice movement with the reality of who is hosting hazardous waste facilities, this the findings of this research questions the ability of current institutions and policies to “adequately protect people of color and the poor from toxic threats.”\textsuperscript{5}

\textsuperscript{3} Ibid., 42.


\textsuperscript{5} UCC, Toxic Waste and Race at 20, 63.
Louisiana Case Study #4: Hurricane Katrina as Major Awareness Builder

Hazardous and toxic wastes are just two of many environmental risks that disproportionately effect minority and lower class community. For national research studies, these facilities serve as indicators of environmental justice and can be used as quantitative support for the need to making sweeping changes in environmental policies at all levels of government. But as the Warren County protests have shown, individual catastrophes and events resonate in very personal ways and have strong mobilizing power for concerned citizens. And recently the environmental justice movement has experienced a major boost in public awareness through sustained press coverage of the devastation during and in the aftermath of Hurricane Katrina.

Hurricane Katrina, by any criteria selected, can be considered an environmental disaster. Over 1,000 people in the gulf region lost lives their lives during and after the day of the hurricane,\(^6\) up to 160,000 homes in the state may be unrecoverable,\(^7\) and sociologists, the media, and Congress have all criticized the government’s preparedness and response to the people of New Orleans, emphasizing that much of the devastation of Hurricane Katrina could have been avoided.

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\(^7\) UCC, *Toxic Waste and Race at 20*, 125.
Neil Smith argued in a November 2005 article that “there is no such thing as a natural disaster.” He suggested that what is often called a natural disaster is really a human-made disaster, pointing to growing evidence supporting theories of global warming. He also argued that the factors that make a major environmental event a disaster, have to do with the vulnerability and preparedness of the community affected, not the weather itself. Smith hypothesizes that if the Hindu Kesh mountains experienced an intense earthquake, it may “spawn no disaster whatsoever,” but an earthquake of similar magnitude in California would have very different consequences (destruction of homes, loss of life, disruption in economy, etc.) and be perceived as a disaster.

In the case of Hurricane Katrina, Smith suggested that the causes were not all natural and that global warming may be putting cities at low sea levels (such as New Orleans and Venice) at high risk of disasters. The city of New Orleans became more vulnerable to disaster after a federal decision in 2001 opened up protective wetlands between New Orleans and the Gulf of Mexico to development, resulting in a reduction in the wetlands and their ability to absorb storm surge. Although the discussion of the impact of global warming is unresolved, and some scientists refute the assertion that rebuilding the Mississippi Delta wetlands or Gulf Coast barrier islands would serve as an

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9 Ibid.

10 Ibid.
effective storm protection,\textsuperscript{11} it is clear that the city of New Orleans was not prepared to face the devastating effects of the hurricane.

One example of lack of preparation was the false confidence of residents in their presumptive protector: the canal levees and flood-wall systems. When these man-made physical protections breeched, storm surge ran over the city, and flooding caused the majority of damage in New Orleans.\textsuperscript{12} Smith questions the Army Corps of Engineers (whose budget had previously been cut by 80 percent) was they were equipped with the resources to properly maintain these critical infrastructure elements in New Orleans.\textsuperscript{13}

In a congressional report, a bipartisan committee formed to “investigate the preparedness and response to Hurricane Katrina” studied the many causes of disaster, including the state of protective measures before the hurricane as well as government response to city and region residence after the storm. In discussing preparedness for environmental threats, the committee reported that the “levees protecting New Orleans were not built for the most severe hurricanes.”\textsuperscript{14} Additionally, after they were built, responsibility for upkeep was shared among many local organizations. Although this is a standard maintenance structure in the United States, in the case of New Orleans, diffuse organizations with different levels of funding and without a clear hierarchy maintained


\textsuperscript{12} Gabe, et. al., \textit{Hurricane Katrina}, 1.

\textsuperscript{13} Smith, “No Such Thing as a Natural Disaster.”

\textsuperscript{14} U.S. Congress, Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, “A Failure of Initiative: The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina” (Washington, DC, 2006).
sections and processes of the levees to different standards, using different tactics. This led to inconsistencies in strength, and in some cases failure to prevent disaster because of politically opposed agencies within or districts of the city.15

Regarding environmental justice, it is evident that Hurricane Katrina disproportionately affected minority and low-income individuals on the Gulf Coast. According to a Congressional Research Service report, the three states impacted (Mississippi, Louisiana, and Alabama) by the hurricane were among the six poorest. In Louisiana, with a 19.6 percent poverty rate, 21.4 percent of the individuals acutely impacted by the hurricane lived below the poverty rate.16 An estimated 44 percent of the 700,000 people acutely affected by the storm were African American, and 73 percent or 270,000 of these impacted African-American’s were in Orleans Parish, the area most impacted the broken levees and subsequent floods.17 And 34 percent of the African-Americans displaced from Orleans Parish are estimated to have been below the poverty line.18

As the floodwaters subsided, and the immediate pressures of evacuating the city, improving the situation in the Superdome, preparing for Hurricane Rita relaxed, and the nation watched development daily in national press, the United States government had a great opportunity to commit to environmental justice through its response to the residents

15 Ibid., 92.
16 Gabe, et. al., Hurricane Katrina, 15.
17 Ibid., 16.
18 Ibid., 17.
of New Orleans. Americans and neighbors abroad were all watching the situation closely, donating to the Red Cross, Salvation Army, and other non-profits. Over 100 countries offered to send aid to the region.\textsuperscript{19} Students, families, and school and church groups volunteered weeks of their time to the clean-up effort, but evaluations of the federal government’s responsiveness to the massive displacement, sanitation, infrastructure, and economic crisis has been substantially negative.

Toxic Waste and Race at 20 criticizes government agencies for disregarding concerns over the safety of using the Old Gentilly Landfill, a re-opened landfill from the 1980s, opposed by environmentalists opposed, that caught fire in November 2005 when it was over 100 feet high.\textsuperscript{20} As an example of injustice in distribution of environmental risks, the UCC publication also chastised the Louisiana Department of Environmental Quality for loosening regulations for landfills reserved for construction debris, allowing storm-related waste to be sent to the Chef Menteur Landfill without applying protective liners. This specific landfill is less than a mile from the closest residential area, a community of over 1,000 Vietnamese-American families. Louisiana officials claim that the risks associated with dumping cleanup waste in a landfill do not warrant lining the facility, but EPA and other regulators have described the risk of not removing hazardous waste from the refuse as high.\textsuperscript{21} Father Vien Nguyen of the Vietnamese-American neighborhood is quoted in Toxic Waste and Race at 20 as saying, “this will have a

\textsuperscript{19} Smith, “No Such Thing as a Natural Disaster.”

\textsuperscript{20} UCC, Toxic Waste and Race at 20, 126.

\textsuperscript{21} Ibid.
chilling effect on our recovery. There seems to be a disregard for human safety as well as recovery.”

Neil Smith argues that the government’s preparation for and immediate response to the hurricane were incompetent, and that the rebuilding effort has lacked strategy, been short-sighted and shown disregard for improving local communities and commerce. Instead, through signing no-bid contracts to out-of-state corporations, Smith asserts that the reconstruction phase of this disaster has cut “deeper the ruts and grooves of social oppression and exploitation,” and he questions the fairness of rebuilding the business district and French Quarter of New Orleans before addressing the problems of the African-American communities.

In a GAO testimony to the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, David E. Cooper described the GAO’s preliminary observations as they sought to “identify lessons learned and improvements needed for future emergencies.” Cooper identified that agency contracting procedures were a priority for “review and revision,” and his testimony illustrated this need by describing a contract granted to an out of state company for

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22 Ibid., 127.

23 Smith, “No Such Thing as a Natural Disaster.”

24 Ibid.

delivering temporary schoolhouses for which “the government may be paying more than necessary.”

Toxic Waste and Race at 20 criticizes the government for paying double the rate for contracts issued without competitive bidding while refusing to address what it calls the “silent killer of childhood lead poisoning.” This contrast is important to recognize because it illustrates how local communities were not meaningful participants in the decisions made about environmental priorities in their city. The UCC reports that soil samples across Orleans Parish have tested high in arsenic and lead, but that the EPA and Louisiana Department of Environmental Quality said there was “no immediate cause for concern.” Toxic Waste and Race at 20 points out that the city had an opportunity to clean up a region that was already high in toxins and high in risk. New Orleans essentially had a chance to start a new chapter in its environmental history with a clean slate. Instead, it appears that patterns of environmental injustice persisted, and Toxic Waste and Race at 20 expresses disappointment in the government decision to let “dirty neighborhoods to stay dirty forever.”

We can only speculate on what progress could have been made toward rebuilding New Orleans with the return of most of its citizens if the environmental clean-up that we deserved would have been done. What if the same priority for clean-up and safety given to the French Quarter [and] the Central Business District … had

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26 Ibid.

27 UCC, Toxic Waste and Race at 20, 129.

28 Ibid., 128.

29 Ibid.
been given to the Lower Ninth Ward, New Orleans East, and other hard-hit sections of the city.\textsuperscript{30}

As a dramatic case with major distribution and participation environmental justice components, Hurricane Katrina decimated large sections of the city and region. At the same time, however, extensive and sustained media coverage has helped to increase awareness of environmental justice as both a real problem and something that can be improved. This environmental and procedural disaster has served as a powerful reminder that achieving justice in distribution and participation is important to a democratic nation and that the United States has a long way to go before it can claim to nurture an environmentally just society.

**HR 1103 Introduced in 110\textsuperscript{th} Congress**

The previously described environmental justice cases, studies, and reports illustrate how the environmental justice movement has struggled to achieve its goal of ensuring equality in environmental resources and risks as well as parity in the decision-making process. Although Title VI of the Civil Rights Act of 1964 as emphasized through Executive Order 12898 should protect minority communities from disproportionate harm, in practice it has failed to do so. Seeking adequate protection by the federal government, environmental justice activists and scholars have called for supplemental legislation designed specifically to implement and enforce justice treatment. Examples of such calls for legislation include the Congressional Research

\textsuperscript{30} Ibid., 131.

The Congressional Research Service report on Hurricane Katrina states that it does not include policy recommendations, but suggests that its findings contribute to the ongoing debate about how to respond to Hurricane Katrina and prepare for future disasters affecting minority populations.\(^3^1\) In concluding the Superfund Study, O’Neil recommended more explicitly that Executive Order 12898 would be greatly strengthened in its impact “if there were repercussions from the lack of its implementation.”\(^3^2\) The first of Toxic Waste and Race at 20’s recommendations are that Congress codify Executive Order 12898 and that it “fix” the limiting interpretation of Title VI of the Civil Rights Act of 1964 that prohibits citizens from filing complaints for disparate effect and instead insists on discriminatory intent.\(^3^3\)

Nearly simultaneously to the publishing of Toxic Waste and Race at 20, Hilda Solis (D-CA)\(^3^4\) and 53 co-sponsors introduced H.R. 1103, the Environmental Justice Act

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\(^3^1\) Gabe, et. al., *Hurricane Katrina*, 3.

\(^3^2\) O’Neil, “Superfund Study,” 1092.

\(^3^3\) UCC, *Toxic Waste and Race at 20*, xiii.

\(^3^4\) At the time of this writing Hilda Solis has become the Secretary of Labor in Barack Obama’s first administration as President of the United States of America. Her biography on the Department of Labor website lists environmental justice as one of the issues she has championed: “A nationally recognized leader on the environment, Solis became the first woman to receive the John F. Kennedy Profile in Courage Award in 2000 for her pioneering work on environmental justice issues. Her California environmental justice legislation, enacted in 1999, was the first of its kind in the nation to become law,” as described in http://www.dol.gov/._sec/welcome.htm

Toxic Waste and Race at 20 acknowledges the contributions Solis has made to the movement. In its chapter of Milestones, Toxic Waste and Race at 20 includes the following text: U.S. Representative Hilda Solis, then a senator in the California legislature, introduces landmark environmental justice
of 2007 (the “Act”) in the House of Representatives (the “House”). The proposed legislation indeed sought to codify President Clinton’s Executive Order 12898. The Act, reprimanded the EPA specifically for failing to achieve the demands of Clinton’s executive order. The Act did not pass in the 110th Congress, but as suggested by authors such as O’Neil, legislation such as this would serve as a means to regulate and enforce the goals of environmental justice.

The Act had proponents and opponents in the House, federal agencies, think-tanks, and non-governmental organizations. H.R. 1103 and its Senate counterpart (S. 642, an identical piece of legislation introduced in the Senate on the same date by Illinois Senator Richard Durbin) were landmark pieces of legislation in that they were the first to make an effort to codify environmental justice into the federal law books. As such, some of the arguments articulated in support of and against the legislation are still being formed. The assumptions underlying the twin pieces of legislation, and the values expressed through advocacy for and against the proposed legislation however, are evident in the Act itself.

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legislation in California establishing a working definition and requiring the California EPA to develop a mission, policy and guidance on environmental justice.

Toxic Waste and Race at 20 also includes a quote from Hilda Solis in its section, What People Are Saying: On the 20th anniversary of its groundbreaking report Toxic Wastes and Race, I commend the United Church of Christ for its continued dedication to peace, justice, and equality. Through its work, communities without a voice have been empowered to join in the fight to protect their communities, their health and their future. Unfortunately, Latinos and other communities of color continue to struggle. As our communities continue to grow in number so should the sound of our voice and power of our vote. It is time to renew the call for real and lasting justice, a goal which we must achieve and can achieve by working together.
The assumptions and implied values in the Act were affirmed by testimony presented in an October 4, 2007 hearing in the Subcommittee on Environment and Hazardous Materials within the House Energy and Commerce Committee (the “Subcommittee”), and also issued by a wide variety of stakeholders. Values include justice, equality in treatment, access, participation and protection, fairness in share and fairness in play, rights to speech, health, economic opportunity, work, education, and housing, and responsibility for risks, inclusion, and care for others. The testimony of stakeholders across the country illuminates a variety of value tensions, including conflicting rights and responsibilities, and different approaches to equality and justice.

Although the Act was a landmark piece of proposed legislation, and the Subcommittee hearing was a landmark Congressional hearing, it is not the first time that the goals of environmental justice have been brought through the dance of legislation and into the stewardship of the American people. The Community Right-to-Know Act of 1986, for example, is driven by the recognition that information empowers communities, and that all communities, regardless of race or economic strength, deserve equal access to information affecting their health and well-being. Simultaneously under consideration in Congress was a bill that sought to preserve the standards set by the Community Right-to-Know Act. This bill was H.R. 1055, the Toxics Right-to-Know Protection Act (S. 595 in the Senate), and it was considered in the same House subcommittee meeting as H.R. 1103. Toxic Waste and Race at 20 included a recommendation for the Executive Branch
to “reinstate the reporting of emissions and lower reporting thresholds … to protect communities’ right to know.” H.R. 1055 directly responded to this recommendation.

H.R. 1055, provides an illustration of what has happened over time without environmental justice legislation passed and enforced through Congress. Its sheer presence as introduced legislation in the 110th Congress serves to inform the reasonable lawmaker that the United States does not sufficiently practice environmental justice. Bills like the Toxics Right-to-Know Protection Act would not need to be considered if federal agencies integrated environmental justice into their missions, procedures and policies. The environmental justice implications of H.R. 1055 serve as another demonstration of the need for codification of Executive Order 12898.

As described above, President Clinton’s Executive Order 12898 in 1994 does not rely on intention or causality in describing environmental justice. Instead, Clinton’s order affirms that all human beings, including minority and low-income persons, have the right not to bear a disproportionate burden of environmental risks, and that all human beings in a democratic society have the right to be meaningful participants in decisions affecting their environmental well-being. The emphasis is placed on the human being and the environment in which individuals live, work, eat, interact, and play. It is not on the decision-maker or on the resulting health effects. Eliminating intention and causality makes environmental justice less of a threatening goal, but as Subcommittee testimony

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35 UCC, Toxic Waste and Race at 20, xiv.

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confirmed, the EPA still has not sufficiently incorporated environmental justice into its mission, as directed by Executive Order 12898.

In 2004, the OIG reviewed EPA’s implementation of the requirements outlined in Executive Order 12898. The OIG specifically reviewed EPA’s integration of the requirements of the Executive Order at the regional and program offices. As described in the OIG’s October 4, 2007 testimony to the Subcommittee, OIG “concluded that EPA had not fully implemented the Order and was not consistently integrating environmental justice into its day-to-day operations.” Specifically, EPA had neither “identified minority and low-income communities,” nor “defined the term ‘disproportionately impacted.’” Additionally, EPA had seemingly acted in direct conflict with Executive Order 12898 when in 2001 “EPA restated its commitment to environmental justice in a manner that did not emphasize minority and low-income populations.” At the conclusion of its review, OIG made twelve recommendations to EPA, of which EPA disagreed with eleven.

In 2005, the GAO examined EPA’s rule-making process. Specifically, the GAO studied “how EPA considered environmental justice during the drafting of three air rules.” GAO found in its report that EPA’s process did not satisfy the goals of

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37 Ibid., 4.


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Executive Order 12898. GAO made four recommendations to the EPA, but was told in initial comments to the report by EPA that the agency disagreed with the recommendations, “saying it was already paying appropriate attention to environmental justice.” In his testimony to the Subcommittee, Mr. John Stephenson of the GAO revealed that EPA later further considered the recommendations, but re-affirmed a statement he made earlier in 2007, that “EPA’s action to date suggests the need for measurable benchmarks to achieve environmental justice goals and to hold agency officials accountable for making meaningful progress.”

OIG performed a second review of EPA’s regional and program offices’ adherence to Executive Order 12898, looking in depth at the relationship between the EPA’s Office of Environmental Justice and these satellite offices. Similarly to its 2004 review, OIG found dramatic room for improvement with regard to EPA implementing the Executive Order. OIG recommended four distinct actions to help EPA get on track with its own regional and programmatic environmental justice reviews. Unlike previous reports, EPA agreed to each recommendation and “established milestones for completing those actions.” This willingness on the part of EPA to address short falls in the agency’s progress towards the goals of the Executive Order, shown in response to this third recent review, stands in stark contrast to those issued in the wake of the 2004 and 2005 reviews.

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39 Ibid., 4.
40 Ibid.
The Environmental Justice Act of 2007 and Its Stakeholders

The Environmental Justice Act of 2007 is both a reactive and proactive piece of proposed legislation. It is reactive in that it seeks to add traction to an Executive Order that has not sufficiently been incorporated as intended into the primary agency responsible for its enactment. By codifying Executive Order 12898, the Act would make Clinton’s strong call for justice in environmental risk distribution an enforceable policy. The Act is proactive as well in the sense that it would serve to protect minority and low-income communities from future environmental injustices, enabling agencies to set up procedures to help ensure that all persons have a fair share of environmental resources, while also empowering communities to actively participate on a fair playing field in the decisions affecting their communities. Such an Act would amplify the presence of environmental justice concerns in the rule-making process within EPA and other federal agencies, ensuring that the values driving environmental justice infiltrate all federal environmental policies.

An example of a recent final rule that may not have happened if environmental justice were an enforceable consideration in EPA decision-making processes is the rule that H.R. 1105 seeks to reverse. The Toxics Release Inventory ("TRI") is a measure supported by the Community Right-to-Know Act of 1986, and it has been collecting and publishing information on corporate inventories of toxics for over 20 years. TRI data has empowered communities through knowledge, and has resulted in increased

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accountability among businesses and reductions in use of toxic chemicals across industries throughout the country.\textsuperscript{43}

Certain stakeholders have criticized TRI’s long-reporting procedures ("Form R") for being an unjustifiably time-consuming process, and causing a disproportionate burden on small businesses.\textsuperscript{44} In response to these repeated concerns, EPA ruled on December 22, 2006 to increase the threshold of pounds of toxics at which a business could file a shorter, simpler Form A annually to the EPA.\textsuperscript{45} The opinion of the EPA regarding this change is that it will reduce the burden on small businesses while only sacrificing detailed information on one percent of the toxics formally reported on Form R. The new thresholds, according to EPA, will also serve as an incentive for small businesses to reduce their use of toxics even further so that they can be under the threshold for using Form A, thus improving environments across America. These arguments for reducing reporting standards are supported by values of competition, small government, efficiency, freedom of the marketplace, and freedom from government interference.

The TRI ruling from December 2006 has been greeted by an uproar of citizens and organizations around the country. Twelve state attorney generals oppose it,\textsuperscript{46} the New

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\textsuperscript{43} U.S. House of Representatives, Subcommittee on Environment and Hazardous Materials, Committee on Energy and Commerce, \textit{Statement of Molly A. O’Neill, Assistant Administrator for Environmental Information and Chief Information Officer, U.S. Environmental Protection Agency, 110\textsuperscript{th} Cong., 2\textsuperscript{nd} Sess., 2007, 1.}

\textsuperscript{44} U.S. House of Representatives, Subcommittee on Environment and Hazardous Materials, Committee on Energy and Commerce, \textit{Statement of Thomas M. Sullivan, Chief Counsel for Advocacy, U.S. Small Business Administration, 110\textsuperscript{th} Cong., 2\textsuperscript{nd} Sess., 2007, 3.}

\textsuperscript{45} Ibid., 4.

\textsuperscript{46} U.S. House of Representatives, \textit{Stephenson Statement}, 12.
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Jersey EPA asserts that more thorough reporting better serves the public, and first-responders (like fire-fighters) who have historically relied on TRI reports to know the complete status of chemicals they might meet in case of emergency seek its repeal. In each of these opposing voices, there is a claim for fair play. Knowledge is a critical component of power, and businesses that do not report their toxic holdings and activities disenfranchise their host community by withholding this information. In addition to these objections to the EPA rule, the Subcommittee hearing revealed an additional, profound justification for protecting the former standards for TRI reporting: environmental justice.

Mr. Stephenson’s GAO testimony demonstrated that communities in the immediate proximity to TRI reporting sites were “42 percent minority, on average, compared to about 32 percent for the country as a whole.” Focusing on the reporting sites in Los Angeles County, California, the GAO testimony similarly estimated that the reduction in detailed information reported back for public consideration also disproportionately affects minority communities. Environmental justice, as defined by the EPA and the Act, emphasizes both the distributional attributes of justice as well as the participatory. No community can be valuable participants in a decision if it is not

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49 U.S. House of Representatives, Stephenson Atatement, 12.

50 Ibid., 14-15.
informed, and the EPA rule encouraging use of Form A makes it more difficult for these minority communities to gain access to critical data about the toxics in their environment.

The Act, while not concerning itself with any one subject matter such as toxics, landfills, noise generating facilities, or clean air, would have demanded that the EPA incorporate environmental justice concerns into all of its programs, regions and rules. Although at times other values conflicting with those inherent in environmental justice might prevail, H.R. 1103 would at least ensure that EPA understood the environmental justice consequences of each of its rules, such as the December 2006 rule reducing TRI reporting, and programs in all of its regions.

**Values Expressed in the Act**

Not surprisingly, many of the values buttressing the Environmental Justice Act of 2007 are the same values on which the Civil Rights Act of 1964 it built. These include equality, fairness and human rights.

The value of equality, in both civil rights and environmental justice, has two sides: equal protection and equal opportunity. Equal protections from physical harm, threats to health, detrimental policies, and fear of undue consequences are values that apply to every American, regardless of race, class, religion, age, disability, etc. Equal opportunities to engage in political discourse, reside in livable environments, become informed citizens and express one’s opinions to government are affirmed throughout the United States Constitution and Bill of Rights.

Fairness is multi-faceted as well. On one side, environmental justice implies the value of fair share. This is the distribution of environmental resources and risks at the
core of environmental justice. This value grounds the argument that every human deserves a basic share of environmental resources, and that no individual or group should bear a disproportionate burden of risks. On the other side, environmental justice implies the value of fair play. This is the participation in political decision-making aspect of environmental justice. This value underscores the assertion that all humans and all groups are capable of engaging in the participatory process, and that they in turn deserve to be brought to the bargaining table with equal information and bargaining skills.

Fortunately for the value of fair share, once the value of fair play is institutionalized and actualized, fair share necessarily follows. In today’s society, however, where individuals and groups rarely begin the democratic process with equal access to information and skills for processing the information they are given, practicing fair play requires discipline and restraint on the part of the stakeholders seasoned in environmental decision-making. In the case of the Toxics Right-to-Know Protection Act, the EPA made its rule without restraining itself to its own rule-making process designed to protect stakeholders’ involvement in the participatory process. In this way, the rule not only limits future access to the information necessary to maintain the American value of fair play, but also undermines the value of fair play through the development of the rule itself.

In the same way that equality and fairness can be focused on more specific values, so can the third value implied in the Act, rights. The Act’s insistence on opportunities for public participation is built on the legal rights to education and free speech, economic right to work, and cultural right to affiliation and community. A value tension inherent in
environmental justice is also illuminated when discussing rights, namely individual rights to housing, health, resources and autonomy. Whereas environmental justice seeks to care for others who may not immediately be able to care for themselves, the environmental risks in question need to be housed somewhere, and many Americans who successfully appeal to the EPA by saying “Not In My BackYard,” or NIMBY, would assert that they have every right to protect their own health and environment, even if it does mean that someone else in the country will have to assume that risk for them. Other values such as individualism, free-market exchange (capitalism), and Darwinism all stem from this value and directly conflict with the value of caring for others that so powerfully protects children, elderly, and other underserved and vulnerable populations from dangerous environmental and health risks.

In this value tension between different rights, an additional value enters the storyline, and this is responsibility. Just as America’s privileges as a world leader comes with responsibilities to be a good neighbor, so might an individuals right to autonomy pair with a responsibility to refrain from imposing on another American’s rights. This responsibility to do no harm, or do little harm, circles back into fair play, and serves as the restraining force that transforms fair play into fair share. Environmental justice, therefore implies that individuals have responsibilities to share risks as well as encourage inclusion in public discourse.

The United States Congress did not pass comprehensive environmental justice legislation in the 110th Congress. This failure to include environmental justice in national law-books leaves a gap in the protection of civil rights, and threatens the environmental
well being of minority and low-income communities in America. Although not uncontroversial, minority communities bear a disproportionate burden of environmental risks, as evidenced in the EPA December 2006 final rule reducing the threshold for detailed TRI reporting and the other previously discussed cases. The United States has been on its path towards the passage of H.R. 1103 since a small, rural, and primarily black community refused to disproportionately accept their state’s toxic waste in 1982, though its momentum has not gained enough strength to successfully lobby for enforceable legislation.

The Warren County protest was informed by the experiences of the county residents during the Civil Rights movement, a time when the nation made dramatic changes in court precedent, legislation, and race relations. If the environmental justice movement seeks to pass legislation codifying Executive Order 12898, tightening up TRI regulations, and expanding the application of Title VI of the Civil Rights Act of 1964, it has a great opportunity to learn from the lessons of the great movement that preceded it. Literature suggests that the civil rights movement progressed on the shoulders of three major changes agents: the courts, great leaders, and community organizing. The remainder of this thesis describes these three powerful catalysts for change and makes recommendations for the environmental justice movement.
CHAPTER THREE

CHANGE AGENTS IN THE CIVIL RIGHTS MOVEMENT

Environmental justice scholars point to the Warren County protests as the beginning of the movement. Similarly, scholars have pinpointed various events as the beginning of the modern civil rights movement. Those in the legal field accredit Brown v. Board of Education of Topeka as the defining beginning of substantial change. Aldon D. Morris indicates that the bus boycott in Baton Rouge, an early successful major non-violent direct action protest, fills that role.¹ In Greensboro North Carolina, it was the Woolworth sit-ins that brought the civil rights movement to the local black community.²

Regardless of the first event or consciousness raising campaign, by the late 1950s, the black community in the south was invested in a new type of protest movement to enact social change. Forced to develop new techniques when a traditional method, legal action, was threatened, civil right activists organized a movement based on community organizing and symbolic leaders. The example of adaptability is a good one for any movement, though the change agents developed in the civil rights movement compose a specific framework from which the environmental justice movement can learn. The purpose of this chapter is to identify ways in which the civil rights movement developed and adapted its strategies in order to achieve its stated goals. After outlining the environment in which the civil rights movement emerged, this chapter will identify

1 Morris, Origins of the Civil Rights Movement, 17.

strengths and weaknesses of its three major change agents, the courts, great leaders, and community organizing.

**Protest Tradition in the Black Community**

The American black community has a long history the protest tradition. Even before arriving on American soil, black slaves protested en route through the dark passage, and slave revolts throughout the American colonies and states persisted through the Civil War. Black communities organized across state lines during the underground-railroad movement, shuttling slaves from captivity in the south to freedom in the north, with many community members risking their livelihoods and their lives so that others might achieve their right to freedom. Before the modern civil rights movement, the National Association for the Advancement of Colored People (“NAACP”), founded in 1909 in the north, protested treatment of blacks in the south at an intellectual level, filing cases in local and federal courts.³ In each of these manifestations of protest, black community members asserted their dignity as human beings, claimed their right for equal treatment under law, and often acted boldly and courageously to achieve their personal and communal goals.

During the second half of the 19th century, black southerners predominately lived in rural communities as tenant farmers and sharecroppers.⁴ Morris notes that blacks in rural settings were dispersed in location, were caught in a cycle of debt with their white oppressors, depended on wealthier whites for subsistence items such as food and shelter,

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⁴ Ibid., 79.
and experienced constant threat of terror through tongue-lashings and night-time “visits” by local “sheriffs and adventure-seekers.” In contrast, as a city like Greensboro, North Carolina exemplifies, urban blacks enjoyed a higher standard of living than their rural counterparts. In 1870, nearly 30 percent of black workers in Greensboro were employed in skilled occupations. Blacks composed nearly fifty percent of the skilled workforce in that place at that time, and even residential patterns showed some integration, with blacks and whites living as neighbors together on seven of nineteen streets in the town.

At the turn of the century, blacks began to migrate to northern and southern cities in large numbers, increasing the size of many southern cities exponentially. Greensboro grew from 2,000 residents in 1880 to 53,000 resident in 1930; between 1900 and 1940, New Orleans doubled its population from 77,714 to 149,034, and Birmingham, Alabama grew from 16,575 to 108,938 residents. In their new cities, blacks resided in closer proximity to each other and joined industrial workforces. Church memberships increased, and city ministers were able to rely on their clergy work as their only source of revenue. The ministry thus became one of few occupations that was isolated from cycles of oppressive dependence on white society. Black school and college enrollment increased, and densely populated black communities had new “opportunities to interact freely

5 Ibid., 78.
6 Chafe, Civil Rights and Civil Liberties, 15.
7 Ibid., 14.
8 Ibid., 15.
9 Morris, Origins of the Civil Rights Movement, 79.
among themselves.”\textsuperscript{10} Although the economic standard of living for blacks in Greensboro decreased during this period (by 1910, the percentage of black workers in skilled occupations decreased from thirty percent to eight percent),\textsuperscript{11} new levels of social consciousness and confidence were growing in black communities through both the experience as urban dwellers as well as significant world events that directly affected blacks’ understanding of rights in a democratic government.

World Wars I and II played a significant symbolic role in the political interests of blacks in both the north and the south. American soldiers, black and white, and the nation that fought the wars from the home-front, committed to fighting because of an ideology: democracy. The men and women in the United States answered their leaders’ call to war so that those oppressed overseas could experience similar rights and freedoms as Americans. Morris notes the following regarding soldiers returning from war.

Black Americans expected the government to deliver democracy in the Harlems and Montgomerys of America. It never happened … the two world wars created an ideological atmosphere that intensified the desires of blacks for freedom and democracy.\textsuperscript{12}

Morris further asserts that a significant number of “informed blacks” during the Cold War of the 1950s recognized the overt hypocrisy of fighting for democracy abroad while failing to uphold the tenants of democracy domestically.\textsuperscript{13} Beyond the United States,

\textsuperscript{10} Ibid.

\textsuperscript{11} Chafe, \textit{Civil Rights and Civil Liberties}, 15.

\textsuperscript{12} Morris, \textit{Origins of the Civil Rights Movement}, 80.

\textsuperscript{13} Ibid.
African nations were systematically overthrowing their colonial rulers during this time, and court rulings in the United States upholding equal rights increased blacks awareness of inequalities in the distribution of public goods and participation in civic life. All this led to a greater inclination of black and sympathetic white citizens to criticize American culture, and increased hope among these constituents for progression towards equality for the future.

**Legal Action as Agent for Change: The Legacy of the NAACP**

As mentioned above, one of the first and strongest civil rights organizations in the United States was the NAACP. The following section is designed to show that the NAACP grew in influence and power throughout the country in the first half of the twentieth century. Although this power made it an effective change agent, so long as it was methodically, actively, and efficiently pursuing civil rights goals, the black community was able to make progress without pursuing other strategies to complement the NAACP’s work. It was only after the NAACP was threatened and reduced in its ability to affect change that other strategies were better cultivated and implemented.

Founded by well-educated northerners, the majority of whom were white, the NAACP was established after a conference held in New York in May 1909. Of the 300 conference attendees, few were black, and only one came from south of Washington D.C: W.E.B. Du Bois. The original executive committee of the NAACP included Du Bois as the only black member (director of publicity and research). Conference attendees in 2010
had wanted to elect him chairman, but Du Bois preferred his role in producing the
NAACP’s monthly magazine, *The Crisis*.\textsuperscript{14}

Although the NAACP’s activist tactics became primarily court based after 1915,
filing civil rights suits in local and federal courts, *The Crisis* was integral to the
NAACP’s early consciousness raising initiatives, and it made Du Bois the “voice of the
NAACP.”\textsuperscript{15} As distribution of *The Crisis* grew across the north and the south, and Du
Bois’ editorial columns, book reviews, *Men of the Month* profiles, and descriptions of
black community activities (both highlights of culture and success and descriptions of the
most heinous racial discrimination crimes) reached more and more households, the
NAACP headquarters in New York City emerged as a leader in civil rights, and NAACP
chapters sprouted in communities around the country. By 1955, 128,716 southerners were
members of the NAACP, and the fourteen southern states and District of Columbia were
home to 1,695 of the 2,825 total local NAACP chapters (sixty percent) averaging 76
members per chapter.\textsuperscript{16}

As the dominant civil rights group in the first half of the twentieth century, the
NAACP and its legal activities were a major change agent for race relations in America.
As seen in the events that led to the Supreme Court’s 1923 *Moore v. Dempsey* due


\textsuperscript{15} Ibid.

process ruling, however, for many black southerners, race relations would become explicitly worse before equality could be achieved.

In 1919, a black World War I veteran returned to rural Phillips County, Alabama and organized the Farmers Progressive Household Union of America, a collective designed to “demand reforms in the accounting methods between black tenants and white landlords.”\(^{17}\) After hiring attorneys to formally incorporate the collective, the farmers union held a mass meeting in a local church during which a deputy sheriff and his colleague (both of whom were white) fired into the building. Return fire killed the deputy sheriff and wounded his colleague, and incited white retribution in the form of over 200 black murders and arrest of hundreds of blacks.

A panel of “white landlords and merchants” gave the detained blacks the option to be released under conditions that included working for white employers, uncompensated, for certain amounts of time. While many chose this option, essentially returning them to temporary slavery, 79 black community members refused surrender and “a dozen ringleaders were put on trial for their lives before an all-white jury after an all-white grand jury had indicted them.”\(^{18}\) In a county where blacks outnumbered whites three to one, the trials of these 79 black defendants were, according to the Supreme Court majority opinion written by Justice Wendell Oliver Holmes, “although a trial in form …

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\(^{17}\) Kluger, *Simple Justice*, 112.

\(^{18}\) Ibid., 113.
only a form … the appellants were hurried to conviction under the pressure of a mob without any regard for their rights and without according to them due process of law.”

Walter White, then a relatively unknown assistant secretary of the NAACP, traveled to Phillips County and published his investigative report in papers across the country, including The Crisis. The story shocked the nation, and the NAACP received over $50,000 to appeal the conviction by the “kangaroo court.” Over three years, NAACP lawyers appealed at the state and then federal level, contending that the convicted men’s Fourteenth Amendment rights were violated, and that these black men were denied equal protection under law.

At the Supreme Court level, attorney Moorfield Storey urged the Justices to decide in favor of the defendants despite a precedent set just eight years previously when the Supreme Court had ruled that the federal court did not have jurisdiction over a state case concerning the Fourteenth Amendment so long as the legal process was followed. Storey insisted that the Court had “erred grievously in [Frank v. Mangum and] here was


20 According to the United States Department of Labor Bureau of Labor Statistics, $50,000 in 1919 is equivalent to over $600,000 in 2009.

21 Kluger, Simple Justice, 113.

22 According to the Library of Congress, “The 14th Amendment to the Constitution was ratified on July 9, 1868, and granted citizenship to ‘all persons born or naturalized in the United States,’ which included former slaves recently freed. In addition, it forbids states from denying any person ‘life, liberty or property, without due process of law’ or to ‘deny to any person within its jurisdiction the equal protection of its laws.’ By directly mentioning the role of the states, the 14th Amendment greatly expanded the protection of civil rights to all Americans and is cited in more litigation than any other amendment.”
the moment to correct the record.”

Indeed, through in his dissenting opinion in *Frank v. Mangum*, Justice Holmes had laid the following groundwork for Storey’s argument.

Mob law does not become due process of law by securing the assent of a terrorized jury. We are not speaking of mere disorder, or mere irregularities in procedure, but of a case where the processes of justice are actually subverted. In such a case, the Federal court has jurisdiction to issue the writ.

In deciding *Moore v. Dempsey*, the Supreme Court reversed the precedent set eight years previously, deciding that the federal court had the authority to review state court decisions that may have violated federal constitutional rights even if in form they followed procedure.

As an early case championed by the NAACP, *Moore v. Dempsey* offered hope to black southerners living oppressed by mob justice. In addition to saving the lives of the black farmers (who were freed by the state two years later), the proceedings established the NAACP as effective counsel, and “made Walter White a nationally known figure and heir apparent to direct the work of the NAACP.”

White would go on to become the executive secretary of the NAACP until his death in 1955.

Leading up to 1954, the NAACP filed suits and appealed decisions in the states and to federal courts. NAACP lawyers represented defendants against criminal cases such as *Moore v. Dempsey*, housing segregation, education segregation (both issues of distributive justice), and voting rights cases (an issue of participative justice). Due to its

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24 Leo M Frank, Appt., v. C. Wheeler Mangum, 237 U.S. 309 (1915).

rapid growth in the south and consistent pressure in the courts, to many blacks, the
NAACP “seemed either too conservative or too radical in its aims,” and whereas blacks
in New York were thriving in the Harlem Renaissance, blacks in the south continued to
live oppressed by Jim Crow laws and consistent violations of equal protection under the
Fourteenth Amendment. Regardless of public opinion, the NAACP and its legal tactics
succeeded in keeping the race dialogue moving in the first half of the twentieth century,
though not without set-backs, as the following cases illustrate.

*Corrigan v. Buckley*, decided in 1926, was dismissed by the Supreme Court for
lack of jurisdiction. At issue was the legality of a contract made among 30 white persons
in the District of Columbia which prohibited the sale, lease, or inhabitation of black
people among the 25 homes owned by the signatories. When one home-owner contracted
to sell her property to a black man, the two of them were sued for breech of contract. In
their defense, the defendants argued that the Fifth and Fourteenth Constitutional
Amendments gave them rights to private property and equal protection, but the court
ruled that while the policies at issue give “all persons and citizens … equal right with
white citizens to make contracts and acquire property, they, like the Constitutional
Amendment under whose sanction they were enacted, do not in any manner prohibit or
invalidate contracts entered into by private individuals in respect to the control and
disposition of their own property.” This ruling essentially gave local communities the
right to contract for segregation.

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26 Ibid., 117.
Gong Lum v. Rice, decided in 1927, was also viewed by advocates as a defeat for civil rights. In 1924, nine-year old Martha Lum tried to enroll in a local white school in her home state of Mississippi. After being refused admission because of her Chinese heritage, the Lum family sued the school district on the grounds that there was no school appropriate for a Chinese-American student, who from their perspective, should not be classified in the same group as African-American children. The state courts determined that as a Chinese-American, Lum was “yellow” and thus “colored” and therefore able to enroll in a colored school. The Supreme Court upheld the state’s decision. In the majority opinion, Chief Justice Taft asserted that this case was not different than dozens which had come before, including Plessy v. Ferguson which upheld segregation in trains. Admitting that previous cases were primarily concerned with the establishment of separate but equal school for white and black students, Taft wrote the following of the Court’s majority opinion.

We cannot think that the question is any different, or that any different result can be reached … where the issue is as between white pupils and the pupils of the yellow races. The decision is within the discretion of the state in regulating its public schools, and does not conflict with the Fourteenth Amendment. 28

Nixon v. Herndon, also decided in 1927, was ruled in the favor of the plaintiff, a black man who sued under the Fourteenth Amendment after he was prohibited from voting in an election primary because of a Texas statute prohibiting blacks from voting in primaries. Describing why it reversed the state court’s decision, Justice Holmes wrote the following of the Fourteenth Amendment.

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Not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any State the power to withhold from them the equal protection of the laws … The statute of Texas in the teeth of the prohibitions referred to assumes to forbid negroes to take part in a primary election the importance of which we have indicated, discriminating against them by the distinction of color alone. States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case.29

In *Nixon v. Herndon*, the Supreme Court decided in the favor of equal rights, but it avoided addressing the argument that Mr. Nixon’s Fifteenth Amendment (protecting voting rights) rights were also protected under the Constitution, instead focusing on the Fourteenth Amendment’s obligation for states to protect all races equally. In so doing, the state of Texas was forced to discontinue its state-wide policy of prohibiting black residents from voting, but the non-governmental Democratic Committee within the state quickly established its own protocol for primaries, eliminating blacks from the process.30 If the Supreme Court had defended its decision by the Fifteenth Amendment, voting rights for minority Americans might have been improved more quickly; instead it wasn’t until 1965 that the Voting Rights Act was signed into law.

As the NAACP brought cases to the Supreme Court through the states, schools like Howard University in Washington D.C, and North Carolina Agricultural and Technical State University (“A&T”) and Bennett College in Greensboro were becoming breeding grounds for the next generation of civil rights proponents. Similarly, in the first half of the twentieth century, urban black churches became a hub of community life.


30 Kluger, *Simple Justice*, 123.
Unlike the early NAACP leaders and lawyers, this new generation of educated men and women committed to the cause of civil rights were black.\footnote{Ibid.} They gained confidence through their training at university, on the pulpit, and in the courtroom, a confidence that permeated the south and prepared the community to react to the repercussions of the landmark case \textit{Brown v. Board of Education of Topeka}.

\textbf{Power Vacuum in the Protest Tradition}  
\textbf{New Change Agents Meet Demand for Action}

\textit{Brown v. Board of Education of Topeka}, which determined that the system of segregation of schools (which were “separate but equal”) did not protect black American’s right to equal protection under the Fourteenth Amendment. As the beginning of the end of legalized school segregation, \textit{Brown v. Board of Education of Topeka} was a major victory for civil rights. At the same time, however, this Supreme Court decision marked the beginning of a systematic and vigorous crusade against the NAACP in the south.\footnote{Morris, \textit{Origins of the Civil Rights Movement}, 27.} Individual white southern leaders resistant to the change, the Ku Klux Klan, and local and state regulatory bodies indeed succeeded in reducing the effectiveness of the NAACP. Their strategies included a combination of intimidation tactics aimed at known members of the NAACP, violence against its leaders, and the introduction of local and state bills requiring the NAACP to publish its membership lists or close chapters.

The NAACP relied extensively on its membership base in the south. In order to bring cases to court, the NAACP needed families who would file suit and neighbors who
would support them. As chapters began to close, membership numbers dramatically
dropped, and the NAACP was outlawed in Alabama (the state of the its Southeastern
Region headquarters).33 A protest vacuum emerged in the south.

From its inception, some southerners (including southern leaders in the NAACP)
criticized the organization for moving too slowly, too bureaucratically, and not radically
enough.34 As the NAACP was attacked from all angles by the southern power structure,
black southerners found new opportunities to develop supplemental strategies to continue
protesting inequality. In time, these secondary strategies gained momentum and became
primary change agents and a major legacy of the civil rights movement. Morris describes
the effect of this power vacuum on in the 1950s.

This attack contributed greatly to the emergence of the modern civil rights
movement. It broke the hegemony of the NAACP and cleared the way for the use
of other tactics in addition to the legalistic approach employed by the association.
The result was a more favorable environment in which new mass movement
organizations and tactics that directly confronted and challenged the Southern
white power structure could emerge.35

If the civil rights agenda of long-disadvantaged and newly empowered black southerners
would proceed, the community would need to adapt to find new ways to challenge the
oppressive system in which they lived.

33 Ibid., 34.
34 Ibid., 14.
Community Organizing and Great Leaders

Leaders such as Reverend Martin Luther King Jr. and Reverend Fred Shuttlesworth became icons in these new forms of protest, and in the late 1950s and early 1960s, non-violent direct action, inspired by great leaders and organized through powerful community structures, became the dominant agents for change in civil rights in America. Although scholars have emphasized the impact of community organizing and great leaders to different degrees in social movement theory, this paper assumes that both change agents add value when pressuring for change and their strengths and limitations should be acknowledged when using them as models. In the case of the bus boycotts across the south as described by Morris, and in the sequence of protest in Greensboro, North Carolina as described by Chafe, both change agents played important roles, and together asserted the necessary pressure to bring about desired change.

Strengths of Great Leaders in a Movement

Leadership, positive and negative, is critical to the success of any social movement. The civil rights movement was fortunate to have distinct and admirable moral and political leaders. Although the movement has innumerable local and national leaders, as well as charismatic and influential opponents, the next section of this paper focuses on four leaders and qualities that shaped the movement: Dr. Martin Luther King, Jr., Reverend Fred Shuttlesworth, and North Carolina Governor’s Luther Hodges and Terry Sanford.
Dr. Martin Luther King, Jr.

Dr. Martin Luther King, Jr., a symbol of the civil rights movement and non-violent direct action tactics, epitomizes the great leader in a moment of great cultural change. He was the son of a prominent Atlanta minister; he was well educated, and charismatic. And after Rosa Parks was arrested for refusing to give up her seat to a white man on a Montgomery, Alabama bus, King emerged through the Montgomery bus boycott in 1955-1956 as a great leader. Although his rise to prominence did not flow as the charismatic movement theorist Max Weber might expect, after he was strategically selected by the boycott organizers to be the public face of the economic protest, King quickly assumed a powerful position in Montgomery, and later on the national scene as Chairman of the Southern Christian Leadership Conference (“SCLC”).

Dr. King, like other leaders in the civil rights movement, was relatively new to his community and thus neither embroiled in internal conflict within the black community, nor stunted in ambition because of ties to white funding sources at risk to protesters. He was a brilliant orator who was capable of relating to both the well-educated and uneducated followers, as Morris describes:

He coherently wove together the profound utterances of ditch diggers, great philosophers, college professors, and floor-scrubbing domestics with ease. To inspire the poor black masses and the educated through oratory King would tell the street sweeper to go out and sweep the streets the way Michelangelo painted pictures or Beethoven composed music or Shakespeare wrote poetry. Moreover,

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36 Max Weber argues a theory of charismatic movements in which the early stages are categorized by leaders who are followed because of identification with said leaders’ personalities, visions, goals, and strategies. Charismatic leaders possess extraordinary gifts of personality, charisma, with the ability to draw in followers and induce trust from large groups. In this theory, social movements begin because of the vision of the charismatic leader and their ability to virally attract followers who share or adopt their vision.
King had the ability to convey in folksy language the commonalities that the contemporary black movement shared with the great liberation movements of biblical times. That message was clearly felt among the masses: Protest was right and even divine, and Martin Luther King was the moral figure and prophet divinely inspired to lead the movement.\footnote{Morris, \textit{Origins of the Civil Rights Movement}, 60.}

In describing the effect of hearing King, Chafe quotes a student in Greensboro who was deeply moved after hearing King speak. “‘It was like a catalyst’ … his presence … sermon was ‘so strong … that I could feel my heart palpitating. It brought tears to my eyes.’”\footnote{Chafe, \textit{Civil Rights and Civil Liberties}, 81.}

\textit{Reverend Fred Shuttlesworth}

As a media darling and martyr for the movement, King’s name has become synonymous with the movement. But he was not the only great leader for civil rights in the 1960s. Many ministers in black communities led their congregations and entire communities in the south through controversial, and sometimes violent encounters. In the case of Reverend Fred Shuttlesworth, his impact as a great leader was amplified by his antagonist, Eugene “Bull” Connor. In Birmingham, the city in which Shuttlesworth was a minister and civil rights leader, activists did not have a Rosa Parks character or confrontation to energize the community to organize a boycott. Without such a lynchpin, Shuttlesworth himself rocked the careful racial equilibrium in the city by challenging cultural norms, and his actions became especially significant and a rallying cry for the
masses because of the dramatic responses by the Ku Klux Klan, Bull Connor, and other powerful white organizations such as Birminham’s White Citizens’ Council.\footnote{Morris, \textit{Origins of the Civil Rights Movement}, 72.}

\textit{Governor Luther Hodges}

Although without the same level of dramatic tension and national awareness, two strong leaders in North Carolina had significant impacts in the civil rights movement. Governor Luther Hodges, who took office in 1954, exemplified the position of power that enables leaders to frame the issues of their time. A resistor to integration after \textit{Brown v. Board of Education of Topeka}, Hodges used bargaining chips with congress, popular appeal, and access to the media to convey an argument to the citizens of North Carolina that voluntary segregation was the only way to ensure equal opportunity to quality education. The Pearsall Plan was introduced after \textit{Brown v. Board of Education of Topeka} as a strategy through which to avoid state lawsuits for non-compliance while avoiding integrating North Carolina’s schools. Hodges called for voluntary segregation, and the Pearsall Plan permitted local districts to shut down its schools if unwelcome integration occurred, and it permitted state funding to private schools which could then accept white students whose public school had closed.

In a televised speech, Hodges framed the Pearsall Plan as a moderate, commonsensical approach to desegregation. He lauded the state for successfully developing black education, and asserted that “if we are not able to succeed in a program of voluntary separate school attendance … the state … with be face-to-face with deciding whither it
will have some form of integrated public schools or shall abandon its public schools.” He cautioned that closing public schools would forever hurt black education, and thus voluntary segregation was the state’s best option. At the same time, Hodges blamed the NAACP for bringing such a crisis in education to the state. He asserted that “the NAACP taught [blacks] to be ashamed of their color and to seek the destruction of their race by ‘burying it in the development of the white race.’” He postured the issue in such a way that radicalized the NAACP as though it was on par with the Ku Klux Klan, and concluded that “anyone who pushed for … segregation carried the burden of the counterresponse,” setting up the NAACP and black community members seeking integration up as the group to blame if and when public schools shut down and public education was denied to all.

*Governor Terry Sanford*

By 1960, North Carolina was led by a governor with a very different perspective on integration. Terry Sanford, an early supporter of John F. Kennedy and charismatic speaker who sent his own children to desegregated schools, provided “an environment that encouraged racial protest by sanctioning its goals.” Leading the movement from within the white power structure, Sanford was unable or unwilling to act with radical

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40 Chafe, *Civil Rights and Civil Liberties*, 51.

41 Ibid.

42 Ibid., 52.

43 Ibid., 105.

44 Ibid.
measures, but he opened political space for discourse, protest, and change in the state. Sanford acknowledged the failures of segregated schools, accepted the Supreme Court’s postulate that black schools did not educate its students sufficiently. By focusing on the economic benefits of desegregating schools, framing changes as a critical component on the overall economy in North Carolina, Sanford was able to argue that the state as a whole would improve if black children were better educated. By underscoring the importance of having a pipeline toward better paying jobs, Sanford framed the issue of segregation as a positive challenge for the state. Sanford used his position as Governor to establish Good Neighbor Councils that encouraged merchant leaders in communities to hire blacks at all levels of the workforce. These councils earned the trust of both the black and white communities in North Carolina, and initiated dialogues across the state to re-enforce Sanford’s economic approach to civil rights.

Strengths and Limitations of Community Organizing in a Movement

Forty-nine years after the Supreme Court decided Brown v. Board of Education of Topeka, it considered another landmark education case regarding affirmative action in admissions policies at the University of Michigan’s Law School. Although in a dissenting option, Justice Clarence Thomas referenced the Fourteenth Amendments as a reason to consider applications through color-blind procedures, Justice Stephen Breyer explains Justice Sandra Day O’Connor’s majority opinion by acknowledging the nation’s tumultuous racial history. He writes in Active Liberty that the Fourteenth Amendment “grows out of a history that includes this nation’s effort to end slavery and the segregated society that followed. It reflects that history. It consequently demands laws that equally respect each individual; it forbids laws based on race when those laws reflect a lack of respect for members of the disfavored race; but it does not similarly disfavor race-based laws in other circumstances … government decision-makers may properly distinguish between policies of exclusion and inclusion.” Breyer further supports the University of Michigan’s claim that “in the context of higher education, a compelling state interest includes a ‘diversity’ that promises ‘education benefits helping to break down racial stereotypes.’” In its decision, the Court ultimately concluded that practical interests of business, the military, and the legal field justify select affirmative action in higher education admissions policies, quoting O’Connor as saying that “the path to leadership [must] be visibly open to talented and qualified individuals of every race and ethnicity.” In order for the Supreme Court to ensure that institutions such as itself will continue to evolve in a direction toward more representation by qualified minorities, law schools must continue to accept, train, and retain minority applications and students (Breyer, Active Liberty, 75-84).
Governor Sanford’s Good Neighbor Councils in North Carolina were one example of the complex organizing in the south that was a critical component of social change in the 1960s. During the bus boycotts, community members organized complex carpool and free taxi services to ensure that blacks were able to get to work, churches rotated the location of mass-meetings, and national organizations fundraised for local movement centers. During the Greensboro sit-ins, neighborhood groups and college activists strategized about how to keep the boycott effective after school let out, and mobilized high-school students through youth chapters of the NAACP and community adults to continue to pressure for change.\footnote{Chafe, Civil Rights and Civil Liberties, 122.} Three types of organizations became particularly important to the success of the civil rights movement: organizations with other organizations as its members, black churches, and black colleges and universities. 

*Umbrella Organizations*

Across the country, umbrella-organizations formalized to organize smaller civil rights organizations. These organizations of organizations emerged as effective mechanisms for communication, strategy, and cooperation, and national leadership groups such as the SCLC and Student Non-violent Coordinating Committee attracted the best and the brightest local leaders. National leadership groups also helped sustain media attention which was critical to the perpetuation of the movement. In the case of the SCLC, it became “the political dimension that pulled churches into the movement and made it a dynamic force.”\footnote{Morris, Origins of the Civil Rights Movement, 78.} As breeding grounds for leadership and cultural strongholds
in the black community, the churches and universities became essential components of community organizing in the civil rights movement.

*The Church as a Movement Center*

For centuries, the black church was the primary breeding ground for black leaders. Independent of white financial support, and a consistent presence in the lives of the vast majority of black southerners, churches were at the center of non-violent direct action from the first bus boycott in Tallahassee. Churches provided meeting space, mechanisms for fundraising, and technical support in making mimeographs. The leaders of the church were respected community leaders who not only had established followers but also layers of denominational government that assisted with both complex decision-making and internal communications. As a greater community, church members shared liturgies, rituals, and rights of passage, creating a robust social network conducive to activism. In the century leading up to the modern civil rights movement, black universities also became a place for training black leaders nurturing black culture, and criticizing cultural norms.

*Universities as Movement Centers*

Unlike the black church, many state funded black colleges remained financially dependent on white run governments or philanthropists, and thus their leaders were not as independent as those of the churches or privately funded college. Chafe illustrates the constraints imposed on state funded universities through the contrast between A&T and

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48 Ibid., 6.

49 Ibid., 11.
Bennett College, and their leaders alternative responses to the massive student arrests in the spring of 1963.

As a state college, A&T leadership was bound to follow the directives of the state government, and particularly the Governor. In an attempt to relieve an overcrowding jail crisis that students from A&T and Bennett strategically initiated as a part of their non-violent direct action tactics, Lewis Dowdy, then acting president of A&T had limited choices through which he could both support the A&T students and comply with the demands of the Governor. As a result, Dowdy acquiesced to the Governor’s request for the state to assume legal responsibility for the jailed students and bring them back to campus for was amounted to house-arrest.  

In contrast, Bennett College president, Willa Player, led an independent school and was able to participate in the movement in very different ways. Responding to the same crisis, Payer visited the 200 women from her school who were imprisoned at an old convalescent hospital (because the jails were full), supported her students for choosing to carry “out the message of dignity and concern for others that the college had striven to teach them,” and proceeded to lobby for better conditions for her jailed students. Stopping short of inciting her own arrest, Player acknowledged that she “had to stay out of jail in order to be sure … they were sufficiently understood.”

\[50\] Chafe, Civil Rights and Civil Liberties, 132.

\[51\] Ibid., 129.

\[52\] Ibid.
Despite pressures on state schools to maintain the status quo, academically minded students were trained to think critically about the differences between what they learned was equality and what they experienced in their daily lives. Teachers encouraged students to stand up for their rights through classroom teaching, on the athletic field, and in extracurricular activities. Students lacked many of the financial risks that often discouraged black adults from aggressively pursuing equal rights. As one A&T student remarked about their unique position to participate in activism, “as college students we have no jobs from which to be fired by the people who don’t like to see us assert ourselves … We can speak up loudly now without fear of economic reprisal.”

Combining their academic training, high energy levels, built-in communication networks, and empowered leaders galvanized by local victories across the south with freedom from economic risks, students became critical mass organizers for change.

Together, the impact of the black churches and black colleges was paramount to the civil rights movement. As information centers, leadership training grounds, and cultural communicators, these two center-points in black cities were the base for the civil rights movement community organizations. When coordinating, they brought together black men and women of all ages, education, and class. They grew out of institutions about which the black community was very proud, new community organization, and umbrella organizations uniting them. They began with built in modes of communication, ritual, and symbolic language. Leaders within these organizations quickly adapted their

\[53\] Ibid., 94.
previous training to the issue at hand, civil rights, and captured and held the attention of massive numbers of southern and northern black and sympathetic whites to initiate and maintain years of non-violent direct action protest. These pressure points eventually led to the successful lobbying for and passage of the Civil Rights Act of 1964, eventual formal desegregation in housing and education, full and equal opportunity to vote at all levels of elections, and a movement towards economic parity.

Despite all of the progress achieved during the civil rights movement, not all of its aims have been achieved. American values of fair share and fair play for all citizens are not central in environmental issues. Instead, black Americans still suffer from disproportionate environmental risks and are marginalized in the environmental decision making process. In order to achieve distributional and participative environmental justice, advocates must adapt their strategies to more effectively implement change, perhaps through the passage of an enforceable federal law specific to environmental justice. The conclusion of this thesis theorizes how the courts, great leaders, and community organizers might better progress the nation towards environmental justice.
CONCLUSION

Mounting research serves as evidence that today’s environmental justice goals are not satisfied by currently enacted policy and procedures at the federal level. While states like California have prioritized environmental justice and implemented its own laws based in values of fairness and responsibility, minority communities in the United States too often lack equal environmental protection, suffer from limited environmental resources, disproportionately carry the burden of environmental risks, and are denied meaningful participation in the environmental decisions that affect the neighborhoods in which they and their children live, work, and play. The laws that protect minorities from many civil rights violations have failed to enforce environmental justice, leading academics like O’Neil, activists groups like the UCC, and even government ancillaries like the Congressional Research Service to call for changes in federal policy.

Like the movement for civil rights, the environmental justice movement has consisted of community organizing, influential leaders, and legal proceedings. Unlike the civil rights movement, however, the progress towards environmental justice has not been as rapid and in nearly thirty years has failed to get substantial legislation passed in Congress. This remainder of this conclusion outlines certain adaptations to the legal approach towards change, leadership, and community activism that might encourage members of Congress to rally behind and pass an enforceable environmental justice law.
The Courts

Justices agree that six basic criteria must be considered with interpreting the Constitution in Supreme Court cases: language, history, tradition, precedent, purpose, and consequence. In today’s Supreme Court, two conflicting methods of interpretation prevail, and the two are in conflict with each other. Whereas Justice Antonin Scalia leads the textualists on the court, asserting that justices must limit their interpretation of the Constitution to the reasonable parameters defined by the words of the text, Stephen Breyer leads another set of judges in the philosophy that the Constitution was constructed to respond “to practical needs … for protection of basic individual freedoms.” This second Constitutional philosophy is conducive to weighing purpose and consequence more heavily than language, history, and tradition, though Breyer asserts that a democratic government (in which the court system plays a central role) is designed to empower the people to define and redefine their laws. Although sometimes accused of being an activist judge, legislating from the bench, Breyer instead urges the public to respond to Supreme Court cases by lobbying for legislation that can resolve the policy debates inherent in the cases considered by the Supreme Court.

3 Breyer, Active Liberty, 33.
4 Ibid., 8.
5 Ibid., 111
Reflecting on the ways in which *Brown v. Board of Education of Topeka* sparked debate about civil rights and galvanized the movement that resulted in the Civil Rights Act of 1964, one strategy for environmental justice advocates to consider is identifying a case to bring to the Supreme Court. As previously mentioned, early cases in federal courts resulted in little movement towards environmental justice (because of the inability of plaintiffs to prove intentionality in environmental decisions), but just as civil rights advocates were able to reverse precedent established in *Frank v. Mangum* with the decision on *Moore v. Dempsey*, so legally minded environmental justice plaintiffs might find greater success in today’s fairly evenly split Supreme Court. And despite the outcome, such a case might have a powerful influence on policy, as Justice Breyer suggests is the primary purpose of the courts. The ability to get a case to the upper courts would legitimize the movement, perhaps encouraging in Americans to organize for change and pressure for legislative measures that would reflect their desire for equal environmental protection.

**Great Leaders**

During the civil rights movement, great leaders were both moral and political figures. For the most part, great leaders were trained as ministers or academicians, and their massive numbers of supporters were drawn by their charisma as well as built in social networks and the highly organized support structure that comprised the movement. The environmental justice movement does not currently have nationally known charismatic leaders like Dr. King. It does, however, have networks of scholars, ministers, students, politicians, and corporate executives who believe strongly in social
environmental responsibility. Each of these groups have the capacity to generate support for environmental justice at the local level, although the movement will be most effected if a great leader would emerge at the national level.

Such a leader would need to champion environmental justice along with a number of related causes in order to retain a large enough base to maintain popular appeal or continuously be re-elected, if in an elected position. Given the dramatic illustrations of environmental injustice, status as a tipping point issue, and American craving for strong moral leadership, this might be the perfect time for such a leader to emerge on the national stage.

Hilda Solis has been lauded as a leader in environmental justice, and her new role as Secretary of Labor in the Obama administration has both made room for a new champion of environmental justice in Congress and also gives her new opportunities to approach environmental justice from the Labor perspective. Working closely with her African-American boss, Solis would be a good choice for environmental justice leadership.

**Community Organizing**

As seen in the wake of Hurricane Katrina, community organizations in the form of churches, school groups, and non-profits, have rushed to the aid of minority communities suffering from environmental disasters. The compassion expressed through these endeavors echoes the fundraising and volunteering exhibited by northern blacks and sympathetic whites during the civil rights movement. Although one could argue that a
movement too diffuse in its mission may struggle to retain committed activists,\(^6\) another perspective is that a movement with a large range of issues has more opportunities to capture the attention of the populace. Perhaps the environmental justice movement has failed to achieve the necessary momentum to implement attitudinal and legislative changes because it has been too specific in its goals and thus has not been able to attract the attention of the majority of Americans. Many citizens in the United States are not racial minorities and are capable of emotionally and intellectually ignore the ways in which they, as the dominant group, benefit from the exploitation of these less powerful groups of people.\(^7\) Until the environmental justice movement resonates with the dominant groups in America, it will not gain massive support.

The environmental justice movement will also be strengthened if activists and scholars continue to work more closely together. One of the major roadblocks for the environmental justice movement has been the difficulty in correlating environmental hazards with health conditions. Continued study into biochemistry and medical fields such as neuroscience could produce breakthroughs in this obstacle. If Congressmen continue to fail to pass legislation that relies on disparate effect instead of discriminatory intent, such basic science research might become the only avenue through which to pressure for enforceable legislation.

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As nature-focused environmentalism experiences new enthusiasm, in part due to attention given to global warming, rising energy costs, and major technological advances towards sustainable infrastructure, it would be strategic for the environmental justice movement to align more closely with traditional environmentalism. Citizens of the whole world are beginning to recognize that environmentalism is not a local issue but instead is global issue, and it is becoming commonly assumed that no community has unlimited environmental resources. Instead all communities face increasing environmental risks. Because of this shift in global attention to the environment, the environmental justice movement may dramatically increase popular appeal through aligning its strategies for greater environmental protection for all. Whereas significant environmental justice problems are occurring in urban centers (frequently populated by minority communities), areas which produce great quantities of trash, and suffer from poor air and water quality, nature-focused environmentalists would benefit from increased support from the environmental justice movement. And the environmental justice movement would benefit from the extensive resources available to nature-focused environmentalism.

The civil rights movement was successful because it adapted to changing pressures in the political landscape of the 1960s. This legacy is crucial to implement for the environmental justice movement as advocates seek environmental equality for minority populations. Today’s political and economic landscapes are changing rapidly. The new federal administration led by Barack Obama is breeding new leaders domestically and internationally. Economic support of sustainable technology has generated a whole new category of “green-collar” jobs focused on alternative energy,
green-building, environmental research, education, and other fields which focus on improving the direction of local and global environments. Environmental justice leaders should be assertive in participating in these dialogues. Whereas economics are closely aligned with environmental resources and risks, minority populations stand to either gain or lose a tremendous amount of well-being based on if they can become integral leaders, workers, and consumers of new green products and technologies.
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