

# CLIMATE DISOBEDIENCE

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## ABSTRACT

*In sharp contrast to the flurry of legal and policy-oriented efforts of years past, climate activists today employ protest and nonviolent civil disobedience to advance their agenda for rapid and ambitious mitigation and adaptation. In so doing, activists make explicit references to the storied past of defining social movements in American history—notably the anti-slavery movements of the 19th century and the civil rights movement of the 20th—and draw direct comparison to the moral failure igniting the relevant social movements. This article examines a topic largely ignored by the legal academy, the emerging climate movement, to assess the usefulness of its persistent reference to prior movements. Comparing this recent mobilization with earlier struggles, this article explores the following questions: First, what are the characteristics of the climate movement and what tactics and narratives does it employ? Second, how are the moral questions and legal and policy goals of the climate movement similar to, or distinct from, the social movements that many climate activists invoke? Third, given the distinct moral and legal questions posed by climate change, what lessons could the climate movement glean from other similarly poised social movements? The preliminary conclusions note that extra-legal actions and non-violent civil disobedience were ostensibly indispensable in the past and appear relevant today. Further, points of overlap and departure in the framing and narrative of prior movements may be instructive for the contemporary climate movement.*

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## INTRODUCTION

It is common for scholars, commentators, and earnest activists to invoke the injustices of slavery and racial segregation to add gravity to their argument or moral heft to their cause. It is equally common for modern activists to justify their particular movement tactics by likening them to the passionate exclamations of street corner abolitionists or lunch counter civil rights activists. Accelerating changes to the global climate, abetted by anemic policy, have inspired a whole new wave of comparisons meant to convey to politicians and the general public the crisis that scientists already observe. This article explores the emerging climate movement in the United States<sup>1</sup> and asks whether the analogies

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1. See HEIKO GARRELTS & MATTHIAS DIETZ, *THE ROUTLEDGE HANDBOOK OF THE CLIMATE CHANGE MOVEMENT* 1 (2013) (I use the term “climate movement” to describe the coordinated and collective action of groups seeking to address the impacts of climate change and the groups and members themselves. I also make clear here that I am reviewing the movement in the United States solely. The climate movement is distinct from the discrete policy actions of the larger environmental groups that have pressed for climate policy at domestic and international scales). See generally Maxine Burkett, *Just Solutions to Climate Change: A Climate Justice Proposal for a Domestic Clean Development Mechanism*, 56 *BUFF. L. REV.* 170, 192–93 (2008) [hereinafter Burkett, *Just Solutions to Climate Change*]. I also introduce the “climate justice movement,” *infra* Part III, to describe the groups that focus heavily on principles of human rights

drawn between it and the country's prior defining movements are apt, useful, or instructive.

From sit-ins and high profile arrests at the foot of the White House<sup>2</sup> to “kayaktivists” in Seattle,<sup>3</sup> to the emerging “Keep It in the Ground” movement,<sup>4</sup> growing impatience with the pace of climate policy and the general disregard of current changes in climate is evident. Such demonstrations indicate that climate activism has moved beyond the courtroom and legislative hallways into the streets and other heretofore-atypical spaces. Where these actions sit in the conception and development of related law is uncertain, both in theory and practice.

Legal scholars, particularly environmental law scholars, are largely sidestepping review of this kind of engagement with the law. Although there have been prior reviews of the shifting tactics,<sup>5</sup> as well as some discussion about the absence of a moral hook in climate discussions,<sup>6</sup> climate-related disobedience, as an alternative method to advance climate-related law and policy, is under-analyzed and under-theorized. Inciting meaningful lawmaking to mitigate climate change through disobedience, however, is consistent with the civil rights and environmental justice (EJ) traditions.<sup>7</sup> Further, protesting a lawful

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and social justice in their approach to climate change. This use of climate justice is slightly more expansive than the definition used.

2. Robert F. Kennedy, Jr., *Why I Got Arrested at the White House to Stop the Tar Sands Pipeline*, HUFFINGTON POST: THE BLOG (Feb. 16, 2013), [http://www.huffingtonpost.com/onearth/why-i-got-arrested-at-the\\_b\\_2734099.html](http://www.huffingtonpost.com/onearth/why-i-got-arrested-at-the_b_2734099.html).

3. Coral Garlnick, *'Paddle in Seattle' protestors gather against Shell oil rig on Saturday*, SEATTLE TIMES (May 16, 2015), <http://www.seattletimes.com/seattle-news/environment/paddle-in-seattle-protesters-gather-against-shell-oil-rig/>.

4. See Bobby Magill, *Oil Leasing Protests a New Front in Climate Policy Fight?*, CLIMATE CENT. (Feb. 18, 2016), <http://www.climatecentral.org/news/leasing-protests-front-in-climate-policy-fight-20046>.

5. See Holly Doremus, *Civil disobedience and climate change*, LEGAL PLANET (Oct. 13, 2009), <http://legal-planet.org/2009/10/13/civil-disobedience-and-climate-change/>; see also John Lemons & Donald Brown, *Global climate change and non-violent civil disobedience*, 11 ETHICS SCI. & ENVTL. POL. 3, 3 (Apr. 27, 2011) (aiming to be a “conversation starter” because the issue had not been dealt with in scientific or environmental peer-reviewed literature).

6. GARRELTS, *supra* note 1, at 85 (“Competing moral obligations or mutually reinforcing morally ‘corrosive’ processes are a new challenge.”).

7. Lemons & Brown, *supra* note 5, at 3 (noting NVCD “spur urgently needed action”). See also Wen Stephenson, *The New Abolitionists: Global warming is the great moral crisis of our time*, BOS. PHOENIX (Mar. 12, 2013), <http://thephoenix.com/boston/news/151670-new-abolitionists-global-warming-is-the-great/#ixzz3UJn1xTTz> (“A transformative progressive movement addressing the climate crisis ‘must capture the spirit of Frederick Douglass.’” (statement of Gus Speth, co-founder of the Natural Resources Defense Council)). A more in-depth discussion of environmental justice is below in Part III. D.

state of affairs that erodes livelihoods today and into the future is a critical component of social movements that wish to effect any significant change.<sup>8</sup>

Other legal scholars, however, may not ascribe the same value to protest. They may be skeptical that this more pronounced iteration of climate advocacy is a means of effectuating change in practice or policy. This skepticism might explain the relative silence from law colleagues despite the proliferation of climate activism. Historically, however, protest tactics of social movements seem relevant to advances in the law. This appears particularly true when the stated remedy required a quantum leap in social acceptance, political realignment, and economic restructuring—as might be the case to address climate change adequately.<sup>9</sup>

This article assesses whether heightened and extra-legal movement tactics such as protest and nonviolent civil disobedience (NVCD)<sup>10</sup>—the deliberate breaking of law to shift the socio-economic and legal landscape—have a palpable impact on the trajectory and ultimate success of the social movement they seek to forward. Inherent limitations pervade this assessment. It is fundamentally difficult to argue convincingly about the role of NVCD, or any other single tactic in, say, spurring passage of the Civil Rights Act. In other words, it is relatively easy to excavate historical analogues and find evidence that supports the notion that NVCD has had (or not) a trajectory-shifting impact—much to the chagrin of historians.<sup>11</sup> It is likely impossible to connect protest and impact conclusively, while avoiding the temptation to “fine-tune [a] preferred theory to explain the [historical] material.”<sup>12</sup>

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8. See Edwin Amenta, Neal Caren, Elizabeth Chiarello & Yang Su, *The Political Consequences of Social Movements*, 36 ANN. REV. SOC. 287, 288 (2010) (“We define political social movements as actors and organizations seeking to alter power deficits and to effect social transformations through the state by mobilizing regular citizens for sustained political action.” (citing CHARLES TILLY, *HOW SOCIAL MOVEMENTS MATTER* 253–70 (Marco Giugni, Doug McAdam & Charles Tilly eds., 1999)).

9. See also Stephenson, *supra* note 7.

10. See Lemons & Brown, *supra* note 5, at 3 (stating that nonviolent civil disobedience is “an act of protest, deliberately unlawful, conscientiously and publicly performed. It may have as its object the laws or policies of some governmental body, or those of some private corporate body whose decisions have serious public consequences; but in either case the disobedient protest is almost invariably nonviolent in character.” Descriptions of different types are provided) (citing CARL COHEN, *CIVIL DISOBEDIENCE: CONSCIENCE TACTICS AND THE LAW* 111 (1971)).

11. See Christopher W. Schmidt, *Social Movements, Legal Change, and the Challenges of Writing Legal History*, 65 VAND. L. REV. EN BANC 155, 176 (2012) (reviewing TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* (2011)).

12. *Id.*

It is also evident, however, that as they are observed through the rearview mirror, disobedience and movement-generated social turbulence have defined the zeitgeist of the most storied periods of American history.<sup>13</sup> To that end, a review of NVCD in the climate movement is worthwhile if only because of a persistent *belief* that the tactic is relevant to and significant in the evolutionary history of the United States. For that reason alone, NVCD and similar disruptive tactics' proliferation in the climate movement should not be ignored by scholars, decision-makers, or climate advocates.<sup>14</sup>

With that important qualification, the article proceeds as follows. Part I describes the current climate movement and the emerging use of diverse tactics with a focus on nonviolent civil disobedience. Part II explores the analogies drawn between the climate movement and prior struggles for human dignity and deep structural change. Here, the article focuses on the U.S. anti-slavery and civil rights movements, most commonly invoked by climate activists. After considering the analogies, it explores whether these analogies are useful to and for the climate movement. In other words, activists and commentators argue that moral equivalency with slavery and civil rights is the logical base for drawing parallels. They also insist that the scales of injustice and shifts to the underlying political economy are comparable. Whether or not these parallels perceptibly advance the climate movement is unclear—and may remain so indefinitely. Accordingly, Part II attempts to demonstrate the limits of the comparisons.

In Part III, the article pivots to consider the ways in which the climate movement, to the extent clarified and manifested in NVCD, needs to examine its framing of environmental problems and solutions. This framing is critical to the movement's success, and in this respect the framing of other movements can provide important insight. The article first offers the profile and tactics of the EJ movement and considers its role in the lineage of the current climate movement. It then suggests that the climate movement has not cogently articulated a narrative that defines and advances the moral good of fighting climate change in a manner that is comprehensible and easily assimilated—to

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13. *See generally id.* (stating that the most important contribution of civil rights activists, from the 1930s through the 1960s, was to adapt their tactics to the shifting social and legal landscapes and to build faith in the potential for change despite numerous setbacks).

14. I use "climate activists" to describe those who engage in protest and, perhaps, NVCD as part of their advocacy for climate-related political outcomes. I use the term "climate advocates" elsewhere to describe those who engage in more mainstream modes of movement activity—for example, lobbying, press releases, and litigation.

its detriment. That is, ostensibly, the climate movement's greatest challenge.

## I. CLIMATE ACTIVISTS AND THE EMERGING SOCIAL MOVEMENT

Climate change has recently inspired a renewed kind of activism. More assertive tactics, including NVCD, have emerged as reasonable approaches given the severity of climate change,<sup>15</sup> the relative lethargy and obstructionism of Congress and the general public,<sup>16</sup> and the failure of more "polite" approaches to achieve viable and scientifically appropriate policies to address climate change.<sup>17</sup> As prominent environmentalist Bill McKibben asserts, a movement is emerging "[a]fter decades of scant organized response to climate change."<sup>18</sup> He explains, "[i]t has no great charismatic leader and no central organization; it battles on a thousand fronts. But taken together, it's now big enough to matter, and it's growing fast."<sup>19</sup>

This section explores the how and the why of that movement. It first identifies a few of the emerging tactics employed to date and then discusses the constellation of events and beliefs that inspired the evolving movement. It concludes with a brief distillation of the relevant research on social movements, which suggests that scholarly engagement with climate movement activism is important and necessary.

### A. *The How*

The climate movement has sought to resurrect the campaigns of prior movements. Eschewing more commonplace actions like lobbying and litigation, emerging leaders in the climate movement have taken a more activist approach across the board.<sup>20</sup> Using an all-of-the-above strategy, the more categorical appeals for scientifically

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15. James Kanter, *Climate Change, the Coal Business and Civil Disobedience*, N.Y. TIMES: GREEN (Nov. 17, 2008), <http://green.blogs.nytimes.com/2008/11/17/climate-change-the-coal-business-and-civil-disobedience/>.

16. Bill McKibben, *Is the Keystone XL Pipeline the "Stonewall" of the Climate Movement?*, TOMDISPATCH.COM (Apr. 7, 2013), <http://www.tomdispatch.com/blog/175684/> [hereinafter McKibben, *Keystone XL*].

17. Kanter, *supra* note 15 (noting that former Vice President Al Gore commented, "he couldn't understand why there aren't rings of young people blocking bulldozers and preventing them from constructing coal-fired power stations").

18. Bill McKibben, *The Fossil Fuel Resistance*, ROLLING STONE (Apr. 11, 2013), <http://www.rollingstone.com/politics/news/the-fossil-fuel-resistance-20130411?page=2>.

19. *Id.*

20. Doremus, *supra* note 5 ("Climate change protests have become more common and more aggressive.").

appropriate climate responses have included protest, arrest, and divestment.<sup>21</sup>

The divestment actions have received the most attention—and gained and lost significant ground—of late.<sup>22</sup> An in-depth analysis of divestment is beyond the scope of this article; however, this component effort is worth mentioning here. The Fossil Free action employs tactics similar to the anti-apartheid movement of the eighties—its calls for divestment are morally charged and defiantly insistent.<sup>23</sup> Fossil Free actions—and actual pledges to divest from coal, oil, or gas holdings—have proceeded with remarkable speed.<sup>24</sup> They have been fueled primarily by sit-ins on college campuses,<sup>25</sup> and have demonstrated a latent energy that has rapidly grown into a kinetic groundswell.<sup>26</sup> In particular, certain high-profile and carefully choreographed arrests have been noteworthy for their attraction of some mainstream attention.<sup>27</sup>

Other actions have also excited the public's imagination. Choosing an approach that favors incremental though powerfully symbolic victories for long-term ends, the activism around the Keystone XL and Dakota Access pipeline was the most robust to date.<sup>28</sup> Before and alongside the Keystone-related actions were ad hoc and far less coordinated acts of disobedience. They included demonstrators—celebrities and renowned climate scientist alike—blocking access to coal plants.<sup>29</sup> Tim DeChristopher's impulsive

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21. GARRELTS, *supra* note 1, at 347–50.

22. See generally *Divestment Commitments*, FOSSIL FREE, <http://gofossilfree.org/commitments/> (last visited September 28, 2016) (noting major divestment commitments from private and public sector entities).

23. Stephenson, *supra* note 7 (“Much of what appeals to these climate leaders, no doubt, is the bracing moral clarity and uncompromising urgency.”).

24. Naomi Klein, *Time for Big Green to Go Fossil Free*, THE NATION (May 1, 2013), <https://www.thenation.com/article/time-big-green-go-fossil-free/>.

25. Katie McChesney, *5 Ways to Take Your Campus Divestment Campaign to the Next Level*, FOSSIL FREE (Sept. 9, 2016), <http://gofossilfree.org/5-ways-to-take-your-campus-divestment-campaign-to-the-next-level/>; see also Christopher Hayes, *The New Abolitionism*, THE NATION (Apr. 21, 2014), at 18.

26. GARRELTS, *supra* note 1, at 351–54.

27. See Kari Huus, *U.S. takes hard line on Greenpeace*, NBC NEWS (Nov. 14, 2003), [http://www.nbcnews.com/id/3475218/ns/us\\_news-environment/t/us-takes-hard-line-greenpeace/](http://www.nbcnews.com/id/3475218/ns/us_news-environment/t/us-takes-hard-line-greenpeace/) (discussing the legality of Greenpeace's protest and appeal to President Bush on a ship suspected of transporting contraband mahogany from Brazil).

28. Hayes, *supra* note 25, at 18 (“The movement to stop the Keystone XL pipeline is probably the largest social movement in American history directed at stopping a piece of capital investment.”).

29. Associated Press, *Hansen and Hannah arrested in West Virginia mining protest*, THE GUARDIAN (June 24, 2009), <http://www.theguardian.com/environment/2009/jun/24/james-hansen>

bidding at an oil and gas lease auction<sup>30</sup> was a significant marker of a tacit desire to shift the narrative of the climate movement. Other individuals, such as Elizabeth Leja, employed more jarring methods. In February 2013, she locked her neck to equipment used to construct the Keystone XL pipeline.<sup>31</sup>

The Keystone XL pipeline itself became the poster child for climate action. Activists posited that the tar sands pipeline represented recklessly myopic decision-making that would advance the dirtiest form of fossil fuel extraction at a time in which all extraction must cease. The pipeline fight has produced significant waves—the largest act of civil disobedience in thirty years.<sup>32</sup> In the fall of 2011, more than 1,200 people were arrested at White House sit-ins as a part of daily peaceful protests.<sup>33</sup> Forty thousand people assembled on the national mall in 2013, representing the largest climate rally at that point in U.S. history.<sup>34</sup> More recently, upwards of 311,000 demonstrators took to the streets of New York City calling for sweeping changes to climate and energy policies during the People’s Climate March in September of 2014.<sup>35</sup> Calls for peaceful disobedience by figures such as Al Gore and Robert F. Kennedy, Jr. underscored the legitimization of these extra-legal actions.<sup>36</sup> Further, the Sierra Club ended a 120-year-old prohibition against civil disobedience to help chart a new course for

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-daryl-hannah-mining-protest. These kinds of actions are also occurring throughout the globe. *See* Lemons & Brown, *supra* note 5, at 9 (discussing the Kingsnorth protest in England); *see generally* GARRELT, *supra* note 1.

30. Doremus, *supra* note 5.

31. Stefanie Spear, *Breaking: Oklahoma Resident Locks Herself to Equipment to Protest Tar Sands Pipeline*, ECOWATCH (Feb. 4, 2013), <http://ecowatch.com/2013/02/04/oklahoma-protest-keystone-pipeline/>.

32. McKibben, *Keystone XL*, *supra* note 16.

33. Bill McKibben, *White House Tar Sands Sit-in Ends With Surge of Support*, HUFFINGTON POST: THE BLOG (Sept. 3, 2011), [http://www.huffingtonpost.com/bill-mckibben/white-house-tar-sands-sit-b\\_947965.html](http://www.huffingtonpost.com/bill-mckibben/white-house-tar-sands-sit-b_947965.html); *see also* Dan Margolis, *Hundreds arrested in pro-environment civil disobedience*, PEOPLE’S WORLD (Sept. 7, 2011), <http://peoplesworld.org/hundreds-arrested-in-pro-environment-civil-disobedience> (stating that 1,252 had been arrested and noting that the demonstration was the longest sustained NVCD action since the civil rights movement and the largest since 1977).

34. McKibben, *Keystone XL*, *supra* note 16; Steven Mufson, *Crowd marches to voice opposition to Keystone pipeline*, WASH. POST (Feb. 17, 2013), [https://www.washingtonpost.com/business/economy/crowd-marches-to-voice-opposition-to-keystone-pipeline/2013/02/17/a36be95e-7937-11e2-82e8-61a46c2cde3d\\_story.html](https://www.washingtonpost.com/business/economy/crowd-marches-to-voice-opposition-to-keystone-pipeline/2013/02/17/a36be95e-7937-11e2-82e8-61a46c2cde3d_story.html).

35. Lisa W. Foderaro, *Taking a Call for Climate Change to the Streets*, N.Y. TIMES, Sept. 22, 2014, at A1.

36. *See, e.g.*, Kanter, *supra* note 17; Kennedy, *supra* note 2 (urging concerned citizens to attend the Forward on Climate Rally in Washington, D.C.).



climate advocacy.<sup>37</sup> Even *New York Times* columnist Thomas Friedman encouraged activists to “go crazy” with civil disobedience.<sup>38</sup>

Those engaging in civil disobedience conceive of themselves as change agents working to introduce a new and just state of affairs,<sup>39</sup> a conception which has been echoed in their portrayals in the media. *The Guardian*, for example, created a gallery of “climate change abolitionists” and described them as “those engaging in an uphill battle to challenge the broken systems that threaten our survival.”<sup>40</sup> The publication made a now-familiar comparison between the campaign to abolish slavery and climate change activism and stated heroically, if a bit simplistically in its conclusion, “The campaign to abolish slavery has many parallels with the work of today’s climate change activists: it takes bravery and determination to try and make the world a better place.”<sup>41</sup> Similarly, then-Congressman (now-Senator) Ed Markey galvanized a capacity crowd at the Arlington Town Hall in 2013 by exclaiming that movements including the American Revolution, the women’s movement, and the anti-Vietnam War movement had started there, in the state of Massachusetts.<sup>42</sup> Further, and most importantly, Markey reminded the crowd that the preceding generations accepted their challenges.<sup>43</sup> James Hansen of Columbia University has also drawn an analogy between climate activism and the abolition of slavery. Hansen explained that when approaching an issue of such gravity, “you cannot compromise. You can’t say let’s reduce slavery, let’s find a compromise and reduce it 50 percent or reduce it 40 percent.”<sup>44</sup> As argued, the climate crisis is tantamount to the state of affairs that galvanized prior movements. The acts are immoral; the appropriate solutions are absolute.

Activism has emerged from the climate movement and it has successfully gained attention and, perhaps, palpable progress in the

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37. McKibben, *The Fossil Fuel Resistance*, *supra* note 18.

38. Thomas L. Friedman, Opinion, *No to Keystone. Yes to Crazy.*, N.Y. TIMES, Mar. 10, 2013, at SR11.

39. See Amenta et al., *supra* note 8, at 7 (“One key motivation for studying movements is that they effect political and social change.”).

40. Joe Romm, *The New Abolitionists: Global Warming is the Great Moral Crisis of Our Time*, CLIMATE PROGRESS (Feb. 27, 2013, 6:30 PM), <http://thinkprogress.org/climate/2013/02/27/1645971/the-new-abolitionists-global-warming-is-the-great-moral-crisis-of-our-time/>.

41. Andrew Winston, *The Climate Change Abolitionists*, THE GUARDIAN: SUSTAINABLE BUS. BLOG (Feb. 27, 2013), <http://www.theguardian.com/sustainable-business/blog/climate-change-abolitionists>.

42. Stephenson, *supra* note 7.

43. *Id.*

44. *Id.*

political discourse on climate.<sup>45</sup> Whether that movement is the 21st century abolitionist movement or the next Stonewall, as Bill McKibben evocatively suggests,<sup>46</sup> remains to be determined.

### B. *The Why*

In speed and scope, climate change has already and consistently outpaced our international and domestic efforts to address it.<sup>47</sup> Early attempts to mitigate and adapt to climate change through domestic policy do not match what the scientific community states regarding its impacts.<sup>48</sup> Observations and predictions from scientists, dire warnings from staid bodies such as the World Bank, and popular translations of the science behind global warming's "terrifying new math"<sup>49</sup> suggest aggressive mitigation and adaptation are quite reasonable.<sup>50</sup> Despite this information—known by governments for decades and evinced in contemporary, and likely climate-related catastrophes<sup>51</sup>—it appears impossible to implement even tepid measures domestically.

This mismatch between the speed and scope of the phenomenon, on the one hand, and the policy response, on the other, might explain the proliferation of more diverse tactics. John Lemons and Donald Brown's calls to consider NVCD serve as an example.<sup>52</sup> In their paper, "Global Climate Change and Non-violent Civil Disobedience," they convey an emerging justification of NVCD in response to climate change. They rely on the idea that those who wish to engage in NVCD are justified only if two conditions are present: (i) that a great injustice is occurring, and (ii) that there is "strong reason to believe that policies and laws and lawful recourse to changing them will not work."<sup>53</sup> For

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45. See Foderaro, *supra* note 35 (stating that concerns about environment drew people to a protest march in New York).

46. See McKibben, *Keystone XL*, *supra* note 16 (discussing comparisons of the climate movement to Stonewall and the abolitionist movement).

47. See McKibben, *The Fossil Fuel Resistance*, *supra* note 18 (stating that the Earth is warming fifty times faster than it ever has in human civilization).

48. See Bill McKibben, *Global Warming's Terrifying New Math*, ROLLING STONE (July 19, 2012), <http://www.rollingstone.com/politics/news/global-warmings-terrifying-new-math-20120719> (stating that country policies have not matched scientists' recommendations).

49. McKibben, *The Fossil Fuel Resistance*, *supra* note 18.

50. See McKibben, *Global Warming's Terrifying New Math*, *supra* note 48 (stating that the current global warming target would lead to negative consequences).

51. See, e.g., Keith Bradsher, *Struggle for Survival in Land Shattered by Typhoon*, N.Y. TIMES, Nov. 12, 2013, at A1; James Barron, *After the Devastation, a Daunting Recovery*, N.Y. TIMES, Oct. 31, 2012, at A1.

52. Lemons & Brown, *supra* note 5, at 9.

53. *Id.* They query, "[i]f over the past 30 years public policy makers in the USA have not taken meaningful action to mitigate global climate change in light of scientific findings and ethical

the former, the grave injustices that one might cite are legion. They include affronts to well-established principles of international law, such as prohibitions against transboundary harm.<sup>54</sup> They might also consist of challenges to basic notions of fairness and equity evidenced in, among other things: the disparate impact on the lowest emitters, here and abroad;<sup>55</sup> the negative development outcomes for countries in the Global South;<sup>56</sup> the greater vulnerability of women, the poor, of-color and indigenous communities in the face of climate disruption;<sup>57</sup> or the saddling of an astoundingly poor climate outcome for future generations.<sup>58</sup> The second condition is evidenced in the many elements of our law and policy landscape that thwart appropriate responses: from the failure to cease fossil fuel subsidies<sup>59</sup> to the unique difficulty of erecting a sound law and policy regime for mitigating and adapting to climate change in a scientifically appropriate manner.<sup>60</sup>

The policy tactics of the most prominent environmental groups have also involved a significant mismatch between the scale of both the scientific discourse and political dissension on climate change,<sup>61</sup> further justifying for some the need to shift tactics. In their report, “Too Polite Revolution,” Petra Bartosiewicz and Marissa Miley provide an in-depth analysis of the failed effort to pass a comprehensive climate bill.<sup>62</sup> Although, to some degree, it was a perfect political storm—replete with vehement opposition and competing policy priorities—the tactics of the most prominent environmental groups were, according to Bartosiewicz and Miley, a major contributor to that failure.<sup>63</sup> It was,

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analyses pointing to the urgent need to do so, is there anything that might induce them to act now?” *Id.* at 8.

54. *See id.* at 7 (stating that greenhouse gases are recognized as violations of human rights).

55. *See id.* (stating that richer developed countries cause most of the harm, but the effects are felt by some of the world’s poorest people).

56. Burkett, *Just Solutions*, *supra* note 1, at 193.

57. *See generally id.*

58. *See also* Lemons & Brown, *supra* note 5, at 9.

59. *See* Anna Yukhanano, *IMF says energy subsidized by \$5.3 trillion worldwide*, REUTERS (May 18, 2015), <http://www.reuters.com/article/2015/05/18/us-imf-energy-idUSKBN0031FC20150518>. Behind China, the United States provided the second-highest total in subsidies, at an estimated \$699 billion. *Id.*

60. *See* Lemons & Brown, *supra* note 5, at 6 (stating that despite scientific evidence, the U.S. government has failed to take steps to mitigate climate change).

61. *See generally* PETRA BARTOSIEWICZ & MARISSA MILEY, *THE TOO POLITE REVOLUTION: WHY THE RECENT CAMPAIGN TO PASS COMPREHENSIVE CLIMATE LEGISLATION IN THE UNITED STATES FAILED* (2013) (discussing environmental groups’ failure to help get bill passed).

62. *Id.* at 8.

63. *Id.* These groups included: Environmental Defense Fund, the Natural Resources

in sum, too polite—attempting to accommodate some of the most flagrant emitters of greenhouse gas emissions while promising minimal disruption to the greater political and economic status quo.

To pass any climate legislation, the larger environmental groups favored coalitions with industrial leaders, eschewing movement building with smaller grassroots groups.<sup>64</sup> The smaller groups, seemingly natural allies, demanded more ambitious mitigation, consistent with the needs of the stated climate science and the susceptibility of the most vulnerable to “dangerous anthropogenic interference with the climate system”.<sup>65</sup> The coalition-building with the fossil fuel and manufacturing industries and the crafting of a weak climate bill was, ostensibly, the “standard M.O.”<sup>66</sup> of the larger green groups, a tactic that has purportedly favored what is possible, under the extant political and economic constraints, over what is argued to be necessary to ensure a viable future within a more stable climate.<sup>67</sup>

The widening chasm between the larger, better-endowed environmental groups, known collectively as “Big Green,”<sup>68</sup> and the smaller grassroots groups has led to open demonstrations of public discord—including, notably, the outing of substantial investments held by many of the Big Green in the development and use of fossil fuels.<sup>69</sup> This deep frustration with Big Green’s M.O. is familiar. The environmental justice (EJ) movement<sup>70</sup> developed partly out of dissatisfaction with the ways in which the mainstream environmental groups defined the “environment” and to whom the political and economic structures owed a “good” environment.<sup>71</sup> The “environment,” from the environmental justice perspective, is not

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Defense Council, the National Wildlife Federation, Pew Center on Global Climate Change, World Resources Institute, the Nature Conservancy, the Sierra Club, League of Conservation Voters, and Alliance for Climate Protection. *Id.* I discuss the profile and policies of the big green groups in greater depth below, *infra* Part IV.

64. *Id.* at 9. These grassroots groups included 1Sky (a coalition grassroots organizations which, at its peak, consisted of 643 smaller grassroots groups) and Energy Action Coalition. *Id.* at 74–75.

65. This is the threshold laid out by the United Nations Framework Convention on Climate Change. U.N. Framework Convention on Climate Change, art. 2 (1991).

66. *Modus operandi.*

67. BARTOSIEWICZ & MILEY, *supra* note 61, at 72 (quoting climate policy advisor, Katherine Silverthorne).

68. *Id.*

69. Klein, *Time for Big Green to Go Fossil Free*, *supra* note 24, at 1–2.

70. See Burkett, *Just Solutions to Climate Change*, *supra* note 1, at 188; see also discussion *infra* Part III. C.

71. See, e.g., Burkett, *Just Solutions to Climate Change*, *supra* note 1, at 189.

remote or abstract. It is where we all live, work, and play. The environmental justice movement worked to realign notions of the environment and make the movement relevant to and for all races and classes, without being anthropocentric.

The tension between the EJ movement and the environmental elite, like that of other grassroots organizations, persists in the climate context.<sup>72</sup> In the imagery the mainstream groups employ,<sup>73</sup> charismatic megafauna (large animals with popular appeal) and remote places have defined climate change.<sup>74</sup> The poor, communities of color, and native communities that are literally crumbling under the current and projected climate impacts have not.<sup>75</sup> For these communities, the tactics employed vis-à-vis “environmental” burdens have historically differed from the mainstream approach.<sup>76</sup>

The absence of a space for grassroots groups in the climate lawmaking, from substance to strategic approach, set the stage for assertive bottom-up strategies to proliferate.<sup>77</sup> For grassroots groups, there is also a sense of possibility in the disruptive and stochastic nature of activism. In other words, there is a longstanding belief that a grassroots struggle can produce an outsized and unpredictable shift in the trajectory of the social and political landscape.<sup>78</sup> A handful of

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72. See, e.g., Ted Hamilton, *The Rebellion to Save Planet Earth: Why Civil Disobedience Could Be Our Last, Best Hope*, SALON (Sept. 7, 2014), [http://www.salon.com/2014/09/07/the\\_rebellion\\_to\\_save\\_planet\\_earth\\_why\\_civil\\_disobedience\\_could\\_be\\_our\\_last\\_best\\_hope/](http://www.salon.com/2014/09/07/the_rebellion_to_save_planet_earth_why_civil_disobedience_could_be_our_last_best_hope/) (explaining that “it’s really a people’s movement, not an environmental movement.”).

73. MAXINE BURKETT, CLIMATE JUSTICE, CLIMATE CHANGE DISCOURSE, AND THE FAILURE OF THE ELITE-DRIVEN DEMOCRACY: A THINK PIECE 12 (Seoul National University) (2010) (on file with author).

74. *Id.*

75. *Id.*

76. See, e.g., Kathleen Margareta Ryder, *Vieques’ Struggle for Freedom, Environmental Litigation, Civil Disobedience, and Political Marketing Proves Successful*, 12 PENN ST. ENVTL. L. REV. 419 (2004). For further discussion of the relevance of environmental justice to the current climate movement, see *infra* Part III.

77. See Felicity Barringer, *An Unclear Course on Emissions Policy*, N.Y. TIMES, May 29, 2011, at A14 (stating that environmental groups sued to stop California’s cap-and-trade system); Letter from Henry T. Perea et al., California Democrat Assembly Members, to Mary Nichols, Chair, California Air Resources Board (June 16, 2014) [hereinafter Perea Letter].

78. Indeed, there is evidence that even scientists are noting, and perhaps relying on, the disruptive potential of “direct action activism.” See Naomi Klein, *How science is telling us all to revolt*, NEW STATESMAN (Oct. 29, 2013), <http://www.newstatesman.com/2013/10/science-says-revolt> [hereinafter Klein, *How science is telling us all to revolt*] (describing one scientific model that provided hope through its exploration of “‘resistance’ – movements of ‘people or groups of people’ who ‘adopt a certain set of dynamics that does not fit within the capitalist culture.’”). Klein summarizes complex systems researcher Brad Werner’s presentation, entitled *Is Earth F\*\*ked? Dynamical Futility of Global Environmental Management and Possibilities for Sustainability via Direct Action Activism*. Werner describes the disruptive potential of

distinguished climate scientists, advocates, and activists now extol the potential of NVCD to change the nature of the game and its outcome. They appear fed-up with the “bodiless heads” of professionally staffed, national environmental organizations and their inability to mobilize the public successfully.<sup>79</sup> As one invitation to protest tar sands development read: “We don’t have the money to compete with those corporations, but we do have our bodies.”<sup>80</sup>

Finally, and fundamentally, injustice met with protest and civil disobedience is a celebrated element of conceptions of a healthy democracy.<sup>81</sup> This animates the contemporary climate movement. From Socrates to Henry David Thoreau to John Rawls, the belief that higher moral laws will conflict with those that societies craft, justifying civil disobedience, is enduring.<sup>82</sup> When that conflict renders a law itself unjust, the individual has, under relevant theories, an affirmative obligation to disobey it.<sup>83</sup> Under these theories, disobedience is not an intended threat to a healthy democracy. It is, instead, a legitimate component of it. Most prominently, the empire-breaking disobedience of Mohandas Gandhi and the transcendent movement led by Martin Luther King have advanced a sense of commitment to both the rightness of NVCD and its disproportionate strength in the face of much greater forces.<sup>84</sup> Commentators have emphasized the importance of NVCD in the defining moments of U.S. history—from the anti-slavery movement to women’s suffrage to civil rights.<sup>85</sup> The climate movement seeks to be a contemporary demonstration of resistance to an unjust state of affairs and, simultaneously, a definitive expression of citizenship.<sup>86</sup> The hopes are high within the climate

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“resistance,” which he posits includes, “environmental direct action, resistance taken from outside the dominant culture, as in protests, blockades and sabotage by indigenous peoples, workers, anarchists and other activist groups.” *Id.* This is, indeed, part of the “dynamics.”

79. BARTOSIEWICZ & MILEY, *supra* note 61, at 72.

80. Maude Barlow, Wendell Berry, Tom Goldtooth, Danny Glover, James Hansen, Wes Jackson, Naomi Klein, Bill McKibben, George Poitras, Gus Speth & David Suzuki, *Invitation to Washington D.C.*, NAOMI KLEIN (June 23, 2011), <http://www.naomiklein.org/articles/2011/06/invitation-washington-d-c>.

81. *See* Lemons & Brown, *supra* note 5, at 8 (discussing tradition of civil disobedience).

82. *Id.*

83. *Id.* *See generally* Matthew R. Hall, *Guilty but Civilly Disobedient: Reconciling Civil Disobedience and the Rule of Law*, 28 CARDOZO L. REV. 2083 (2007).

84. Lemons & Brown, *supra* note 5, at 8.

85. *Id.*

86. *See* Klein, *How science is telling us all to revolt*, *supra* note 78 (quoting glaciologist and fellow protestor, Jason Box, who stated “I couldn’t maintain my self-respect if I didn’t [attend the White House mass action against the Keystone pipeline] . . . just voting doesn’t seem to be enough in this case. I need to be a citizen also.”).

movement, with some amongst it seeking to usher in a just, zero-carbon future and to transform dramatically the global political economy.<sup>87</sup>

### C. *The Efficacy of Social Movements*

They've got the lobbyists. They've got the super-PACs.

They made the campaign contributions.

They've got this town in their pockets—they have got the situation under control.

And then you show up. And then we show up. And we change the game.

-Sen. Sheldon Whitehouse

at #ForwardOnClimate, Feb. 17, 2013.

While acknowledging the impact of charismatic leaders and their movement on the American story, it is just as crucial to understand whether direct action has worked to shift the political process. The proposition that it did is straightforward. Determining its validity is far more difficult. Researchers have studied the impact of direct action numerous times using innumerable methodologies.<sup>88</sup> The environmental movement alone has been the subject of many of these studies.<sup>89</sup> The most storied and studied movements —including the labor, feminist, and civil rights movements—may be influential in various ways.<sup>90</sup> Further, there is “conclusive evidence that the largest

87. Paul Gilding, *Victory at Hand for the Climate Movement?*, PAUL GILDING (Mar. 20, 2013), <http://paulgilding.com/2013/03/20/victoryathand/> (“If we read the current context correctly, and if the movement can adjust its strategy to capture the opportunity presented, it could usher in the fastest and most dramatic economic transformation in history.”); *see also* Klein, *How science is telling us all to revolt*, *supra* note 78.

88. *See* Amenta et al., *supra* note 8, at 288 (stating that social movements have drawn “extensive scholarly attention”).

89. *See id.* at 294 (stating the largest movements, including environmental, have had a disproportionate amount of scholarship).

90. Researchers have found these larger movements to be more influential. *Id.* at 294–95 (“In short, there is conclusive evidence from well-crafted studies that the largest movements have had political impacts on some issues of concern to them.”). There is serious debate over whether or not social movements have had any major political consequence, or whether one can expect them to have consequence consistently. *Id.* at 288. There is wide disagreement on this point, with some scholars holding that they are “generally effective and account for most important political change” and others argue the polar opposite. Social movements, they argue, are “rarely influential and overall not significantly so compared with other political actors, institutions, and processes.” *Id.* According to Amenta et al., “The extant research—mainly case studies of the largest movements—typically concludes that these movements are politically influential for the specific outcomes analyzed, but it does not settle the larger questions of whether movements are generally effective or how influential they are.” *Id.* *See also* Susan Olzak & Sarah A. Soule, *Cross-cutting Influences of Environmental Protest and Litigation*, 88 SOCIAL FORCES 201, 203 (noting that “despite the odds against them, social movements continue to mobilize and often attain their goals.”).

movements have had political impacts.”<sup>91</sup> Movement protests, however, yield particular influence in helping to set policy agendas.<sup>92</sup> Though the specific mechanisms and degree of influence is impossible to state conclusively,<sup>93</sup> researchers argue that scholars ignore movements at their own peril.<sup>94</sup> The same is arguably true for the legal academy, particularly at the advent of the emerging climate movement. This section looks at how the movement-policy-making mechanism worked historically and looks more closely at the social science findings regarding prior environmental campaigns.

The recent social science literature suggests some very clear roles for social movement activity. This activity has a direct effect on policy at the agenda-setting stage.<sup>95</sup> Empirical evidence reveals that protest “positively and significantly” influences political attention.<sup>96</sup> This is the least politically controversial stage of the policy process, hence politicians’ willingness to support discussion of more contentious positions.<sup>97</sup> The issue-oriented hearings that follow, though apparently symbolic, facilitate eventual success for relevant legislation.<sup>98</sup> Further, with respect to environmental legislation, protest and institutional influence, when employed concurrently, positively affect the passage of “pro-environmental” legislation.<sup>99</sup>

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91. Amenta et al., *supra* note 8, at 295.

92. *See id.* at 294 (“Recent high-profile articles also indicate that movements have been significantly influential.”); Olzak & Soule, *supra* note 90, at 204 (stating “the agenda-setting stage of the policy process when showing support for controversial policies is less consequential.”). Movement protests are relatively less impactful in the passage of discrete laws. *See* Amenta et al., *supra* note 8, at 294.

93. *See* Olzak & Soule, *supra* note 90, at 201 (asking “Do social movements matter to policy changes, and, if so, how?” and noting wildly divergent views). Olzak and Soule state that the divergent views all have merit though the empirical evidence on whether protest shapes policy remains mixed. *Id.*

94. *See* Amenta et al., *supra* note 8, at 295.

95. I borrow Johnson, Agnone, and McCarthy’s conceptualization of the federal policy-making process. Erik Johnson, Jon Agnone & John D. McCarthy, *Movement Organizations, Synergistic Tactics and Environmental Public Policy*, 88 SOCIAL FORCES 2267, 2268 (2010). They identify at least four important stages: (i) agenda setting, (ii) content specifying, (iii) legislation passage, and (iv) policy implementation. *Id.* Social movement activity will only affect legislation indirectly through its influence on agenda setting. *See also* Olzak & Soule, *supra* note 90, at 203.

96. Olzak & Soule, *supra* note 90, at 214 (citing Brayden King, Keith Gunnar Bentele & Sarah A. Soule, *Congressional Agenda Setting and Fluctuating Attention to Civil and Political Rights, 1960–1987*, 86 SOCIAL FORCES 137–63 (2007)). Olzak and Soule note, interestingly, that at more consequential stages of the political process, protest may instigate backlash, inhibiting movement success. *Id.*

97. Johnson et al., *supra* note 95, at 2269.

98. Olzak & Soule, *supra* note 90, at 204.

99. Johnson et al., *supra* note 95, at 2282.



Research on prior social movements addressing environmental concerns confirms the efficacy of the movement, though the effect of direct action in isolation is less clear. Some researchers have found that “no single tactical repertoire” appears to affect legislative policy.<sup>100</sup> Tactical diversity is optimal.<sup>101</sup> Others have found that institutionalized forms of influence, such as press releases and lawsuits,<sup>102</sup> have had “a powerful effect” on the policy process at the initial stages.<sup>103</sup> Early influence can have indirect impact in later stages, including the passage of legislation.<sup>104</sup> Most interesting for this discussion is research finding greater success from “non-confrontational” types of mobilizing in the environmental movement.<sup>105</sup> Protest, however, has been less central than it has been in other movements.<sup>106</sup> The low rates of protest, relative to the labor and civil rights movement, in fact, has contributed to the “popular characterization” of the national environmental groups as “prototypical professional” organizations.<sup>107</sup>

Critical to this discussion, however, the climate movement does not purport to be an environmental one. It aspires to be much more than an attempt to legislate to correct a discrete environmental harm. It seeks to correct a deeper harm that disparately dismantles livelihoods as a result of a changing climate, and to introduce a different kind of political economy that, at the very least, abandons the use of fossil fuels as a driver of our economy.<sup>108</sup> In that sense, social scientists Amenta et al. are correct in encouraging a distinct manner of

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100. *Id.* at 2281.

101. *Id.* at 2284 (“We find evidence that the environmental movement influences law passage in both high rates of institutional influence and protest activity, as predicted by the organizational infrastructure model.”). This was the case for the civil rights movement. *See* discussion *infra* Part II.

102. Olzak & Soule, *supra* note 90, at 205–06 (comparing institutional protest to “extra-institutional” or “disruptive” protests, and noting that extra-institutional protests occur twice as often as institutional protests).

103. *Id.* at 219. *See also* Johnson et al., *supra* note 95, at 2279 (explaining that “[t]he environmental movement does not increase its ability to set the Congressional environmental agenda when simultaneously engaging in protest and institutional influence activity.”). With caveats, Olzak and Soule infer that Congressional hearings matter more to policy outcomes than does protest. Olzak & Soule, *supra* note 90, at 218.

104. *See* Olzak & Soule, *supra* note 90, at 219 (explaining if institutional forms of protests are successful during early stages of protests, then “support for movement goals can be mobilized in the halls of Congress at later stages.”).

105. *Id.*

106. Johnson et al., *supra* note 95, at 2275. Protest has still been important; concerns about activism “pushed along the Clean Air debate.” *Id.*

107. *Id.*

108. *See generally* Stephenson, *supra* note 7 (paralleling the climate change movement with historic social movements).

assessing—and even conceiving and executing—a given movement. They suggest, “instead of theorizing about their cases as if they were typical—expecting that broad explanatory claims and findings should apply to all movements—scholars should think more about what sort of case their case is and make relevant comparisons with findings regarding other movements.”<sup>109</sup> To the extent that the climate movement is not strictly an environmental movement, movements concerning injustice, systemic failures, and transformative political and economic change are, arguably, relevant.

## II. TESTING THE ANALOGIES

The climate movement invokes two compelling analogous social movements: abolition of slavery and US civil rights. Drawing comparisons between a current movement and defining movements of the past can give instantaneous moral weight to a movement’s cause.<sup>110</sup> It is an acknowledgement of the enormity of the task given the stagnancy of the extant social, political, and economic milieu vis-à-vis the movement’s stated injustice.<sup>111</sup> If persuasive, therefore, the analogies to the abolitionist and civil rights movements legitimize the dire climate warnings and render odious the attendant injustices suffered by the most vulnerable—present and future. It would also justify the calls for ambitious mitigation and adaptation. Most of the embrace and justification of protest and NVCD tactics appears to happen in hindsight.<sup>112</sup> It does, however, put the contemporary listener on notice while the movement builds its narrative and weaves its way into the greater social fabric. This section looks closely at the anti-slavery and civil rights movements to explore purported similarities with the emerging climate movement.

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109. Amenta et al., *supra* note 8, at 302 (citations omitted).

110. See generally Lemons & Brown, *supra* note 5 (comparing the lessons that can be learned from looking at the moral assumptions of slavery and the baseline assumptions people have toward fossil fuels today; Craig Segall, *Darkness Visible: Global Warming and British Anti-Slavery*, 36 ENVTL. L. REP. 10845 (Nov. 2006)).

111. See Hayes, *supra* note 25, at 14–15 (explaining in the big picture that it is easy to lose sight of how radical abolitionists were at the time “that some of the wealthiest people in the country would have to give up their wealth. That liquidation of private wealth is the only precedent for what today’s climate justice movement is rightly demanding . . . . It is an audacious demand, and those making it should be clear-eyed about just what they are asking.”); Stephenson, *supra* note 7 (similarly a quote by Tim DeChristopher “At this point of unimaginable threats on the horizon, this is what hope looks like . . . . With countless lives on the line, this is what love looks like, and it will only grow. The choice you are making today is what side are you on.”) (quoting Tim DeChristopher).

112. See generally Lemons & Brown, *supra* note 5.

A. *The Abolition of Slavery as an Allegory for Energy, Economy, and Human Suffering*

Commentators and activists have frequently invoked the anti-slavery movement to describe the enormity of the climate challenge.<sup>113</sup> They argue that a massive cultural and moral shift must take place in a global economy that uniquely relies on and profits from the status quo.<sup>114</sup> More than any other movement in American history, the underlying conditions seem similar: like slavery, fossil fuels have been regarded by their proponents as fundamental to provide energy and drive production.<sup>115</sup> Burning fossil fuels, they note, will never be morally tantamount to the enslavement of millions of human beings.<sup>116</sup> Importantly, though, those fuels supplanted the institution of slavery as the fulcrum of American economic productivity.<sup>117</sup>

As slavery has been abolished for more than a century and a half in the United States, it is easy to forget that the institution was inextricably interwoven into the global economy and was a sizeable portion of American wealth.<sup>118</sup> By 1860, slaves constituted 16% of all of the wealth of the United States, which, adjusted to today totals \$10 trillion.<sup>119</sup> They represented half of the South's total wealth.<sup>120</sup> As property, slaves "were worth more than all the banks, factories and railroads in the country put together."<sup>121</sup> From a temporal distance, it is easy to underestimate the seismic economic disruption abolition represented in its time. This is, however, one of the foundational reasons many analogize abolition efforts with contemporary climate

113. See Lemons & Brown, *supra* note 5, at 9 (drawing the analogy and asking to what extent it is appropriate); Segall, *supra* note 110, at 10845 (encouraging environmentalist to study "the last major social movement aimed at making the basic economic underpinnings of a society morally visible: British anti-slavery" and arguing that is worth studying because "it created a new way of viewing and ordering the world.").

114. As zealous as many commentators have been in drawing the analogy, many have also been very careful not to overstate and thereby diminish the gravity of American slavery. See Hayes, *supra* note 25, at 14; Stephenson, *supra* note 7.

115. See Segall, *supra* note 110, at 10852 (stating how current dependence on fossil fuels means "our society cannot wean itself from carbon without significant international effort and technological innovation.").

116. Hayes, *supra* note 25, at 14.

117. *Id.* at 11.

118. See generally Segall, *supra* note 110 (detailing the structural similarities between Britain in the late 1800s and early 1900s and the United States today—the former relying on the slave trade, the latter on fossil fuels).

119. Hayes, *supra* note 25, at 2–3.

120. *Id.* at 3.

121. *Id.* (quoting Eric Foner). Foner then offers a provocative thought: "Think what would happen if you liquidated the banks, factories and railroads with no compensation." *Id.*

activism. Critics argued abolition would completely corrode the economy and the American way of life.<sup>122</sup> This notion of collapse animates discussions of climate change today as well.<sup>123</sup>

The complete banality of the slave and fossil fuel economies for the vast majority of their contemporaries is also notably similar. The belief that enslavement was morally wrong was far from universally accepted.<sup>124</sup> The reverse was true in some cases. Anti-abolitionists were labeled crackpots in London<sup>125</sup> or members of an abrasive fringe in the United States.<sup>126</sup> Slavery's contemporaries did not widely hold equality or rights to life, liberty, and the pursuit of happiness as universal, despite declarations that they were self-evident truths.<sup>127</sup> Slavery constituted the natural order of society, biblically justified for many.<sup>128</sup> Historian Eric Foner suggests that at the time of the Revolution and the Constitution, many were also simply resigned to the institution rather than rabidly in support of it.<sup>129</sup> Nonetheless, though slavery's opponents seem reasonable today, at the time the public deemed them wildly radical, if not contemptible.<sup>130</sup> Their efforts to end the immorality of slavery, if persuasive, would effect a massive privation of wealth,<sup>131</sup> and for that reason the most powerful actively resisted.

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122. Andrew Hoffman, *Climate change as a cultural and behavioral issue: Addressing barriers and implementing solutions*, 39 ORGANIZATIONAL DYNAMICS 295, 296 (2010).

123. *See id.* (“Calls to end our dependence on fossil fuels are being met with the same kind of response as did calls to end our dependence on slavery.”).

124. *See* Marc D. Davidson, *Parallels in reactionary argumentation in the US congressional debates on the abolition of slavery and the Kyoto Protocol*, 86 CLIMATIC CHANGE 67, 72 (2008) (explaining it was argued in public discourse at the time that “slaves would be better off and socially securer than free people in Africa or the poor in the Northern States of the US.”). Hoffman, *supra* note 122, at 296 (stating “few people saw a moral problem” with a critical institution like slavery).

125. Hoffman, *supra* note 122, at 296.

126. *See* JEFFREY B. RUTENBECK, PARTISAN PRESS COVERAGE OF ANTI-ABOLITIONIST VIOLENCE: A CASE STUDY OF STATUS QUO JOURNALISM 1, 11 (1987) (naming the anti-slavery movement “abolitionist fanaticism”).

127. Hoffman, *supra* note 122, at 296; Davidson, *supra* note 124, at 67 (“Despite these ‘self-evident truths,’ slavery was upheld in many states and rationalised in congressional debates for almost another century before it was formally abolished by the US Congress in 1865.”).

128. Hoffman, *supra* note 122, at 14.

129. Hayes, *supra* note 25, at 14.

130. HENRY DAVID THOREAU, CIVIL DISOBEDIENCE 14 (Walter Harding ed., 1967) (1849). The abolitionists themselves were not a monolith and were split into two groups: those led by William Lloyd Garrison, who were activists relying on mass action, and those led by Nathaniel P. Rogers, who believed the only answer was “the reformation of mankind.” *Id.*

131. Hayes, *supra* note 25, at 13.

The economy and the American way of life have also been key rhetorical roadblocks for advancing climate-appropriate law and policy, with powerful players resisting policies to decouple carbon-intensive energy from the economy.<sup>132</sup> Other important similarities between the climate movement and the abolition movement pertain. There exists a significant externalization of the costs of each—freedom in the context of slavery and, in the climate context, climate-related drought and sea-level rise experienced by the most vulnerable.<sup>133</sup> Some have argued that the sheer magnitude of what is at stake in the climate movement, in both human and economic terms, is on its own notable.<sup>134</sup> By all estimates, investors will never realize trillions of dollars of fossil fuel-based wealth if our society effectuates scientifically appropriate mitigation of and adaptation to climate change.<sup>135</sup> On this point, there is no precedent other than slavery. Further, at this moment in time, advocates of legal or political responses to abate climate change, as it was to abolish slavery, suffer from the dearth of persuasive and viable legal arguments to advance the cause in the courts.<sup>136</sup>

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132. For an explicit comparison between the abolition of slavery and the global climate negotiations, including rationalization of ongoing slavery with rationalizations of ongoing greenhouse gas emissions in U.S. congressional debates on the Kyoto Protocol, see Davidson, *supra* note 124, at 67. See also Hoffman, *supra* note 122, at 296; Albert C. Lin, *Evangelizing Climate Change*, 17 N.Y.U. ENVTL. L.J. 1135, 1169–71 (2009) (citing the importance to the economy and everyday life, the externalization of costs, and the presence of formidable vested interests that benefit from the status quo).

133. See Maxine Burkett, *Climate Reparations*, 10 MELB. J. INT'L L. 509 (2009) [hereinafter Burkett, *Climate Reparations*].

134. Stephenson, *supra* note 7; Davidson, *supra* note 124, at 67 (“Today, the United States is as dependent on fossil fuels for its patterns of consumption and production as its South was on slavery in the mid-nineteenth century.”).

135. See McKibben, *Global Warming's Terrifying New Math*, *supra* note 48; CARBON TRACKER INITIATIVE, UNBURNABLE CARBON 2013: WASTED CAPITAL AND STRANDED ASSETS 4 (2013), <http://www.carbontracker.org/wp-content/uploads/2014/09/Unburnable-Carbon-2-Web-Version.pdf>; IPCC, CLIMATE CHANGE 2013 THE PHYSICAL SCIENCE BASIS WORKING GROUP I CONTRIBUTION TO THE FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE SUMMARY FOR POLICYMAKERS (2013); see also Hayes, *supra* note 25, at 13. According to one estimate, the “unexcavated carbon” is worth roughly \$20 trillion. *Id.*

136. See Segall, *supra* note 110, at 10860 (writing in 2006 that “[t]he movement stands, then, about where Granville Sharp stood during the interminable pre-Somerset cases: the legal arguments are in place but the courts are not.”). The carbon tort has not been successful thus far. See *Am. Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527 (2011) (ruling that the public nuisance theory under tort law was not a suitable means for addressing climate change.); *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012) (case was dismissed on the grounds that regulating greenhouse emissions was a political rather than a legal issue, and thus needed to be resolved by Congress or the Administration rather than the courts.); Maxine Burkett, *Litigating Climate Change Adaptation: Theory, Practice, and Corrective (Climate) Justice*, 42 ENVTL. L. REP. NEWS & ANALYSIS 11144 (2012) [hereinafter Burkett, *Litigating Climate Change Adaptation*] (arguing for the possibility of expanded tort law regarding the area of climate

Climate activists who seek aggressive policy and economic responses still occupy the fringe for critics of the emerging climate movement.<sup>137</sup> Critics may well employ words such as “unreason, impatience, implacability,” all used to describe abolitionism, to deride the climate movement today.<sup>138</sup> They might point to the purported uncertainty around proposed policy, the economic ruin that would follow, the ineffective and unfair product of acting alone on a worldwide affliction, all of which—and more—formidable critics used to combat abolitionism.<sup>139</sup>

The deep moral implications of climate change that drive this impatience are also most often compared to slavery.<sup>140</sup> Those drawing the comparisons argue multiple points. Some note the explicit relevance of human rights and social, economic, and racial justice implicated by slavery and climate change—particularly the latter’s disparate impact on the most vulnerable.<sup>141</sup> Others note the surfacing “spiritual underpinnings” of the activists and leaders in the climate movement—contemporary counterparts for Quakers and early Evangelicals during slavery—that advance the moral dimension.<sup>142</sup>

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change); Maxine Burkett, *Climate Justice and the Elusive Climate Tort*, 121 YALE L.J. ONLINE 115 (2011) (arguing the common law nuisance claims rejected by The Supreme Court can be used to achieve corrective justice for the vulnerable climate).

137. See e.g., Matthew Nisbett, “The McKibben Doctrine: How Green Politics Undermine Climate Action,” *The Breakthrough*, <http://thebreakthrough.org/index.php/voices/the-public-square/the-mckibben-doctrine> (last visited Jan. 15, 2017).

138. Stephenson, *supra* note 7 (describing American Studies scholar Andrew Delbanco’s analysis of abolitionism and stating, “[h]e reminds us that, far from being admired as the morally fearless heroes we remember them as today, they were derided and reviled by their contemporaries. The word “abolitionism” was most often used as “a slander meant to convey what many Americans considered its essential qualities: unreason, impatience, implacability.”).

139. See Davidson, *supra* note 124, at 72–79 (explaining how six arguments cited in the US Congress against the abolition of slavery and its suspect rhetoric runs parallel to those arguments being made against the ratification of the Kyoto Protocol).

140. Lin, *supra* note 132, at 1169–70.

141. Stephenson, *supra* note 7. See also Burkett, *Climate Reparations*, *supra* note 133, at 514 (defining “climate vulnerable,” and making the case for claims against the highest emitters); Maxine Burkett, *Legal Rights and Remedies*, in *THE LAW OF ADAPTATION TO CLIMATE CHANGE* (Michael Gerrard & Katrina Kuh eds., 2012).

142. Stephenson, *supra* note 7. The spiritual underpinnings are becoming more overt as the Catholic Church increasingly weighs in on and advocates for more aggressive climate action. See Encyclical Letter by Pope Francis, *LAUDATO SI’* (May 24, 2015), [http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco\\_20150524\\_encyclica-laudato-si\\_en.pdf](http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_encyclica-laudato-si_en.pdf); Anthony Faiola, Michelle Boorstein & Chris Mooney, *Release of encyclical reveals pope’s deep dive into climate science*, WASH. POST (June 18, 2015), [http://www.washingtonpost.com/local/how-pope-franciss-not-yet-official-document-on-climate-change-is-already-stirring-controversy/2015/06/17/ef4d46be-14fe-11e5-9518-f9e0a8959f32\\_story.html](http://www.washingtonpost.com/local/how-pope-franciss-not-yet-official-document-on-climate-change-is-already-stirring-controversy/2015/06/17/ef4d46be-14fe-11e5-9518-f9e0a8959f32_story.html). It is important to note, though, that the religious community’s lack of engagement has been a notable difference,

Most, however, maintain that climate change poses the same challenge to society that slavery posed, forcing it to confront the moral costs of the underlying economic structure.<sup>143</sup> In this regard, this is a challenge to “our society’s moral worth,” they argue.<sup>144</sup> Craig Segall asserts that moral obligations should galvanize society to act.<sup>145</sup> This would require the shifting of multiple paradigms, including a moral shift, one in which a sense of personal responsibility begets a sense of national responsibility, which in unison initiates change.<sup>146</sup> In this vein, some commentators have noted the “audacious demand” vis-à-vis the current political economy and argue that those making such demands remain “clear-eyed” about the change they seek and the true value of their disruptive tactics.<sup>147</sup> Indeed, this was ostensibly indispensable for toppling slavery.

### *B. The Civil Rights Movement and Human Dignity*

In the way that the magnitude of abolition’s practical and moral implications might parallel contemporary calls for decarbonization and restructuring of our economy, the politics of the civil rights sit-ins appear analogous to those surrounding the tactical shift in climate advocacy. The multi-decade African American struggle for civil rights was waged on many fronts, all of which might be instructive for the emerging climate movement.<sup>148</sup> For the current discussion, however, the sit-ins in which African American protesters occupied spaces such as restaurants from which they were prohibited appear most relevant. These were the most public demonstrations of dissent from the social and legal order that sanctioned, and actively ensured, the subjugation of African Americans.<sup>149</sup> Unlike the heavy reliance on court-related outcomes that inaugurated the early civil rights movement, the sit-ins were a significant part of the profile and personality of the civil rights movement.<sup>150</sup> And, unlike other protests, the sit-ins that began in

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and a significant handicap for the climate movement. See discussion Part III, *infra*.

143. Lin, *supra* note 132, at 1169–70.

144. Segall, *supra* note 110, at 10851.

145. *Id.*

146. *Id.*

147. Hayes, *supra* note 25, at 17; Segall, *supra* note 110, at 10851.

148. See, e.g., MICHAEL GELOBTER ET AL., THE SOUL OF ENVIRONMENTALISM: REDISCOVERING TRANSFORMATIONAL POLITICS IN THE 21<sup>ST</sup> CENTURY, REDEFINING PROGRESS 21.

149. *Id.*

150. Christopher W. Schmidt, *Divided By Law: The Sit-Ins and the Role of the Courts in the Civil Rights Movement*, 33 LAW & HIST. REV. 93, 99 (2015) [hereinafter Schmidt, *Divided By Law*] (“The sit-ins marked a new phase of the Civil Rights movement, one in which mass

Greensboro, North Carolina ignited “a full-fledged protest movement.”<sup>151</sup> Historians and the popular media credit the small but courageously defiant acts of the four young men in Greensboro for transforming segregation practices and reshaping and reinvigorating the struggle for racial equality.<sup>152</sup>

The sit-ins, now understood as cornerstones of the movement, were not always viewed in a positive light. Critics, including those within the civil rights movement, considered them impulsive and unwise. There was a rift, largely generational,<sup>153</sup> between those who believed the courts were the soundest avenue for recourse and transformation and those who grew frustrated by the limited and anemic results that followed from landmark cases such as *Brown v. Board of Education*.<sup>154</sup> Frustration at *Brown*’s failure to meet youth expectations for change resulted in the students’ rejecting litigation-based strategies wholesale. The students’ antagonism toward litigation extended to the leadership and lawyers of the NAACP, whom they deemed as “out of touch”<sup>155</sup> and “too slow for the demands of our time.”<sup>156</sup> Conversely, lawyers for the NAACP Legal Defense Fund (LDF) “saw courtroom fights over the meaning of the Constitution as a battleground where they had won before and where they could win again.”<sup>157</sup> Changing the law was not, however, the sole purpose of the protests from the students’ perspective. A shift in the law may have been a fortuitous byproduct, but only one among others.<sup>158</sup> Indeed, a central goal of the lunch counter sit-ins of 1960 was to redefine and renew the “very idea of ‘civil rights.’”<sup>159</sup> It was decidedly meant to

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participatory direct-action protest would become the leading edge of the movement’s demand for social and political change.”).

151. *Id.*

152. *Id.* (“Greensboro had set in motion an escalating series of events that would move a nation.”).

153. *Id.* at 114 (explaining that “[t]he sit-in tactic captured the students’ sense of frustration with their parents’ generation and their approach to civil rights.”).

154. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *see generally* Schmidt, *Divided By Law*, *supra* note 150.

155. Of course, like any organization, and the movement itself, there were diverse opinions and approaches in the NAACP. As Christopher Schmidt explains, “The NAACP was never monolithic. Considerable intra-organizational variation could be found on a number of levels: national office versus local branches; southern versus northern; rural versus urban; leaders versus rank-and-file members.” Schmidt, *Divided By Law*, *supra* note 150, at 118 n.98.

156. *Id.* at 113.

157. *Id.* at 147–48.

158. *Id.* at 112.

159. *Id.* at 93. Schmidt argues that the lunch counter sit-in movement was a contest over the role of the courts in realizing civil rights, as much as it was about dismantling the discriminatory



eschew court-based reform and highlight the rights of sentient and worthy citizens, as it was increasingly evident that formal channels of lawmaking did not effectively shine a light on the “central moral problem” or usher in enduring social change.<sup>160</sup> Ultimately, “[t]he demonstrations at the lunch counters were inspired by the desire to make known, in peaceable fashion, the fact that we are suffering a moral wrong.”<sup>161</sup> In time, the sit-in protests transformed both the movement itself—from agenda to tactics—and the larger milieu of the segregated South.<sup>162</sup>

The legal history of sit-ins directs attention to the legal consciousness of grassroots, non-elite actors. Further, it requires focusing on the means by which legal claims and ideas move from the bottom to the top and vice versa. The struggles between Big Green and the emerging grassroots climate movement strikingly mirror NAACP Legal Defense Fund and student dissension. Many viewed the NAACP as elitist and overly cautious with their use of formal legal avenues, such as litigation and lobbying, as primary tools for change. The larger institution and the grassroots activists were able, however, to coalesce enough to make ostensibly transformative advances.

### C. *Looking Deeply at the Differences and the Dangers of Moral Misappropriation*

The climate movement is increasingly aware of the need to inject moral urgency into its appeals for rapid and decisive climate policy responses.<sup>163</sup> Simply stating, however, that climate change is the moral crisis of our time will not suffice. But its rhetorical value is clear—it lends urgency to the climate crisis that is not yet widely shared. The push to end slavery in the 19th century justified, at least in hindsight, a “resolute and radical” movement to end it.<sup>164</sup> But whether society will accept climate change as a moral crisis remains an open question.

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practices of public accommodations. *Id.*

160. *Id.* at 135–36 (quoting Ralph McGill, editor of the *Atlanta Constitution*, who wrote: “The sit-ins were, without question, productive of the most change. No argument in a court of law could have dramatized the immorality and irrationality of such a custom as did the sit-ins. . . . Not even the Supreme Court decision on the schools in 1954 had done this. . . . The central moral problem was enlarged.”).

161. *Id.* at 117.

162. *See id.* at 100–02 (racial discrimination in privately owned public accommodations was far from the top of the civil rights agenda. The sit-ins changed this.”).

163. Burkett, *Just Solutions to Climate Change*, *supra* note 1, at 200 (“The urgency of the [climate] crisis requires prompt and substantive action. We now have . . . a moral obligation to implement climate solutions.”).

164. *See, e.g.*, Stephenson, *supra* note 7.

The rights and wellbeing of individuals, the preservation of human dignity, and the fair and equal access to better livelihood, among other things, animated prior movements. Similar to these movements, climate justice (CJ), as conceived by the academy, seeks to reach more equitable outcomes by limiting the excesses of some to reduce the burdens on others.<sup>165</sup> This reorientation toward who is suffering first and worst is emerging in the new climate movement. Public intellectuals, such as Naomi Klein, have advanced alternative theories to support the moral urgency of climate change through discussion of the Black Lives Matter movement.<sup>166</sup> Klein asks, “[w]hat does #BlackLivesMatter, and the unshakable moral principle that it represents, have to do with climate change? Everything.”<sup>167</sup> She then proceeds in an informal manner and explains what might have transpired if Hurricane Katrina, flooding in Bangladesh, or the devastation of Hurricane Haiyan in the Philippines had transpired in wealthier neighborhoods in the U.S., Australia, or Canada.<sup>168</sup> Perhaps if the distance between the greatest emitters and the greatest climate impacts was far smaller, then advancing tar sands pipelines, for example, might not be a “centerpiece” of foreign policy.<sup>169</sup>

What the climate movement seeks dwarfs discrete policy decisions. It seeks moral reform and attempts to transform rather than forward a single policy position. In terms of the enormity of the task at hand, abolition and African American civil rights might well be helpful analogues. In light of the disparate impacts meted out, the poor climate prognosis, and the concentration of those who benefit coupled with the ubiquity of the fossil fuel infrastructure, the climb for the climate movement is similarly quite steep. Further, there have been significant setbacks. This was also the case for the abolitionist movement, which witnessed a deepening commitment to slavery as it expanded after roughly 30 years of antislavery activism.<sup>170</sup> Similarly,

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165. It has long been a core part of the environmental justice movement as well. For further discussion of the environmental justice movement as a forerunner to climate justice, *see* discussion *infra* Part III; *see also* Burkett, *Just Solutions to Climate Change*, *supra* note 1, at 194; Burkett, *Climate Reparations*, *supra* note 133, at 539.

166. Naomi Klein, *Why #BlackLivesMatter Should Transform the Climate Debate*, THE NATION (Dec. 12, 2014), [http://www.thenation.com/article/what-does-blacklivesmatter-have-to-climate-change/](http://www.thenation.com/article/what-does-blacklivesmatter-have-to-do-climate-change/) [hereinafter Klein, *Why #BlackLivesMatter Should Transform the Climate Debate*].

167. *Id.*

168. *Id.*

169. *Id.*

170. *See* Bill Bigelow, *What Climate Activists Can Learn From the Abolitionist Movement*, GOOD MAGAZINE (Apr. 22, 2013), <http://magazine.good.is/articles/what-climate-activists-can-lea>

the early civil rights movement saw a more egregious advance for segregationists after decades of work and decisions such as *Brown*. Each movement had steep climbs. One triggered the Civil War.<sup>171</sup> And, the multi-decade tenacity of civil rights activists is noted and notably daunting.<sup>172</sup>

While to some degree appropriate, the analogy between the climate movement and the abolition and civil rights movements also falls short in many ways. There is no direct equivalent in climate change to mass enslavement, centuries of forced labor, and horrors such as lynching.

The analogy also stumbles in another important respect: the specifics of intentional racism contrast with the amorphous nature of climate change's disparate impacts. Rawls suggests that to justify civil disobedience, the activist must appeal to a common conception of justice.<sup>173</sup> This appears elusive for the climate movement, as it has not yet effectively articulated the affront to common conceptions of justice, even though arguments to that effect can be persuasively made. The leaps in understanding required, however, are formidable. Further, the appropriation of prior movements might inspire its own, perhaps justifiable, backlash.<sup>174</sup>

Although there are many parallels to the moral appeals of past movements, garnering a general acceptance of the immorality of climate change is no simple task.<sup>175</sup> If the majority can accept it as an affront to a common conception of justice, then, like its movement predecessors, the climate movement might advance in its goal for deeper moral reform.<sup>176</sup> It might be, then, that seven generations hence

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rn-from-the-abolitionist-movement.

171. See Hayes, *supra* note 25, at 13 (explaining that the “last time in American history that some powerful set of interests relinquished its claim on \$10 trillion of wealth was in 1865—and then only after four years and more than 600,000 lives lost in the bloodiest, most horrific war we’ve ever fought.”).

172. Bill Bigelow, *supra* note 170.

173. John Rawls, *Justification of Civil Disobedience* (1969), in *COLLECTED PAPERS* 181 (Samuel Richard Freeman, ed., Harv. Univ. Press 1999).

174. See, e.g., Angela P. Harris, *Race and Feminism in Feminist Legal Theory*, 42 *STAN. L. REV.* 582 (1990).

175. See Stephenson, *supra* note 7, at 5 (“The parallels [between the abolitionist movement and climate change movement] are irresistible: there’s the sheer magnitude of what’s at stake . . . the explicit emphasis on human rights and social justice . . . even the spiritual underpinnings of both movements.”).

176. See, e.g., *id.* at 4–5 (“It should go without saying that fossil fuels and their effects on the atmosphere cannot simply be abolished at the stroke of a pen. There will be no Emancipation Proclamation or Act of Parliament freeing us from fossil fuels; no constitutional amendment abolishing climate change.”). Complicating that leap, it remains unclear whether the repeal or

Americans will look back on this period of intense fossil fuel usage with the “same incomprehension” with which we now regard the enslavement of African Americans.<sup>177</sup>

There is evidence that the climate movement’s more assertive acts, those that model passionate advocacy have provided early evidence of its efficacy and significance.<sup>178</sup> The prognosis regarding its success remains elusive, however, and likely will for some time. It has significant hurdles to overcome, even if it can draw legitimacy from abolition and civil rights. Most notably, there is a possible mismatch between the climate movement’s aspirations and current behavioral and value inclinations of the United States.<sup>179</sup>

### III. AMERICAN VALUES AND THE VALUE OF FRAMING

I don’t think people are clear-eyed about any of this...

There is romanticism on the far left, too, that all you have to have is some demonstrations, the Occupy Wall Street fantasy.

Theda Skocpol<sup>180</sup>

Climate change is an astoundingly complex phenomenon from the vantage point of every discipline, including science, law, and psychology. It might also lack elements that make it less accessible to Americans than other issues. In a 2013 article, the *National Journal* noted the five things the issues of immigration, gay marriage, and gun control have that “climate change doesn’t.”<sup>181</sup> In particular, the article

passage of one set of laws can do the trick, again given the ubiquity and totality of fossil fuels in the U.S. and global economy.

177. Hoffman, *supra* note 122, at 296.

178. See Foderaro, *supra* note 35 (demonstrating several examples of successful activist movements); but see Juliet B. Schor, *Climate discourse and economic downturns: The case of the United States, 2008–2013*, 13 ENVTL. INNOVATION & SOCIETAL TRANSITIONS 6–20 (2014) (noting the stagnation of climate change progress).

179. See Hoffman, *supra* note 122, at 296 (explaining the conclusion “that there is a range of individual and organizational level biases that operate to maintain current behaviors that do not support sustainability.”).

180. THEDA SKOCPOL, NAMING THE PROBLEM: WHAT IT WILL TAKE TO COUNTER EXTREMISM AND ENGAGE AMERICANS IN THE FIGHT AGAINST GLOBAL WARMING (Jan. 2013), [http://www.scholarsstrategynetwork.org/sites/default/files/skocpol\\_captrade\\_report\\_january\\_2013\\_0.pdf](http://www.scholarsstrategynetwork.org/sites/default/files/skocpol_captrade_report_january_2013_0.pdf). The climate movement has struggled to articulate clearly the moral wrongs it wishes to correct and the values it aims to nurture. This departs from the recent Occupy movement, which effectively derided corporate greed and the yawning wealth gap. Unlike Occupy, and to its benefit, the climate movement is awakening to the need for a roadmap.

181. Amy Harder, *5 Things Immigration, Gay Marriage, and Gun Control Have That Climate Change Doesn’t*, NAT’L J., Apr. 17, 2013, at 1–2 (the article cites the following: (i) the absence of humanizing policy; (ii) the negative electoral consequences of supporting climate policy; (iii) a lack of agreement on what the problem is; (iv) lack of a root in culture, versus science; and, (v) the lack of time to grapple with the problem). Though these are certainly provocative, some are

claims that unlike the other issues, energy and climate policy does not “embody itself in human beings.”<sup>182</sup> This seems true on its face and is in sharp contrast to prior movements, but it also does not reflect how climate change does affect humans across the globe.<sup>183</sup> Reorienting climate change to embody the human experience has been an early goal of academics studying CJ and appears to be a chief challenge for the environmental movement generally.<sup>184</sup>

Although the *Journal* article also suggests that climate change, unlike the other hot-button issues, is rooted in science rather than culture it is now clear that culture has a profound influence on how society perceives climate information and might accept plausible solutions.<sup>185</sup> Relatedly, the article also argues that there is a lack of agreement on the problem and states simply, “Washington cannot solve a problem whose definition it cannot agree on.”<sup>186</sup> This is intuitively correct, and it is also true that the climate movement itself has not adequately settled on a comprehensible problem definition.<sup>187</sup>

The problem of climate change is at once a systemic and institutionalized reliance on fossil fuels and an enduring habit of high consumption at both the individual and national level.<sup>188</sup> Changing individual behaviors and values is notoriously difficult,<sup>189</sup> which has been demonstrated by increasing research in law and psychology.<sup>190</sup> Thus, articulating the perils of climate change or the elegance of a set of solutions, even if done *ad nauseam*, will have limited effect.<sup>191</sup> Social

not convincing. *Id.* In particular, many more increasingly understand that the assumption that climate change, and the base issues, are not culturally rooted is false. *See* discussion *infra* III.A.

182. *Id.* at 1.

183. *Id.*

184. Maxine Burkett, *Just Solutions to Climate Change: A Climate Justice Proposal for a Domestic Clean Development Mechanism*, 56 *BUFF. L. REV.* 169, *supra* note 1, at 189; Burkett, *Climate Reparations*, *supra* note 133, at 510.

185. Harder, *supra* note 181, at 2.

186. *Id.* (explaining that the existence of a shared definition of the “problem” in the arenas of immigration, gun control, and gay marriage is itself up for debate. Regardless, it is certainly true that there is an absence in the climate context).

187. *Id.*

188. *See generally* Lin, *supra* note 132, at 1140 (describing the fundamental human behaviors that lead to climate change).

189. *See generally* Lin, *supra* note 132, at 1138 (exploring “the difficult problem of changing individual behaviors and attitudes relevant to global warming” and arguing that “[e]xisting proposals to achieve such changes [vis-à-vis climate change] by activating behavioral norms give inadequate attention to the role of individuals’ core values.”).

190. *See id.* (drawing on “insights from research on law and psychology”).

191. *See id.* at 1162 (explaining that values are relevant to climate change-related behavior in two critical ways—in deeply held attitudes and behaviors regarding the environment and an

and personal norms have an outsized impact on the way in which individuals behave.<sup>192</sup> Even if these norms shift, formidable structural barriers such as powerful vested interests and inadequate physical infrastructure will likely still be in place.<sup>193</sup>

Given the urgency of climate change, then, efficiently shifting values and behaviors to support a viable, life-sustaining climate is a critical first step.<sup>194</sup> If successful, this shift could ease the advance of sound and definitive solutions despite vested interests and lacking infrastructure.<sup>195</sup> The remainder of this section considers the cultural roots of climate change, and some of the key obstacles for the climate movement. It then considers the place of EJ as a precursor, both in theory and practice, to the current climate movement. It concludes by exploring whether or not the current structure of the climate movement and its narrative about climate change can improve to advance scientifically appropriate developments in our political economy.

#### A. *The Cultural Roots of the Climate Debate*

The deep divisions that climate change has introduced are unsurprising when one considers data on the cultural differences in American society.<sup>196</sup> Additionally, exclusively focusing on traditional engagement with the law is insufficient in the face of deeply entrenched human behaviors.<sup>197</sup> As the University of Michigan's Andrew Hoffman explains, technology and economic activity are the tools of environmentally destructive behavior. Underlying "individual beliefs, cultural norms and societal institutions," however, direct the speed, scope, and development of that activity.<sup>198</sup> To end the impact of that activity, an "organization"—or, in this case, society—must grapple with its cultural roots.<sup>199</sup>

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individual's perception and processing of information).

192. *Id.* at 1156.

193. *Id.* at 1147.

194. *Id.* at 1162.

195. *Id.* at 1171.

196. *Id.* at 1175–76.

197. Lin, *supra* note 132, at 1149 (citing Holly Doremus who stated, "Law is an incomplete tool for regulating human behavior,' because it cannot encompass all behaviors, nor can it be perfectly enforced.").

198. Hoffman, *supra* note 122, at 295.

199. See generally Lin, *supra* note 132, at 1135–36 (proposing a climate change strategy that accounts for the role of values in behavior and examines steps for motivating changes within a particular community, American evangelicals).

Researchers have identified two poles of cognitive bias in risk perception in America: one influenced by a more individualistic and hierarchical worldview, and one by a more community-oriented and egalitarian worldview.<sup>200</sup> The former tends to resist the science of climate change or, if accepted, embraces solutions that many in the environmental movement distrust.<sup>201</sup> The latter more readily accepts the science, assimilates the risks, and engages with proposed systemic solutions.<sup>202</sup>

Researchers have also done copious and convincing work on the impact of cognitive biases on the individual response to climate change,<sup>203</sup> and the conclusions are relevant here for two reasons. First, they clarify a very formidable obstacle for the climate movement. To the extent that the individualistic and hierarchical cognitive bias is deeply embedded and lauded in American society, the work of the climate movement becomes much more difficult.<sup>204</sup> The movement understands climate change to be a chief byproduct of the current political economy,<sup>205</sup> one that core American values may affirm. Further, climate advocates' solutions rely on the rapid phase-out of

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200. See generally Dan M. Kahan et al., *Culture and Identity-Protective Cognition: Explaining the White Male Effect in Risk Perception*, 4 J. EMPIRICAL LEGAL STUD. 465, 476 (2007) (discussing a study in which respondents tend to form into two groups: one with an individualistic worldview, and another with a community-oriented worldview); Lin, *supra* note 132, at 1174 (describing cultural cognition theory, which assumes that “preferences for organizing society fall along two axes: hierarchy-egalitarianism and individualism-communitarianism.” Lin explains, “[a] hierarchical view favors a distribution of social goods based on essentially fixed social attributes such as class or gender; conversely, an egalitarian view opposes such a distribution of social goods. A communitarian view favors the subordination of individual interests to the collective; by contrast, an individualist view comprehends individuals, rather than the collective, as responsible for their own well-being.”).

201. See Lin, *supra* note 132, at 1160 (“The absorption of information, even if it activates a norm of environmental protection, does not necessarily result in behavioral changes to benefit the environment.”).

202. *Id.* at 1174–75 (observing that this group tends to be more sensitive to and receptive of information).

203. *Id.* at 1158 (explaining that “[e]ven if information reaches the intended recipient, psychological mechanisms may work against norm activation. Psychologists have identified various cognitive shortcuts and biases that affect how individuals process information.”).

204. See Dan M. Kahan et al., *Culture and Identity-Protective Cognition: Explaining the White Male Effect in Risk Perception*, 4 J. EMPIRICAL LEGAL STUD. 465, 492 (2007) (“[H]ierarchical and individualistic worldviews risk skepticism, toward environmental risks.”).

205. See generally NAOMI KLEIN, *THIS CHANGES EVERYTHING* (2014) [hereinafter KLEIN, *THIS CHANGES EVERYTHING*]. See also Petra Bartosiewicz, *The Time for a Polite Green Revolution Has Passed*, HUFFINGTON POST (Jan. 24, 2013), [http://www.huffingtonpost.com/petra-bartosiewicz/climate-change-action\\_b\\_2546064.html](http://www.huffingtonpost.com/petra-bartosiewicz/climate-change-action_b_2546064.html) (discussing how solutions to the climate crisis must confront “market capitalist forces that are considered fundamental to the American way of life”).

fossil fuel use and deployment of renewable energy and energy efficiency efforts.<sup>206</sup> Given the time frame, the relevant financial market will not have the capacity to act conclusively, even if it is the preferred mechanism for some.<sup>207</sup> The climate movement also advances a narrative that is about the shared human experience of climate change and encourages deep consideration of the disparate impacts on the most vulnerable—even those that are far away in space and time.<sup>208</sup> This wider community-oriented position is in opposition to the strong individualistic tendency of many Americans, as well as the cultural celebration of rugged individualism that has endured in some areas.<sup>209</sup>

The civil rights movement provides, again, a helpful parallel here. Some cite the American commitment to individualism as corrosive to the advances of the civil rights movement.<sup>210</sup> The authors of the *Soul of Environmentalism* note that, through U.S. Supreme Court decisions of the early 1970s, “communities” and “groups” were whittled away from conceptions of civil rights.<sup>211</sup> Seeking greater rights for specific African American individuals, such as medical students or job applicants, civil rights lawyers omitted communities and shared experience from the discussion.<sup>212</sup> The civil rights movement, the authors contend, “played into the country’s very strong ideological bias towards the individual and away from community.”<sup>213</sup> The authors note that environmentalism generally faces problems “eerily similar to those faced by the Civil Rights movement” decades prior.<sup>214</sup> The tactical choices of the civil rights movement, notably its narrowing of focus and means of advocacy, did not help.<sup>215</sup> This is not only a relevant

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206. See THIS CHANGES EVERYTHING, *supra* note 205.

207. See Damian Carrington, *Carbon bubble will plunge the world into another financial crisis – report*, THE GUARDIAN (Apr. 18, 2013), <http://www.theguardian.com/environment/2013/apr/19/carbon-bubble-financial-crash-crisis> (discussing that the best case for carbon capture and storage technology would only allow for an extra 4% of fossil fuels to be burned, and there are no commercial projects up and running); CARBON TRACKER INITIATIVE, *supra* note 135, at 5.

208. See Lin, *supra* note 132, at 1159 & n.115 (describing hyperbolic discounting, generally, and geographic discounting “in which the intensity of one’s feelings about land uses and other activities with environmental effects varies inversely with the distance of that activity from one’s geographic place.”).

209. See generally Lin, *supra* note 132 (contrasting the community-oriented narrative advanced by the climate movement with the individualistic tendencies of many Americans).

210. GELOBTER ET AL., *supra* note 148, at 12–13.

211. *Id.* at 12.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*



admonition but also a testament to the strength of the value of individualism even when up against appeals for equality.

Working on the critical task of framing the climate crisis is the second reason cognitive biases are uniquely relevant.<sup>216</sup> To maintain a “clear eye,” the climate movement may need to confront the notion that its message, in terms of defining the problem and its solution, may contradict prevailing narratives of what American culture and citizenship encompass.<sup>217</sup> Appropriate and convincing framing may, simultaneously, be the movement’s most difficult and vital work. The first task would be to settle on a coherent narrative. This is particularly important for an issue dogged by division.<sup>218</sup> It is important, too, because it concerns a circumstance in which a coherent and comprehensive definition of the problem eludes even the most ardent advocate.<sup>219</sup> The second task would be to distill that problem definition, and concomitant solutions, into one that even the most resistant individual can understand and, perhaps, assimilate.

### *B. The Challenge for “Environmentalists”*

An initial hurdle for coherence and cogency in the climate movement is a fundamental one. Despite evidence and assertions to the contrary, most deem climate change as an environmental crisis exclusively.<sup>220</sup> Environmentalists, and environmentalism, already trigger deep emotional responses in some individuals.<sup>221</sup> As a group, environmentalists are inextricably intertwined with polarizing ideology that can provoke antipathy to change in some.<sup>222</sup> Consequently, efficiency measures that have an “environmentalist” or “green” flavor, for example, may experience deep resistance.<sup>223</sup> Further, as explained by Professor Albert Lin, “proposed responses to climate change calling for wealth redistribution, heightened regulation, involvement of

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216. Lin, *supra* note 132, at 1192–93.

217. *Id.* at 1193.

218. *See id.* at 1186–87 (recommending the use of narrative storytelling as a tool to reconcile different and traditionally divisive views).

219. *See generally id.* at 1147–48 (stating that “[u]ltimately, the difficulty of changing behavior, the wide range of activities contributing to global warming, and the predominance of non-individual emission sources point to the need for a suite of strategies to combat climate change.”).

220. *See generally* Hoffman, *supra* note 132, at 297 (calling the “mythical fixed-pie” of tension between economic interests and environmental interests— that what is good for one is bad for the other— “an unfortunate assumption on environmental issues like climate change.”).

221. *Id.*

222. *Id.*

223. *Id.*

international institutions, or participation of scientific elites in policymaking may threaten the values of persons who favor hierarchical and individualist social orderings.”<sup>224</sup> This resistance is significant enough that Andrew Hoffman advocates for invoking “accepted language and terminology” for public acceptance and, subsequently, to galvanize scientifically appropriate policy responses.<sup>225</sup> The tenor of this advice, however, assumes a homogenous and monolithic climate movement—one that is indecipherable from the environmental movement.

The mainstream environmental movement has been, in both perception and fact, quite homogenous. Though 76 percent of Americans identified as “environmentalists” in the late 1980s,<sup>226</sup> the predominant identity of environmentalists from the 19th century forward has been white and male.<sup>227</sup> This is in part because of the omission of certain stories and struggles, which have been advanced by the EJ movement or catalogued as public health crises.<sup>228</sup> Furthermore, though quite large in numbers, the membership of these groups is largely passive, giving the identity and direction of group leaders significant influence.<sup>229</sup> Wealthy men dominated most of the recognized organizations, such as the Sierra Club and the National Audubon Society.<sup>230</sup> Indeed, as early as the 1970s, social science researchers categorized environmental movement organizations as professional movement organizations that rely heavily on “paper membership and full-time paid staff of scientists, lawyers and lobbyists,

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224. Lin, *supra* note 132, at 1176; Naomi Klein, *Capitalism vs. the Climate*, THE NATION (Nov. 28, 2011) at 19.

225. Hoffman, *supra* note 122, at 296, 298 (Hoffman also notes that climate change still “resides in the ‘pre’ social fact phase, awaiting public acceptance.”). This would also suggest that words like “collectivism” invoked by prominent authors, like Naomi Klein, would not succeed in galvanizing those resistant to seemingly liberal or left-leaning ideas, even if good ones. *See generally* KLEIN, THIS CHANGES EVERYTHING, *supra* note 205.

226. BARTOSIEWICZ & MILEY, *supra* note 61, at 17. This data was the result of a 1989 Gallup poll after the Exxon Valdez oil spill.

227. *Id.* at 15–16.

228. *See* Johnson et al., *supra* note 95, at 2273 (explaining that the loss of legislative gains in the 1980s “combined with the emergence of a vibrant grassroots strand of the movement focused on issues of toxic contamination and environmental justice and extremely critical of mainstream national [environmental movement organizations] contributed to a growing crisis of legitimacy within the national movement.”). For discussion of the environment-health nexus, see Shankar Vedantam, *Research Links Lead Exposure, Criminal Activity*, WASH. POST (July 8, 2007), [http://www.washingtonpost.com/wp-dyn/content/article/2007/07/07/AR2007070701073\\_2.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/07/07/AR2007070701073_2.html).

229. BARTOSIEWICZ & MILEY, *supra* note 61, at 20 (citing an estimated ten million members, representing the largest constituencies of any civic organizational category).

230. *Id.* at 15–16 (further noting that some local organizations formerly had office whites-only policies).

rather than an active membership.”<sup>231</sup> They continue to have sizeable professional staffs with a focus on national influence in Washington, D.C. and bridge-building with industry.<sup>232</sup> This contrasts with the more robust community engagement, local orientation, and consensus of grassroots groups.<sup>233</sup> Their preferred approach was most evident in the recent, failed attempt to pass comprehensive climate legislation.<sup>234</sup> Professor Theda Skocpol’s critique about the absence of a “clear-eyed” approach was also directed toward the “bipartisan fantasies” that the big environmental groups brought to negotiations.<sup>235</sup> This profile, persistent over the decades, supports the notion that the environmental movement is not even a social movement in the traditional sense, as most social movements in U.S history mobilized the public.<sup>236</sup>

The emerging *climate* movement seeks to be a social movement that moves far beyond the bounds of conventional environmentalism. Though ostensibly distinct from mainstream environmental advocacy, the climate movement remains too diffuse to define precisely. While organizations like 350.org are clear flag-bearers for redefining the problem of climate change and advocating aggressive, scientifically appropriate responses, the boundaries of the movement remain unclear. Specifically, the role of larger organizations, such as Big Green or labor unions, remains uncertain.<sup>237</sup> Further, absent a cogently stated goal, external viewers may define the climate movement as a seemingly random pipeline, comprised of perpetual detractors proffering a convoluted narrative. Further, the “public” that climate

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231. Johnson et al., *supra* note 95, at 2273. This might account for the heavy reliance on “more traditional institutional influence activity such as lobbying, litigation, testifying at Congressional hearings and public education.” *Id.* This approach is distinct from other social movements. *Id.* It was successful and is credited with spurring the development of the federal environmental regulatory framework. *Id.*

232. *Id.* at 2271–72.

233. See BARTOSIEWICZ & MILEY, *supra* note 61, at 72–78 (discussing differences in the approaches grassroots environmental organizations and “big green” organizations take to environmental activism).

234. *Id.* at 15 (explaining that “[b]y circumventing the state and local level grassroots organizers that had been concerned with climate issues for years, the Alliance for Climate Protection and other national groups campaigning for climate change legislation failed to tap into a potentially powerful source of support and field strength to get their message out.”).

235. HARVARD UNIV. CTR. FOR THE ENV’T, SOCIAL MOVEMENTS AND CLIMATE CHANGE (2013), <http://environment.harvard.edu/news/huce-headlines/social-movements-and-climate-change>.

236. BARTOSIEWICZ & MILEY, *supra* note 61, at 15.

237. Externally, the media and other commentators have defined the climate movement by its opposition to the Keystone XL pipeline, perhaps to movement activists’ detriment. Yet, focusing on small victories like Keystone with eyes firmly set on more ambitious goals is a demonstrated element of movement success.

activists have been able to galvanize looks quite similar to the homogenous group of environmentalists that the climate movement hopes to move beyond. Yet they are diverse in some respects, working with previously unconventional allies.<sup>238</sup> At the height of the Keystone debate, however, polls showed that wealthy, educated Democrats were one of the only groups that opposed the pipeline.<sup>239</sup> This has evolved quite recently with the notably deep diversity of the Dakota Access Pipeline protests. It appears that, to date there are pockets of organization that work at the intersection of race, poverty, and climate change. The environmental mainstream still struggles to effectively build alliances. The climate grassroots is still in the process of building bridges and establishing an identity.<sup>240</sup>

It is important, however, that alliances in the climate movement are diverse *and* cohesive. While, the “combination of institutional influence activity and protest allows a movement to simultaneously persuade, disrupt and bargain,”<sup>241</sup> the lack of a cohesive vision can be fatal.<sup>242</sup>

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238. See, e.g., McKibben, *Keystone XL*, *supra* note 16 (noting the motley crew present at a White House protest including: the Hip Hop Caucus led by Lennox Yearwood Jr., college students from the 323 campuses where the fight for fossil-fuel divestment was under way, indigenous groups whose communities had been devastated by mining and oil companies, the legendary investor Jeremy Grantham, solar entrepreneurs, leaders of Texas refinery towns who did not want more crude spilling in their communities, ranchers who did not want pipelines running across their lands, members of the Citizens Climate Lobby, the NAACP, and veteran environmental activists).

239. See generally Schor, *supra* note 178 (observing how the relative health of the economy affects climate change progress); The Dakota Access Pipeline protests stand in striking contrast. See e.g., Christopher Mele, “Veterans Serve as ‘Human Shields’ for Dakota Pipeline Protesters,” *N.Y. TIMES*, Nov. 29, 2016.

240. Again, empirical evidence also supports this alliance-building. See generally Johnson et al., *supra* note 95 (finding “all types of movement activity, but especially the development of national organizational infrastructures, to be positively associated with the convening of Congressional hearings on the environment. Only when there are high levels of *both* protest and institutional activity is there any evidence that the environmental movement directly influences the passage of environmental laws.”). The authors conclude that tactical diversity can be “efficacious in achieving desirable political outcomes.” *Id.* at 2284.

241. *Id.* at 2284. Importantly, the research “suggests that long-standing debates over the relative efficacy of protest vs. more traditional institutional influence activity represent a false dichotomy.” *Id.* (citations omitted).

242. One should not confuse this with internal dissent. In fact, dissent can be critical for successful social movement activism, as it was for the civil rights movement. See Schmidt, *Social Movements*, *supra* note 11, at 180 (citing TAMIKO BROWN NAGIN, *COURAGE TO DISSENT* 441 (2012)). The lack of a cohesive vision was, arguably, the death knell for the late civil rights movement, which fractured as it initiated its organizing against poverty. *Id.* at 164. Schmidt noted that the project to mobilize black ghettos failed because the movement “dissented so much, in so many directions, all at once.” *Id.* It is difficult for a coherent and cogent frame, also necessary for success, to emerge from this kind of dissension.

### C. *Framing and Environmental Justice: A Conceptual Blueprint for the Climate Movement*

To maximize its impact, the climate movement needs to employ familiar frames to diagnose the core problem and justify the substantial ends it seeks.<sup>243</sup> But simply remedying the unabated consumption of fossil fuels will not fully address the problem. As social science researchers Daniel Cress and David Snow explain, “for a challenger to have a policy impact it must employ resonant prognostic and diagnostic frames – to identify problems and pose credible solutions to them.”<sup>244</sup> In other words, to succeed a movement must “diagnose problems, attribute blame, and construct solutions”<sup>245</sup> that resonate with the intended audience. Further, as sociologist Eileen Maura McGurty explains, “[i]n movements, symbols are strategically chosen from the existing cultural beliefs and manipulated into new modes of thinking through collective action.”<sup>246</sup> This is the process of “framing,” which has two major components: a collective action frame for a specific act and a master frame for an entire movement.<sup>247</sup>

The failure to frame effectively is already evident to some CJ activists. Describing the international effort on display during the United Nations Framework Convention meetings in Copenhagen, Climate Justice Action Network demanded: “System Change, Not Climate Change.”<sup>248</sup> In a telling post-mortem, they stated that the Copenhagen effort failed to advance a “[CJ]-discourse that was visible and understandable beyond the subcultures of activists and policy-wonks, and thus failed to provide a visible alternative to despair.”<sup>249</sup> Further, it “failed to establish a new ‘pole of attraction’ that would substantially reconfigure the political field around climate change,”

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243. See Lin, *supra* note 132, at 1193 (explaining that “[p]er cultural cognition theory, how a problem is framed and how a policy response is justified are pertinent as well.”).

244. Amenta et al., *supra* note 8, at 296 (quoting Daniel M. Cress & David A. Snow, *The Outcomes of Homeless Mobilization: The Influence of Organization, Disruption, Political Mediation, and Framing*, 105 AM. J. SOC. 1063–64 (2000)).

245. Eileen Maura McGurty, *Warren County, NC, and the Emergence of the Environmental Justice Movement: Unlikely Coalitions and Shared Meanings in Local Collective Action*, 13 SOC’Y & NAT. RES. 373, 374. (2000).

246. *Id.* This is the first of four requirements for the development of a movement, which also includes social networks, repertoires of action, and political opportunities. *Id.*

247. *Id.* The master frame should be “flexible, easily elaborated, and resonant with potential participants.” *Id.*

248. Brian Tokar, *Movements for Climate Justice in the US and Worldwide*, in ROUTLEDGE HANDBOOK OF THE CLIMATE CHANGE MOVEMENT 139 (Matthias Dietz & Heiko Garrelts eds., 2014).

249. *Id.* at 140.

thus failing to significantly advance the larger goal of CJ.<sup>250</sup> System change is difficult to convey convincingly, a problem that is compounded by the deep skepticism, if not animosity, some would have toward its core message. Many within the larger environmental groups may even recoil.

The EJ movement might present a helpful blueprint moving forward. It was a product of the civil rights movement and a critical, though often ignored, progenitor of branches of the environmental movement in general and the CJ movement in particular.<sup>251</sup> The EJ movement emerged in the late 1970s and early 1980s in response to the disproportionate toxic burden of underrepresented communities. It notably refused to divorce environmental concerns from a commitment to social justice.<sup>252</sup> A strong, community-level activist network, often employing the direct action tactics of the civil rights movement at a smaller, more targeted scale characterized EJ efforts.<sup>253</sup> It was at the periphery of mainstream environmental efforts and at times at odds with it, criticizing Big Green's demographic composition and the concerns it chose to forward.<sup>254</sup> Further, though it began with the struggles of the African American community, its concerns did not end there. EJ asserted that decision-makers first saddled politically underrepresented communities with environmental burdens, but then emphasized that those burdens inevitably crept beyond those communities' borders.<sup>255</sup>

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250. *Id.*

251. For a definition of the climate justice movement, as compared to the climate movement generally, see *supra* note 1.

252. GELOBTER ET AL., *supra* note 148, at 10 (“Many environmentalists of color admire the mainstream movement’s goals, but they also know firsthand that social justice is routinely ignored in the mainstream movement’s decision-making.”). The emerging claims of environmental racism instigated significant attention to and research into the issues of distributive justice, a positive, if sometimes controversial, aspect of the discourse concerning EJ. McGurty, *supra* note 246, at 381–82 (“While there still remains a significant debate in the literature about whether race or class has the greater effect in determining location of waste sites, the environmental racism frame was immediately broadened and extended, applicable to a wide array of collective actions.”).

253. See BARTOSIEWICZ & MILEY, *supra* note 61, at 19. Bartosiewicz and Miley also note that, similarly, the first Earth Day in 1970 did not materialize spontaneously, but as a result of the efforts of tens of thousands of local organizers. *Id.* at 78.

254. See GELOBTER ET AL., *supra* note 148, at 5 (explaining that leaders of the EJ movement welcomed the essay *The Death of Environmentalism* because it echoed concerns that they had been working on for “well over two decades”).

255. See McGurty, *supra* note 246, at 382 (explaining that EJ brought into question waste management policies that assumed the increasing production of waste); see also *id.* at 383 (“The second major waste policy impact is to challenge the underlying assumption guiding all waste management policy: continued expansion of hazardous waste generation and an ever increasing supply of waste facilities.”). This invidious progression is also evident in climate change.

A watershed event for the EJ movement, the struggle in Warren County, North Carolina, in 1982, might have been interpreted as another round of activism in the civil rights movement.<sup>256</sup> Warren County, primarily African American and the 3rd poorest county out of 100 in the state,<sup>257</sup> was the site of a movement that explicitly linked to African American civil rights and the notions of freedom and equality.<sup>258</sup> In response to the construction of a hazardous waste landfill, a group of nearly 500 protested for more than six weeks in opposition.<sup>259</sup> EJ movements such as this one recognized the link between the history of racial segregation, concentrated poverty, political powerlessness, and their relationship to the overexposure of poor communities and communities of color to environmental risks.<sup>260</sup> Activists have since used protest and civil disobedience to oppose mountaintop removal in Appalachia as well as resist the community and environmental impacts of the military's presence in Vieques, Puerto Rico.<sup>261</sup>

These events have met the requirements for an emergent social movement, providing an important template to consider. Warren County, for example, included the four major components of a movement, according to McGurty: (i) cultural frames; (ii) social networks; (iii) disruptive action; and, (iv) political opportunities.<sup>262</sup> The cultural, collective action frame used at the time was the “unique diagnosis, attribution of blame, and proposed solutions” presented by identifying the manner in which race and economic inequity and environmental burdens intersect.<sup>263</sup> Political powerlessness was, for the first time, inextricably intertwined with the narrative and understanding of environmental harm. The social networks

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256. *Id.*; see also *id.* at 374 (explaining that although this was not the first or only important event shaping the EJ movement, legacy of the events “derived from these events are central to understanding the contemporary environmental justice policy discussion”).

257. *Id.* at 376.

258. *Id.* at 378.

259. *Id.* at 373.

260. *Id.* at 373–74.

261. Celine Anderson, *Earth Quaker Action Team Campaigns Against PNC Bank for Financing Mountaintop Removal Coal Mining 2010–2015*, SWARTHMORE NONVIOLENT ACTION DATABASE (Sept. 27, 2015), <http://nvdatabase.swarthmore.edu/content/earth-quaker-action-team-campaigns-against-pnc-bank-financing-mountaintop-removal-coal-minin>; Nathalie Schils, *Puerto Ricans Force United States Navy out of Vieques Island, 1991–2003*, SWARTHMORE NONVIOLENT ACTION DATABASE (July 7, 2011), <http://nvdatabase.swarthmore.edu/content/puerto-ricans-force-united-states-navy-out-vieques-island-1999-2003>.

262. McGurty, *supra* note 245, at 374–75.

263. *Id.* at 375. See also GELOBTER ET AL., *supra* note 148, at 22 (discussing the reframing of environmentalism to include “new” frames from the EJ and sustainability movements).

resuscitated community linkages forged during the civil rights movement, which had receded since the fervor of the 1960s.<sup>264</sup> The disruptive acts were also familiar. They were the direct action tactics, slightly adapted, that had been used successfully during the late civil rights movement. Finally, there was heightened engagement in environmental policy, a political opportunity that EJ activists might influence effectively.<sup>265</sup>

As a matter of framing, in the same way that the environment was not a far-off and isolatable location, neither were the struggles for greater health, environmental integrity, and economic prosperity severable. For that reason, scholars and activists view the Warren County struggle as transformative.<sup>266</sup> The commingling of environmental burdens and social justice was intentional and unique. It was the first time African Americans had mobilized, with national implications, around race and environment explicitly.<sup>267</sup> McGurty notes that in its wake, “environmental racism shifted into a broader, more elaborative and resonant environmental justice master frame.”<sup>268</sup> With that shift, and the conceptual and tangible link to the civil rights frame, skepticism about government decisions vis-à-vis the welfare of of-color and poor communities emerged.<sup>269</sup> Indeed, the issue of African Americans gaining political influence was inextricably intertwined with opposition to the landfill.<sup>270</sup>

The EJ frame, though in some corners unpopular and still largely at the periphery of the mainstream environmental movement, remains important with respect to climate change and the climate movement.<sup>271</sup>

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264. McGurty, *supra* note 245, at 378 (“Due to the significant social networks available to the opponents, these powerful African American leaders were available to the group and helped to legitimize and empower the opposition.”).

265. *Id.* at 375.

266. *Id.* at 373.

267. *Id.*

268. *Id.* at 375.

269. Indeed, the civil rights agenda included a need to change discriminatory land use decisions, according to McGurty, “however, the civil rights involvement of the Warren County case added an environmental dimension as well as a social/ economic/political dimension to the problem.” *Id.* at 380.

270. McGurty, *supra* note 245, at 381.

271. See Barringer, *supra* note 77; Perea Letter, *supra* note 77; see also Dorceta E. Taylor, *The State of Diversity in Environmental Organizations*, GREEN 2.0 (July 2014), <http://www.diversegreen.org/the-challenge/>. The senior staff, for example, of the mainstream environmental movement is still not racially diverse. GELOBTER ET AL., *supra* note 148, at 10. Gelobter argues that the lack of racial integration is not because of “overt discrimination but because of differences in vision.” *Id.* Discussed further below, the green group’s strategy relied on modest and incremental victories that sought compromise from the start. BARTOSIEWICZ & MILEY, *supra*



EJ provides a movement template that the mainstream groups have not proffered.<sup>272</sup> From the framing of the environmental burden as inextricably linked to political powerlessness to the use of the strategies of grassroots activism, EJ provides an alternative to the approach of the mainstream environmental groups—one that more closely resembles a social movement.<sup>273</sup>

Indeed, the multidimensional elements of EJ are emerging in the climate movement and the CJ movement, specifically. The CJ movement's involvement in the Black Lives Matter struggle is telling.<sup>274</sup> Not only are CJ activists joining the fray by, for example, staging a die-in outside the convention center at the 2014 U.N. Framework Convention on Climate Change meetings in Peru,<sup>275</sup> they are also understanding the way in which other significant dimensions of race and class alter the framing of the climate crisis and underscore the need for rigorous and aggressive responses to it.<sup>276</sup> Bill McKibben, the founder of 350.org, maintains that with its emphasis on human rights, the CJ movement has more in common with abolitionism than with “much of today's environmentalism.”<sup>277</sup> This reorientation can impact the larger climate movement from its framing, to expanded networks, to more effective tactics to, ultimately, effectively leveraging political opportunities. The problem definition in the issue of toxics changed as a result of the EJ frame.<sup>278</sup> The problem definition might also evolve for the climate movement. Further, employing centuries old movement tactics and pulling the threads of the environmental movement that have been at the periphery for centuries may have a transformative effect.

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note 61, at 9 (explaining the “fundamental structural disconnect within the environmental community”). The proposal agreed on, for example, “was brokered among a small group of stakeholders and was largely absent of broad-based, grassroots support.” *Id.*

272. See BARTOSIEWICZ & MILEY, *supra* note 61, at 20 (noting the big green groups' failure to engage the grassroots, questioning “whether the environmental movement, at least as defined by the big green groups, should even be called a ‘social movement’ in the tradition of the civil rights and antiwar movements.”).

273. See generally *id.*

274. See KLEIN, *supra* note 205.

275. Klein, *Why #BlackLivesMatter Should Transform the Climate Debate*, *supra* note 166.

276. See, e.g., Majandra Rodriguez, *Facing Climate Change Through Justice and Intersectionality*, 350.ORG (Sept. 3, 2015), <http://350.org/facing-climate-change-through-justice-and-intersectionality/>.

277. Stephenson, *supra* note 7.

278. See McGurty, *supra* note 245, at 383. The problem definition could not just be to allow this waste facility “anywhere but here.” Instead, under EJ, it was to challenge “the model of economic and industrial development predicated on waste expansion.” *Id.* (citing Memorandum from K. Ferruccio to Jonathan Howes (May 17, 1993) (on file with McGurty)).

At the same time, however, constructing a movement that employs both the mainstream and a newly empowered periphery may be the most impactful approach. The civil rights movement bears this out anecdotally and empirically. A large number of “tactically diverse organizations” can account for the civil rights movement’s political influence.<sup>279</sup> As legal historian Christopher Schmidt explains, the NAACP Legal Defense Fund lawyers never won the constitutional breakthrough for access to public accommodations through the Supreme Court.<sup>280</sup> The litigation that developed from the sit-ins did result in numerous, though individually narrower, legal victories.<sup>281</sup> This was also true for the abolition movement, for which legal activism was insufficient.<sup>282</sup> The parallels in the climate movement—the chasm between Big Green’s institutional approaches and the small battles the emerging climate activists are waging—are considerable. Simultaneously, focusing on the tactics of elites and the grassroots appears pivotal.

#### *D. Understanding the Values at Stake*

A number of important lessons arise from this review of powerful historical movements and the contemporary climate movement. The climate movement might first focus its efforts on building a narrative based on shared and resonant values that climate change threatens. This section asserts the importance of inclusion to drive the movement. The work on movement goals, however, is a greater challenge and perhaps the most pressing. The tactical diversity and coalition building will be for naught if a coherent message does not drive the movement and galvanize the broader public. To build the master frame, a number of more foundational shifts are appropriate.

##### 1. The Value of Inclusion

There are no magic bullets for a successful social movement.<sup>283</sup> It

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279. Amenta et al., *supra* note 8, at 296. Generally speaking, movements “with greater strategic resources” have an advantage. *Id.* Further, “resourceful movement infrastructures, including diverse leaders, complex leadership structures, multiple organizations, informal ties, and resources coming substantially from members, brought gains in policy implementation for the civil rights movement in the South.” *Id.*

280. Schmidt, *Divided By Law*, *supra* note 150, at 102.

281. *Id.*

282. See generally Segall, *supra* note 110.

283. Amenta et al., *supra* note 8, at 296 (citing political mediation arguments, which “reject the search for magic bullets;” the authors explain, “There are no specific organizational forms, strategies, or political contexts that will always help challengers. Instead, scholars should be

seems, however, that allies are critical to all movements, especially one with this level of ambition.<sup>284</sup> Allies that are diverse in the communities they reach, as well as their access to the grassroots and grasstops, are also important.<sup>285</sup> Employing both “insider” and “outsider” tactics can achieve significant policy gains.<sup>286</sup> The larger the movement infrastructure, the greater the ability to adopt “multiple influence methods.”<sup>287</sup> In short, “neither disruptive protest nor institutional influence activity alone is sufficient to make favorable changes in public policy,” militating in favor of mending fences between the traditional environmental movement and the emerging climate movement.<sup>288</sup> The climate movement can build on early support of and engagement with indigenous groups, other civil rights leaders, and EJ organizations.<sup>289</sup> This is consistent with their heavy analogical association with defining social movements. The need to diversify is particularly important for Big Green, which has received counsel from several corners regarding the need to forge broader coalitions.<sup>290</sup> A wider net might also include “cultural vouchers,”<sup>291</sup> so as to reach out to those heretofore disinclined to accept the science and impacts of climate change, its urgency, or both. There is precedent for this tactic. The impact of bridge-building between groups such as the NAACP and the student protestors was exponential.<sup>292</sup> Further, EJ leaders have

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looking for specific forms of organization and strategies that are more productive in some political contexts than in others”).

284. See Johnson et al., *supra* note 95, at 2270 (noting that elites play an important role in mediation models).

285. *Id.* at 2271 (explaining the movement infrastructure model, which emphasizes how tactical diversity may heighten movement effects and the role of organizational infrastructure in contributing to diverse movement tactics).

286. See *id.* (noting the need for movements to employ both insider and outsider tactics).

287. *Id.*

288. See *id.* at 2271.

289. See McKibben, *The Fossil Fuel Resistance*, *supra* note 18 (“Indigenous groups are core leaders of the fight, since their communities have been devastated by mines and cheated by oil companies. The Rev. Lennox Yearwood Jr. of the Hip Hop Caucus was handcuffed next to Julian Bond, former head of the NAACP, who recounted stories of being arrested for integrating Atlanta lunch counters in the Sixties.”).

290. See, e.g., GELOBTER ET AL., *supra* note 148, at 24; BARTOSIEWICZ & MILEY, *supra* note 61; HARV. UNIV. CTR. FOR THE ENV’T, *supra* note 235; see also Taylor, *supra* note 272 at 5–6.

291. See Lin, *supra* note 132, at 1182 (defining cultural vouchers as those “individuals bearing authority and credibility within their cultural groups who can defend the science and policies of climate change to members of their own cultural groups on grounds consistent with those groups’ worldviews.” (citation omitted)).

292. See Schmidt, *Divided By Law*, *supra* note 150, at 129 (describing the “functional alliance” forged between the two groups, aided by the recognition of Jim Crow as the common enemy). It is plausible that ‘Big Green’ and the climate movement are not decided on a common enemy, an

argued that the most important ingredient for social change is transformative alliances.<sup>293</sup> Coalitions are particularly key here as they avoid the misperception that societies can segregate the environment, literally or figuratively, from our lives, our futures, and our individual dignity. Church groups, labor unions, community organizations, women's groups such as the League of Women Voters,<sup>294</sup> would include black, brown, women, and those whose stories of continued oppression through multiple modes resonate.

## 2. The Value of Preserving Human Dignity

As the environmental and CJ movements aim to do, placing a human face on climate change avoids perceiving it as a distant inconvenience, happening in a far-off land.<sup>295</sup> Emphasizing the contemporary impacts on human communities and livelihoods is honest and strikes a balance with the perception of the environment as divorced from the lived experience. It may also ignite empathy for the challenges to human dignity that climate issues impact presently.

It is becoming widely understood that climate change is not just about the environment and scientific assessments of its resilience—nor are its responses.<sup>296</sup> Like abolition and civil rights, the core principle that the climate movement ostensibly seeks to invoke—one that might not backfire—is the affirmative principle of human dignity.<sup>297</sup> Civil rights leader Diane Nash's words with respect to what the sit-ins would

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important point of dissent that they might need to resolve.

293. See GELOBTER ET AL., *supra* note 148, at 25–26 (recommending a number of actions to transform the environmental movement, including growing a new leadership with a human face and building “transformative alliances”).

294. See HARV. UNIV. CTR. FOR THE ENV'T, *supra* note 235 (quoting THEDA SKOCPOL, NAMING THE PROBLEM: WHAT IT WILL TAKE TO COUNTER EXTREMISM AND ENGAGE AMERICANS IN THE FIGHT AGAINST GLOBAL WARMING (Jan. 2013), [http://www.scholarsstrategynetwork.org/sites/default/files/skocpol\\_captrade\\_report\\_january\\_2013\\_0](http://www.scholarsstrategynetwork.org/sites/default/files/skocpol_captrade_report_january_2013_0) (“You do need to go well beyond the network of organizations that already think of themselves as environmentalists . . . environmentalism remains a very upper middle class, coastal movement.”)).

295. See GELOBTER ET AL., *supra* note 148, at 25 (noting that ideas require a human face in order to overcome commercial noise and political disillusionment).

296. See Kerri Smith, *The wisdom of crowds*, 3 NATURE REPORTS CLIMATE CHANGE 89 (2009) (“The take-home message is clear: it's all very well having a shiny new technique for burying carbon or turning plants into fuel, but ‘if we don't understand how society is going to perceive it, it might well backfire’. . . . The tools of natural science cannot help us ask what makes our culture so consumption-heavy, what determines how individuals or communities differ in their response to climate change, or what power dynamics are at play when governments negotiate their policies . . . . In the end it's whether people will take them up.” (citation omitted)).

297. See Schmidt, *Divided By Law*, *supra* note 150, at 114 (noting the importance of human dignity in regards to offensive practices designed to subjugate and humiliate African Americans).

need to create are parallel.<sup>298</sup> It would need to create “a climate in which all men are respected as men, in which there is appreciation of the dignity of man and in which each individual is free to grow and produce to his fullest capacity.”<sup>299</sup> It was dubbed the “redemptive” or “beloved” community.<sup>300</sup> And, the climate movement appears to aspire to this very notion.<sup>301</sup>

### 3. The Value of Spiritual Power and Renewal

Each prior movement relied heavily on the moral imprimatur of organized religion.<sup>302</sup> Movements often seek to shift hearts and minds as much as the legal and political status quo. Here, again, the antislavery movement becomes particularly relevant.<sup>303</sup> To implement the sort of radical change implied, movement activity required something additional beyond litigation and “a conversation among elites.”<sup>304</sup> It was, and needed to be, “a mobilization of rhetoric designed to provoke empathy and moral outrage, as a triumph of populist human rights organizing, or as the product of a religious revival that created a time ‘when values have taken precedence over economics, when the spiritual triumphed over the material.’”<sup>305</sup> There was a critical religious hook present in the abolition movement that is, at best, inchoate in the climate movement.<sup>306</sup> This hook was also present for the civil rights movement, explicitly and implicitly. The leadership, the gathering places, the soundtrack for the movement were steeped in deep moral commitment through religious expression.<sup>307</sup> It was

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298. *Id.* at 116.

299. *Id.*

300. *Id.* at 116–17.

301. See also Klein, *Why #BlackLivesMatter Should Transform the Climate Debate*, *supra* note 166; see generally GELOBTER ET AL., *supra* note 148.

302. Lin, *supra* note 132, at 1167 (explaining how the environmental movement represents “an outgrowth of the Golden Rule.”).

303. The British anti-slavery movement is more relevant, as Great Britain was able to abolish slavery with relatively little violent conflict, in sharp contrast to the United States. *Id.* at 1171.

304. Segall, *supra* note 110, at 10861.

305. *Id.*

306. This is not to say that major religious figures have not weighed into the climate change debate and demanded more vigorous action. LAUDATO SI’, *supra* note 142; Faiola et al., *supra* note 142. It is not yet a core part of the culture of the climate movement, with the exception of organizations like the Hip Hop Caucus, under the leadership of Lennox Yearwood Jr. This also does not assume that all religious expression supports (or has supported) the goals of these movements. There were religious justifications of slavery. Further, dominionism is arguably an obstacle to contemporary goals of the environmental and climate movements.

307. Paul Harvey, “Religion and the Civil Rights Movement in America,” Oxford Research Encyclopedia of Religion (Aug. 2016); Clarence Taylor, *African American Religious Leadership*

implicit in the tenets and precepts at base. The sit-ins, for example, were an enactment of an inherent dignity of each person and sought a reality in which there was both “physical proximity and spiritual affinity.”<sup>308</sup> This is not a surprising invocation of religion. As the foundation of many core values, movements would need to engage it to resuscitate or shift those values. And, in so doing, perhaps deliver a more just state of affairs.<sup>309</sup>

While organized religion need not predominate, it should have a role. Until very recently, it has been absent from the climate change discourse.<sup>310</sup> Although there have been some appeals to creation care within evangelicalism,<sup>311</sup> it was not until the Pope’s recent encyclical that a major denomination has taken up the moral implications of climate change and the need to respond appropriately.<sup>312</sup> This is a great departure from movements like the civil rights movement, in which the church and its charismatic leaders propelled the movement forward.<sup>313</sup> It was such a forceful part of these movements that analogies drawn between them and the current climate movement are perhaps incomplete absent engagement and organization within a space of worship.<sup>314</sup>

In lieu of the church and core teachings, an appeal to values deeply held in a manner tantamount to religious devotion may suffice. The movement, however, continues to struggle with identifying those values.

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*and the Civil Rights Movement*, the Gilder Lehrman Institute of American History, <https://www.gilderlehrman.org/history-by-era/civil-rights-movement/essays/african-american-religious-leaders-hip-and-civil-rights-m> (last visited Oct. 28, 2016).

308. Christopher W. Schmidt, *Conceptions of Law in the Civil Rights Movement*, 1 U.C. IRVINE L. REV. 641, 665 (2011) [hereinafter Schmidt, *Conceptions of Law*]. King argued that achieving desegregation without integration would have “pernicious effects.” It would lead to “physical proximity without spiritual affinity. It gives us a society where men are physically desegregated and spiritually segregated, where elbows are together and hearts are apart.” *Id.*

309. See generally Lin, *supra* note 132, at 1171 (explaining that “motivating an effective response to global warming is as much about changing core values of society as it is about developing more efficient technologies or instituting regulatory systems to limit emissions.”).

310. Juliet Eliperin, *Warming Draws Evangelicals Into Environmentalist Fold*, WASH. POST (Aug. 8, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/07/AR2007080701910.html> (describing the “long-standing divide between global-warming activists and American evangelicals.”).

311. See *id.* (describing Wilson’s treatise, which outlines his case for conservationism).

312. LAUDATO SI’, *supra* note 142; Faiola et al., *supra* note 142.

313. See Harvey, *supra* note 307; see Taylor, *supra* note 307.

314. Citing the participation of Reverend Yearwood and the Hip Hop Caucus, at this point, would be woefully inadequate to convincingly demonstrate the movement’s diversity and effective inclusion of religious voices. See McKibben, *The Fossil Fuel Resistance*, *supra* note 18 (delineating the civil disobedience of Rev. Yearwood Jr.).

#### 4. The Value of Economic Justice

Those who are culturally and cognitively pre-disposed to distrust the environmental movement can dismiss climate action through the use of loaded, and presumed anti-American, terminology. Like a watermelon, the epithet goes, environmentalists are green on the outside and communist-red on the inside.<sup>315</sup> It is reasonable to believe, however, that climate change is a manifestation of the destructive relationship the excesses of any political economy has with the global environment and the ongoing viability of civilization.<sup>316</sup> These excesses are not exclusive to capitalism, per se. They were a hallmark of Soviet Russia and elements of communist China, today.<sup>317</sup> Further, appeals for economic justice are not peculiar to the climate movement nor are they uniquely un-American. Economic justice and deep economic restructuring were foundational to the late civil rights struggles and inherent in the anti-slavery movement, respectively.<sup>318</sup> Of course, these were efforts that, at the time, allowed southern detractors and even Presidents to label civil rights activism as a communist plot.<sup>319</sup>

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315. See, e.g., JACQUELINE VAUGHN SWITZER, *GREEN BACKLASH: THE HISTORY AND POLITICS OF ENVIRONMENTAL OPPOSITION IN THE U.S.* 209 (1997); see also, Thomas DiLorenzo, *Why "Environmentalists" Are Called "Watermelons,"* LRC Blog (Dec. 7, 2009, 8:07 AM), <https://www.lewrockwell.com/lrc-blog/why-environmentalist-are-called-watermelons/>.

316. Brad Werner, professor of geophysics and complex systems at the University of California, San Diego, Presentation at American Geophysical Union meeting in San Francisco: *Is Earth F\*\*ked? Dynamic Futility of Global Environmental Management and Possibilities for Sustainability via Direct Action Activism* (Dec. 6, 2012). See generally KLEIN, *THIS CHANGES EVERYTHING*, *supra* note 205. Some make clear that dismantling a growth paradigm is not the goal. In his gallery of climate change abolitionists, Andrew Winston explains,

So what are we "abolishing"? Climate abolitionists are not fighting to eliminate growth. Eradicating slavery did not rid the world of cotton or tobacco, and moving away from carbon will not mean abandoning human and economic development – in fact, it will help ensure it. What we want to abolish is our outmoded, broken economic and energy systems that threaten our survival, in part because they put no value on human and ecosystem inputs and impacts.

Winston, *supra* note 41.

317. Even Klein, to whom many ascribe a deep anti-capitalist thread, freely and convincingly acknowledges that these excesses are universal across political and economic organization. KLEIN, *supra* note 205, at 159 (explaining that "humans have behaved in this shortsighted way not only under capitalist systems, but under system's that call themselves socialists as well—whether they were or not remains a subject of debate.").

318. Gavin Wright, *The Stunning Economic Impact of the Civil Rights Movement*, BLOOMBERGVIEW (Feb. 13, 2013, 11:17 A.M.), <https://www.bloomberg.com/view/articles/2013-02-13/the-stunning-economic-impact-of-the-civil-rights-movement>; Tomiko Brown-Nagin, *The Civil Rights Cannon: Above and Below*, 123 *YALE L.J.* 2698, 2711 (2014) (stating that the grassroots efforts of critical players in the civil rights movement pushed economic citizenship as part of their efforts to the overall civil rights movement); [http://press.princeton.edu/chapters/s1AB\\_9518.pdf](http://press.princeton.edu/chapters/s1AB_9518.pdf) (stating that economic change was an important element of abolitionism).

319. See Schmidt, *Divided By Law*, *supra* note 150, at 137, which explains that a communist

Economic justice has been the goal that has eluded prior movements, including the ongoing labor and women's movements.<sup>320</sup> It is perhaps the final summit.

Yielding to a framing of that goal as anti-American challenges the integrity of prior movements as well as the current scientific reality that the global economy is increasingly at odds with a livable environment. Climate advocates and activists could grapple with building a frame that can accept the possibility of that clash while finding avenues to build a more climate-conducive political and economic organization.

### 5. The Value of Simplicity

A simple statement of the movement's ultimate goals appears crucial. Direct action and NVCD have occupied an important space in prior movements for transformative political, social, and, perhaps legal responses and likely does for the climate movement as well.<sup>321</sup> It appears, too, that it works best in concert with institutional efforts. If we take the phenomenon seriously—that the globe is undergoing a significant scientific experiment with the climate that, itself, is an even deeper experiment with the limits of the socio-political foundation of our societies—then the climate movement must do more work on framing for persuasion of the general public.<sup>322</sup> If stopping the Keystone XL pipeline is a means, then what exactly is the end? If that was the collective action frame, what is the master frame?

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label was an accusation:

[O]pponents always trotted out in an effort to discredit civil rights protests in the South: that local activists were just puppets of “outside” operators, professional agitators regularly assumed to be linked to the Communist Party. This was a standard line of attack by the white South against the NAACP after Brown. And It was occasionally voiced in response to the sit-ins. For example, when ex-President Harry S. Truman denounced the sit-ins, he questioned whether they were being coordinated by Communists.

*Id.*

320. See, e.g., Schmidt, *Social Movements*, *supra* note 11, at 166 (citing Risa Goluboff's exploration of the effort in the 1940s to forge a legal remedy to the economic exploitation of black workers).

321. SRDJA POPOVIC & MATTHEW MILLER, BLUEPRINT FOR REVOLUTION: HOW TO USE RICE PUDDING, LEGO MEN, AND OTHER NONVIOLENT TECHNIQUES TO GALVANIZE COMMUNITIES, OVERTHROW DICTATORS, OR SIMPLY CHANGE THE WORLD, 200–01 (Cindy Spiegel ed., 2015) (noting that NVCD is four times more successful than violent civil war and that the number of doors one can knock on has far more impact when compared to 70,000 person-hours sitting in place, as was sometimes the case with the Occupy movement).

322. Hoffman, in the context of Organizational Behavior, explains that “[e]xecutives realize that they also must convince people it is the right idea, and then convince them to do it.” Hoffman, *supra* note 122, at 304.



## CONCLUSION

Constructing a complete and viable frame is beyond the scope of this article.<sup>323</sup> It seems, however, that the work on framing is key to movement success. Recent, provocative critiques of the Occupy Wall Street movement are instructive.<sup>324</sup> All note the passion and appeal of the movement, as well as the inability for the movement to transfer fervor to tangible outcomes.<sup>325</sup> Noting the formidable forces and structures in opposition, the protestors themselves were not clear on the solutions, even with relatable grievances regarding economic inequality and corporate power.<sup>326</sup> The contrast between Occupy and contemporary movements that have toppled regimes worldwide is sharp.<sup>327</sup> The successful movements have included now familiar elements: clarity of purpose, shared values forged by proponents, effective planning, and connection to the mainstream.<sup>328</sup>

Climate activists would do well to continue engaging prior movements beyond simple analogy but also in narrative and principles. This would not present a radical departure from the more inclusive interpretation of environmentalism's history. As Michael Gelobter et al. argue, "Cesar Chavez and Martin Luther King, Jr. were only two of thousands of people of color whose movements for justice set the template for Earth Day. These leaders are part of our soul as environmentalists. The rebirth of the movement depends on being clear about that lineage."<sup>329</sup>

It is also true that prior movements commingled legal and extra-legal action. Indeed, those on opposite ends of the ideological spectrum understand of the evolution of law in multi-dimensional terms. Martin Luther King, on one hand, and legal scholar Alexander

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323. A few possible frames have come to mind during the course of research. In particular, resurrecting appeals to the "beloved community" is the most enchanting. All other movements to date have affirmed that this is an amendment, if elusive, to the spiritual constitution of the country. For discussion of the beloved community, see Anthony E. Cook, *King and the Beloved Community: A Communitarian Defense of Black Reparations*, 68 GEO. WASH. L. REV. 959 (2000).

324. See, e.g., POPOVIC & MILLER, *supra* note 321, at 170 (noting the Occupy movement never made itself inviting to the typical citizen living in Middle America); see also Greg Satell, *The Revolution Will Be Managed*, HARV. BUS. REV. (May 19, 2015), <https://hbr.org/2015/05/the-revolution-will-be-managed> (criticizing the Occupy movement for its lack of effective action).

325. See, e.g., POPOVIC & MILLER, *supra* note 321, at 170 (noting the Occupy movement would have been more successful had it gone to where average Americans lived and worked, rather than symbolic squares in large cities).

326. *Id.* at 171.

327. See Satell, *supra* note 324 ("The contrast is sharp and it is no accident.").

328. *Id.*

329. GELOBTER ET AL., *supra* note 148, at 8.

Bickel,<sup>330</sup> on the other, understood law “as an unfolding social process. They sought to reconceptualize law so as to recognize processes of cultural change, social disorder, and political agitation as an integral part of giving meaning to the law.”<sup>331</sup> Large-scale agitation and disorder may be inevitable—whether political or climatological. An embrace of this kind of legal and political unrest may herald a greater resilience to climate change and, more profoundly, enduring social transformation.

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330. Alexander Bickel was a law professor and an expert on the United States Constitution. He is best known for stressing “passive virtues” of judicial decision making—that is, the refusal to decide cases based on substance if narrower grounds existed to resolve the case. Ronald Collins, *Online Alexander Bickel symposium: Foreword — looking back while moving forward*, SCOTUSBLOG (Aug. 13, 2012), <http://www.scotusblog.com/2012/08/online-alexander-bickel-symposium-foreword-looking-back-while-moving-forward/>.

331. Schmidt, *Conceptions of Law*, *supra* note 308, at 658–59.