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### 1

**Plan: The United States federal judiciary should provide public nuisance compensation to climate justice claimants in the form of domestic clean development mechanism grants for wind power.**

### 2

**Advantage 1 is Climate Justice ---**

**The AEP decision green-lighted regulations but closed the door on compensation for those seeking climate justice.**

**Burkett 11**—Professor of Law @ University of Hawaii [Maxine Burkett, “Climate Justice and the Elusive Climate Tort,” The Yale Law Journal Online, 121 Yale L.J. Online 115 (2011), pg. http://yalelawjournal.org/2011/09/13/burkett.html]

The Supreme Court’s decision in American Electric Power Co. v. Connecticut (AEP) closes another door for those most vulnerable to climate change. The corrective justice goals of tort law and the associated possibilities for redress—particularly vital to the most vulnerable—remain elusive due to the Court’s restricted view of tort law’s relevance to climate change. This Essay analyzes these climate justice implications of AEP.

The field of “climate justice” (CJ) is concerned with the intersection of race and/or indigeneity, poverty, and climate change. It also recognizes the direct kinship between social inequality and environmental degradation. The term “climate vulnerable,” the subject of CJ, describes those communities or nation-states that have a particularly acute exposure to present and forecasted climatic changes. That increased vulnerability is due to either the nature and degree of climate impacts’ forecast and/or the preexisting socioeconomic vulnerabilities that climate impacts amplify. Underscoring the “justice” element, these most vulnerable populations are also the least responsible for the emissions that fuel anthropogenic climate change.

The Essay argues that the common law nuisance claims rejected by the Court in AEP provide an **important mechanism** for the climate vulnerable to achieve corrective justice. Corrective justice is one of the most important goals of tort law because of its focus on the relationship between the tortfeasor and victim. While there are myriad interpretations of corrective justice theory and its application, this approach at its core counsels simply that individuals who are responsible for the wrongful losses of others have a duty to repair those losses. Further, rectification of harms suffered can help restore the moral balance upset by the externalized costs that climate change inflicts on individuals and communities. The corollary, therefore, is that tort law should provide a venue and possible **damages remedy** for CJ plaintiffs whose claims—namely, injuries to life and property—demand **compensation** from the worst offenders.

As Professor Osofsky explains in her commentary, the AEP Court explicitly endorses the regulatory route for addressing emissions that contribute to climate change, rather than providing a parallel track in the courts through injunction. Even if a regulatory regime could achieve emissions reductions objectives more effectively than tort law, however, CJ claimants have **lost the ability to confront major emitters and gain redress** for their particular—and disproportionate—injuries. So while tort law, and the accompanying judicial process, introduces the complex web of claims and potential defendants that Professor Gerrard describes, it also provides a unique way for CJ claimants to face major emitters, argue that they have been injured, and demonstrate that defendants have an obligation to make amends for that wrong.

Public nuisance theory, in particular, serves as a potentially effective corrective justice mechanism for CJ claimants because it focuses on the nature of the harms plaintiffs suffer. **Native Village of Kivalina** v. ExxonMobil Corp., another pending public nuisance case that faces an uphill battle after AEP, is a paradigmatic example of CJ by virtue of its plaintiffs and the nature of their claims. Plaintiffs seek monetary damages for the past and ongoing emissions of several major oil, coal, gas and utility companies. Kivalina has almost 400 residents, 97 percent of whom are Alaska Natives. The village is traditional Inupiat and is located at the tip of a six-mile-long barrier reef. Plaintiffs allege that climate change has severely harmed Kivalina’s people and property by reducing the sea ice that acts as a protective barrier to coastal storms. The storms and waves are destroying the land with such severity that the entire community must now relocate further inland. Government estimates have determined that the cost of relocation falls between $95 million and $400 million.

The Inupiat are among the most vulnerable to climate change and yet have produced insignificant emissions. The current regulatory infrastructure for reducing emissions does not respond to the specific needs of these plaintiffs. For them, a viable tort claim is a means to achieve compensation for the loss of their property and to facilitate their relocation. Public nuisance theory, with its emphasis on the unreasonableness of a plaintiff’s injury, provides an appropriate focus for understanding climate impact claims. Instead of assessing the worth of a defendant’s actions—often riddled with the politics of wealth and power—nuisance law shines a spotlight on the unprecedented events climate change introduces. Public nuisance claims, as Professor Abate explains, may succeed where disparate impact litigation failed in the environmental justice context. They can provide the **specific relief**—funding for physical relocation in this case—that these particular CJ plaintiffs deserve. Even with a comprehensive regulatory scheme for emissions reduction in place, public nuisance law should remain a means by which climate-impacted communities can seek compensation from major emitters.

The decision in AEP forecloses federal common law public nuisance claims so long as the EPA retains regulatory authority over greenhouse gas emissions. The opinion further states that, even if the EPA decides not to regulate greenhouse gas emissions (or does so inadequately), the federal common law is not an available track to pursue such actions. That stance may negatively impact the ability for any court to address the individual claims based on specific harms brought by CJ plaintiffs—claims that are critical for achieving redress for these vulnerable communities.

The Court’s decision also betrays a skittishness in dealing with climate change suits generally, which underscores its failure to appreciate the deep injustices climate impacts introduce. Inexplicably, the AEP Court takes time in its relatively slender decision to inject doubt about elements of climate science. Abandoning the confidence demonstrated in Massachusetts v. EPA, the Court cites to a magazine article expressing doubt about climate change impacts as a counterweight to the voluminous peer-reviewed articles on which the EPA based its findings. Further, the Court pauses again to make a facile indictment of all breathing, sentient beings. In an instant, it dismisses the relative excess with which some have burned carbon for luxury and profit versus those who have for food and shelter.

This reluctance to address the justice elements of climate change is a legal phenomenon that exacerbates already dangerous climate effects. Over twenty years ago, David Caron explained that the law can create feedback loops that, like their counterparts in the physical world, amplify certain climate trends. A core purpose of law and the courts, particularly in a tort law context, is to provide recourse to those who have been wronged, especially if the wrongs involve the loss of life or property. If at every turn there is no avenue for remedy, the law and its **institutions risk being perceived as an ineffective** means to acknowledge and correct injustice—especially from the vantage point of the climate vulnerable. This denies the least responsible their day in court and further delays—if not, excludes—any possibility of being made whole.

Moving forward from the AEP decision, the lower courts have a choice about how they treat the unresolved alternative avenues for tort relief. If the lower courts make the distinction between the injunctive relief sought in AEP and the **compensatory relief** sought in Kivalina and **recognize the corrective potential of compensation claims** and their role in administering the process, the disparately impacted may enjoy appropriate recourse. Opening their doors to climate tort claims would be the courts’ distinct contribution to what will hopefully be a diverse and multi-layered commitment to rectifying, at least in part, the losses of the climate vulnerable.

**Using damages to support domestic clean development supports indigenous sustainable energy. It creates institutions dedicated to climate justice.**

**Burkett 08** - Professor of law @ University of Colorado [Maxine Burkett, “Just Solutions to Climate Change: A Climate Justice Proposal for a Domestic Clean Development Mechanism,” Buffalo Law Review, 56 Buffalo L. Rev. 169, April 2008

There are as many possibilities in rural communities.247 **Native wind projects**, for example, are the most well-established cooperatives just waiting for a formal market, which the dCDM would provide. According to Winona LaDuke, Native American activist and environmental justice advocate, native people have their eyes on the horizon.248 There is a movement for local control of energy as wind and solar projects proliferate throughout native lands. Specifically, there is a push for the creation of distributed energy systems with which local households and businesses can produce power and sell excess energy onto the grid.249 This locality-based approach emphasizes small-scale and dispersed-alternatives generation, providing the possibility of production at the tribal level.250 LaDuke perfectly summarizes the intersection of race, poverty, and just solutions, solutions that lack only the right of entry. She writes:

The reality is that this region of North America has more wind power potential than almost anywhere in the world. Twenty-three Indian tribes have more than **300 gigawatts of wind generating potential**. That’s equal to over half of present U.S. installed electrical capacity. Those tribes live in some of the poorest counties in the country, yet the wind turbines they are putting up could power America—if they had more markets and access to power lines.251 Again, market access would be the very purpose and the incredible value of the dCDM.

Currently, significant tribe-based initiatives under NativeEnergy have begun selling renewable energy credits or “green tags” on a more ad hoc basis. The Rosebud Sioux, a founding member of the Intertribal Council on Utility Policy (COUP) in South Dakota, “pioneered the development of green power financing through the up-front sale of green tags (or renewable energy credits . . . RECs).”252 NativeEnergy markets the tags to buyers who seek to reduce domestic carbon emissions while financially supporting tribal renewables projects. Bob Gough describes the end product as “sustainable homeland economies.”253 “**Village power models**” can develop renewables technology designed for remote off-grid applications, serving the grossly underserved on Indian lands, while restoring the balance upset by environmental and **climate injustices**.

The dCDM would ensure a long-term stable revenue source for projects that are already proceeding in a CDM-like fashion.254 In its expansion phase, NativeEnergy envisions “further development of private marketing strategies for the sale of green power, green tags and pollution credits”—all needed to support development of NativeEnergy projects.255 The market share potential is great, as the Intertribal COUP presently assesses the wind potential in the **Great Plains Indian reservations** and conservatively estimates an energy generation of 530 billion kilowatt-hours annually.256 Sustainable home economies can be fostered and advanced with the support of an independent, firmly established market infrastructure—the dCDM.

**Clean development institutions establish a climate justice model for just transition. Without this model, green development leaves out the marginalized communities at the greatest risk from climate change.**

**Burkett 08** - Professor of law @ University of Colorado [Maxine Burkett, “Just Solutions to Climate Change: A Climate Justice Proposal for a Domestic Clean Development Mechanism,” Buffalo Law Review, 56 Buffalo L. Rev. 169, April 2008

The dCDM is the best, just solution in the face of none.281 It is also consistent with traditional **e**nvironmental **j**ustice norms, and, at the same time, soundly responds to some of the more salient criticisms leveled at EJ thus far. Specifically, consistent with the Ten Actions of Climate Justice Policies enumerated at the Second National People of Color Environment Leadership Summit, the dCDM would “ensure **just transition[s] for workers** and communities,” by ensuring a place in the burgeoning “renewable resource economy.”282 It is, in fact, dependent upon the promotion of “ownership and stewardship of renewable resources” by workers and community members.283 As a part of a domestic market, the dCDM will “allow communities to participate in the creation” and maintenance of the carbon market—meeting another important action point for Climate Justice Policies.284 Another more general environmental justice goal that would be met is in creating possible carbon sinks, through afforestation and reforestation projects, for example, the dCDM could facilitate desperately needed efforts to **green urban EJ communities**. At present, urban communities of color are bereft of parks and open spaces, particularly as compared to their white counterparts.285 Social justice and green infrastructures will, for once, have a committed and steady investment mechanism.286

The mechanism will also quiet EJ detractors. Organizations such as the Black Chamber of Commerce—and other political and economic forces in the African American community—have organized to oppose the EJ movement, claiming that it seeks to prevent all economic development in communities of color. The dCDM is an EJ and a climate justice solution that **disproves the underlying premise** of the above critique and **encourages** the kind of **economic development** that will ready communities for an unparalleled challenge.287

In assessing the future of environmental justice, Brulle and Pellow maintained that a “sophisticated EJ vision” would combine the creation of “innovative practices through existing entities” and the development of “new institutions apart from traditional ones.”288 The dCDM introduces both. With the opportunity presented by increasing demands for climate policy and the introduction of sustainable local economies in EJ communities, the dCDM is poised to **incorporate environmental justice and climate justice norms** in early climate policy decisionmaking.

CONCLUSION

Environmental justice norms demand that in choosing its response to climate change, the United States address the disproportionate burdens of the crisis. The emerging discussion of policy strategies to respond to global warming has failed to address concerns of communities that will be most negatively affected by related calamities. This policy failing reflects, in large part, a **conceptual blind spot** as to the relevance of environmental justice concerns to global warming. Indeed, U.S. legal academics to date have not developed and adhered to a concept of “**climate justice**,” and thus policymakers are not alone in this regard. As this Article has made clear, however, climate justice is a powerful concern that must be placed within the broader **environmental justice framework**, and policymakers should be careful to address such concerns in adopting measures to address the climate crisis.

The urgency of the crisis requires prompt and substantive action. We now have an opportunity and a **moral obligation** to implement climate solutions that neither disregard disproportionate suffering nor aggravate it. In fact, a union of justice principles and climate change solutions will allow the United States to decisively demonstrate what it so often simply declares: the nation’s claimed foundational commitment to justice and equity in our laws.289 In the short term, adoption of the domestic CDM, though not the overarching remedy that environmental justice advocates would like to see most, is the remedy that is consistent with the current trajectory of policy-makers and, as such, is the most feasible approach. There are also significant advantages that attach to this solution. Besides meeting the theoretical and practical mandates of the environmental justice movement, it is an important **engine for emergent economic development opportunities** across the nation’s rural and urban communities. This and the struggle for more fundamental systemic changes can, and should, be done concurrently.

The additional, though less obvious, benefit of this analysis is that it sets a framework for how the United States can meet its **responsibilities and obligations** to poor and of-color communities **throughout the globe**. Climate justice, in other words, can forcefully encourage the United States to consider the consequences of its political and economic character and incorporate the attendant moral obligations into its choice of solutions. If the environmental justice movement cannot curb the excesses of the United States‟ political economy, however, it will surely be ill-equipped to do so on a global scale.290 There is a growing sense that the continued relevance of the movement is hinged on its ability to have consequence in the fate of the global poor and of-color. The environmental justice movement, therefore, must be a critical and consequential crafter of domestic, and ultimately global, solutions.

The domestic CDM is, in fact, a model solution in light of the reconsidered EJ movement. From their review and critique of the first decades of EJ, Robert Brulle and David Pellow urge twenty-first century EJ scholars to balance the documentation of problems with an “orientation toward” solutions.291 They explicitly request proposals that promote “new directions for society to heal itself and produce more just and sustainable forms of production.”292 This is the vital contribution of the dCDM to our communities as well as to the legal academy.

It is true that “[p]olitics and law can ultimately have no higher purpose than seeking fair outcomes for the survival of the natural world.”293 It is also true that adaptation measures produced by political and legal processes can reinforce rather than alleviate uneven distributions of power.294 My purpose here has been to encourage an adaptive response that does not reinforce inequality, but instead takes the first, crucial step to charting a path in which all solutions, however flawed, may be just. Pg. 237-244

**Climate justice is needed to ensure planetary survival.**

**Barlow 10** - National Chairperson of the Council of Canadians and founder of the Blue Planet Project. [Maude Barlow (A former U.N. Senior Water Advisor), “Advice for Water Warriors,” Yes! Magazine, posted Nov 08, 2010, pg. http://www.yesmagazine.org/planet/advice-for-water-warriors

Half the tropical forests in the world—the lungs of our ecosystems—are gone; by 2030, at the current rate of harvest, only 10 percent will be left standing. Ninety percent of the big fish in the sea are gone, victim to wanton predatory fishing practices. Says a prominent scientist studying their demise “there is no blue frontier left.” Half the world’s wetlands—the kidneys of our ecosystems—were destroyed in the 20th century. Species extinction is taking place at a rate one thousand times greater than before humans existed. According to a Smithsonian scientist, we are headed toward a “**biodiversity deficit**” in which species and ecosystems will be destroyed at a rate faster than nature can create new ones.

We are polluting our lakes, rivers, and streams to death. Every day, 2 million tons of sewage and industrial and agricultural waste are discharged into the world’s water, the equivalent of the weight of the entire human population of 6.8 billion people. The amount of wastewater produced annually is about six times more water than exists in all the rivers of the world. A comprehensive new global study recently reported that 80 percent of the world’s rivers are now in peril, **affecting 5 billion people** on the planet. We are also mining our groundwater far faster than nature can replenish it, sucking it up to grow water-guzzling chemical-fed crops in deserts or to water thirsty cities that dump an astounding 200 trillion gallons of land-based water as waste in the oceans every year. The global mining industry sucks up another 200 trillion gallons, which it leaves behind as poison. Fully one third of global water withdrawals—enough water to feed the world—are now used to produce biofuels. A recent global survey of groundwater found that the rate of depletion more than doubled in the last half century. If water was drained as rapidly from the Great Lakes, they would be bone dry in 80 years.

The global water crisis is the **greatest ecological and human threat** humanity has ever faced. Vast areas of the planet are becoming desert as we suck the remaining waters out of living ecosystems and drain remaining aquifers in India, China, Australia, most of Africa, all of the Middle East, Mexico, Southern Europe, U.S. Southwest, and other places. Dirty water is the biggest killer of children; every day more children die of water-borne disease than HIV/AIDS, malaria, and war together. In the global South, **dirty water kills a child every 3.5 seconds**. And it is getting worse, fast. By 2030, global demand for water will exceed supply by 40 percent—an astounding figure foretelling of terrible suffering.

Knowing there will not be enough food and water for all in the near future, wealthy countries and global investment, pension and hedge funds are buying up land and water, fields and forests in the global South, creating a new wave of invasive colonialism that will have huge geo-political ramifications. In Africa alone, rich investors have already bought up an amount of land double the size of the United Kingdom.

We Simply Cannot Continue on the Present Path

I do not think it possible to exaggerate the threat to our Earth and every living thing upon it. Quite simply, we cannot continue on the path that brought us here. Einstein said that problems cannot be solved by the same level of thinking that created them. While mouthing platitudes about caring for the Earth, most of our governments are deepening the crisis with new plans for expanded resource exploitation, unregulated free trade deals, more invasive investment, the privatization of absolutely everything, and unlimited growth. This model of development is **literally killing the planet**.

Unlimited growth assumes unlimited resources, and this is the genesis of the crisis. Quite simply, to feed the increasing demands of our consumer-based system, humans have seen nature as a great resource for our personal convenience and profit, not as a living ecosystem from which all life springs. So we have built our economic and development policies based on a human-centric model and assumed either that nature would never fail to provide or that, where it does fail, technology will save the day.

Two Problems that Hinder the Environmental Movement

From the perspective of the environmental movement, I see two problems that hinder us in our work to stop this carnage. The first is that, with notable exceptions, most environmental groups either have **bought into the dominant model** of development or feel incapable of changing it. The main form of environmental protection in industrialized countries is based on the regulatory system, legalizing the discharge of large amounts of toxics into the environment. Environmentalists work to minimize the damage from these systems, essentially fighting for inadequate laws based on curbing the worst practices, but leaving intact the system of economic globalization at the heart of the problem. Trapped inside this paradigm, many environmentalists essentially **prop up a deeply flawed system**, not imagining they are capable of creating another.

Hence, the support of false solutions such as carbon markets, which, in effect, privatize the atmosphere by creating a new form of property rights over natural resources. Carbon markets are predicated less on reducing emissions than on the desire to make carbon cuts as cheap as possible for large corporations.

Another false solution is the move to turn water into private property, which can then be hoarded, bought and sold on the open market. The latest proposals are for a water pollution market, similar to carbon markets, where companies and countries will buy and sell the right to pollute water. With this kind of privatization comes a loss of public oversight to manage and protect watersheds. Commodifying water renders an earth-centered vision for watersheds and ecosystems unattainable.

Then there is PES, or Payment for Ecological Services, which puts a price tag on ecological goods—clean air, water, soil, etc.—and the services such as water purification, crop pollination, and carbon sequestration that they provide. A market model of PES is an agreement between the “holder” and the “consumer” of an ecosystem service, turning that service into an environmental property right. Clearly this system privatizes nature, be it a wetland, lake, forest plot, or mountain, and sets the stage for private accumulation of nature by those wealthy enough to be able to buy, hoard, sell, and trade it. Already, Northern Hemisphere governments and private corporations are studying public/private partnerships to set up lucrative PES projects in the Global South. Says Friends of the Earth International, “Governments need to acknowledge that market-based mechanisms and the commodification of biodiversity have failed both biodiversity conservation and poverty alleviation.”

The second **problem with our movement is one of silos**. For too long environmentalists have toiled in isolation from those communities and groups working for human and social justice and for fundamental change to the system. On one hand are the scientists, scholars, and environmentalists warning of a looming ecological crisis and monitoring the decline of the world’s freshwater stocks, energy sources, and biodiversity. On the other are the development experts, anti-poverty advocates, and NGOs working to address inequitable access to food, water, and health care and campaigning for these services, particularly in the Global South. The assumption is that these are two different sets of problems, one needing a scientific and ecological solution, the other needing a financial solution based on pulling money from wealthy countries, institutions, and organizations to find new resources for the poor.

The clearest example I have is in the area I know best, the freshwater crisis. It is finally becoming clear to even the most intransigent silo separatists that the ecological and human water crises are intricately linked, and that to deal effectively with either means dealing with both. The notion that inequitable access can be dealt with by finding more money to pump more groundwater is based on a misunderstanding that assumes unlimited supply, when in fact humans everywhere are over-pumping groundwater supplies. Similarly, the hope that communities will cooperate in the restoration of their water systems when they are desperately poor and have no way of conserving or cleaning the limited sources they use is a cruel fantasy. The ecological health of the planet is intricately tied to the need for a just system of water distribution.

The global water justice movement (in which I have the honor of being deeply involved) is, I believe, successfully incorporating concerns about the growing ecological water crisis with the promotion of just economic, food, and trade policies to ensure water for all. We strongly believe that fighting for equitable water in a world running out means taking better care of the water we have, not just finding supposedly endless new sources. Through countless gatherings where we took the time to really hear one another—especially grassroots groups and tribal peoples closest to the struggle—we developed a set of guiding principles and a vision for an alternative future that are universally accepted in our movement and have served us well in times of stress. We are also deeply critical of the trade and development policies of the World Trade Organization, the World Bank and the World Water Council (whom I call the “lords of water”), and we openly challenge their model and authority.

Similarly, a fresh and exciting new movement exploded onto the scene in Copenhagen and set all the traditional players on their heads. The **climate justice** movement whose motto is "Change the System, Not the Climate," arrived to challenge not only the stalemate of the government negotiators but the stale state of **too-cozy alliances** between major environmental groups, international institutions, and big business—the traditional “players” on the climate scene. Those climate justice warriors went on to gather at another meeting in Cochabamba, Bolivia, producing a powerful alternative declaration to the weak statement that came out of Copenhagen. The new document forged in Bolivia put the world on notice that business as usual is not on the climate agenda.

How the Commons Fits In

I deeply believe it is time for us to extend these powerful new movements, which fuse the analysis and hard work of the environmental community with the vision and commitment of the justice community, into a whole new form of governance that not only challenges the current model of unlimited growth and economic globalization but promotes an alternative that will **allow us and the Earth to survive**. Quite simply, human-centered governance systems are not working and we need new economic, development, and environmental policies as well as new laws that articulate an entirely different point of view from that which underpins most governance systems today. At the center of this new paradigm is the need to protect natural ecosystems and to ensure the equitable and just sharing of their bounty. It also means the recovery of an old concept called the Commons.

**Calling on the US judiciary aids international commitments to climate justice.**

**Long 08** – Professor of Law @ Florida Coastal School of Law [Andrew Long, “International Consensus and U.S. Climate Change Litigation,” 33 Wm. & Mary Envtl. L. & Pol'y Rev. 177, Volume 33 | Issue 1 Article 4 (2008)

1. Enhancing U.S. International Leadership

In a time of unfavorable global opinion toward the United States, **explicit judicial involvement** with international norms will move the United States closer to the international community by acknowledging the relevance of international environmental norms for our legal system. As in other contexts, explicit judicial internalization of climate change norms would "build[ ] U.S. 'soft power,' [enhance] its **moral authority**, and strengthen[ ] U.S. capacity for **global leadership**"2 °3 on climate change, and other global issues. More specifically, domestic judicial consideration of the global climate regime would reaffirm that although the United States has rejected Kyoto, we take the obligation to respect the global commons seriously by recognizing that obligation as a facet of the domestic legal system.

U.S. courts' overall failure to interact with the international climate regime, as in other issue areas, has "serious consequences for their roles in **international norm creation**."2" As judicial understandings of climate change law converge, the **early and consistent** contributors to the transnational judicial dialogue will likely play the strongest role in **shaping the emerging international normative consensus**.2"' As Justice L'Heureux- Dube of the Canadian Supreme Court noted in an article describing the decline of the U.S. Supreme Court's global influence, "[decisions which look only inward ... have less relevance to those outside that jurisdiction." °6 Thus, if U.S. courts hope to participate in shaping the normative position on climate change adopted by judiciaries throughout the world, explicit recognition of the relationship between domestic and international law is vital.

With climate change in particular, norm development through domestic application should be an important aspect of **global learning**. The problem requires a global solution beyond the scope of any prior multilateral environmental agreements. This provides a situation in which U.S. judicial reasoning in applying aspects of climate regime thinking to concrete problems will **fall into fertile international policy soil**.

Accordingly, the recognition of international norms in domestic climate change litigation may play a strengthening role in the perception of U.S. leadership, encourage U.S. development and **exportation** of effective domestic climate strategies, and **promote international agreements** that will enhance consistency with such approaches. In short, explicit judicial discussion of international climate change norms as harmonious with U.S. law can enhance U.S. ability to regain a global leadership position on the issue and, thereby, more significantly **shape the future of the international climate regime.**

2. Promoting the Effectiveness of the International Response

Along with promoting U.S. interests and standing in the international community, climate change litigation has a direct role to play in developing the international regime if courts directly engage that regime." 7 Just as the United States as an actor may benefit from acknowledging and applying international norms, the regime in which the actions occur will benefit through application and acceptance. Indeed, a case such as Massachusetts v. EPA that directly engages only domestic law can nonetheless be understood to impact international lawmaking by considering its actors."' More important, however, will be cases in which the domestic judiciary gives life to international agreements through direct engagement-a "role [that] is particularly important as a check on the delegitimization of international legal rules that are not enforced."" 9

Assuming, as we must in the arena of climate change, that international law can only effect significant changes in behavior through penetration of the domestic sphere, domestic litigation that employs international law not only provides an instance in which the international appears effective but, more importantly, molds it into a shape that will enable further use in domestic cases or suggest necessary changes internationally.

 By engaging the international, domestic cases can also provide articulation for the norms that have emerged. The precise meaning of the UNFCCC obligation that nations take measures must be hammered out on the ground. In the United States, if Congress has not acted, it is appropriate for the courts to begin this process by measuring particular actions against the standard.

3. Encouraging Consistency in Domestic Law and Policy

In the absence of national climate change law and policy, explicit discussion of international sources and norms in litigation will provide a well-developed baseline for a uniform judicial approach in the domestic realm. This could occur both within and beyond the United States.

Within the United States, bringing international environmental law into the mix of judicial reasoning would provide common grounding that unifies the decisions and begins to construct a more systematic preference for development of an effective legal response to international threats. Specifically, if an international climate change norm is found relevant to interpretation of a domestic statute, reference will be appropriate to that norm when future questions of interpretation of the domestic statute arise.210 Thus, to the extent that climate change cases rely upon consensus concerning the scientific evidence of climate change, future cases should use that consensus as a measuring stick for claims of scientific uncertainty.2n The same can occur with norm development. For example, had the Court in Massachusetts tied its jurisdictional or substantive holding to an identifiable norm, the opinion would have greater clarity and value as a precedent in other contexts within the United States.

Outside the United States, this approach would provide value to other, more transnationally oriented domestic courts.212 This would serve a **norm entrepreneurship function** and likely increase agreement among domestic courts on how to approach climate change issues raised under statutes designed for other purposes.

4. Enabling a Check at the Domestic-International Interface

Finally, climate change litigation has something to offer for the growth of administrative law at the interface of domestic and international law. At least two points are noteworthy.

First, U.S. courts can serve a unique function of providing legal accountability for U.S. failure to honor its UNFCCC commitments.213 Although this might be achieved implicitly, arguably the approach of Massachusetts, doing so explicitly would provide a check of a different magnitude. An explicit check here would serve the purposes identified above, as well as offering the practical benefit of **increasing compliance**. The dualist tradition, and perhaps concerns of domestic political backlash, weigh against grounding a decision solely in the UNFCC. However, looking to it as a major point in a narrative defining the development of a partly **domestic obligation to take national action for the redress of climate change would serve the** same beneficial **purpose.** This approach has the advantage of building a significant bridge over the dualist divide between domestic and international law without ripping the Court's analysis from traditional, dualist moorings. Pg. 212-216

### 3

**Advantage 2 is Adaptation ---**

**We need a legal model capable of promoting both climate mitigation and adaptation. We must adapt our legal reasoning if we want to marshal the resources needed to cope with climate change.**

**Craig 10** - Professor of Law & Associate Dean for Environmental Programs @ Florida State University [Robin Kundis Craig, “'Stationarity is Dead' - Long Live Transformation: Five Principles for Climate Change Adaptation,” Harvard Environmental Law Review, Vol. 34, No. 1, 2010, pp. 9-75

Climate change is creating positive feedback loops that may irreversibly push ecosystems over ecological thresholds, destroying coupled socio-ecological systems. In January 2009, the U.S. Climate Change Science Program ("USCCSP") reported that the Arctic tundra represents a "clear example" of climate change pushing an ecosystem beyond an ecological threshold. 21 Warmer temperatures in the Arctic reduces the duration of snow cover, which in turn reduces the tundra's ability to reflect the sun's energy, leading to an "amplified, positive feedback effect. '22 The result has been "a relatively sudden, domino-like chain of events that result in conversion of the arctic tundra to shrubland, triggered by a **relatively slight increase in temperature**," 23 and the consequences for people living in these areas have been severe. For example, the Inupiat Eskimo village of **Kivalina**, Alaska, is suing for the costs of moving elsewhere, in response to the steady erosion of the village itself.24 Similarly, most Canadian Inuit live near the coast, on lands that exist only because of permafrost. Warming Arctic conditions threaten to deprive them of their homelands.25

Thus, a variety of natural systems and the humans who depend on them—what are termed socio-ecological systems26—are vulnerable to climate change impacts. While developing and implementing successful mitigation strategies clearly remains critical in the quest to **avoid worst-case** climate change scenarios, we have **passed the point** where mitigation efforts alone can deal with the problems that climate change is creating.27 Because of "committed" warming—climate change that will occur regardless of the world's success in implementing mitigation measures, a result of the already accumulated greenhouse gases ("GHGs") in the atmosphere 28—what happens to socio ecological systems over the next decades, and most likely over the next few centuries, will largely be **beyond human control**. The time to start preparing for these changes is now, by **making adaptation part of a national climate change policy**.

Nevertheless, American environmental law and policy are not keeping up with climate change impacts and the need for adaptation.29 To be sure, adjustments to existing analysis requirements are relatively easy, as when the Eastern District of California ordered the FWS to consider the impacts of climate change in its Biological Opinion under the ESA.30 Agencies and courts have also already incorporated similar climate change analyses into the National Environmental Policy Act's ("NEPA") Environmental Impact Statement ("EIS") requirement3 ' and similar requirements in other statutes. 32

Even so, adapting law to a world of continuing climate change impacts will be a far more complicated task than addressing mitigation. When the law moves beyond analysis requirements to actual environmental regulation and natural resource management,33 it will find itself in the increasingly uncomfortable world of changing complex systems and complex adaptive management—a world of unpredictability, poorly understood and changing feedback mechanisms, nonlinear changes, and ecological thresholds. As noted, climate change alters baseline ecosystem conditions in ways that are currently beyond immediate human control,34 regardless of mitigation efforts. These baseline conditions include air, water, and land temperatures; hydrological conditions, including the form, timing, quality, and amount of precipitation, runoff, and groundwater flow; soil conditions; and air quality. Alterations in these basic ecological elements, in turn, are prompting shifts and rearrangements of species, food webs, ecosystem functions, and ecosystem services.35 Climate change thus complicates and even obliterates familiar ecologies, with regulatory and management consequences.

Nor are these regulatory and management consequences an as-yet-still hypothetical problem. In February 2008, a group of researchers noted in Science that current water resource management in the developed world is grounded in the concept of stationarity—"the idea that natural systems fluctuate within an unchanging envelope of variability."36 However, because of climate change, "**stationarity is dead**."37 These researchers emphasized that impacts to water supplies from climate change are now projected to occur "during the multidecade lifetime of major water infrastructure projects" and are likely to be wide-ranging and pervasive, affecting every aspect of water supply.38 As a result, the researchers concluded that stationarity "should no longer serve as a central, default assumption in water-resource **risk assessment and planning**. Finding a suitable successor is crucial for human adaptation to changing climate."39

 Further, these authors realized the critical question is what a successor regime to stationarity should look like. 40 With the onset of climate change impacts, humans have **decisively lost the capability**—to the extent that we ever had it—to dictate the status of ecosystems and their services. As a result, and perhaps heretically, this Article argues that, for adaptation purposes, we are better off treating climate change impacts as a rather than as anthropogenic disturbances, 41 with a consequent shift in regulatory focus: we cannot prevent all of climate change's impacts,42 but we can certainly improve the efficiency and effectiveness of our responses to them. As this slow-moving tsunami 43 bears down on us, some loss is inevitable—but loss of everything is not. Climate change is creating a world of triage, best guesses, and shifting sands, and the sooner we **start adapting legal regimes** to these new regulatory and management realities, the sooner we can marshal energy and resources into actions that will help humans, species, and ecosystems cope with the changes that are coming. Pg. 13-16

**Compensation for climate adaptation is critical. Warming induced scarcity produces starvation and drought. Billions of people will suffer.**

**Marlow & Barcelos 11** - Co-Executive Directors of the Three Degrees Project at the University of Washington School of Law [Jennifer Marlow (JD from the University of Washington) & Jennifer Krencicki Barcelos (JD from the University of Washington), “Global Warring and the Permanent Dry: How heat threatens human security in a warmer world,” Seattle Journal of Environmental Law, 2011 Volume 1 Issue 19

2. Food and Water

Coupled with heat-related dangers to public health, the warmer world is likely to be a **hungry world**. Heat can be devastating to crops, and in many places, climate change is already reducing agricultural productivity. A recent newspaper headline, ripped from the front page of the San Francisco Chronicle’s business section, reads “World’s Wheat Crop Stressed.”25 According to the article, “Yields aren’t keeping up with a world growing hungrier. Crops are stunted in a world grown warmer. A devastating fungus, a wheat ‘rust,’ is spreading out of Africa, a grave threat to the food plant that covers more of the planet’s surface than any other.”26 The article continues, “In the face of leapfrogging prices, stagnating yields and shifting climate zones, wheat cannot be counted on to fill humankind’s stomach in the future as it has since at least 7000 BC.”27 The article is right to call attention to the multitude of social and scientific factors that combine to create food insecurity.

One such factor that will compound all of this for much of Africa will be desertification. It is estimated that by 2050, there could be less than ninety reliable crop-growing days per year in parts of sub-Saharan Africa.28 (See Fig. 2).

The warmer world will lead to reduced yields of many staple grains: wheat, maize, rice, and soybeans. A rule of thumb is that for every one degree Celsius increase in temperature, cereal grain crop yields will decline by about 10 percent.30 Importantly, this decline is attributable to temperature increases only; scientists did not factor in any changes in precipitation, pathogen responses, or other possible impacts on food production in their study. In hotter weather and with longer growing seasons, plants may mature faster, but overall yield is reduced.31

In addition, current research reveals that the rising temperatures associated with climate change could significantly reduce the protein content of many of the major grains that people depend on for survival.32 As Figure 2 indicates, some regions may benefit from climate change’s hotter temperatures, but much of the **Global South** will see reduced yields of crops that are already in scarce supply. And, according to the map, Russia’s crops were supposed to benefit from warmer weather.

The warmer world will also be a **thirstier world**. And there are alread a lot of thirsty people. Take water scarcity, in India, for example, where the magnitude of drying far exceeds the capacity of afterthought or charity to provide an adequate response as people kill each other with swords in the slums of Bhopal over access to limited freshwater. India’s 2009 record drought and shifting monsoon caused “the driest June for 83 years . . . exacerbating the effects of a widespread drought and setting neighbour against neighbour in a desperate fight for survival.”33 One hundred thousand people in Bhopal already rely entirely on the daily deliveryy of water from water tankers to meet their survival needs.34

The UN has warned for many years that water shortages will become one of the most pressing problems on the planet over the coming decades, with one report estimating that **four billion people will be affected** by 2050. What is happening in India, which has too many people in places where there is not enough water, is a foretaste of what is to come.35

Will we be delivering water to four billion people via tanker trucks in India? How about in the United States? The recent drought study by Dr. Dai mentioned earlier poses equal challenges for the United States, particularly for the Southwest.36 Although the United States has avoided significant drying over the past fifty years due to natural climate variations, much of the United States will experience severe drying within the next few decades.37 Imminent drying could cause water levels in the Colorado River and Lake Mead to drop, further endangering the water supply for the Southwest.38 Dr. Dai also predicts droughts of devastating severity by 2030 in southern Europe, Southeast Asia, Brazil, Chile, Australia, and a majority of Africa.39

3. Security

The warmer world is likely to be a less secure world. Looking beyond the public health imp,” acts of heat waves and the phenomenon of reduced agricultural productivity and water scarcity, the warmer world is going to be a more violent place. In fact, there is a phrase in psychology, “**the heat hypothesis**,” which is used to describe this very phenomenon.40 Studies of this relationship between human behavior and weather patterns date back to the time of Cicero (106–32 BC), although the topic was first empirically studied in the 1700s.41 Research by criminal psychologist Ehor Boyanowsky, a professor at Simon Fraser University, shows that “elevated ambient temperatures lead to increased brain temperatures that result in cognitive dysfunction, emotional stress, and aggression,” as well as increases in violent crime.42

According to another study by Iowa State psychologist Craig Anderson and sociologist Matthew DeLisi, “higher temperatures can increase aggression in myriad ways.”43 Based on their analysis of violent crime data for the period between 1950 and 2008, the researchers estimate that an increase of 4.4 degrees Celsius in the United States would result in more than 100,000 additional violent crimes nationwide per year.44 But, the researchers caution, regular heat-fueled aggression is only one part of the problem. Migration, when it does take place, is likely to lead to even more violent behavior that can take on various forms of civil unrest. As DeLisi notes, “displacement and migration of people across borders can potentially lead to a lot more human conflict.”45 He points out the example of a **post-Hurricane Katrina** spike in Houston homicides, which has been linked to spars between Houston gangs and those gangs displaced from New Orleans.46 The Katrina example may seem unique, but there is actually potential for increased violence across the world as shown in Figure 1. The map showcases how climate-induced environmental stresses will overlay one another and create or exacerbate political instability resulting in “**climate change hot spots**.” The areas that face **water insecurity** also face **food insecurity** and these factors combine and can lead to the forced migration of climate refugees.

Without adequate access to food and water, and with more violence and aggression, it is not hard to see how many people in the warmer world could be less secure. How will we cope with a climate-dominated future? What kinds of needs will we voice? As the 1994 United Nations Development Programme’s (UNDP) Human Development Report (HDR) describes:

For most people, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event. Will they and their families have enough to eat? Will they lose their jobs? Will their streets and neighborhoods be safe from crime? Will they be tortured by a repressive state? Will they become a victim of violence because of their gender? Will their religion or ethnic origin target them for persecution?47

Through its 1994 HDR, the UNDP promoted a new concept of security in the post-Cold War era, human security, as a more holistic alternative to the traditional twentieth century reliance on heavy militarization and notions of security centered on nation-states.48 Security in a warmer world must take on new meanings, and many traditional security institutions are now beginning to reexamine what this new security paradigm could look like.

Every year, Foreign Policy magazine collaborates with The Fund for Peace to create an index that evaluates the security of the world’s countries. In the summer of 2009, the index featured a special article devoted to the destabilizing effects of climate change. The article concludes, “[a]s global warming churns the world’s weather, it’s becoming increasingly clear that it’s time to start thinking about the long term. In doing so, the West may need to adopt an even broader definition of what it takes to protect itself from danger.”49 Challenging the common discourse about global security threats related to **Pakistan**, the article suggests that “[w]hen it comes to the stability of one of the world’s most volatile regions, it’s the fate of the Himalayan glaciers that should be keeping us awake at night.”50 Perhaps, the article suggests, climate change is on par with terrorism as a threat to the United States and the global world order. According to a recent New York Times article, a new type of national intelligence work is being founded on the assumption “that the **21st century will be shaped** not just by competitive economic growth, but also by potentially **disruptive scarcities**—depletion of minerals; desertification of land; pollution or overuse of water; weather changes that kill fish and farms.”51 pg. 28-29

**Public nuisance compensation is a crucial first step for adaptation strategies that avoid cultural genocide. Compensation demands polluters take responsibility for the unjust distribution of environmental harms.**

**Abate 10** - Professor of Law @ Florida A & M University [Randall S. Abate, “[Public Nuisance Suits for the Climate Justice Movement: The Right Thing and the Right Time](http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/washlr85&section=16), Washington Law Review, Vol. 85 Iss. 197

B. Incorporating Climate Justice Principles into the Post-Kyoto Regime

As Kivalina-like litigation theories **gain support in the courts** in the United States, Australia and elsewhere, they may prompt nations to develop legislation recognizing such human rights-based protections for climate change impacts. The next step would be to integrate such a theory at the international level in a treaty or pre-treaty agreement, such as the recent Copenhagen Accord.369 A similar progression occurred in the context of environmental impact assessment, which took hold in the United States in the late 1960s370 and was subsequently integrated into international environmental law treaties in the ensuing decades.371 Developing countries’ interests are now commanding more attention than ever before in international climate change negotiations.372 The need for climate justice provisions as part of a post-Kyoto regime is likely to gain a similar stronghold with possible **victories** at the domestic level **in cases like Kivalina** and the Torres Strait Islanders. One goal of the climate justice movement is that the **cultural genocide** these victimized populations are facing or may face in the immediate future should begin to trigger domestic and international human rights protections.373

Some of the publicity regarding the need for climate justice provisions has already taken hold in international climate diplomacy. In December 2009, at the Fifteenth Conference of the Parties to the Kyoto Protocol in Copenhagen, climate justice concerns were considered as part of the negotiation for the provisions of the Copenhagen Accord. For example, Article 1 of the Accord provides, “We recognize the critical impacts of climate change and the potential impacts of response measures on countries particularly vulnerable to its adverse effects and stress the need to establish a comprehensive adaptation programme including international support.”374 The Accord also establishes specific mechanisms to promote climate change adaptation assistance to vulnerable populations. For example, Article 6 recognizes the crucial role of reducing emissions from deforestation and forest degradation (REDD) to “enable the mobilization of financial resources from developed countries” to reduce global greenhouse gas emissions.375 In addition, Article 8 calls for thirty billion dollars for the period 2010– 2012 in adaptation funding from the developed countries to the “most vulnerable developing countries, such as the least developed countries, small island developing States and Africa.”376 Article 8 further calls for 100 billion dollars a year by 2020 to address developing countries’ efforts to mitigate greenhouse gas emissions.377

But Copenhagen was a disappointment to many who sought stronger protections for vulnerable populations.378 First, the Accord is only a political agreement—the hope to negotiate a binding treaty text at Copenhagen was abandoned as impossible prior to the start of the meeting.379 The international community now seeks to negotiate such a binding text at the Sixteenth Conference of the Parties (COP 16) in Mexico City in 2010. Second, the negotiations were highly contentious, largely because the developing countries were dissatisfied with the mitigation and adaptation proposals that the developed countries were offering.380 Finally, the Accord’s final language lacked any reference to “human rights” and existing human rights obligations set forth in other international treaties and instruments.381 For a post-Kyoto treaty to fully respond to the **climate-change-adaptation** era of the present, a marriage of international environmental law and international human rights must occur in that treaty’s text.382 Anything less would further victimize vulnerable populations who lie in the path of devastating climate change impacts.

Despite its shortcomings, the Copenhagen Accord reflects an important paradigm shift in the international community’s approach to climate change as compared to the existing approach in the Kyoto Protocol. While climate change mitigation strategies remain important, they are no longer the exclusive focus of international climate change regulation. The text of the Copenhagen Accord is laced with urgency regarding the need to implement meaningful climate change adaptation measures for vulnerable populations.383

But the Copenhagen Accord is only a small step forward. The climate justice field, both domestically and internationally, needs to build on the progress from Copenhagen and develop **action mechanisms and affirmative rights** for these vulnerable populations to ensure that their interests are given top priority as the international community confronts the daunting challenges posed by climate change in the decades to come. Formally recognizing the need for action is an **indispensable first step**. But the devil is in the details and the needs of vulnerable populations must come first in moving forward. Human rights impact assessments384 and actionable individual rights as part of a post-Kyoto regime on climate change are examples of a new, human-centered strategy to combat international environmental problems. Treaty-based protections addressing climate change can no longer focus exclusively on state sovereignty and protection of natural resources. The focus now must shift to ensure protection of vulnerable populations affected by climate change.

Perhaps the most shocking illustration of this need for enhanced protections for vulnerable populations is in the Maldives, a country that faces certain inundation from sea level rise within decades unless drastic mitigation and adaptation measures are undertaken very soon. This crisis is compellingly conveyed through the eloquent words of the President of the Maldives, Mohamed Nasheed, in his inaugural address to the “Climate Vulnerable Forum” meeting on November 9, 2009.385

We gather in this hall today, as some of the most climate vulnerable nations on Earth. We are vulnerable because climate change threatens to hit us first; and hit us hardest. And we are vulnerable because we have modest means with which to protect ourselves from the coming disaster. We are a diverse group of countries. But we share one common enemy. For us, climate change is no distant or abstract threat; but a clear and present danger to our survival. \*\*\* We are the frontline states in the climate change battle. \*\*\* So what can we do about it? \*\*\* Members of the G8 rich countries have pledged to halt temperature rises to two degrees Celsius. Yet they have refused to commit to the carbon targets, which would deliver even this modest goal. \*\*\* At two degrees my country would not survive. As a president I cannot accept this. \*\*\* I refuse to believe that it is too late. . . Copenhagen is our date with destiny.386

If the Copenhagen Accord represents the outcome of these nations’ “date with destiny,” there is little hope for these nations’ survival in the coming decades. These “frontline” nations must press for more comprehensive and **aggressive mechanisms to authorize climate justice relief** in both domestic and internationals law instruments and forums.

CONCLUSION

Regardless of the ultimate outcomes in the **public nuisance cases** for climate change impacts in U.S. federal courts, this litigation strategy has been an enormous step forward in the climate justice movement. It has **drawn attention** to vulnerable populations that have been victimized by climate change impacts and it has **underscored the urgent need for a viable remedy**. These cases were well-timed in that each drew attention to these issues at a critical juncture in the international diplomacy on climate change law and policy in the negotiations leading up to Copenhagen. Developing nations’ need for mitigation and adaptation measures have taken center stage in the post-Kyoto era, and negotiating a viable system of compensation for victims of climate change impacts will be an indispensable component of these negotiations in the years ahead. Of course, the nature and degree of these remedies will **continue to be tested in domestic courts** and in international negotiation sessions. Ken Alex, Supervising Deputy Attorney General for the State of California and counsel for the plaintiffs in California v. General Motors Corp., has faith in the promise of public nuisance and other common law remedies to effect change and promote justice for victims of environmental problems. He writes:

But in many ways, this environmental challenge is no different from the clouds of ‘sulphurous acid gas’ streaming from the stacks of Tennessee copper companies into Georgia a century ago, where the federal common law rose to protect the interests of the harmed state. The genius of environmental common law is its ability to address new pollution problems using long established principles validated by decades of **judicial precedent** to effect sometimes profound changes. The challenge for attorneys handling today’s innovative cases is how to best use those common law tools to reach beyond the constraints of current politics to a new era of responsibility and hope.387

The Kivalina case, and a narrow class of future cases like it, could be the **bridge** toward an era of increased hope for the victims of climate change impacts and a **transition** toward increased responsibility for the public and private entities that are principally responsible for those harms. Pg. 247-252

### 4

**Contention 3 is Climate Justice Praxis ---**

**Voting AFF is a form of demosprudence – a legal bridge between aggrieved communities and existing institutions. Becoming role-literate participants in legal debates builds public momentum for social change.**

**Guinier 9** Lani Law @ Harvard “BEYOND LEGISLATURES: SOCIAL MOVEMENTS, SOCIAL CHANGE, AND THE POSSIBILITIES OF DEMOSPRUDENCE” 89 B.U. L. Rev. 539 2009 p.544-554

In her Ledbetter dissent and subsequent remarks, Justice Ginsburg was courting the people to reverse the decision of a Supreme Court majority and thereby limit its effect. In Robert Cover's "jurisgenerative" sense,36 she claimed a space for citizens to advance alternative interpretations of the law. Her oral dissent and public remarks represented a set of *demosprudential* practices for instantiating and reinforcing the relationship between public engagement and institutional legitimacy. In Justice Ginsburg's oral dissent we see the possibilities of a more democratically-oriented jurisprudence, or what Gerald Torres and I term demosprudence. 37 Demosprudence builds on the idea that lawmaking is a collaborative enterprise between formal elites - whether judges, legislators or lawyers - and ordinary people. The foundational hypothesis of demosprudence is that the wisdom of the people should inform the lawmaking enterprise in a democracy. From a demosprudential perspective, the Court gains a new source of democratic authority when its members engage ordinary people in a productive dialogue about the potential role of "We the People" in lawmaking.38 Demosprudence is a term Professor Torres and I initially coined to describe the process of making and interpreting law from an external - not just internal - perspective. That perspective emphasizes the role of informal democratic mobilizations and wide-ranging social movements that serve to make formal institutions, including those that regulate legal culture, more democratic. 39 Demosprudence focuses on the ways that "the demos" (especially through social movements) can contribute to the meaning of law. Justice Ginsburg acted demosprudentially when she invited a wider audience into the conversation about one of the core conflicts at the heart of our democracy. 40 She grounded her oral dissent and her public remarks in a set of demosprudential practices that linked public engagement with institutional legitimacy. Those practices are part of a larger demosprudential claim: that the Constitution belongs to the people, not just to the Supreme Court. The dissenting opinions, especially the oral dissents, of Justice Ginsburg and other members of the Court are the subject of my 2008 Supreme Court foreword, *Demosprudence Through Dissent.41* The foreword was addressed to judges, especially those speaking out in dissent, urging them to "engage dialogically with nonjudicial actors and to encourage them to act democratically. '42 The foreword focuses on oral dissents because of the special power of the spoken word, but Justices can issue demosprudential concurrences and even majority opinions, written as well as spoken.43 Moreover, true to its origins, demosprudence is not limited to reconceptualizing the judicial role. Lawyers and nonlawyers alike can be demosprudential, a claim that I foreshadow in the foreword and which Torres and I are developing in other work on law and social movements. 44 Supreme Court Justices can play a democracy-enhancing role by expanding the audience for their opinions to include those unlearned in the law. Of the current Justices, Justice Antonin Scalia has a particular knack for attracting and holding the attention of a nonlegal audience. His dissents are "deliberate exercises in advocacy" that "chart new paths for changing the law."'45 Just as Justice Ginsburg welcomed women's rights activists into the public sphere in response to the Court majority's decision in *Ledbetter,* Justice Scalia's dissents are often in conversation with a conservative constituency of accountability. 46 By writing dissents like these, both Justices have acknowledged that their audience is not just their colleagues or the litigants in the cases before them. Both exemplify the potential power of demosprudential dissents when the dissenter is aligned with a social movement or constituency that "mobilizes to change the meaning of the Constitution over time. '47 Thus, Justice Ginsburg speaks in her "clearest voice" when she addresses issues of gender equality.48 Similarly, Justice Scalia effectively uses his originalist jurisprudence as "a language that a political movement can both understand and rally around. 4 9 Both Justices Ginsburg and Scalia are at their best as demosprudential dissenters when they encourage a "social movement to fight on." 50 Robert Post, writing in this symposium, reads my argument exactly right: "[C]ourts do not end democratic debate about the meaning of rights and the law; they are participants within that debate." 51 As Post explains, I argue that the "meaning of constitutional principles are forged within the cauldron of political debate," a debate in which judges are often important, though not necessarily central, actors. 52 Law and politics are in continuous dialogue, and the goal of a demosprudential dissenter is to ensure that the views of a judicial majority do not preempt political dialogue. When Justice Ginsburg spoke in a voice more conversational than technical, she did more than declare her disagreement with the majority's holding. By vigorously speaking out during the opinion announcement, she also appealed to citizens in terms that laypersons could understand and to Congress directly. 53 This is demosprudence. Robert Post eloquently summarizes and contextualizes the argument I make about demosprudence. He also corrects the misunderstanding of the law/politics divide that beats at the heart of Gerald Rosenberg's criticisms of that argument.54 Post neatly restates my premise: "Law inspires and provokes the claims of politically engaged agents, as it simultaneously emerges from these claims. '55 In his companion essay, Professor Rosenberg polices the law/politics distinction to create a false binary. Rosenberg dismisses the possibility of an ongoing and recursive conversation between law and politics that *may* produce changes in the law and eventually in our "constitutional culture," meaning changes in the popular as well as elite understanding of what the law means. Constitutional culture is the fish tank in which the beliefs and actions of judicial as well as nonjudicial participants swim. It is the "dynamic sociopolitical environment" in which ideas about legal meanings circulate, ferment, compete and ultimately surface in formal venues such as legal advocacy or legislative actions.56 As political scientist Daniel HoSang explains, the goal of demosprudence is "to open up analytic and political possibility to build and sustain more dynamic and politically potent relationships between [legal elites] and aggrieved communities. 57 Professor Rosenberg's critique of demosprudence rests on several misunderstandings of my work and that of other legal scholars.58 First, Professor Rosenberg wrongly assumes that my claims are descriptive rather than aspirational.5 9 Second, Professor Rosenberg's concern about my "Courtcentric" analysis overlooks the occasion for my argument;60 that is, the traditions associated with the Supreme Court foreword published every year in the November issue of the *Harvard Law Review.* Third, he orients his entire critique around polling data and other social science research to trivialize the relationship of narrative to culture, to exaggerate the predictive capacity of a data-driven approach to quantify causation and to preempt other useful analytic approaches. 6 1 First, my foreword posits that judges *can* play a demosprudential role and that oral dissents are one *potential* vehicle for allowing them to do so. 6 2 While it is true that oral dissents *currently* face obstacles to their demosprudential efficacy, those obstacles need not be insurmountable. Moreover, Rosenberg's critique arguably makes my point. He is saying "people don't pay attention, 63 while I am saying "yes, they can!" Indeed, they might pay more attention if Justices took the time to talk to them.64 He characterizes the past; I aim to sketch out the contours of a different future. Rosenberg is absolutely right that one next step might be to deploy the tools of social science to explore the extent to which this claim has been realized.65 But the foreword is suggestive, not predictive. Justices of the Supreme Court can be demosprudential when they use their opinions to engage nonlegal actors in the process of making and interpreting law over time. They have democratically-based reasons to seek to inspire a mobilized constituency; it is not that they invariably *will* cause a social movement to emerge. Similarly, the idea that Court opinions do not invariably inspire social movements does not mean they cannot have this effect. Nor do I argue that oral dissents are the only, or even the single most important, communication tool at the Court's disposal. When the Supreme Court announced *Brown v. Board of Education66* in 1954, there were no dissents. Moreover, the orality of the opinion announcement was not a central feature of the event. No one heard the voice of Earl Warren reading his decision on the radio. Nevertheless, the decision had a powerful effect, in part because it was purposely drafted to speak to "the people. '67 Justice Warren consciously intended that the *Brown* opinion should be short and readable by the lay public. 68 In his work, Professor Rosenberg focuses on the white backlash the Brown decision inspired.69 But a demosprudential analysis also focuses on the frontlash, the way that Brown helped inspire the civil rights movement. *Brown's* accessibility and forcefulness helped inspire a social movement that in turn gave the opinion its legs. 70 In 1955, Rosa Parks refused to give up her seat on a bus in Montgomery. She was arrested. Four days later, when she was formally arraigned and convicted, a one-day bus boycott by the black citizens of Montgomery was unexpectedly, amazingly, successful. 71 Dr. Martin Luther King, Jr. delivered a sermon that evening before a mass meeting of 5000 people gathered at and around Holt Street Baptist Church. 72 He prepared his audience to take the bold step of continuing the boycott indefinitely. He did so by brilliantly fusing two great texts: the Supreme Court's pronouncement a year earlier in *Brown* and the Bible.73 Dr. King roused the crowd at that first mass meeting in Montgomery with a spirited refrain: "If we are wrong - the Supreme Court of this nation is wrong. If we are wrong God Almighty was wrong. In the foreword, I argue that Dr. King was a classic example of a "role literate participant. '75 His theological and strategic acumen enabled him to invoke Brown as "authorization" and "legitimation" to sustain the actions that 50,000 blacks in Montgomery, Alabama would take for over thirteen months when they refused to ride the city's buses.76 But as Robert Post rightly points out, the word "authorize" meant something more like embolden or encourage. 77 My point is that Brown shows judicial actors can inspire or provoke "mass conversation." It is when the legal constitution is narrated through the experience of ordinary people in conversation with each other that legal interpretation becomes sustainable as a culture shift.78 And if a majority opinion can rouse, so too can a dissenting one. Thus, demosprudence through dissent emphasizes the use of narrative techniques and a clear appeal to shared values that make the legal claims transparent and accessible. Although demosprudence through dissent is prescriptive rather than descriptive, it was never my intent to suggest that the Court should be central to any social movement. Like Justice Ginsburg, I am not a proponent of juridification (the substitution of law for politics). 79 In Justice Ginsburg's words, "[t]he Constitution does not belong to the Supreme Court." 80 At the same time, I recognize that the Court has been deeply influential, albeit unintentionally at times, in some very important social movements. Studying the 1960s student movement in Atlanta, Tomiko Brown-Nagin argues that the lunch counter sit-ins were, in fact, a reaction to the Supreme Court's decision not because of what the Supreme Court said, but because of what it did not say. 81 The Court initially raised, then dashed expectations. It was the disappointment with "all deliberate speed" - the legal system's failure to live up to the promise of the Court's initial ruling- that inspired students to take to the streets and initiate some of the bold protest demonstrations at lunch counters and in streets in the 1960s.8 2 Brown-Nagin emphasizes the multiple ways in which courts, lawyers and social movement actors are engaged in a dialogic and recursive discourse.83 Rosenberg's second misunderstanding deserves both a concession and a clarification. Rosenberg's criticism that my argument is too Court-centric is fair as far as it goes.84 I appreciate (and to a great extent share) Rosenberg's skepticism regarding courts as the primary actors in forging the path of social change. Gerald Torres and I argue that social change involves denaturalizing prior assumptions, a process that must be continuously monitored under the watchful eye of engaged political and social actors. 85 Moreover, social change is only sustainable if it succeeds in changing cultural norms, is institutionalized through policy decisions and the oversight of administrative actors, and develops an internal and external constituency of accountability. I concede that courts are not necessarily central to social movement activism. Why then do I focus on the dialogic relationship between the Supreme Court and other essential social change actors in the foreword? The foreword is designed to be, and has always been, *about the Court's Term.86* In this venue, I developed the idea of demosprudence *in application* to this particular organ of government. The inherent structural limitation of this particular art form was challenging but ultimately, in my view, productive. It pushed me to explore the ways that judicial actors, in conjunction with mobilized constituencies, can redefine their roles consistently with ideas of democratic accountability. Indeed, because the format of the foreword encouraged me to approach demosprudence from this angle, I discovered something important about demosprudence: judges, not just lawyers or legislators, speak to constituencies of accountability in a democratically accountable and democracy-inspired legal system. I argued that oral dissents (like Justice Ginsburg's in *Ledbetter)* reveal the existence of an alternative, and relatively unnoticed, source of judicial authority.87 The Court's legitimacy in a democracy need not depend on the Court speaking with an "institutional voice" (that is, unanimously). Here I am influenced by Jane Mansbridge's idea that democratic power can be held to account through two-way interactions, a source of authority rooted in "deliberative accountability. '88 The demosprudential dissenter ideally provides greater transparency to the Court's internal deliberative process. 89 At the same time, the dissenter may disperse power "by appealing to the audience's own experience and by drafting or inspiring them to participate in a form of collective problem solving." 9° Thus, the Court gains constitutional authority when dissenters speak in a "democratic voice," potentially expanding their audience beyond legal elites. In Mark Tushnet's words, "the Constitution belongs to all of us collectively, *as we act together."9'* Third, Rosenberg's argument that oral dissents are ineffectual, are unlikely to ever be effectual, and should not be considered relevant, reflects his disciplinary allegiances. 92 His perspective depends on empirical evidence of causation. It has a substantive, a methodological and a technological dimension. Rosenberg's substantive argument seems to rest on the assumption that law almost never influences politics or vice versa. His skeptical certitude reduces to insignificance the recursive interactions between the courts and the activists in the 1950s and '60s over civil rights, in the 1970s over the meaning of gender equality, in the 1990s over affirmative action, and in the 2000s over the meaning of marriage. In addition, Professor Rosenberg's certitude goes well beyond the evidence he cites. He believes demosprudential dissents "are not necessary because if there is an active social movement in place then no judicial help is needed. '93 At the same time, he quotes McCann approvingly despite the fact that McCann concludes law can in fact make a difference under the right circumstances. 94 There is more than a friendly misunderstanding at work. Within Professor Rosenberg's critique of demosprudence lurks a deep disciplinary tension about the nature of causation and the primacy of uniform metrics of measurement, as well as the meaning of political participation and influence. 95 What I value about political engagement cannot simply be reduced to what can be measured. When judges participate openly in public discussion, whether through book tours or oral dissents, their words or ideas may have traction without causing measureable changes in public opinion. As Robert Post notes, I am of the school that values "the texture and substance of dialogue. '96 I do not define politics, more generally, primarily by election outcomes or polling data. As I write elsewhere, opportunities for participation enhance democratic legitimacy in part because "democracy involves justice-based commitments to voice, not just votes: participation cannot be reduced to a single moment of choice. '97 Opportunities for formal and informal deliberation are important because of "the texture and meaning of the relationships among political actors, as well as the texture and substance of the values that emerge from public discussion." 98 The methodological aspect of Rosenberg's critique involves his taste for numbers and other metrics of certainty. 99 Rosenberg would prefer that I treat the format of a dissent as something to be studied by literary critics but as irrelevant to political or public relationships.100 The notion that storytelling is not the stuff of politics ignores the important work of social psychologists and linguists who write at length about the processes by which the brain hears and evaluates information. For example, what people say they believe is not necessarily predictive of what they do.' 01 Indeed, attitudes are not recalled like USB memory sticks, but are reconstructed in relationship to the environment. 102 My argument assumes that the river of social change has many tributaries, from the strategic mobilization of diverse resources that Marshall Ganz identifies to the narratives of resistance that Fred Harris explores. 0 3 No single institution of government, acting alone, successfully controls or enables these mighty currents. For example, the Supreme Court, when it wields law to establish relationships of power and control, primarily legitimates rather than destabilizes existing relationships of power and control. 104 Thus I agree with Rosenberg that the Court rarely functions as the central power source for fundamental structural change. Nevertheless, I argue that members of the Court can catalyze change when they help craft or expand the narrative space in which mobilized constituencies navigate the currents of democracy. That role may be hard to measure, especially when demosprudential politics do not use the same language or framing devices as ordinary politics. 0 5 That role may also be inaccurately interpreted if the evaluation tool is survey data that asks open-ended questions or miscodes respondents' answers. 10 6 For example, after recalibrating the measurement tools on which conventional wisdom relies, Professors Gibson and Caldeira conclude that the American people may not be as woefully ignorant about the Court as has been consistently reported. 07 In addition, when members of the Court direct their dissents to social movement actors and other role-literate participants, the recursive nature of that discourse would be difficult to capture in national survey instruments.10 8

**Nuisance compensation shifts both social and legal norms. The Historical success of clean air and water litigation proves pressure generated by advocacy for the plan is useful even without immediate implementation.**

**Percival 12** Robert Robert F. Stanton Professor of Law & Director of the Environmental Law Program @ Maryland “Of Coal, Climate and Carp: Reconsidering the Common Law of Interstate Nuisance” [U of Maryland Legal Studies Research Paper No. 2012-12](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2017071#%23) http://ssrn.com/abstract=2017071

p. 36-40

The historical record demonstrates that states invoking the common law of interstate nuisance have rarely succeeding in getting the judiciary to solve transboundary pollution problems. As discussed in Part I, the Supreme Court did stop New York City, at least for awhile, from dumping its garbage at sea, which required the city to build more garbage incinerators. And the Court eventually forced Chicago to build its first sewage treatment plant in order to curb its excessive water diversions that were lowering the level of the Great Lakes. Even the air pollution injunction issued by the Supreme Court to protect Georgia from further damage from polluting copper smelters in Tennessee only required intermittent controls – production cutbacks during the growing season – that later were abandoned.310 But the historical record also suggests that interstate nuisance actions have been a significant catalyst for change quite beyond the immediate impact of any judicially awarded relief. Fear that the Court might eventually order the smelters in Georgia v. Tennessee Copper to shut down helped spur the development of new technology – the lead-acid chamber method – to control pollution from copper smelters. Although the Fourth Circuit reversed the order North Carolina had obtained to require TVA’s power plants to install new pollution control equipment, the litigation ultimately culminated in a settlement that achieved the kind of relief the state initially sought. Despite being dismissed in the U.S. Supreme Court, the American Electric Power litigation for seven years placed the contribution of coal-fired power plants to climate change in the national spotlight. The Seventh Circuit’s recent decision refusing for now to order the U.S. Army Corps of Engineers to close the Chicago Sanitary and Ship Canal to block the spread of invasive species of carp was coupled with the admonition that the court could intervene in the future if the threat continues to grow. But the common law of interstate nuisance has other virtues even apart from the well known deterrent impact of tort law. Benjamin Ewing and Douglas Kysar describe the role of the modern common law of nuisance as part of a complex mosaic of “overlapping governance mechanisms” that “help to span jurisdictions and to marshal different fact-finding competencies, remedial powers, and value orientations.”311 Such mechanisms help to “ensure a fuller and more inclusive characterization of emerging threats to social and environmental wellbeing.” 312 They are part of what Ewing and Kysar describe as “prods and pleas,” a kind of check against institutions who fail to perform their assigned roles to meet societal needs.313 Few people expected that an interstate nuisance action to address climate change ultimately would be successful,314 defeats in litigation can lay the groundwork for future success in court.321 The converse also can be true, as North Carolina’s litigation against the TVA demonstrates, but such common law actions now engage the federal courts and Congress “as partners in an ongoing colloquy over the interpretation and lawfulness of statutes” with common law judgments functioning as “an integral part of this colloquy.”322 When the regulatory and political processes fail to prevent significant harm from transboundary pollution, the threat of litigation under the common law of interstate nuisance remains a useful prod to action by other branches of government. This action can include not only new laws or regulatory action to address emerging or neglected problems, but also laws to restrict the scope of state common law. In 2011 both the Texas and Utah state legislatures passed laws insulating permitted discharges from nuisance liability premised on climate change.323 IV. CONCLUSION Congress first enacted comprehensive federal regulatory programs to protect the environment in the early 1970s. Prior to the enactment of such programs, a primary legal vehicle for redressing pollution problems was the common law of nuisance. Early in the twentieth century, states invoked the federal common law of nuisance to seek intervention by the U.S. Supreme Court in disputes over transboundary air and water pollution. The Court, exercising its original jurisdiction over disputes between states, heard several interstate nuisance cases and used its equitable powers to stop environmentally destructive actions.

**Nuisance damages change destructive consumption and energy generation patterns. The plan shifts the burden for climate action onto those most responsible for climate change.**

**Cutting & Cahoon 08** - Professor of Environmental Studies @ UNC Wilmington & Professor of Biology and Marine Biology @ UNC Wilmington [Robert H. Cutting & Lawrence B. Cahoon, “"The 'Gift' that Keeps on Giving: Global Warming Meets the Common Law," Vermont Journal of Environmental Law, 10 VJEL 109, 2008, Volume 10

B. Litigation

Much of the litigation of the past few years focused on federal resistance both to the EPA’s regulation and to states’ efforts to regulate fuel¶ composition, mileage, and GHG emissions. Results have been less than¶ favorable to the states, and even Mass. v. EPA is back in court because of the refusal of the Bush Administration to act.121 Now, attorneys general and NGOs have launched a major offensive in federal court. Using both federal¶ and state public nuisance theories, they are trying to obtain extensive relief, seeking to force electrical power generators and automakers to reduce GHG emissions or bear the costs global warming imposes on our society and ecosystems.122

These cases serve an important public information function. This, in turn puts pressure on a recalcitrant administration and legislature to enact more comprehensive but politically palatable solutions, such as cap-andtrade. Since consumer behavior, particularly energy use, can radically influence GHG volume, consumer awareness may spark consumer behavior modifications; though information for consumers and investors remains difficult to obtain.123 These cases also offer a chance for the responsibility of global warming related damages to shift from receptors onto generators through efficient, effective, and creative equitable relief.124 In addition, the generators’ tremendous exposure to liability in these public nuisance cases may be just enough incentive to spur generators to develop their own creative solutions to the problems associated with GHG emissions.

**Linking climate justice with changes in community energy production provides a starting point for challenging lack of representation, compensation, and broader social injustice.**

**Sustainable energy praxis reconstructs the unjust institutions and patterns of consumption responsible for climate injustice.**

**Schlosberg 13** David Poli Sci @ Northern Arizona “Theorising environmental justice: the expanding sphere of a Discourse” *Environmental Politics* 22 (1) p. 46-50

Many climate justice groups began not from ideal notions of social justice, but instead from environmental justice principles and the expected experience of climate change. The US Congressional Black Caucus (2004) prepared a report on the environmental injustice of climate change impacts, noting the disproportionate impact on African-American communities in the United States (especially in terms of heat and health), but also the potential benefits to such communities of a prevention strategy that included retrofitting for efficiency, new technologies, cleaner industries, and more stable energy prices for renewables. The Bali Principles of Climate Justice (2003), developed by a range of movement organisations brought together into an International Climate Justice Network, is not based on academic notions of global justice, though we may certainly read a sense of cosmopolitanism, for example, into them. Instead, these activist principles stem from the original principles of environmental justice, developed by communities of colour in the United States in 1991. For this and many more climate justice organisations, there was a direct link from battles for environmental justice in poor and minority communities to the construction of climate change, the experience of inequitable environmental devastation, and the exclusion from decision-making. As with environmental justice, these notions of climate justice arose from the experience and material conditions (now and anticipated) of local communities. Climate change was seen, at this point, as simply another, if broader, environmental manifestation of social injustice. As with movement discussions of environmental justice, one of the key frames of climate justice addresses not only ideals but also how the fact and experience of injustice gets constructed. Concerns with the lack of recognition – of communities of colour, of indigenous communities, of the link between environmental conditions and everyday life for many – are central to movement considerations of climate justice. Theorists, representatives of impacted nations, and activist organisations have articulated a range of ways to understand the series of injustices embodied in the creation and experience of climate change. As with environmental justice, the conception of justice is broad and pluralist, more focused on understanding and addressing the problem than on constructing an ideal. And yet, the breadth of the understanding of environmental and climate justice here both includes and moves beyond local environmental conditions, to expand the environmental justice frame and engage broader conceptions of social and global justice. But environmental justice is also turning much more specifically to the local experience of increasing vulnerability to climate change, and to conceptions of adapting to a life challenged by an altered climate; here, another shift can be seen in the framing of the concept. Environmental and climate justice activists and movements regularly address the actual material experience of changing environmental conditions, impacts on everyday life, and, crucially, the potential ways functioning and development are threatened. Stories of the potential health impacts of heat, of food insecurity due to drought or floods, the instability of housing and infrastructure, and the disappearance of tradition, culture, and place have become the norm. Adaptation discourse has focused, in part, on vulnerability enhancing events, and on anticipatory responses to them. On the reconstructive side, movements are turning increasingly to adaptive responses to a changing climate – addressing, for example, urban heat, food security, or mobility. Overall, and increasingly, the discourse of climate justice is about vulnerabilities and the very functioning and resilience of communities. But this focus is also much more explicit about the relationship between the way that natural systems and human communities function, and there is much more recognition of the way that those natural systems support the functioning of human communities. Hurricane Katrina, again, serves as an example. Before Katrina, the corridor between New Orleans and Baton Rouge – dubbed ‘Cancer Alley’ – was a major focus of environmental justice discourse. Oil refineries, chemical plants, vinyl manufacturing, and more were all linked to the disadvantage of poor and minority communities; again, environmental injustice was about social injustice being manifest in a host of environmental risks and bads. But after the storm, that approach was supplemented. It was not just that the hurricane exposed, once again, the dire state of social injustice – though it did that. The storm brought attention to the link between the vulnerability of the community and, to put it directly, the state of nature. Environmental justice advocates began to question a very different impact of the refining of oil they had been protesting for its impact on the human community; that impact was now also changing and undermining the climate system, which was then coming back to harm the community in another way. The link between ecological stability and community functioning – or climate instability and social disadvantage – became clear. In other words, environmental and climate justice have become more embedded in an understanding of the way that environmental conditions provide for individual and community needs and functioning. This is another way that a capabilities approach to justice works in environmental and climate contexts – it can help address the relationship between environmental conditions and the broader justice aim of providing for basic needs and enabling the functioning of both individuals and communities. Examined in this way, as environmental justice extends into climate justice, it pushes beyond the qualifiers ‘environment’ or ‘climate’, and into an understanding that justice itself depends on a stable and predictable set of environmental conditions (Holland 2012, Schlosberg 2012). Environmental justice and sustainable materialism But it is not simply the rebound effect of climate change that has pushed a conception of environmental justice into broader engagement of the relationship between environment and social justice. The discussion of climate change illustrates the centrality of this connection between the condition of the natural world and the material experience of everyday life. This concern has led to another key development – a focus on more reconstructive material practices and sustainable relationships with the environment. While most well-known environmental justice battles have been reactions to inequity, threats to health or capabilities more generally, or responses to misrecognition and exclusion from decision-making, there has been a growth of groups using environmental justice and sustainability to design and implement more just and sustainable practices of everyday life. So we see the environmental justice movement making demands for investment in environmental technologies and jobs, food justice, and liveable communities more generally. The prominent green jobs and community-building work of Van Jones (2009), along with the ‘just sustainability’ frame of Julian Agyeman (2005), are examples of the potential of an environmental justice praxis that sees just communities as based on a working, sustainable relationship with the natural world. This approach is especially obvious in movements for food justice and just energy development. These movements directly take on both unjust practices and institutions and unsustainable environmental processes. They are not satisfied with purely individualistic or consumerist responses to environmental concerns – it is not about simply installing one’s own rooftop solar panels, or getting a Whole Foods in the neighbourhood. The focus is on building new practices and institutions for sustainability – practices and institutions that embody not only principles of environmental or climate justice, but a broader sense of sustainability as well. Call it a more reconstructive environmental justice, based on a conception of sustainable materialism. In many communities, a growing focus is on resisting, rethinking, and redesigning basic institutions that embody problematic practices connected to our basic material needs. So the response to food deserts is not buying organic veggies at a natural foods megamart, but getting more involved in growing and sharing food in community supported agriculture, collective gardening, urban farms, farmers markets (Gottlieb and Joshi 2010, Alcon and Agyeman 2011). The idea of the food justice movement is to transform our relationship with food, its production, transportation, and consumption. It is not simply about supplying a basic need; it is, in addition, awareness that such basic needs that supply the functioning of a community should themselves be sourced without creating injustices. In terms of energy, many environmental justice communities are organising around the development of community-wide local generation and networking of solar and wind.13 The idea of just energy transition is to replace destructive practices – for example, the damage done to the environment by coal mining and burning, and the abuse of local autonomy by mining companies. This concept of environmental justice shifts from resistance to reconstruction, aims to transform both dominating and unsustainable practices of production and consumption, and works to sustainably rebuild the material relationships we have with the resources we use every day. All while supplying a host of basic needs. These trends can be framed in at least three important ways. First, such practices are clearly a Foucauldian form of resistance to the relations that contribute to the continued reproduction of unsustainable practices; movement groups simply want to step out of the processes where they themselves are part of the creation of injustice. Second, they represent practices of equity, recognition, participation, and the delivery of basic capabilities in just and inclusive ways. Third, they embody the institutionalisation of a new form of sustainable materialism and the direct involvement of groups in the development of institutions that re-imagine, and reconstruct, our relationship with the natural world. These new movements and efforts illustrate environmental justice moving toward a form of just sustainability that embodies not only a variety of themes of justice, but also a thorough engagement in everyday material life – the things that pass through our bodies, the practices we use to transform the natural world, and the institutions we can shape collectively (Gabrielson and Paraday 2010). Many environmental justice movements, in this way, have expanded beyond a reactive position to environmental conditions, and now refuse to participate in practices that create or circulate injustice, propose and create new counterinstitutions and practices, and, crucially, embrace a more sustainable relationship between just communities and a working environment. Theory and movements: environmental justice discourse and praxis All of this, to me, illustrates how environmental justice in practice offers a rich form of politics and practice – one that academics in the field would do well to engage. One of the signature characteristics in much environmental justice scholarship has been a relationship between academic work and movement groups. The original articulation of an environmental justice movement came out of academic studies and conferences. The early history of the academic side of the movement was based on the work of Robert Bullard (1990, 1993) and early conferences, such as that organised by Bryant and Mohai (1992), that helped articulate and publicise findings of inequitable distribution of environmental goods and bads.14 The relationship between academic studies and the environmental justice movement has been integral to its development and growth, and its discourses, in the past three decades. Sze and London (2008) see this relationship as one of the continuing elements of reflection in the recent literature, and one of the promising trends in the field. In part, this relationship is about the idea of praxis – that theory and practice must inform each other (Sze and London 2008, p. 1347). As Holifield et al. (2010, p. 18) insist, there is ‘a need for environmental justice scholarship to actively work at its connections to activism and its engagement with those at the sharp end of injustice, however it is understood, and to bring theory to bear in meaningful ways into praxis and diverse forms of public engagement’. Theorising from movement experience works to expand our understanding of those movements; in return, those movements can and do inform theory in productive ways. There are numerous examinations of this intersection in the United States, from my own work on movement pluralism (Schlosberg 1999), to Di Chiro’s (2008) work on social reproduction in environment/feminist coalitions, to Sze et al’s (2010) examination of water politics in California, to the range of responses to community organising after Katrina (Bullard and Wright 2009). All of this illustrates the relationship between environmental justice as an academic idea and a social movement, to the benefit of each. This focus on the relationship between practice and theory has also been central to my attempts to understand the ‘justice’ of environmental justice (Schlosberg 2004, 2007). Many attempts to define environmental or climate justice have been too detached from the actual demands of social movements that use the idea as an organising theme or identity. This does assume that there is a value to movement practice – that theory can, and should, actually learn from the language, demands, and action of movements. Why, the more purist academic or sceptic might ask, should we prioritise what activists believe or do? But the question should not be about who is the best judge of a conception of justice – activists or theorists. The point is that different discourses of justice, and the various experiences and articulations of injustice, inform how the concept is used, understood, articulated, and demanded in practice; the engagement with what is articulated on the ground is of crucial value to our understanding and development of the concepts we study. It continues to be unfortunate that there are those in the study of environmentalism, or in the theoretical realm, who simply cannot see the importance, and range, of these articulations at the intersection of theory and practice – especially when movement innovation is as broad and informative as it is in environmental justice.

# 2AC K

### 2AC—OV

**Case outweighs.**

**1 - Climate Justice Model. 5 Billion people are at risk of starvation, drought-induced conflicts, and local environmental collapse. The consequences of climate change will be distributed unjustly, preventing political feedback for action. Failure to develop the legal basis for alternative models of development and distribution is the largest threat to global social and environmental welfare. That’s Barlow.**

**2 - Climate Adaptation Doctrines are key to prevent cultural genocide. Creating affirmative rights regimes that respect the need to adapt to climate change demonstrates responsibility for the loss of place and culture created by climate change. That’s Barcelos and Abate.**

**Three implications for the K.**

**1 – This takes out alternative solvency. Trying to develop the proper method for politics, representation or performance privileges perfection over adaptation. Climate change will make political organizing, collective action, and community innovation on the part of marginalized communities much more difficult. That's Schlosberg.**

**2 – It means no uniqueness for their case turns. Without legal mechanisms for compensation, climate change impacts are guaranteed to be incredibly unequal. That's Barcelos.**

**3 – We access their impacts. Institutionalizing climate justice models helps build constituencies for change. Economic and environmental consequences of climate change create negative feedbacks for addressing under-representation and social death. Climate justice mechanisms are an indispensible first step for challenging representational injustice. That’s Abate and Schlosberg.**

### 2AC—Fiat

**AFF is not useful because it could never happen.**

**1 - Aspirational political dialogue is constructive. We know that our advocacy is aspirational, not descriptive. Demosprudence recognizes law making is collaborative. The meaning of constitutional principles are forged in political debate. Law inspires and provokes the claims of politically engaged agents, as it simultaneously emerges from these claims. That’s Gunier and Torres.**

**2 - The plan text is a DISSENT from existing legal opinion – not a consolidation of legal authority. Logically, there is no difference from their argument and saying that there is no use in arguing DOMA violates equal protection or that Plessy consolidated Jim Crow.**

**3 - The AFF supports role-literacy, not role-playing. Pedagogically, the 1AC explains how and why we could imagine a different role for the courts in the arena of climate justice. The ability to answer questions and provide direction for what that institution should do helps anyone seeking climate justice in the U.S. That’s Torres.**

**4 - Demands for legal accountability for climate change are useful for social movements even when they don’t succeed in quickly changing state behavior.**

**Osofsky 7** Hari Law @ Oregon **‘7** CLIMATE CHANGE LITIGATION ASPLURALIST LEGAL DIALOGUE? 43 A Stan. J. Int'l L. 181 2007 p. 216-219

Environmental rights petitions to regional and international human rights bodies often focus on governmental underregulation of corporate entities, entities that may have ties to multiple nationstates. 135 As noted above, the climate change petitions build out of that tradition and, in the process, push the boundaries of the institutional spaces in which they are brought. Although these petitions' use of climate science to draw causal links is certainly innovative, the more fundamental institutional challenge that they represent comes from the extent of their multiscalar geography. The typical petition to the Inter-American human rights bodies or the World Heritage Committee involves facts occurring on a far more limited scale than those in the climate change petitions. The damage to a World Heritage site, for example, is predominantly caused and/or regulated within the country in which the site is located.' 6 Likewise, past environmental rights cases before the Inter-American Commission and Court of Human Rights involve a tighter geographic nexus between at least some of the behavior at issue and the resultant harm and occur over a far more precisely delineated period of time. 3 7 However, the process of applying existing laws to the harms caused by global climate change forces supranational bodies to consider new relationships of place, space, and time. The InterAmerican Commission and World Heritage Committee were asked to address the applicability of the institutional framework to multiscalar, multiinstitutional problems that occur over longer-thantypical periods of time. This structural difference requires the bodies to develop approaches to implementation that engage the challenges posed by the novel framing of these problems. As noted above, the World Heritage Committee created a body of experts to explore both the risks posed by global climate change and a management strategy.' An engagement of the underlying geography, both in terms of the place-dependent relationships and of the spatial categories in which the World Heritage process operates, is critical to developing those management solutions. A plan that simply focuses on the country in which the melting is occurring would not fundamentally address the threat to the World Heritage. Similarly, if the Inuit's petition ultimately were to succeed, the Commission would need to engage both the front end of limiting greenhouse gas emissions and the back end of mitigating the harmful effects of global climate change.'39 Although such steps are potentially within the current capabilities of these bodies, the process of recommending and implementing them causes the institutions to evolve responsively. As innovative as they are, these petitions also highlight the limited formal power of supranational petition processes. While, in theory, a successful petition would result in law and policy change, the relevant governments may flout the ambiguous status and weak enforcement mechanisms of these bodies. For example, the United States rejected the recommendations of the Inter-American Commission on Human Rights in *Dann v. United States,* a case involving indigenous peoples' land rights; it shows no signs of being likely to be more responsive in the context of the Inuit Petition. 140 Although the formal effects of supranational petitioning processes are often limited, they can potentially have a far greater informal impact. They may put pressure on a government to change its behavior, even as that government denounces the supranational body's decision. More indirectly, these petitions can be used in other advocacy contexts-e.g., as persuasive authority in more binding sub-national and national litigation or as symbols in media campaigns-and thus become part of broader civil society initiatives. **14'** Hence, an examination of the petitions further reveals their limited role under a traditional Westphalian model. Not only do the existing legal categories fail to capture climate change, but these claims also face substantial structural barriers. International and regional institutions, such as the World Heritage Committee or the Inter-American Commission on Human Rights, provide potentially receptive fora for engaging the impacts of anthropogenic climate change. As noted above, the World Heritage Committee convened a committee of experts to examine and report on the climate change petitions.1 42 Similarly, the Inter-American Commission's past openness to environmental rights and willingness to hold a more general hearing on climate change and human rights provides petitioners with some limited hope of ultimately prevailing. The difficulty of changing law and policy through even successful petitions, however, embodies the extent to which our nation-statedriven transnational legal system struggles to engage the complex interrelationships of multiple normative communities.

**5 - Energy policy advocacy is a tool not a trap. Even if we have no chance, we should build momentum and support for these ideas.**

**Shove & Walker 7** Elizabeth Sociology @ Lancaster Gordon Geography @ Lancaster “CAUTION! Transitions ahead: politics, practice, and sustainable transition management” *Environment and Planning C* 39 (4)

For academic readers, our commentary argues for loosening the intellectual grip of ‘innovation studies’, for backing off from the nested, hierarchical multi-level model as the only model in town, and for exploring other social scientific, but also systemic theories of change. The more we think about the politics and practicalities of reflexive transition management, the more complex the process appears: for a policy audience, our words of caution could be read as an invitation to abandon the whole endeavour. If agency, predictability and legitimacy are as limited as we’ve suggested, this might be the only sensible conclusion.However, we are with Rip (2006) in recognising the value, productivity and everyday necessity of an ‘illusion of agency’, and of the working expectation that a difference can be made even in the face of so much evidence to the contrary. The outcomes of actions are unknowable, the system unsteerable and the effects of deliberate intervention inherently unpredictable and, ironically, it is this that sustains concepts of agency and management. As Rip argues ‘illusions are productive because they motivate action and repair work, and thus something (whatever) is achieved’ (Rip 2006: 94). Situated inside the systems they seek to influence, governance actors – and actors of other kinds as well - are part of the dynamics of change: even if they cannot steer from the outside they are necessary to processes within. This is, of course, also true of academic life. Here we are, busy critiquing and analysing transition management in the expectation that somebody somewhere is listening and maybe even taking notice. If we removed that illusion would we bother writing anything at all? Maybe we need such fictions to keep us going, and maybe – fiction or no - somewhere along the line something really does happen, but not in ways that we can anticipate or know.

**6 – This is true in the context of energy.**

Seymour 6 (Frances Seymour founding Director of the Institutions and Governance Program at the World Resources Institute and Simon Zadek, “Governing Energy: The Global Energy Challenge,” Accountability Forum 9, Greenleaf 2006, http://www.greenleaf-publishing.com/content/pdfs/af09zade.pdf)

Accountability for ensuring citizen participation Collaboration between the government and civil society is an increasingly important component of designing and implementing successful public policy, particularly in the context of the controversial technology choices that the energy challenge is forcing us to confront. Collaboration between corporations and communities affected by their activities is increasingly recognised as necessary to obtain a ‘social licence to operate’. Inclusive decision-making processes that allow people to participate in decisions that affect their lives are often key to political legitimacy. The concept of ‘free, prior and informed consent’ is increasingly recognised as a standard for ensuring that the rights of local communities are not sacrificed to serve commercial, national or global interests. Ensuring meaningful public participation in energy-sector decision-making is challenging, especially given the sector’s technical complexity and high-stakes financing. Fundamental to this will be a step change in the quality and confidence with which these issues are popularly communicated, especially by government and the media. It is no longer satisfactory that anchormen and -women can snigger when specialist reporters mention ‘parts per million’ as if it were an incomprehensible bit of jargon. Our educators need to make such terms common currency, familiar as VAT. As concern about energy security increasingly dominates debates about energy supply, ensuring transparent and participatory processes is likely to become even more difficult and ever more important. But deliberative decision-making processes that are informed by citizen participation can in fact help identify new solutions to old challenges, and ensure that implementation of resulting decisions will enjoy public support rather than engender conflict. The way forward We need to examine the underlying assumptions about energy and the environment on which today’s governance and accountability systems have been built. Such an assessment challenges us to develop a new generation of institutions with a system of rules for our economy and politics which incorporates energy scarcity and environmental fragility into its design. We need to apply what we know about structuring accountability relationships to the particular challenge of accelerating the transition to a post-carbon political economy in a way that promotes equity, sustainability and security. Changing our energy consumption patterns means changing how we construct our accountabilities and vice versa. We need to imagine government agencies that are accountable to poor communities for extending access to modern energy services; corporations that are accountable for respecting human rights in the course of energy extraction; citizens that are accountable for the climate emissions embedded in their consumption behaviour; and international organisations that are accountable for promoting multiple objectives, such as energy security and climate protection. Those newly imagined institutions and innovations in governance may seem far removed from what is practical to achieve in today’s political and economic context. But such an exercise of imagination is essentially practical: it encourages us to understand how incremental change — while often tortuously slow — can constitute real progress towards meeting the global energy challenge.

### 2AC—Consistency

**Obviously we want to win and this is a competitive activity. If the ballot is irrelevant we will happily accept three ballots and have a discussion about any issue for the remainder of the allotted time. We choose AFF’s to which facilitate good engagement and robust debate against. This AFF is an example of that choice. All of the other arguments Emporia have made are reasons why other arguments are bad. They should therefore celebrate this willingness.**

**Plus demanding this level of intellectual consistency puts people on trial for their personal lives and does not allow them to change their minds. It is not only violent but pigeonholes people but also forces a consistent political ideology without change, growth, or experimentation with the performance of different identifies.**

**This AFF is entirely consistent with all of our other arguments this year. We have read a global warming advantage about a clean energy in nearly every debate this year.**

### 2AC—Performance

**The 1AC engaged you.**

**Privileging form and ethics of performance encourages judges to feel good in affirming the self-worth of the negative. This creates a trade-off with deciding what we should do, instead of how we should speak or who should speak.**

**Simpson 2** David English @ UC Davis Situatedness, or Why We Keep Saying Where We’re Coming From p. 218-221

The Persistence of Ethics The assertions of belonging that inform **declarations of situatedness** can then be read partly as **wish** **fulfillments** - for how else could their reiteration be so effectively ensured? Michael Sandel has specified the potential of the "multiply-situated" selves that he sees us to be to collapse into "formless, protean, storyless selves, unable to weave the various strands of their identity into a coherent whole" (Democracy's Discontent, p. 350). The maximizing of personal opportunities for some is shadowed by the melancholy of a lost or vanishing community even among those able to profit from flexible subjectification procedures. Others are presumably consigned to pure insecurity or to the imagined consolations of residual traditional groups of the sort that tend to go by the name of communities. Such groups as we do belong to or affiliate with are themselves insecure both as experienced and in their relation to anything identifiable as a general history. Lukacs may have been one of the last to believe that the "self-understanding" of a group, which was in this case a class, the proletariat, could also be "simultaneously the objective understanding of the nature of society," so that all conscious furtherance of class-specific aims was also the truth of history (History and Class Consciousness, p. 149). A more common contemporary experience is the declaration of group interests as ... group interests, and those of groups to which one only partly or temporarily belongs anyway. So the debate over the feminist "standpoint epistemology" that was derived from Lukacs rapidly acknowledged the problem of there being no visibly coherent groups, or too many of them, to belong to.20 Postmodern theory can sometimes declare itself comfortable enough with the predicament of fractured identity as itself a source of knowledge and oppositional energy, making a virtue of the condition that so concerns Michael Sandel. But there are still many of us who punctuate the narrative with regular declarations of situatedness, obeying an **ethical mandate** not to be a mere individual by way of a hoped-for connection with some interpersonal or impersonal identity-forming principle. Which leads us, at last, to the matter of ethics, and to a discussion I have withheld until now. What is at work in these assertions of the determining power of situatedness - positive for Benhabib and Sandel, and also for Hollinger when rendered subject to revocable consent-seems to be an instance of what Glen Newey has described as "the major project in modern liberalism ... **to use ethics to contain the political**." 21 What is actually going on in these addresses to the current condition, in other words, is an ethics, or an exhortation to certain sorts of ethical behavior, largely on the part of individuals. What is being said is not that I am in some clearly explicable sense situated here or there or then or now, but that l should or should not be so situated, in order to authorize what I am saying as the property of something beyond just myself. And that in being thus situated I am not responsible for what I am saying or doing: the responsibility is collective. And that **in challenging or denying me in what I affirm or desire, you are opposing not just me but a group that I represent, which is an unethical thing for you to do.** The claims and assumptions are muddled, even to the point of appearing by some definitions quite unethical (for this is hardly the Kantian subject doing rigorous justice on itself): notice that it is mostly a virtue to situate oneself but a sort of diminishment or accusation to ask someone else to do the same. But it is ethical argument that often pops up to fill the space abandoned by epistemology: **what we cannot know for sure is supplanted by what we ought to be or do.** So in the Goldhagen case the central hypothesis is about choice: how the Germans could have refused (without fear of reprisal) to kill Jews, but killed them anyway. In the exposition of the history standards, the gaps in our knowledge that come from the sheer proliferation of possible knowledges are filled by encouraging students to make moral choices. The scientism of The Bell Curve hardly conceals its address to the question of whether we should be in the business of maintaining (racial) preferences. And the Littleton summit and its ongoing rehearsal have a good deal to do with what we call in the last commonplace instance family values and community standards. It is for good reasons that Alain Touraine has characterized us as giving up on "scientism" in favor of a "return to moralism." 22 Touraine himself seems quite happy with this. Notwithstanding his rigorous critique of identity crisis as a social-historical phenomenon, it is to another such category, that of the creative subject, to which he turns for solace: "If we are to defend democracy, we must recenter our social and political life on the personal subject ... hence the growing importance of ethics, which is a secularized form of the appeal to the subject." 23 It is now twenty years since Fredric Jameson wrote about ethics as a "historically outmoded system of positioning the individual subject" and as "the sign of an intent to mystify" by way of the "comfortable simplifications of a binary myth." 24 These remarks are even more timely now than when they were first recorded, and Jameson himself has again recently reminded us that ethical speculation is "irredeemably locked into categories of the individual" and that "the situations in which it seems to hold sway are necessarily those of homogeneous relations within a single class." 25 This need not be always and in principle the case, and one would hardly wish to discourage attention to questions that are ethical in the broadest sense: questions about how one should act, how one might best live one's life, how one might limit the damages one does to others. But my very use of the impersonal pronoun here indicates the problem: that ethics for most of us most of the time means subjective meditation.26 The return to or persistence of ethics is a form of what Jameson has called "pastiche," which is "the blank and non-parodic reprise of older discourse and older conceptuality, **the performing of the older philosophical moves as though they still had a content**, **the ritual resolution of 'problems' that have themselves long since become simulacra**, the somnambulistic speech of a subject long since extinct" (p. 99). This could be said too of the "problem" of the subject that **the rhetoric of situatedness is designed both to repackage and to "resolve."** Those of us in the habit of situating ourselves on a regular basis might stop to investigate the **peculiar feeling of virtue** we have as we do so, and ponder whether we have deserved it by any active connection with anything (some of us of course can pass this test, but not all of us). Niklas Luhmann has written of the tendency whereby ethical prescriptions apply to others rather than to oneself: "One can formally subject oneself to them, but self-application is not an option because of the lack of any consequential authority for action." He sees them as symptoms of an "irritation" in the social sphere that can only take the form of pure "communication" (Observations on Modernity, p. 78). In its **turning from "cognitive to normative" ethics then becomes itself "an unethical kind of doping**" (pp. 91, 94) whereby **one confesses one's own limits** - itself a form of authority ("let me tell you where I am coming from")-o**nly in order to expose everyone else's**. The imperative to situate oneself is perceived as ethical even as (or perhaps because) it is usually **devoid of critical content and without consequences beyond the moment of utterance**. Meanwhile the ethics of situatedness **promises** to restore to the **individual** a **satisfaction** that in its profound loneliness it can no longer derive from the metaphysics of individuality itself.

**Their strategy LIMITS politics to ONLY the personal. This devastates structural change, and increases all oppression – it demands that political performance assimilate to very limited norms of experience.**

**Scott 92** Joan Harold F. Linder Professor at the School of Social Science in the Institute for Advanced Study in Princeton “Multiculturalism and the Politics of Identity” October Summer p. 16-19

The logic of individualism has structured the approach to multiculturalism in many ways. The call for tolerance of difference is framed in terms of respect for individual characteristics and attitudes; group differences are conceived categorically and not relationally, as distinct entities rather than interconnected structures or systems created through repeated processes of the enunciation of difference. Administrators have hired psychological consulting firms to hold diversity workshops which teach that conflict resolution is a negotation between dissatisfied individuals. Disciplinary codes that punish "hate-speech" justify prohibitions in terms of the protection of individuals from abuse by other individuals, not in terms of the protection of members of historically mistreated groups from discrimination, nor in terms of the ways language is used to construct and reproduce asymmetries of power. The language of protection, moreover, is conceptualized in terms of victimization; the way to make a claim or to justify one's protest against perceived mistreatment these days is to take on the mantle of the victim. (The so-called Men's Movement is the latest comer to this scene.) Everyone-whether an insulted minority or the perpetrator of the insult who feels he is being unjustly accused-now claims to be an equal victim before the law. Here we have not only an **extreme form of individualizing**, but a conception of **individuals without agency.** There is nothing wrong, on the face of it, with teaching individuals about how to behave decently in relation to others and about how to empathize with each other's pain. The problem is that difficult analyses of how history and social standing, privilege, and subordination are involved in personal behavior entirely drop out. Chandra Mohanty puts it this way: There has been an erosion of the politics of collectivity through the reformulation of race and difference in individualistic terms. The 1960s and '70s slogan "**the personal is political**" **has been recrafte**d in the 1980s **as "the political is personal**." In other words, **all politics is collapsed into the personal**, and questions of individual behaviors, attitudes, and life-styles **stand in** for political analysis of the social. Individual political struggles are seen as the only relevant and legitimate form of political struggle.5 Paradoxically, individuals then generalize their perceptions and claim to speak for a whole group, but the groups are also conceived as unitary and autonomous. This individualizing, personalizing conception has also been be- hind some of the recent identity politics of minorities; indeed it gave rise to the intolerant, doctrinaire behavior that was dubbed, initially by its internal critics, "political correctness." It is particularly in the notion of "experience" that one sees this operating. In much current usage of "experience," references to structure and history are implied but not made explicit; instead, **personal testimony of oppression re- places analysis**, and this testimony comes to stand for the experience of the whole group. The fact of belonging to an identity group is taken as authority enough for one's speech; the direct experience of a group or culture-that is, membership in it-becomes the only test of true knowledge. The exclusionary implications of this are twofold: all those not of the group are denied even intellectual access to it, and those within the group whose experiences or interpretations do not conform to the established terms of identity must either suppress their views or **drop out**. An appeal to "experience" of this kind forecloses discussion and criticism and **turns politics into a policing operation:** the borders of identity are patrolled for signs of nonconformity; the test of membership in a group becomes less one's willingness to endorse certain principles and engage in specific political actions, less one's positioning in specific relationships of power, than one's ability to use the prescribed languages that are taken as signs that one is inherently "of" the group. That all of this isn't recognized as a highly political process that produces identities is troubling indeed, especially because it so closely mimics the politics of the powerful, naturalizing and deeming as discernably objective facts the prerequisites for inclusion in any group. Indeed, I would argue more generally that separatism, with its strong insistence on an exclusive relationship between group identity and access to specialized knowledge (the argument that only women can teach women's literature or only African-Americans can teach African-American history, for example), is a simultaneous refusal and imitation of the powerful in the present ideological context. At least in universities, the relationship between identity- group membership and access to specialized knowledge has been framed as an objection to the control by the disciplines of the terms that establish what counts as (important, mainstream, useful, collective) knowledge and what does not. This has had an enormously important critical impact, exposing the exclusions that have structured claims to universal or comprehensive knowledge. When one asks not only where the women or African-Americans are in the history curriculum (for example), but why they have been left out and what are the effects of their exclusion, one exposes the process by which difference is enunciated. But one of the complicated and contradictory effects of the implementation of programs in women's studies, African-American studies, Chicano studies, and now gay and lesbian studies is to totalize the identity that is the object of study, reiterating its binary opposition as minority (or subaltern) in relation to whatever is taken as majority or dominant.

**Struggles against Louisiana’s toxic corridor prove that no one method is best – personal narratives, activist scientists, policy and legal experts succeeded together. Instead of arguing about establishing the *best* method, they used all available tools.**

**Allen 3**—Barbara Allen, Science and Technology in Society @ Virginia Tech [*Uneasy Alchemy* p. 151-155]

The citizen protest against pollution and hazardous waste in the corridor began with sharing stories. They suspected something was wrong, but did not have all of the knowledge or words to communicate what they tacitly knew was a problem. Eventually, the residents' affiliation with experts, typically activist-experts, led to a strengthening of local allegations regarding their environment and the emergence of a more participatory, democratic, and effective citizen-input process. This combination of local knowledge and technical/professional expertise proved to be a potent hybrid knowledge that has been a catalyst for environmental improvement in the region. The new, hybrid knowledges emerged in a variety of arenas, including citizens' narratives, economics, the law, and health. This discourse demonstrates how a more objective knowledge can be constructed through the combination of citizen knowledge with expert knowledge. Objective knowledge combined with cross-class, multirace coalitions, if used in the policy and regulatory arenas, leads to more inclusive decision-making processes and effective environmental change as evidenced in the Louisiana industrial corridor. Community narratives and environmental stories played an important role in coalescing community groups in the beginning stage of citizen dissent regarding siting permit decisions. By talking among themselves, residents were able to tell convergent stories about their traumas and observations regarding the toxic waste in their neighborhoods. These powerful stories, reiterated at public hearings, further fueled citizen outrage and activism. Groups emerged that shared a language about their polluted environment and became the primary force for change in the region. The residents' voices were made more powerful when they combined, in chorus, with experts who shared their environmental concerns. Willie Fontenot, an activist and **political scientist** with the **state attorney general's office**, played an important role in helping the citizens identify and name hazardous waste for the first time. Through illustrated talks and field trips, Fontenot educated many of the corridor residents about the signs of exposure and their dangers. Important and effective activists such as Amos Favorite, Albertha Hasten, Florence Robinson, and Theresa Robert were enabled, in large part, because of Fontenot's educational work. Citizens also found important allies in the **geologists** who questioned the corporate science of underground injection containment. Men such as Jeffrey Hanor and Brad Hanson worked On geological questions outside of corporate funding, lending credence to the citizens' skeptical standpoint, thus creating a more objective science of underground injection for policy and permit purposes. They added to the citizenscience base of the corridor and diminished the frustrating amount of "undone science" in the questions surrounding the injection of hazardous waste. The debates of expert economists were very important in the regulatory and political processes. The government-industry alliance, a partnership dating back to the arrival of big oil in the state at the turn of the century, firmly backed a traditional market economist, Loren Scott, in their advocacy of chemical expansion in the region. Likewise, the citizen activists found their **economic** **expertise** in the work of a local environmental economist and policy expert, Paul Templet. In addition, the citizens also constructed their Own voice surrounding the economics of pollution and health, evidenced by the numerous testimonials, the majority being women caring for sick family members. Their local narrative was further legitimated in expert discourse by Templet whose work also showed the disproportionate income spent on health care in Louisiana. The **U.S. EPA** also allied with the citizens of Louisiana in the economic debate questioning the profit corporations made by noncompliance. This reciprocal play between expert and citizen in the toxic debate has strengthened the position of the residents who are calling for a better environment. Citizen knowledge alone is often termed "opinion" and not treated as equal with the corporate knowledge that is taken by the DEQ as "truth." **Expert-activist research like that of the geologists, the economists, and medical specialists helps develop a citizen-science that is more applicable to solving local problems**. Through this citizenscientist alliance the more biased corporate science that was heretofore masquerading as "truth" in the policy arena is exposed as one-sided and flawed. Legal experts were at the center of some of the most acrimonious fights over the siting of hazardous industries. Antichemical development residents were fortunate to have an exemplary student law clinic willing to represent them. The combination of multiracial, multiclass citizen groups augmented with legal expertise from Tulane's student attorneys was a powerful, winning alliance. The prochemical industry governor and his appointees recognized the combined power of the multicultural residents and the student attorneys and set out to stop it On all levels. This was a sign that these citizen-expert, issue-based alliances and the hybrid knowledge they were producing were working exceptionally well. Through various means, the governor attempted to stop the students from representing groups in chemical company siting disputes. This act brought into focus the weakness of identity-based politics in the environmental justice movement and foregrounded the strength of heterogeneous new social movement groups. Women scientists also played a pivotal role in the public translation of science in the corridor. Florence Robinson, Wilma Subra, Kay Gaudet, and Patricia Williams were directly involved in producing more applicable and objective knowledge about the communities affected by pollution. They began with the lives and questions of the citizens-listening to their concerns and observations, and extended to them the expertise of their scientific training. Robinson and Subra also helped create a participatory citizen-science, by teaching people how to conduct scientific surveys and have their concerns made part of the official record, in case of future litigation. These citizenempowering methodologies contrast with the preferred corporate methodology, traditional epidemiology-a method that almost never shows causation because of the biases inherent in it. This methodological bias is evidence that science not only needs its context examined (who is doing the science and for what purpose) but the content (methodology) as well. The debates in three discursive arenas-economics, the legal system, and health-partially represent citizen resistance to further unchecked and poorly regulated petrochemical development in their communities. Carried out by heterogeneous groups formed specifically around issuebased politics, the public debates are purposeful: they emerge from new social movements actively advocating justice and change with respect to their causes. In the three arenas as well as in the formation of the narrative story, expert-activists played an important role. Thus more global knowledge was brought into a conversation with local knowledge to form an important discourse with which to resist and change the corporategovernment narrative that was firmly entrenched in the corridor. Taking my argument a step further, environmental policy-making processes could also make the combination of both citizen and expert voices more inclusive and less biased and thus representative of the community. According to political theorist Iris Young, "struggles about environmental justice cannot simply be about the placement of hazardous sites, a distributive issue, but must more importantly be about the processes through which such placements are decided."] After a discus- sion of the changes needed in the environmental policy processes, I will give an example of a positive outcome in one community in the corridor.

### 2AC—Experience

**1 - Direct experience with climate injustice is driving the demand for compensation. They are willfully ignoring the connection between the lived-reality of climate change in Alaskan villages like Kivalina and public nuisance suits. We meet their criteria, we just don’t impose them. That’s Abate and Burkett.**

**2 - Performance police. Environmental justice and climate justice movements have a long history of exchange between academic researchers and other participants. The question should not be about who is the best judge of a conception of justice – activists or theorists. Even if they win all their link arguments that the 1AC abstracts from direct experience, that has been a crucial part of expanding the scope of environmental justice. Without the qualitative and quantitative work of Bullard, Schlosberg, Brulle, Agyeman, Pellow, and others, pressure on environmental justice issues would never have been as successful. That’s Schlosberg.**

**3 - Exclusive Inclusion. Their methodological pre-requisites are the left-wing equivalent of the Roberts court using standing to narrow who can demand compensation for environmental damage. The negative’s methodology focus creates a perverse incentive to demand ever-greater hurdles to overcome before it’s okay to have your day in court.**

**4 - No evidence from existing plaintiffs representing aggrieved communities that we should not pursue public nuisance damages – voting negative violates their own standards for evaluating evidence.**

**5 - Compensatory justice encourages everyday storytelling and self-presentation. The forum and framework of the 1AC facilitates greater equality in representation.**

Jo **GOODIE** Law @ Murdoch **’11** “The ecological narrative of risk” in *Law and Ecology: New Environmental Foundations* ed. Andreas Philippopoulos-Mihalopoulos p.77-78

4. 9 Conclusion The environment is made 'thinkable' and amenable to different types of legal deliberations through the figure of risk. Analysis of toxic tort litigation provides the opportunity for examining the nexus between the conceptualisation of risk and the legal domain. In judging a toxic tort case the court assesses evidence of the environmental conditions that caused harm to the plaintiff and considers how the plaintiff and others typically functioned in that environment and what sort of calculations they made of any environmental risk; it is in assessing this evidence that a certain form of environmental space and problems are revealed or identified by the litigation. But as Steele observes common use of the term 'risk' obscures the significance of the different forms of risk assessment in toxic tort litigation. 70 There are at least four interrelated conceptions of risk operating - the scientific, the insurantial, the clinical, and everyday or commonsense notions of risk. The clinical approach to thinking about risk commonly employed in public health programmes is taken up because it allows the analysis to focus on how scientific and technical calculations of risk are conflated with everyday or commonsense notions of the actual risk posed by certain environmental hazards. This clinical perspective also highlights the significance of the plaintiff's ability to situate themselves (or not) as appropriately risk averse in the face of known risk; blame and responsibility frame the court's assessment of the plaintiff's claim. Typically when legal commentators consider the function of risk assessment in litigation their focus tends to be only on actuarial or other scientific calculations of risk. Everyday or commonsense notions of risk have not been the focus of academic debate. They are of course harder to pin down, and not as readily drawn upon as scientific calculations of risk to persuade courts on fine points of causation. Certainly many toxic tort suits fail, and other potential actions are thwarted, by a lack of definitive scientific evidence establishing a causal link between the plaintiffs injuries and their exposure to an environmental hazard. The scientific evidence, or at least its 'objectivity', is, Philippopoulos-Mihalopsoulos observes, 'a pedestal on which a presumption rests for the comprehension of risk'. 71 Non-scientific, everyday understandings of risk play a critical role in how the court comprehends the risk to which the plaintiff was exposed and deserve closer analysis. My own experience as a plaintiffs solicitor,72 working in the early 1990s on these kinds of cases, was that despite the requirement to adduce expert evidence, the particulars of any plaintiffs claim are scrutinized by the court through the lens of everyday or commonsense understanding of both the plaintiffs and defendant's conduct in the face of risk. Toxic tort litigation reveals and reports the existence of environmental hazards in a manner which tends to focus on the impact of the toxin on the plaintiff personally, and publicly delineates the harm they have suffered; it allows the articulation of the real, rather than simply theorized or projected, experience and consequence of toxic exposure. 73

### 2AC—Perm

**Permute – we should advocate for public nuisance compensation and insert.**

**Net Benefits.**

**1 - Changes the constitution of the public. Expanding public nuisance to include climate change changes our conception of public good. Constructing counter-hegemonic institutions and creating constituencies for resource redistribution creates community led-development. That’s Burkett.**

**2 - Demosprudence. Creating a dynamic bridge between aggrieved communities and legal elites is better than forcing the marginalized to swim across the river by themselves. Combining internal and external perspectives on legal institutions prevents cooptation and backsliding. Institutional anchors for social change maintain environmental justice gains. That’s Gunier and Torres.**

**3 - Demanding US accountability – requiring the US to pay back a portion of its ecological debt strengthens international norms of mutual accountability for sustainable development. That’s Long.**

**Critique of the racial state shouldn’t preclude appeals to state-based politics.**

**Lipsitz 4** George Black Studies @ UC SB “Abolition democracy and global justice” *Comparative American Studies* 2 (3) p. 271-276

Abstract As new social relations produce new kinds of social subjects, scholars in American Studies and Area Studies experience anxieties about disciplinary as well as geographic borders. The Civil Rights tradition of the 14th Amendment plays an important role within progressive American Studies scholarship, but in the course of seeking equality and exclusion within the USA, this tradition runs the risk of occluding the role of the nation in the world and its central role in creating and preserving inequality and injustice in other nations. An emerging emphasis on struggles for social justice without seeking state power encapsulates many of the most progressive impulses within Area Studies and transnational studies, yet this perspective runs the risk of occluding the enduring importance of the nation-state in inflecting global developments with local histories and concerns. The present moment challenges us to draw on both traditions, and to use each to critique the shortcomings of the other, while at the same time promoting an inclusionary, nonsectarian, and mutually supportive dialogue about our differences. Keywords American Studies ● Area Studies ● inequality ● transnationalism In Jack Conroy’s 1935 short story ‘The Weed King’, a stubborn Missouri farmer wages a one person war against the weeds that spring up in his fields. Believing that farming would be an easy job if it were not for the weeds, he dedicates himself to their eradication with a zeal that astounds his fellow workers. The ‘weed king’ embraces his war against weeds as his reason for being. ‘His only vanity,’ Conroy tells us, is his belief that he has ‘put the quietus to more weeds than any man, woman, child or beast west of the Mississippi’ (Conroy, 1985: 101). Even in the winter time when snow covers the ground, the zealot worries night and day about the tiny seeds waiting to bloom in the spring. One of his neighbors points out that weeds have their uses too, that many of them have greatly-needed medicinal powers. However, the weed king is not deterred. He soon succeeds in suppressing most of the weeds on his property. His singleminded zealotry has its costs, however. The measures he takes to kill the weeds prove fatal to his crops as well. At the present moment of tumultuous transformation and change, scholars in American Studies and Area Studies might be tempted to emulate the weed king, to keep a keen eye on our fields to protect what we have been cultivating for so many years, to view each other’s work with trepidation and counter-insurgent zeal. American Studies scholars worry that the growing enthusiasm for transnational studies threatens to focus too much on exchanges across national boundaries, in the process occluding the unique, particular, and specific inflections given to those processes by distinct national histories, cultures, and politics. Area Studies specialists, many of whom have been part of a decades-long tradition dedicated to constructing epistemologies and ontologies that resist the hegemony of the monolingual, monocultural, and nationalist scholarship of the US academy, rightly fear that a transnational or postnational American Studies might simply project American Exceptionalism onto a broader geographic terrain. Outside the USA, specialists in both American Studies and Area Studies have reason to fear that (wittingly or unwittingly) scholars from the USA will use the power of US capital, communications media, and commerce to substitute a US-centric monologue masquerading as a dialogue for the greatly needed polylateral communication and collaboration that a transnational world requires. At a time when substantive changes in social structures, technology, and politics are radically reconfiguring the relations linking culture, time, and place, policing the boundaries of disciplines speaks to deep desires for continuity and certainty. It is possible to look at the current ferment in our fields and see only what is being lost, to become subsumed with melancholy about lost conversations and conventions. Yet scholarly research should be conducted out of conviction, rather than out of habit. If we are not careful, our work can come to resemble Swedish anthropologist Ulf Hannerz’s definition of Scandinavian cooking – something passed down from generation to generation for no apparent reason (Hannerz, 1992: 42). Like the weed king, we can worry night and day about the purity of our fields. As new social relations throw forth fundamentally new social subjects with new epistemologies, ontologies, archives, and imaginaries, new patterns of scholarly inquiry will inevitably emerge. Will shallow forms of cultural and ideological critique eclipse the grounded insights produced by ethnography or social history? Will the fetishes of archival and ethnographic research methods produce empiricist and myopic work lacking in self-reflexivity? Will comparative work lack the cultural and linguistic depth traditionally produced by primarily national studies? Will national studies ignore the ways in which nationalism itself is a transnational project? Will the proliferation of new social subjects and new objects of study come at the expense of marginalizing aggrieved social groups or will it teach us how social identities become conflated with power in richly generative and productive ways? It is understandable that these kinds of questions arise when we try to do our work. Anything worth doing can nonetheless be done badly, and principled questions from colleagues protect our interests as well as theirs. Yet counter-insurgency is a poor model for scholarly work, and too much attention to pulling out weeds can kill the crops. Even more important, weeds can have curative powers if we learn to use them correctly. The author of ‘The Weed King’ confided to his biographer that his mother believed that ‘weeds’ were simply plants for which no use had yet been found (Wixon, 1994: 32). The ‘weeds’ that invade a field can also inform it in crucially important ways if we learn to recognize their curative powers. Within American Studies, the tradition of 14th Amendment Americanism may seem like the quintessential expression of American exceptionalism. Forged from the freedom dreams and collective struggles of an enslaved people, the 14th Amendment stands as an enduring symbol of the accomplishments of the abolition democracy that ended slavery in the wake of the Civil War. More than a specific Constitutional provision promising equal treatment under law, the 14th Amendment has functioned as a widely shared social warrant authoring and authorizing new ways of knowing and new ways of being. In his indispensable work, Black Reconstruction in America, W.E.B. Du Bois demonstrated how slaves fighting for their freedom soon realized that it would not be enough to be merely ‘free’ in a society premised on their exclusion. In the course of staging a general strike in the fields, running away from slavery to swell the ranks of the Union army, and joining together to work land liberated by military force, they formulated a political perspective that Du Bois named ‘abolition democracy’ (Du Bois, 1995). They fought for the 13th, 14th, and 15th Amendments to the Constitution. At the Charleston Black Convention in 1865 they called for more than nominal freedom, for the development of their full being as humans. Between 1865 and 1877 they fashioned alliances with poor whites to elect progressive majorities to office, and their successes led to the first universal public education systems in the South, to governments that subsidized the general economic infrastructure rather than just the privileges and property of the elite. Although betrayed by the Compromise of 1877, by the removal of federal troops from the South, by the legal consolidation of the combination of sharecropping and Jim Crow Segregation, and by Supreme Court decisions that took protections away from black people and extended them to corporations, abolition democracy and the 14th Amendment successfully challenged the hegemony of white male Protestant propertied power. It opened the door for subsequent claims for social justice by immigrants and their children, religious minorities, women, workers and people with disabilities. From voting rights to affirmative action, from fair housing to fair hiring, the 14th Amendment is an enduring and abiding force for social justice in US society. Yet American Studies scholarship that subsumes social justice under the rubric of the 14th Amendment runs the risk of ignoring the position of the USA in the world. Celebrating struggles for citizenship inside the USA can work to strengthen the distinctions between citizens and aliens, providing legitimation for nationalist and nativist policies that impose enormous suffering on humans precisely because they are not US citizens. The legacy of the 14th Amendment has not prevented women and blacks in contemporary California from supporting anti-immigrant nativism through Proposition 187, aimed at denying immigrants and their children needed state services, or through Proposition 227, banning bilingual education in the state’s classrooms. Post-1965 immigrants from Asia, who owe their entry into to the USA to the civil rights movement and its exposure of previous national origin quotas as racist, have not been immune to pursuing the privileges of whiteness for themselves by opposing affirmative action and school desegregation policies vital to the well-being of blacks and Latinos. At the same time, the power inequalities that separate even the most aggrieved US citizens from the masses of poor and working people around the world can render struggles for full 14th Amendment rights by US citizens to be little more than what Martin Luther King, Jr used to describe as ‘an equal right to do wrong’. Certainly the prominence of Colin Powell and Condoleeza Rice in forging the rationale for the 2003 invasion and occupation of Iraq demonstrates the limits of this form of inclusion. If abolition democracy emblematizes the emancipatory tradition within American Studies, the idea of collective and linked struggles for change without aiming for control over any one state expresses the uniquely generative stance within transnational social movements and transnational scholarship. Articulated in the form of a manifesto in John Holloway’s Change the World Without Taking Power, this sensibility has taken on activist form in the work of the EZLN in Mexico, the Gabriela Network in the Philippines, and the Okinawan Women Act Against Military Violence in that Japanese prefecture (Holloway, 2002). These movements make demands on the state and recognize the specificity of national histories, cultures and politics, but their aspirations and activities cannot be contained with any single national context. The activities of the Okinawan Women Act Against Military Violence (OWAAMV) demonstrate the importance of a transnational perspective that goes beyond the history, culture, and politics of any single nation state (Fukumura and Matsuoka, 2002). Coming from a country that has been serially colonized since the 17th century and occupied militarily by both the USA and Japan, OWAAMV activists cannot solve their problems within a single national context. Disadvantaged by colonial status, race, and gender, they cannot turn to national liberation, anti-racism or feminism as their sole context for struggle. Coming from a small island with a limited population in a corner of the world far removed from metropolitan centers of power, they must forge alliances with outsiders based on political affinities and identifications, rather than counting on the solidarities of sameness that sustain most social movements. As eyewitnesses to brutal combat on the island in 1945 that killed more than 130,000 Okinawan civilians (one-third of the local population) and tens of thousands of Japanese and US military personnel, they find it impossible to celebrate organized violence and masculinist militarism (Hein and Selden, 2003: 13). As women confronted with the pervasive presence of commercial sex establishments, sex tourism and rapes of civilian women and girls by military personnel, they see gender as a central axis of power and struggle. The complicated history that brought the OWAAMV into existence, and which vexes them in so many ways, has produced new ways of being and new ways of knowing that contain enormous generative power for scholars in Ethnic Studies and American Studies. They do not seek to make their nation militarily superior to others. Instead, they argue that massive preparation for war increases rather than decreases the likelihood of violence. Moreover, they argue that military spending creates security for states and financial institutions but not for people. They charge that expenditures on war serve to contain and control people like themselves who oppose the global economic system, who challenge neoliberal policies designed to privatize state assets, lower barriers to trade and limit the power of local entities to regulate the environment. Perhaps most important, they call for a new definition of ‘security’, one that places the security of women, children and ordinary people before the security of the state and financial institutions. They ‘queer’ the nation – not because they take an explicit position on the rights of gays and lesbians, but because they interrupt and contest the narrative of patriarchal protection upon which the nation-state so often rests. By necessity, the OWAAMV go beyond the categories and cognitive mappings of area studies. They are citizens of Japan, but also victims of Japanese and US colonialism. On most issues, they feel more in solidarity with the indigenous Sovereignty Movement in Hawai’i or the Gabriela network mobilizing against sex tourism and sex work near military bases than they do with their fellow citizens of Japan. The nature of US imperialism forces them to seek alliances with pacifists and feminists in the USA, with Puerto Rican activists fighting against US military exercises on the island of Vieques, and with the Okinawans transported to Bolivia during the Cold War era when the Japanese and US governments relocated them in that South American nation so their land could be appropriated for military uses. They feel solidarity with witnesses to war and empire everywhere, recognizing that the things that have happened in their part of the Pacific cannot be contained within any one ‘area’ of study. Transnational organizing of mobilizations for change, without directly seeking to take state power, speak directly to the new circuits and networks of power emerging from new forms of production, consumption, communication and repression. They often display brilliant ingenuity in fashioning seemingly unlikely short-term alliances, affinities and identifications with people across class, gender, race and national lines. Yet this very tactical dexterity makes it difficult to turn temporary victories into long-term institutional changes. Strategies that manifest the mobility and dynamism required for challenging transnational corporations and financial institutions often lack the concentrated power needed to challenge the enduring power of the state and its control over the prisons, armies and police agencies deployed in support of private power everywhere. Even more important, flexible, fluid and dynamic coalitions often lack both the organic solidarity and the connecting ideology that make movements successful. Groups engaged in this kind of struggle can become unexpected allies in each other’s struggles, but they can also easily be manipulated into fighting against each other if they do not develop a systemic analysis of global power. Scholars can be pitted against each other as easily as aggrieved communities can. In an era of carefully orchestrated challenges to public education, scholarly independence and critical thinking, it is likely in the near future that every department, discipline and field will be encouraged to defend its own worth by belittling others, to compete for scarce and declining resources by inflating its own achievements at the expense of others. A losing proposition in politics, this ‘race to the bottom’ would be even more disastrous for scholarship because it encourages parochialism and defensive localism at precisely the moment when we most need dialogue, generosity and cosmopolitanism. It is important in this context to identify and learn from scholarly works that offer models of principled and productive synthesis between American Studies and Area Studies. Fortunately, both well established classics and promising new work in both American Studies and Area Studies contain this generative potential. The scholarly works of W.E.B. Du Bois and Walter Rodney provide especially useful and generative models from the past, while recent studies by Melani McAlister, Lise Waxer, Roderick Ferguson and Clyde Woods pose bold and exciting challenges in the present (Ferguson, 2004; McAlister, 2001; Waxer, 2002; Woods, 1998).

**This turns their epistemology methodology claims: activists, lawyers, and academics using pluralistic vocabularies are more politically effective. Mobilization, mainstream institutional change, and legal-doctrinal changes create positive feedbacks not tradeoffs.**

**Cable et al 2** Sherry Sociology @ Tennessee “Different Voices, Different Venues: Environmental Racism Claims by Activists, Researchers, and Lawyers” *Human Ecology Review* 9 (1) p. 36-38 [Acronyms clarified – Turner]

Some progress has been made since the earliest days of the EJM [**environmental justice movement]**. For example: one direct consequence of Executive Order 12898 was the Institute of Medicine’s report (1999) on a National Academy of Science committee’s recommendations for addressing environmental justice issues via public health, biomedical research, education, and health policies. Such attention suggests a widening forum for the discussion of the causes and consequences of disproportionate environmental risks. Activist/academic and Bullard’s associate Glenn Johnson observes in his review of this manuscript that the “walls” separating activists, researchers, and lawyers have weakened since 1995. He bases his observation on anecdotal evidence such as the increased advocacy of environmental justice by health care practitioners and officials and the introduction of environmental justice materials in academic curricula. Johnson’s diagnosis of the EJM is that the most significant problem “is not the ‘science’ of environmental justice, but the ‘political science’ among various decision makers who determine whether an environmental justice problem is legitimate or not.” Still, the efforts of activists, researchers, and lawyers remain less than successful in ameliorating environmental injustices, ideally obtainable by building coalitions. In the past, each group was constrained, pursuing its own subgoals: for activists, recruitment and political mobilization; for researchers, hypothesis testing and knowledge building; and for lawyers, appropriate juridical arguments and winning. To create a more effective coalition, these “old” voices must modulate to “new” voices. The old voice of activists is characterized by: the redress of grievances in a single community or in a limited number of sites; the mobilization of only one given ethnic group in a community; and an audience restricted to community residents. The old voice of researchers features hypothesis-testing relevant to the theoretical issues of a particular discipline and an audience comprised primarily of fellow researchers and only secondarily of other knowledge-users. The old voice of lawyers emphasizes practices associated with vested, selfinterest law and adherence to the court’s procedural rules that do not permit multi-causal models as evidence. In intergroup interaction, these old voices produced noise. In contrast, the new voices diminish the clamor. The new voice of activists must target system inequities and the institutional practices of capitalism that generate differential risks; reach out to a broader constituency to include, not only the poor of all colors, but also middle-class and white sympathizers; and carry their appeals for fairness to political arenas such as the court of public opinion because, although cultural values emphasize equality, the courts of justice do not hear arguments against class-based discrimination. The new voice of researchers must augment discipline-required hypothesis testing with participatory research models that respond to community needs; enlarge their audience to include community residents; and promote their research findings in political arenas such as Congress, governmental agencies, state legislatures, and local city councils. The new voice of lawyers must permit space for the more complex arguments of researchers; emphasize a client-centered model; and include the public as an important segment of their audience. Underlying the old voices is an emphasis on monolingualism in which each party typically acted in accord with its own agenda and spoke to a delimited audience. In contrast, underlying the new voices is an emphasis on polylingualism in which each party recognizes the agenda of the others, acts to achieve some degree of cooperation with them, and speaks to a broader audience. Such new, polylingual voices would bring beneficial effects for more effective cooperation among activists, researchers, and lawyers. One effect of the new voices would be to produce an agendum that broadens the base of participation at the grassroots level, simultaneously shaping the nature of policy-making debates to involve various publics, legislators, and bureaucrats. The new agendum would call for a risk free society, no end-production pollution, and equitable exposure to risks of morbidity and mortality by region, class, and race/ethnicity (Bullard 1999a, 1999b; Cole and Foster 2001). The EJM has already begun to focus attention on issues that signal an improved agendum by highlighting: the effects of current federal and state laws, administrative regulations, and procedural guidelines on the implementation and enforcement of pollution policies; the unfairness of requiring victims to shoulder the burden of proof of harm rather than mandating that polluters prove their actions caused no harm; and the need to adjust the prioritization of community health and welfare relative to corporate profits and private property rights. Kuehn (2000) suggests further potential agendum items involving: the identification of criteria for defining minority and low income communities that both researchers and lawyers may use; the specification of political standards for determining when a disparate impact is inequitable; and the determination of the appropriate reference for community when determining the degree of disparity legally significant under Title VI. A second beneficial effect of the new voices of activists, researchers, and lawyers is the replacement of specialized vocabularies with a common language of environmental justice that is denotatively meaningful. Highly abstract and theoretically detailed models must be unpacked, the complex made simple. In general, the vocabulary of social scientists, the logic of hypothesis testing, and the complexity of findings must be reinterpreted and simplified by lawyers to be useful in courts. Activists must learn both academic and legal terminologies, researchers must connect with activist and legal communities, and lawyers must work to incorporate these groups into the courtroom. The rule that governs all communication must not be forgotten: write so that both insiders and outsiders can understand it. A third beneficial effect of the new voices is the opportunity to create new strategies in the courts of justice, the court of public opinion, and in political institutions. EJM activists have typically sought redress of grievances through the courts by framing suits under equal protection, environmental, and civil rights laws (Mank 1999; Poirer 1994; Schwartz 1997). Different arguments could be tendered in the courts to modify existing jurisprudence. Activists, researchers and lawyers acting together might convince judges to allow arguments which permit plaintiffs’ lawyers the same freedom as defense lawyers to introduce multicausal arguments that involve the relative influences of race and other variables on disproportionate risk. Allowing such arguments would replace the mechanistic notion of causality that presently discounts scientific assessments of disproportionate risk. In addition, new strategies might be developed for audiences outside of the courts of justice. The court of public opinion might be addressed via media and public forums in ways that inform and educate the public in the new polylingualism. Perhaps the most important arena for the new, polylingual voices of the EJM is political institutions at all levels. These new voices resonate to facilitate political action locally, nationally, and globally. Courts of justice may only rule on established law, and, although racial discrimination is prohibited, no laws exist against class-based discrimination. But, by appealing to cultural values of fairness, the EJM and public opinion together can potentially exert the political pressure to move even the most intransigent politicians in the direction of a more equitable distribution of environmental risks. At the national level, such political action will be most successful when politicians sympathetic to green/fairness issues hold office. When the EJM faces resistance in Washington from a predominance of politicians favoring capital formation, regional and community coalitions in the movement can target state and local issues. With a broader audience and with more articulated structural ties among the parties, the new, polylingual voices of the EJM will more successfully promote thinking globally while acting locally.

### 2AC—Global

**Bridging local and global environmental policy, research, and epistemology is crucial to solve environmental problems as well as structural violence.**

**Miller 6** Clark Public Affairs @ Wisconsin Paul History of Science @ Wisconsin “The Politics of Bridging Scales and Epistemologies” in Bridging Scales and Knowledge Systems Concepts and Applications in Ecosystem Assessment Eds. Walter V. Reid et al. p. 297-298

Why should global environmental assessments concern themselves with the complex, costly, and sometimes uncomfortable challenge of bridging scales and knowledge systems? After all, conducting a comprehensive, scientific assessment of environmental change at global scales is hard enough in itself. What benefits can be achieved from further complicating the task to integrate knowledge from alternative epistemological paradigms and subglobal scales? One answer is to more effectively link knowledge to action by promoting accurate, policy-relevant global environmental assessments. Bridging scales and epistemologies may enable assessments to better **integrate local knowledges** into global models and data sets, potentially strengthening the accuracy of their findings. Likewise, integrating scientific and indigenous knowledges, or global and national styles of reasoning, may contribute to better translation of assessments into effective policy strategies for addressing global environmental change. These are important pragmatic reasons to bridge scales and epistemologies. In this chapter, however, we approach the question from a more overtly political standpoint. Viewed politically, global environmental assessments are not only attempts to synthesize scientific knowledge but also elements in reworking the constitutional foundations of global order (Miller 2004a; see also Jasanoff 2003 and Litfin 1998). But what kind of global order are assessments forging? Unfortunately, too often, attempts by assessments to portray science in a unified framework contribute to excluding voices from global decision mak-ing and exacerbating ideological divisions in global society (Miller 2004b, 2003). In this manner, assessments contribute to the growing “democratic deficit” that permeates international institutions (Held 2004; Verweij and Josling 2003; Keohane 2001). We contend that, if properly designed and managed, efforts to bridge scales and epistemologies in global environmental assessments could contribute to the converse: promoting inclusion, dialogue, deliberation, and democracy in global governance.

Our argument brings together two literatures; comparative policy analysis and deliberative democratic theory. Combined, these literatures suggest the need to recognize and foster epistemic pluralism and deliberation as an important element in democratizing international governance. Building on the idea that this might be accomplished through “reasoning together” (Jasanoff 1998), we suggest a fourfold strategy for bridging scales and epistemologies in global environmental assessments:

• Building critical capacity for policy reasoning—strengthening citizen capacity across the globe to formulate and reflect critically on reasoned justifications for global policy choices

**• Promoting epistemic tolerance and pluralism— recognizing and facilitating the expression of divergent styles of reasoning about global environmental risks in governing forums**

**• Enhancing epistemic dialogue and exchange—encouraging efforts to bring divergent styles of reasoning into dialogue and exchange as well as crosscutting reflection and evaluation**

**• Orchestrating cross-scale epistemic jurisdiction—strengthening dialogue and exchange, as well as appropriately delegating authority, across scales of assessment and governance.**

**Assigning institutional environmental responsibility facilitates personal responsibility.**

**Fahiquist 9** J. N., Department of Philosophy, Delft University of Technology, Winter/Spring. Journal of Agriculture and Environmental Ethics 22, Moral Responsibility for Environmental Problems—Individual or Institutional? P. 109-124

This is the way in which individuals as consumers and citizens are responsible for environmental problems. Individuals should do what they can against the background of their particular situation. The more resources, power, and capacity an agent has the better her ability to contribute to solving the problem and the more reasonable it is to ascribe forward-looking responsibility to her. This view means that the causal links are less central than it is in the backward-looking concept. Just as Bill Gates did not cause the social problems he contributes to solving by giving money to charity, the individuals that are best placed to contribute to solving environmental problems are possibly not the ones who contributed the most causally to these problems. Their position to do more can be due to several factors, most likely involving financial resources but also education, information, and leadership skills in terms of a talent for influencing others.Institutional Responsibility We now have the conceptual and normative tools to say in virtue of what institutional agents like governments and corporations are responsible for environmental problems and how their responsibility is related to individual responsibility. Governments and corporations are responsible because it is in their **power to create reasonable alternatives for individuals.** They have it in their power to make it easier and less expensive for individuals to choose the environmentally friendly option and they can provide information that is easily accessible and as straight-forward as possible. In essence, they are responsible because they have the power to create opportunities for individuals to do what is right. Another way of phrasing it is to say that **institutions can make it easier for individuals to assume forward-looking responsibility**. This could be done by making information accessible, subsidizing organic food while taxing non-organic food, by product development and presentation of products and so forth.20 The greater the extent to which these actors have done that, the greater the extent of individual responsibility. The greater the extent to which institutional agents have taken their forward-looking responsibility, the greater the extent to which it is reasonable to ascribe both backward-looking and forwardlooking responsibility to individuals when they do not choose the environmentally friendly option. First, the greater the availability and affordability of good options, the more reasonable it is to blame those individuals who still do not adjust their behavior. Second, the greater the extent to which, e.g., governments have assumed their responsibility, the larger the group of individuals with enough capacity and resources to assume their forwardlooking responsibility.

**Assigning institutional responsibility is key to adapt to climate change.**

**Fahiquist 9** J. N., Department of Philosophy, Delft University of Technology, Winter/Spring. Journal of Agriculture and Environmental Ethics 22, Moral Responsibility for Environmental Problems—Individual or Institutional? P. 109-124

Some critics will argue that individuals have a personal responsibility, which would be eroded if we allocate too much responsibility to institutional actors. Do individuals not have to do anything by themselves? I think there are two ways to respond to such criticism.First, one way of conceptualizing a forward-looking responsibility is through a virtue ethical approach. Garrath Williams views responsibility as a virtue, which essentially represents a ‘‘readiness to respond to a plurality of normative demands.’’21 This is a slightly different way to conceptualizing the idea that individuals are too complex to assess morally merely on the basis of isolated actions. Instead focus should be on an individual’s whole life and character as well as the way in which the character evolves and improves. It focuses on the different roles an individual has and challenges to respond to a plurality of, sometimes even conflicting, demands. Viewed from that angle, personal responsibility is still very important. However, what should be acknowledged is that individuals’ character and the virtue of behaving responsibly can be affected by social systems, policies, and information and education. Against this background, this institutional responsibility can be stated as follows. Responsibility of governments and corporations: To create systems to make it easier for individuals to respond to the emerging norm that we ought to act in environmentally friendly ways. A second way of responding to the critique that personal responsibility is eroded if too much responsibility is ascribed to institutions is the following. Ascribing and distributing responsibility is a social practice that serves two purposes. First, it creates or establishes fairness. Second it is a tool to establish an effective and efficient division of labor in order to solve societal problems.22 The optimal distribution of responsibility is both fair and effective, although it is sometimes difficult to achieve both to the same extent. Sometimes, one of the two purposes is more important than the other and the two have to be weighed against each other in each case. There are areas of life and society where stating that something is the personal responsibility of individuals is fair and when this is the most important feature of that distribution of responsibility. There are other areas**, for example, climate change**, the problems of which are too urgent and to vast to only care about fairness and personal responsibility. The long-term goal should be to encourage virtuous individuals, as citizens and consumers, i.e., for example to have people embrace green virtues.23 It would, of course, be nice if people in general start to care about the environment more naturally and every day. However, from the short-term perspective we need to add that this distribution of responsibility should also be effective and efficient, i.e., contributing to a solution to the problem. That is why the greatest share of responsibility for environmental problems should be ascribed to the most powerful, resourceful, and capable actors, i.e., governments and corporations, because they can create systems that make it easier and less costly for people to choose the environmentally friendly option than to choose the environmentally harmful option. As argued by Henry Shue, some duties should be assigned to institutions instead of individuals because that is likely to be more efficient. Institutions can make possible the coordination and cooperation that are needed for those duties to be fulfilled. A second reason is that it would be to demand too much of people to assign such duties to individuals because individuals have rights as well as duties and should be allowed some time outside of their role as duty-bearers. Thus, for reasons of efficiency as well as for reasons of fairness institutions as opposed to individuals should be considered the main duty-bearers. However, this does not mean that individuals are completely exempted. On the contrary, it is their duty to make sure there are adequate institutions to implement the duties in question.24 Whereas, Shue argues that the role of institutions is to implement the duties, Michael Green argues that the responsibility of institutions is even greater than the responsibility of individuals. He argues that while it is reasonable to keep the restrictive version of responsibility, i.e., the responsibility that always traces behavior to harm for individuals, a more comprehensive kind of responsibility should be assigned to institutions because they constitute a different kind of agent. Institutions have more power and can alter mass behavior, they are better at collecting and processing information about direct and indirect consequences of their actions and they can spread the cost through taxation. Essentially, institutional agents have more capacity; hence a greater share of responsibility is justified. 25 Similarly, Walter Sinnott-Armstrong argues that whereas individuals do not have a moral obligation not to waste gas, governments have a moral obligation to fight global warming, primarily due to the scale of the problem.26

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#### Privileging performance grants the illusion of ethical powers, but removes the ground for collective change and the testing of ethical principles.

David **SIMPSON** English @ UC Davis **‘2** *Situatedness, or Why We Keep Saying Where We’re Coming From* p.

232-235

Ulrich Beck's Risk Society, which can usefully be read along with Giddens's Modernity and Self-Identity (both discussed in chapter I and elsewhere) for the beginnings of a powerful analysis of the way we live now, in the moment that may be called late modernity or postmodernity, suggests that the poor old Cartesian subject has now taken such a drubbing (and it continues to suffer at the hands of many of us who are up-to-date thinkers) that the real problems are only being masked by exhuming it for regular reburial. Beck finds us experiencing a world in which nothing that is felt to be ultimately pertinent to our lives can be known through the experience of our lives. What most requires being known is now outside the individual: that which is "devoid of personal experience becomes the central determinant of personal experience," leading to a sense of "imperceptible and yet omnipresent latent causality" (Risk Society, p. 72). The assumed roles of class and family, visible even if never simply stable, are replaced by a host of "secondary agencies" too numerous to track and too mutable to hold on to (p. 131). Along with this there arise "risk conflicts" that cannot possibly be managed by individuals and that are in their scope nothing less than global and comprehensive, potentially removing all inherited protections possessed by the haves and withheld from the have nots. This complete breakdown of familiar patterns of cause and effect has, says Beck, produced a bizarre hyperbole, a **placing of all decisionmaking language (certainly not power) back in the mouths (certainly not hands) of individuals**. So we are presented with "construction kits of biographical combination possibilities" (p. 135), offered the chance to be all that we can be in a world where we can affect almost nothing that most matters to who we are and what we might become. Biography, as it had been for Sartre, becomes again the site of "systemic contradictions" that are experienced as choices (p. 137): "The floodgates are opened wide for the subjectivization and individualization of risks and contradictions produced by institutions and society" (p. 136). Beck's account (with Giddens's) asks to be read alongside Hollinger's to my mind far too affirmative recommendation of the lifestyle of making choices presented in Postethnic America. Beck's Risk Society finds that it is indeed a matter of choosing "between different options, including as to which group or subculture one wants to be identified with," but also that we have to "take the risks in doing so" (p. 88). These risks are substantial indeed, so that **the language of self-determination covers over a predicament of near-powerlessness**. Those alert to the dishonesties enshrined in the culture of empowerment will find much to identify with in Beck's analysis of the way in which "experts dump their contradictions and conflicts at the feet of the individual and leave him or her with the well intentioned invitation to judge all of this critically on the basis of his or her own notions" (p. 137). The pressures are unbearable: the individual is invited to take "a continual stand" on almost everything, and is "elevated to the **apparent throne of a world-shaper**" at the same time "as he or she **sinks into insignificance**" (p. 137). The effort to describe "individual situations" becomes more impossible than ever before owing to the proliferation of possible determinations needing to be accounted for (p. 138). Meanwhile, "handling fear and insecurity becomes an essential cultural qualification, and the cultivation of the abilities demanded for it becomes an essential mission of pedagogical institutions" (p. 76). This last observation contains another clue as to why it is that we (in the academy) so often go on speaking as if **situatedness** were a **firm knowledge-producing concept**, either by unanalyzed epistemological gestures or by **recourse to an ethical vocabulary in which no epistemology need ever be tested.** Pedagogical institutions, including not only the schools and universities, with their **monotonous** **rhetoric** of **self fashioning**, but also the popular media and the manipulators of common sense, have a powerful interest in **presenting imposed predicaments as matters of choice**, while those who resist this message find themselves driven to equally unambiguous alternatives, whereby **situatedness precludes all significant choice whatsoever.** Because neither position is tenable in the abstract, the debate between them is endless: it simply has no language in which it could possibly conclude anything. Beck suggests that we in fact live with neither kind of certitude, but with the experience of muddle and confusion in a state of considerable psychological stress: the sort of stress that 1 have argued is apparent in the rhetoric of self-affiliation with its awkward oscillation between hyperaffirmative and hypertentative declarations. (Common sense, and common usage, may then reveal more about the nature of our situatedness than many of those manning the "pedagogical institutions" would be prepared to admit.) Happy situated ness was probably always no more than a fantasy. Think of Heidegger with his hammer, hammering away happily because the act has subsumed the "equipment" in a way that "could not possibly be more suitable" because it calIs up no theorization or reflection. The more purposive the action, the more "primordial" we become. Exchanging one hammer for another more suitable one embodies the way in which "interpretation is carried out primordialIy not in a theoretical statement but in an action of circumspective concern," with no "wasting words" (Beinll and Time, pp. 98, 200). Or recall Malinowski's picture of the tribal fishermen, each totalIy absorbed in carrying out his part of the general task at hand, confident in the habits of "old tribal tradition" and "lifelong experience" ("The Problem of Meaning in Primitive Language," p. 3II). This is (or was), perhaps, happy situated ness, wherein one is connected to an environment in a manner that does not calI for reflection and where what are otherwise thought of as self and other fulfill themselves in perfect purpose. But where now are the primitive fishermen, and what would we do to them if we found them? How long can one go on hammering without hitting one's thumb? While hammering, no one has to answer Adorno's question, "who are you?" Unless of course the hammering is going on in a lumberyard governed by divided labor instead of in some idyllic do-it-yourself situation with no one else around. Modernity has mostly been a condition of having others around; hence its reactive valuation of privacy and solitude. Late modernity is experienced as a sense of having far too many others around, and takes the nightmare form of a doomsday population explosion or (in the more decorouslyaffiuent loca- tions) a building-out of green spaces. According to Beck and Giddens, and to many other analysts of late modernity, privacy itself is now so thoroughly permeated by choice-making obligations and exterior determinations ranging from the local and microorganic to the global that the word hardly has meaning. **Total situatedness, total panic.** Perhaps the old false certainties of both kinds, the ones that claim self-determination (I can make my situation) and the ones that refuse all responsibility (I am a creature of my situatedness) are now all the more marketable because of the extent of this panic.