

# The Environmental Justice Movement as a Model Politics of Risk

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**Abstract:** Risk carries unique significance for democratic politics today as it faces the challenges of rising inequality, neoliberalism, and systemic racism. To show how, the article divides “risk” into two complementary political models: a technocratic logic of risk allocation, concerned primarily with safety, and a forensic logic of risk attribution, concerned with holding risk takers and risky policies to account. Both have had pervasive effects on a transformed welfare state, increasingly focused on “personal responsibility” and privatized risk-management. But risk has also played a key role in the way post-1968 movements have organized and challenged the logic of privatization. Risk-based movements, the article argues, especially from the political margins, are key agents in promoting a new political form founded on risk attribution. The article focuses on the exemplary case of the American environmental justice movement in the 1980s and 90s as it reframed social justice around three core demands: accountability from decisions makers, equitable risk distribution (including redress for extreme inequities, past and present), and broad participation in decisions about danger and communities’ well-being.

**Keywords:** risk; environmental justice; inequality; responsibility; social movements; participatory democracy

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## The Environmental Justice Movement as a Model Politics of Risk

Since the closing decades of the twentieth century, the democratic project seems less feasible, even impossible. Neoliberalism, privatization, and financialization pose a real threat to democracy as popular sovereignty and as a system premised on autonomy and individual flourishing.<sup>1</sup> Growing material inequalities in the wake of these transformations threaten political equality and the sustainability of human life on earth.<sup>2</sup> Meanwhile, sociologists and critical theorists have warned of the general decline of social movements as democracy's primary agent of evolution and change.<sup>3</sup>

Risk, I propose, has shaped each of these interlocking narratives in ways that, while recognized by some, have not been systematically analyzed. The erosion of social safety nets, new containment measures directed at people and communities, or a heavy emphasis on personal responsibility are all ways that risk defines power relations, compounds inequalities, and shapes political institutions. Importantly, however, risk also exposes the points of friction in the logic of privatization. The overlooked potential of risk to resist and politicize neoliberal institutions undermines the general story of democratic decline and especially the muted role of movements. In this article, I argue that risk in the hands of social-justice movements is the basis for a novel

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<sup>1</sup> On the former, see Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Cambridge, MA: MIT Press, 2015); Bonnie Honig, *Public Things: Democracy in Disrepair* (Fordham University Press, 2017); on the latter, see Margaret Jane Radin, "Market-Inalienability," *Harvard Law Review* 100 (1987): 1849-1937; Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge, MA: Harvard University Press, 1995).

<sup>2</sup> Thomas Piketty, *Capital in the 21st Century* (Cambridge: Harvard University Press, 2014).

<sup>3</sup> Jürgen Habermas, *The Theory of Communicative Action* (Cambridge: Polity Press, 2004); Wolfgang Streeck, *How Will Capitalism End? Essays on a Failing System* (London: Verso, 2016).

and distinct political form, one that addresses new threats to democracy but also old, previously unattended injustices.

To understand this new political form, we must first distinguish two very different kinds of “risk” and their corresponding political models. I call the first the *politics of risk allocation*: a technocratic logic that seeks to identify and mitigate threats, where *threats* are the “risks.” When deployed by citizens or governments, this logic is used to demand (or promise) safety. The second, in contrast, is the *politics of risk attribution*: an adversarial logic that seeks out the responsible parties behind dangerous policies and decisions. Here, *decisions* are the “risks.” Risk attribution is aimed at holding public and private actors to account, especially when existing institutions are unable to provide sufficient remedies.

The global coronavirus pandemic illustrates this key distinction. As the virus spread around the world, governments were expected to contain the threat to public-health and to provide remedies for the economic fallout. With time, however, and in growing numbers, people turned to the distinctly human element of the crisis, looking for responsible parties and demanding redress. In the US, for example, many focused on the virus’s unequal impact on communities of color and the poor, citing existing disparities in access to healthcare, paid sick leave, housing, and more. Officials were criticized for their perceived lack of readiness as were behaviors that contributed to the virus’s spread, from frequent flying to trade in rare animals. In more extreme cases, individuals, countries, and peoples were directly blamed for the global catastrophe.

As this example shows, the two political models of risk, the one focused on *safety* and the other on *responsibility*, bear heavily on questions of democratic viability and social justice. While many aspects of risk allocation have been thoroughly studied, especially in the context of the welfare state, the politics of risk attribution remains to be addressed by theorists. Though it

can and has been used extensively as a tool of oppression and scapegoating, risk attribution offers a new horizon for popular democratic politics, raising new demands for justice and inclusion. The seemingly disparate struggles of precarious labor, the Movement for Black Lives, the fight against AIDS, and many others fall under its purview, united by the centrality of risk and its normative and practical uses.

As a comprehensive example of the popular, social-justice politics of risk attribution, the article foregrounds the American environmental justice movement (EJM) which arose in the 1980s. A wide grassroots network, the EJM targets local hazards and links them to other forms of structural inequality. It shows how risk can help mobilize a diverse and heterogeneous, ad-hoc political community, successfully challenging policy makers, corporations, and members' often life-threatening living conditions. Risk, as the movement demonstrates, is not only a compounding factor for existing inequalities, but a new form of politics to address them, a powerful weapon of the marginalized.

The article proceeds in three main parts. It begins with a new, *political* classification of risk, drawing on existing social theory to identify the actors, technologies, and sites that define the politics of allocation and attribution. The next section turns to post-1968 "new social movements" as a key factor in promoting the politics of risk attribution. Both risk theory and radical social movement theory, I propose, resist left critiques of new movements' democratic deficit though each provides only half the picture. Risk theorists are primarily concerned with middle-class political organizing, while identity politics is rarely conceived through the lens of risk. The final section examines the EJM as an example of risk-based community organizing. Building on insights from democratic theory, the section discusses the role of responsibility,

structural inequality, participation, and time in movement organizing to present a complete model of the democratic politics of risk attribution.

### **Two Models of the Politics of Risk: Allocation and Attribution**

In the past decades, risk has become a particularly loaded concept. Social-scientific theories, ostensibly unified by a concern with the “risk society,”<sup>4</sup> have been deeply divided on its precise definition. Some understand risk as a measurable, controllable prospective danger in contrast with uncertainty: that which is inherently unknowable and unmanageable about the future. Others distinguish between risk as humanmade and danger as “natural,” and debate the question whether risk is “constructed” or “real.”<sup>5</sup> What Beck himself meant by the “risk society” was that late modernity was defined by new kinds of cumulative, technologically driven, potentially catastrophic danger. Others have emphasized less ominous “risks:” the probabilistic constructs that have reshaped social science and set up new, technocratic modes of population management from psychiatry to policing.<sup>6</sup>

None of the above classifications, however, speaks directly to the different roles risk plays in our political life. The politics of risk, I argue, has two main forms: risk allocation and risk attribution. Both are concerned with exposure to danger, but they ask different questions about it.

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<sup>4</sup> Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage Publications, 1992).

<sup>5</sup> For extended surveys, see Jakob Arnoldi, *Risk: An Introduction* (Cambridge, UK; Malden, MA: Polity, 2009); Jens Zinn, ed., *Social Theories of Risk and Uncertainty: An Introduction* (Malden, MA: Blackwell Pub, 2008).

<sup>6</sup> Pat O’Malley, “Governmentality and Risk,” in Zinn, *Social Theories of Risk*; Nikolas Rose, “At Risk of Madness,” in *Embracing Risk: The Changing Culture of Insurance and Responsibility*, ed. Tom Baker and Jonathan Simon (University of Chicago Press, 2002); Kevin Stenson and Robert R. Sullivan, eds., *Crime, Risk and Justice: The Politics of Crime Control in Liberal Democracies* (Cullompton: Willan, 2001).

“Risk allocation” quantifies the danger by asking about its extent, potential outcomes, and the means to mitigate harms to people and the environment. When exposure can’t be substantially minimized, its costs are widely distributed as an alternative form of remediation. Techniques like insurance, risk analysis, or epidemiology underwrite a politics of management, regulation, and containment.

In contrast, “risk attribution” asks what decisions and background conditions have led to current and potential levels of exposure. It asks not only who is affected by a potential danger but who is responsible. Risk attribution also looks for socially meaningful differences in exposure to danger, based on race, gender, class, etc. It is therefore effective in exposing the practical limitations of widely distributing or technocratically containing danger, the core ambition of risk allocation. Risk attribution is a reminder that, like any other distributive project, all allocations of risk are contestable and politically relevant, and cannot be permanently resolved, not least with purely technical means.

The first model and at least some of its political implications have been thoroughly explored. François Ewald offers one of the more affirmative accounts of risk allocation, arguing that insurance created a new model of social solidarity. The idea of “risk,” he claims, cannot be separated from the actuarial technology which pools together resources, classifies people, and monetizes potential harms to spread their costs widely. Using statistics and probabilities, nineteenth-century insurers gave rise to a new society, bound together by mutual aid and collective accountability. While danger, harm and loss are individual and personal, the risk, conceived as the probability of them occurring to any member of a group, is shared by all. On a

practical level, the insurance principle gave individuals a strong tool against employers and the government, liberating action and enterprise by freeing people from fear.<sup>7</sup>

Ewald's position, however, describes insurance in ideal terms, overlooking the fact that it is an inherently discriminatory technology. Just like insurance, the sciences shaped in its image, which classify, remedy, or isolate social risks, are founded on exclusion and differential treatment. They are driven as much by scientific principles as by more tacit discretionary choices on which risks to address and how. Belonging to a specific risk category determines the price one pays for security, while actuarial classification identifies and excludes "outliers" for the sake of internal balance.<sup>8</sup> Risk populations, moreover, the constructs of insurers and administrators, are a top-down imposition divorced from one's identity and voluntary association. As recent debates on algorithmic policing have brought to the fore, risk classification can facilitate coercive, often racially-biased state measures in an effort to preempt and prevent danger.<sup>9</sup>

Whether in wide social-insurance schemes or in the exponential growth of financial markets—a market-based system of hedging<sup>10</sup>—risk allocation technologies define contemporary

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<sup>7</sup> Francois Ewald, "Risk and Insurance," in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller (University of Chicago Press, 1991), 208.

<sup>8</sup> Dan Bouk, *How Our Days Became Numbered: Risk and the Rise of the Statistical Individual* (Chicago, Ill.: University of Chicago Press, 2015), chap. 7; Marion Fourcade and Kieran Healy, "Classification Situations: Life-Chances in the Neoliberal Era," *Accounting, Organizations and Society* 38 (2013): 559-72.

<sup>9</sup> Cathy O'Neil, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (New York: Broadway Books, 2016); Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police and Punish the Poor* (New York, NY: St Martin's Press, 2018).

<sup>10</sup> Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction* (New York: Zone Books, 2016).

capitalist democracies when they regulate as when they deregulate. A *politics* of risk allocation is widely prevalent today: whenever we demand greater regulation, state-guaranteed safety nets, or effective government responses to natural or humanmade threats, we are speaking the political language of risk allocation.<sup>11</sup> One could also argue that recent attention to the idea of a rising “precariat” as a new political agent relies on a technical understanding of risk. It identifies financial fragility, job insecurity, or dangerous work, for example, as definitive features of our lives as citizens and non-citizens.<sup>12</sup>

But the late-twentieth century also presents an important alternative: the politics of risk *attribution*. The underlying logic of attribution is that to call something a “risk” is to suggest that someone (person or institution) made a risky decision, exposing someone to danger.<sup>13</sup> It is the logic behind liability waivers and “moral hazard,” a general anxiety about firms and individuals taking too much or too little responsibility. The main aim of risk attribution is not to increase safety but to identify those responsible and hold them to account. It responds to a range of moral intuitions, quite separate from the protective solidarities of risk allocation, and marks the expectation that people be rewarded (or sanctioned) according to their actions.

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<sup>11</sup> On the actuarial state and the long history of government risk management, see Rachel Z. Friedman, *Probable Justice: Risk, Insurance, and the Welfare State* (Chicago: University of Chicago Press, 2020); David A. Moss, *When All Else Fails: Government as the Ultimate Risk Manager* (Cambridge, Mass.: Harvard University Press, 2002).

<sup>12</sup> Kathleen Thelen, “The American Precariat: U.S. Capitalism in Comparative Perspective,” *Perspectives on Politics* 17 (2019): 5-27; Sanford Schram, *The Return of Ordinary Capitalism: Neoliberalism, Precarity, Occupy* (Oxford: Oxford University Press, 2015); Paul Apostolidis, *The Fight For Time: Migrant Day Laborers and the Politics of Precarity, The Fight For Time* (Oxford, New York: Oxford University Press, 2019).

<sup>13</sup> Niklas Luhmann, *Risk: A Sociological Theory*, trans. Rhodes Barrett (New Brunswick, N.J.: Aldine Transaction, 2002), 14.

Though it has many older precedents, “modern” risk attribution rose to prominence in the 1980s, an age of environmental disasters, like those in Chernobyl and Bhopal, and growing skepticism toward science and technological development. “Risks” were increasingly seen as outcomes of *decisions*.<sup>14</sup> Society, as Beck famously argued, uses a language of risk to understand its present circumstances as outcomes of its past behaviors. It is a “systematic way of dealing with hazards and insecurities induced and introduced by modernization itself,” one that characterizes, for example, the environmental critique of growth. Risks, Beck adds, “as opposed to older dangers, are consequences,” that is, they reflect a new sensibility, that society had allowed its technological and scientific tools to become the main causes of its endangerment.<sup>15</sup>

While Beck was concerned with high-impact, often disastrous side-effects, Mary Douglas, Niklas Luhmann, and others expand risk attribution to a host of day-to-day activities. This notion of risk, as Douglas shows, is both moralizing and forensic. It investigates present harms and hardships to locate the guilty parties and blameworthy behaviors at their root. It also uses the threat of future calamity to warn against such behavior in the present.<sup>16</sup> “Pollution,” she argues, “is a powerful forensic resource. There is nothing like it for bringing their duties home to members of the community.”<sup>17</sup>

The practice of risk attribution, therefore, is hardly confined to the realm of progressive social movements. Luhmann details the disruptive ways in which risk attribution is incorporated into the legal, economic, and political systems. Juridical logic, for example, is stifled when

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<sup>14</sup> Beck, *Risk Society*; Mary Douglas, *Risk and Blame* (Routledge, 2013), 14-15; Luhmann, *Risk*.

<sup>15</sup> Beck, *Risk Society*, 21.

<sup>16</sup> Douglas, *Risk and Blame*, 9.

<sup>17</sup> *Ibid.*, 5-6.

forced to assign “blame” for future events and “likely” possible catastrophes.<sup>18</sup> Risk attribution is also handily used to oppress and to dominate, for instance in the demonization of migrant workers and refugees in the name of security.<sup>19</sup> “Disasters that befoul the air and soil and poison the water,” as Douglas writes, “are generally turned to political account: someone already unpopular is going to be blamed for it.”<sup>20</sup> One of the most prevalent uses of risk attribution, as I show later, is the spread of “personal responsibility” as a way to frame and limit social services and safety nets since the 1980s.<sup>21</sup> It is precisely this power to disrupt, mobilize, and set up a politically potent opposition that makes the politics of risk attribution an important, dangerously understudied phenomenon.

The two logics of risk—the technocratic logic of risk allocation and the forensic logic of risk attribution—give completely different meanings to the idea of a politics of risk. The first treats the state as an expert-led, scientifically-run administrative organization, supplemented by market solutions to risk. The second, as this article explores at length, organizes publics, fills in accountability gaps, and, importantly, subjects the scientific constructs deployed by markets and bureaucracies to critical examination. The two models are, in this sense, complementary. As Ewald suggests, actuarial techniques help relieve the costs of finger-pointing, including social splintering and polarization.<sup>22</sup> By accepting that certain calamities are a fact of modern life, by

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<sup>18</sup> Luhmann, *Risk*, 61.

<sup>19</sup> Roxanne Lynn Doty, “States of Exception on the Mexico–U.S. Border: Security, ‘Decisions,’ and Civilian Border Patrols,” *International Political Sociology* 1 (2007): 113-37.

<sup>20</sup> Douglas, *Risk and Blame*, 5.

<sup>21</sup> Melinda Cooper, *Family Values: Between Neoliberalism and the New Social Conservatism*, Near Futures (New York: Zone Books, 2017); Yascha Mounk, *The Age of Responsibility: Luck, Choice, and the Welfare State* (Cambridge, MA: Harvard University Press, 2017).

<sup>22</sup> Ewald, “Risk and Insurance,” 201-3.

pooling resources, and by replacing retribution with monetary compensation, it promotes mutual aid and resolves thorny disputes around personal loss. Similarly, attribution goes beyond the technocratic horizon of risk allocation and allows us to reflect as a political community on the way we manage danger and fairly distribute risk. In the next sections, I focus on the central role of movements in developing a democratic politics of risk attribution and the vital importance of risk-based organizing from the margins for questions of social justice and political inclusion.

### **Risk and New Social Movements**

1968 marks an inflection point in the popular democratic politics of the Global North. The so-called “new movements” that emerged after the heyday of the labor and civil rights movements were fundamentally different: a loose amalgam of largely middle-class organizations concerned primarily with “lifestyle” issues. Like the welfare state and its demise, new movements are often seen as signs of democratic decline, representing a loss of political focus and efficacy in the transition from national politics to community organizing.<sup>23</sup> The aim of this section, however, is to qualify this dominant narrative—later duplicated in critiques of neoliberalism—by focusing on the novel role of risk for “new movements” and their overlooked radical history.

The term “new social movements” (NSM) refers to a wide range of movements—for example the environmental, feminist, or peace movements—concerned with quality of life, on the one hand, and identity-based claims, on the other. Within this basic definition lurks a regular left critique, running from Jürgen Habermas’s early impressions of the 1968 uprisings to contemporary critics of neoliberalism. Namely, new movements mark a turn to “culture” and to

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<sup>23</sup> Jürgen Habermas, *Toward a Rational Society: Student Protest, Science and Politics* (London: Heinemann Educational, 1971); Steven M. Buechler, “New Social Movement Theories,” *Sociological Quarterly*, 1995, 441-464.

civil society as the primary sites of social, economic, and political contestation. In so doing, the argument goes, they neglect “real” politics.<sup>24</sup> Combining grassroots activism with professional lobbying, new movements generally target public opinion and policy makers, rather than directly challenging political incumbents. Their membership and leaders, moreover, represent a (mostly) white middle-class, committed to preserving (or assimilating into) hegemonic ways of living.<sup>25</sup>

Well before the “rise of neoliberalism,” new movements marked the democratic deficit of the welfare state itself: a post-WWII compromise that effectively ended labor struggles, replacing the politically-active worker with a pacified consumer of state services.<sup>26</sup> It also meant the privatization and “domestication” of social problems, which presented the results of political decisions as “categories of deviant behavior: as private conflicts, illness, and crime.”<sup>27</sup> In response to this “qualitative change in the methods and effects of domination and social control,”<sup>28</sup> new movements became defensive, committed to the preservation of cultural stakes and aiming to “reconstitute a civil society that is no longer dependent upon ever more regulation, control, and intervention.”<sup>29</sup>

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<sup>24</sup> Habermas, *Rational Society*, 42; Habermas, *Communicative Action*, 348; Steven Klein and Cheol-Sung Lee, “Towards a Dynamic Theory of Civil Society: The Politics of Forward and Backward Infiltration,” *Sociological Theory* 37 (2019): 69-70.

<sup>25</sup> Claus Offe, “New Social Movements: Challenging the Boundaries of Institutional Politics,” *Social Research*, 1985, 833, 857; John A. Hannigan, “Alain Touraine, Manuel Castells and Social Movement Theory: A Critical Appraisal,” *Sociological Quarterly* 26 (1985): 435-54; Buechler, “New Social Movement Theories,” 452.

<sup>26</sup> Habermas, *Communicative Action*, 395; Offe, “New Social Movements,” 822.

<sup>27</sup> Habermas, *Rational Society*, 42-43.

<sup>28</sup> Offe, “New Social Movements,” 844.

<sup>29</sup> *Ibid.*, 820.

The contemporary critique of neoliberalism continues in the same vein, despite the wide social, economic, and political transformation designated by the term. Neoliberalism is often depicted as overrun with interest-group lobbying and splintered, isolated “single issue” grassroots struggles, helpless in combatting a receding welfare state.<sup>30</sup> Like their predecessors, these accounts foreground the decline of labor organizing, dismantling of worker rights, and systematic erosion of a publicly-minded citizenry.<sup>31</sup> “As the decay [of capitalism] progresses,” Wolfgang Streeck summarizes with undisguised contempt, “it is bound to provoke political protests... but for a long time, these are likely to remain of the Luddite sort: local, dispersed, uncoordinated, ‘primitive.’”<sup>32</sup>

Risk theory, however, provides an important counternarrative. Luhmann, Douglas, Beck, and others agree that new movements are primarily defensive and lifestyle oriented, but they see that as a valuable development, the emergence of a new political form. New movements are responsible for reorienting popular struggles to what I have termed the politics of risk attribution. Beck, who focuses on intractable, potentially catastrophic *systemic* risks, has been particularly outspoken on their unparalleled contemporary political significance, essentially replacing national *class* politics with a cosmopolitan, international politics of risk.<sup>33</sup>

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<sup>30</sup> Grant Farred, “Endgame Identity? Mapping the New Left Roots of Identity Politics,” *New Literary History* 31 (2000): 645.

<sup>31</sup> Brown, *Undoing the Demos*, 38-39; David Harvey, *Justice, Nature, and the Geography of Difference*, 1996, 337.

<sup>32</sup> Streeck, *How Will Capitalism End*, 490.

<sup>33</sup> Ulrich Beck, “Why ‘Class’ Is Too Soft a Category to Capture the Explosiveness of Social Inequality at the Beginning of the Twenty-First Century,” *The British Journal of Sociology* 64 (2013): 69.

Luhmann and Douglas offer more qualified accounts of risk that are, for that, more general and widely applicable. For Luhmann and Douglas, new movements embody the politics of risk in three ways: they position themselves as the critical border vis-à-vis a corrupt center, they identify and fortify the values that matter to a community by focusing on the threats it faces, and they fill in an accountability deficit. As the next section shows, there is a fourth way movements deploy risk: they point to its unequal distribution and the ways it compounds existing inequalities. This final aspect, however, failed to inform much of the social theory of risk, due primarily to the latter's focus on middle-class movements concerned with widely distributed, "universal" threats like climate change or nuclear catastrophe.

Mary Douglas and Aaron Wildavsky locate risk-centered movements on the border or periphery of the political center—government bureaucracies and markets—in an active and visible conflict.<sup>34</sup> Studying early environmental organizations, they show how a language of risk was effective in opposing an ossified, degraded "center." Instead, movements showcased alternative ways of living, models of purity and wholesomeness. This "border," notably, was largely metaphorical. A majority of the new movements studied by risk theorists drew their members from the "new middleclass" and defended, rather than challenged, its universalist "Enlightenment" values.<sup>35</sup> Their main critique was aimed at the dangers produced, and ignored,

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<sup>34</sup> Mary Douglas and Aaron Wildavsky, *Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers* (University of California Press, 1983), 90.

<sup>35</sup> Offe, "New Social Movements," 849; Douglas and Wildavsky, *Risk and Culture*, 130. More recent efforts to address the compounding (and confounding) effects of risk on other forms of inequality have remained at the diagnostic level. They focus on new social vulnerabilities and discriminatory practices but overlook the political agency and organizing on the part of the very same actors. See Anna Olofsson et al., "The Mutual Constitution of Risk and Inequalities: Intersectional Risk Theory," *Health, Risk & Society* 16 (2014): 417-30.

by the center, adopting a highly grim vision of imminent doom and radical discontinuity between past and future. For Luhmann, border organizations use risk to publicly stage an artificial social rift, a spectacle that allows society to observe itself as (if) a conflict between opposing forces.<sup>36</sup> Speaking in the name of society and even humanity they produce the kind of “fundamental criticism” of society which the center cannot.<sup>37</sup>

Risk, moreover, names a set of grievances that, by definition, lack a clear addressee. Risk-based movements are “peripheral” in the sense that no institutional procedure exists in the present to identify, address, and hold responsible parties to account for dangerous behaviors and policies. A risk-based grievance takes a form that is “neither ‘private’... nor ‘public’... but which consists in collectively ‘relevant’ results and side effects of either private or institutional-political actors for which these actors, however, cannot be held responsible or made responsive by available legal or institutional means.”<sup>38</sup> By holding decision makers to account for dangerous “side effects,” movements can put new pressures on the legal and political systems using mass media and public opinion.

A second important vindication of new movements appears in a very different context: radical NSM theory. In these accounts, focused on post-1968 organizing from the social and political margins, new movements are not merely (or not at all) the signs of decline. Rather, they bring to light other forms of domination. Historically, the movements of the marginalized represent the successive rejection of the class-centered politics of the “old left,” with its universalist, homogenous notion of “the worker” (white, male, a citizen, etc.) and of the “new

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<sup>36</sup> Luhmann, *Risk*, 143.

<sup>37</sup> Douglas and Wildavsky, *Risk and Culture*, 102, 120-25.

<sup>38</sup> Offe, “New Social Movements,” 826.

left,” which, though attuned to cultural stakes, tended to reinforce racial and gender hierarchies.<sup>39</sup> Often know derogatively as “identity politics,”<sup>40</sup> movements like feminism, disability-rights, or gay liberation demand political recognition, group rights, and the transformation of harmful public perceptions as a necessary supplement to redistribution.<sup>41</sup> At their best, they combine community organizing with intersectional solidarity, self-help, and political self-determination among the marginalized,<sup>42</sup> helping apply earlier legislative victories to new constituencies like the “welfare mothers,” unemployed veterans, or Black workers.<sup>43</sup>

And yet, scholarship on identity politics has only partially addressed, or even acknowledged, the centrality of risk for new-movement politics. The final section brings risk theory and radical NSM theory together in an analysis of the environmental justice movement, a later offspring of the environmental movement and a critical voice within it. Alongside

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<sup>39</sup> Sekou Franklin, “Race, Class, and Community Organizing in Support of Economic Justice Initiatives in the Twenty-First Century,” *Community Development Journal* 49 (2014): 185; Farred, “Endgame Identity?” 638.

<sup>40</sup> Nicole S. Bernhardt and Laura G. Pin, “Engaging with Identity Politics in Canadian Political Science,” *Canadian Journal of Political Science* 51 (2018): 771-94.

<sup>41</sup> Nancy Fraser, “From Redistribution to Recognition? Dilemmas of Justice in a ‘post-Socialist’ Age,” *New Left Review* 212 (1995): 68-93; Jonathan Havercroft and David Owen, “Soul-Blindness, Police Orders and Black Lives Matter: Wittgenstein, Cavell, and Rancière,” *Political Theory* 44 (2016): 739-63.

<sup>42</sup> Franklin, “Race, Class, and Community”; Robert Fisher, “Organizing in the Modern Metropolis: Considering New Social Movement Theory,” *Journal of Urban History* 18 (1992): 222-37; Joel F. Handler, “Postmodernism, Protest, and the New Social Movements,” *Law & Society Review* 26 (1992): 697-731; Gilbert Elbaz, “Beyond Anger: The Activist Construction of the AIDS Crisis,” *Social Justice* 22 (1995): 43-76.

<sup>43</sup> Stephen Tuck, “We Are Taking Up Where the Movement of the 1960s Left Off: The Proliferation and Power of African American Protest during the 1970s,” *Journal of Contemporary History* 43 (2008): 637-54.

contemporaneous struggles, most notably the fight against AIDS, it remains one of the more prominent examples of effective risk attribution from the social and political margins.

### **The Environmental Justice Movement and the Democratic Politics of Risk**

The environmental justice movement emerged as a grassroots challenge to mainstream environmentalism. It gained national attention through key events, most notably the 1982 struggle against the placing of a toxic landfill in Warren County, NC, an area populated predominantly by Black and poor communities. The Warren County struggle melded together the anti-toxins movement with a civil rights sensibility. It also consolidated the movement's distinctive form of risk attribution, which linked local hazards to relevant decision-makers and structural inequalities, especially environmental racism.<sup>44</sup>

EJM scholars have extensively analyzed the movement's intersecting struggles for environmental, racial, gender, and economic justice. What they haven't sufficiently emphasized is the role of risk in the way the movement defines itself, its membership, and its targets. Environmental justice struggles begin with a localized threat—a siting decision or polluting factory—imposed from without by an exclusionary decision-making process. Organizing around risk fills in these two lacunae—the lack of input and of accountability—with a demand for equity and political inclusion. While the mainstream movement offers a critique of irresponsible

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<sup>44</sup> Eileen Maura McGurty, "From NIMBY to Civil Rights: The Origins of the Environmental Justice Movement," *Environmental History* 2 (1997): 302-3; Ronald D. Sandler and Phaedra C. Pezzullo, eds., *Environmental Justice and Environmentalism: The Social Justice Challenge to the Environmental Movement* (Cambridge, MA: MIT press, 2007), 3; Laura Pulido, "A Critical Review of the Methodology of Environmental Racism Research," *Antipode* 28 (1996): 144; Mark Dowie, *Losing Ground: American Environmentalism at the Close of the Twentieth Century* (Cambridge, Mass.: MIT Press, 1995), 128.

growth, therefore, the EJM highlights instead the disparate impact of environmental degradation on already marginalized communities.

Looking at the EJM as a risk-based, social-justice movement, reveals both the challenge of organizing from extreme vulnerability and the surprising efficacy of risk as a political form. The EJM follows a threefold strategy of risk attribution. It moves from an epistemic attribution, linking symptoms to their immediate causes, to the attribution of responsibility, usually focused on administrative and corporate decision-making. As a final step, it identifies both as a form of structural injustice. In these three ways, risk attribution helps set up heterogeneous communities of solidarity. Its novel politics of risk, as I detail below, is comprised of four main components: a politics of responsibility, risk as a (new) basis for social justice demands, participatory democracy, and a politics of time.

### Risk and the Politics of Responsibility

Risk-based organizing, whether in the mainstream environmental movement, the fight against AIDS, or the contemporary activism of the “precarariat,” begins, I propose, with an accountability deficit: a grievance, stirred by an imminent threat or active danger, with no existing remedies or a clear audience. At first, the threat may even lack a name. Such was the case of the middle-class Black residents of Carver Terrace in Texarkana, TX, driven by redlining and misinformation to build their home on top of a toxic-waste site:

Residents knew at some level about the bad-smelling air, mysterious illness or deaths among people with no prior history of medical problems, plants that would not grow or grew strangely, animals becoming ill or born deformed...

The amorphous and invisible nature of chemical exposure, however... worked against the integration of this knowledge.<sup>45</sup>

The early stages of an EJ struggle are little more than isolated observations, hazards and illnesses slowly uncovered and given a highly personal interpretation. As experts and officials begin to respond, resident trust remains high. Only with time and organization do symptoms become associated with specific responsible parties, trust is replaced with disillusionment and anger, and new connections are drawn between local concerns and older struggles for rights, equality, and recognition.<sup>46</sup>

Luhmann's idea of the political role of risk—conceived as a decision that places another in danger—has an important precedent in John Dewey's idea of a public organizing around its “problems.” Like contemporary risk theorists, Dewey was motivated by what he perceived as the crisis of democracy in the face of growing social and technological complexity.<sup>47</sup> “The public,” Dewey wrote in 1927, “consists of all those who are affected by the *indirect consequences* of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for.”<sup>48</sup> Deweyan publics form in response to an accountability gap, aiming to replace the inadequate handling of individual grievances by setting up collective forms of self-observation, monitoring, and remediation. “Industry and inventions in technology,” Dewey adds

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<sup>45</sup> Stella M. Čapek, “The ‘Environmental Justice’ Frame: A Conceptual Discussion and an Application,” *Social Problems* 40 (1993): 11.

<sup>46</sup> *Ibid.*, 7, 14-15.

<sup>47</sup> Melvin L. Rogers, “Dewey and His Vision of Democracy,” *Contemporary Pragmatism* 7 (2010): 69-91; Eric MacGilvray, “Dewey’s Public,” *Contemporary Pragmatism* 7 (2010): 31-47.

<sup>48</sup> John Dewey, *The Public and Its Problems: An Essay in Political Inquiry* (Penn State Press, 2012), 48, emphasis added.

in an important example, “create means which alter the modes of associated behavior and which radically change the quantity, character and place of impact of their indirect consequences.”<sup>49</sup>

Dewey’s formulation explains how an unnamed threat can become a movement and a collective identity. Risk forms a special if widespread case of a Deweyan problem, challenging expert rule to make way for broad participation,<sup>50</sup> and the EJM is a case in point. First, local environmental justice struggles emerge in response to danger (present or future), a threat which urgency demands action and delimits a relevant community. By making the private—illness, living-conditions, but also exclusionary decision-making processes—“publicly relevant,”<sup>51</sup> the movement’s resistance to risk becomes a basis for collective identity. Second, the movement uses risk attribution strategically to shift responsibility (back) to policy makers, creating, or activating, accountability mechanisms. Third, the EJM dramatizes the opposition between risk-takers and affected third parties: it is a public shaped by a demand for inclusion. I discuss the second and third aspects in the following sections.

As a “Deweyan” public, risk-based organizing from the margins differs from other forms of identity politics in its heterogenous, ad-hoc makeup and its emphasis on accountability. Local struggles emerge in response to danger, identifying their members, first and foremost, as those affected. Like the earlier anti-toxins movement, many begin in the home and local community, the “sites of social reproduction,” and are often led by women in their explicit capacity as parents

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<sup>49</sup> Ibid., 56.

<sup>50</sup> Rogers, “Dewey and His Vision of Democracy,” 73, 80.

<sup>51</sup> Michael Warner, *Publics and Counterpublics* (New York: Zone Books, 2002), 62.

or caretakers.<sup>52</sup> For this reason too, one of the first aims of risk attribution is to counteract the hegemonic, increasingly gendered and racialized discourse of “personal responsibility.”

As a heavily moralized framing for social disparities, personal responsibility has, since the 1980s, been used to attribute systemic harms to individual choices and behaviors, not least in the realm of health and safety, the family, and the home.<sup>53</sup> The generous social-insurance plans of the postwar era were replaced by far more stringent criteria for social assistance and a diminished claim to individual security as a basic right. Behind these broader changes was a transformed meaning of responsibility itself, from “the individual’s duty to help others... [to] our responsibility to take care of ourselves.”<sup>54</sup> The welfare state under this new paradigm not only reallocated and depooled risk, leaving individuals to fend for themselves.<sup>55</sup> It also became deeply “risk attributive.” “Workfare” and other types of conditional, “means-tested” benefits match assistance with “merit,” deeds with rewards. They primarily target the working-classes and communities of color, aided by a massive state apparatus of invasive questioning, surveillance, and policing.<sup>56</sup>

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<sup>52</sup> Kara Zugman, “Political Consciousness and New Social Movement Theory: The Case of Fuerza Unida,” *Social Justice* 30 (2003): 169-70; See also, Dowie, *Losing Ground*, 127-28; J. Timmons Roberts and Melissa M. Toffolon-Weiss, *Chronicles from the Environmental Justice Frontline* (Cambridge; New York: Cambridge University Press, 2001), 22.

<sup>53</sup> Cooper, *Family Values*.

<sup>54</sup> Mounk, *The Age of Responsibility*, 35.

<sup>55</sup> Jacob S. Hacker, “Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States,” *American Political Science Review* 98 (2004): 243-260.

<sup>56</sup> Joe Soss, Richard C. Fording, and Sanford Schram, *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race* (University of Chicago Press, 2011); Frances Fox Piven, *Regulating the Poor: The Functions of Public Welfare* (New York: Vintage Books, 1993).

The new welfare paradigm is also deeply depoliticizing. It creates a culture of finger-pointing and “voluntary” self-policing, stifling political action in a pervasive fear of liability. Communities fighting lethal toxins are hardly exempt. The residents of Carver terrace, for example, were told that their symptoms were due to “‘hereditary’ health problems among blacks,”<sup>57</sup> while migrant farm laborers in California were offered personal-safety tips when they protested the deadly use of pesticides.<sup>58</sup> Officials’ overwhelming tendency is to attribute ill-health to poor habits, from smoking and drug abuse to poor diet,<sup>59</sup> dominating movement efforts to explicitly link symptoms and polluters. In freeing citizens—and governments—from their duties of care, therefore, personal responsibility not only eliminated important safety nets but limited one’s ability to hold the system to account.

In response, risk-attribution offers a potent tool in an anti-racist, social-justice politics. When residents of predominantly Black neighborhoods in Boston and New York City organized to fight widespread youth asthma, they had to contend with prevalent views of the problem as one of personal hygiene or “cleanliness of the home.” Growing evidence, however, linked asthma to poor air quality in urban centers, disproportionately affecting low-income communities of color.<sup>60</sup> From a problem rooted in personal habits, activists worked to reframe asthma as a collective problem shared by a community, the result of political priorities and environmental

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<sup>57</sup> Čapek, “The ‘Environmental Justice’ Frame,” 14.

<sup>58</sup> Laura Pulido, *Environmentalism and Economic Justice: Two Chicano Struggles in the Southwest* (Tucson: University of Arizona Press, 1996), 76.

<sup>59</sup> Roberts and Toffolon-Weiss, *Chronicles*, 19.

<sup>60</sup> Phil Brown et al., “The Health Politics Of Asthma: Environmental Justice And Collective Illness Experience,” in *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement*, ed. David N. Pellow and Robert J. Brulle, Urban and Industrial Environments (Cambridge, Mass: MIT Press, 2005), 191, 194.

degradation.<sup>61</sup> A personal injury became the basis for a common identity, with disease symptoms serving as signals:

the [Alternatives for Community and Environment] interns and many of the children they teach cannot separate out their experience of wheezing from their knowledge of the harmful effects of diesel exhaust from nearby buses. They cannot think about their inhalers without thinking about the excess of bus depots and trash incinerators located in their neighborhoods.<sup>62</sup>

Even as communities embrace the “privacy” of their bodies, homes, and neighborhoods as the main sites of contestation, risk-based organizing reverses the arrows of responsibility.

Importantly, moreover, the EJM’s risk attribution overturns the harmful effects of the personal responsibility regime without rejecting responsibility wholesale. Though it speaks in terms of structural inequality, it does not abandon the agency, dignity, and integrity implied by the language of responsibility.<sup>63</sup> On the contrary, communities are created by assuming responsibility—in the sense of duty or mutual obligation—to confront risk, answering the call of a particular danger. Responsibility, as Tracy Isaacs suggests, can create collective actors by “preceding” the group, enabling it to form, and providing the basis for its agency.<sup>64</sup> In this way, the EJM’s politics of responsibility moves from identifying hazards to collective identity work and self-determination. Identifying as a risk, by this logic, is already a call to action.

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<sup>61</sup> Ibid., 198.

<sup>62</sup> Ibid., 201.

<sup>63</sup> The case of the EJM should therefore qualify Mounk’s claim that the prevalent progressive answer to the responsabilizing paradigm is a “denial of responsibility:” removing blame from individuals by pointing to structural causes. Risk-based organizing, in contrast, is “counter-responsibilizing.” See Mounk, *The Age of Responsibility*.

<sup>64</sup> Tracy Lynn Isaacs, *Moral Responsibility in Collective Contexts* (Oxford; New York: Oxford University Press, 2011), 150.

Finally, though risk precedes members' other identities, it is necessarily linked back to them in the process of organizing, setting up broad networks of solidarity and coordinated action. The "environmental racism" frame, in particular, was crucial for the movement's early success,<sup>65</sup> linking individuals' alarming health symptoms to everyday experiences of racial discrimination and the cultural narratives that enabled them. Benjamin Chavis, a prominent movement leader, defined environmental racism as the "deliberate targeting of people-of-color communities for toxic waste facilities and the official sanctioning of a life-threatening presence of poisons and pollutants."<sup>66</sup> In the words of Hazel Johnson, founder of People for Community Recovery in Chicago, it is "a form of genocide."<sup>67</sup> Redlining, selective dumping, and exclusion from decision-making, as Charles Mills argues, reflect the original exclusion of communities of color from the social contract. As nonwhite bodies were and are identified with the uncivilized "wild," their continued removal from the public sphere is tacitly permitted.<sup>68</sup> Conversely, but to the same effect, the nonwhite body is regularly associated with a morally and physically corrupt "urban

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<sup>65</sup> Robert Benford, "The Half-Life Of The Environmental Justice Frame: Innovation, Diffusion, And Stagnation," in *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement*, ed. David N. Pellow and Robert J. Brulle, Urban and Industrial Environments (Cambridge, Mass: MIT Press, 2005), 40; Čapek, "The 'Environmental Justice' Frame," 8, 17.

<sup>66</sup> U.S. Congress, House, Subcommittee on Civil and Constitutional Rights, "Environmental Justice: Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary," 103rd Cong., 1st sess., March 3 and 4, 1993 (1994), 4.

<sup>67</sup> *Ibid.*, 8.

<sup>68</sup> Charles W. Mills, "Black Trash," in *Faces of Environmental Racism: Confronting Issues of Global Justice*, ed. Laura Westra and Bill E Lawson (Lanham, MD: Rowman & Littlefield Publishers, 2001), 78-79.

lifestyle,” that stands as a threat to the ideal purity of the wilderness, celebrated, among others, by mainstream environmentalists.<sup>69</sup>

In response, struggles for safety and environmental justice emphasize the links to past and present struggles for rights and recognition. The anti-pesticide campaigns in California’s Central Valley in the 1970s epitomize the successful linking of risk and identity in migrant farmworkers’ boycott of local grapes. The boycott not only succeeded where traditional labor organizing repeatedly failed, focusing on the harms of pesticides to workers and consumers alike. It also re-appropriated “once shameful cultural icons,” like ritual prayer and Catholic iconography, as “symbols of resistance,” feeding into the broader Chicano/a movement.<sup>70</sup> Environmental justice claims have played a similar role in struggles for indigenous self-determination and sovereignty.<sup>71</sup>

The “call” of danger is also vital to extending a community’s reach and mobilizing allies. The “morally disquieting image of a group of people trapped in a poisoned setting through no fault of their own”<sup>72</sup> has been effective in enlisting the indispensable support of mass media, public opinion, and large environmental organizations to the cause of small, vastly outnumbered and out-resourced communities.<sup>73</sup> In that, argues Judith Butler, it transforms the traditional, consent-based social contract, acting as an “ethical solicitation” to “those we do not know, and

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<sup>69</sup> Bill E Lawson, “Living for the City: Urban United States and Environmental Justice,” in *Faces of Environmental Racism*; Rima Vesely-Flad, *Racial Purity and Dangerous Bodies: Moral Pollution, Black Lives, and the Struggle for Justice* (Augsburg Fortress Publishers, 2017).

<sup>70</sup> Pulido, *Environmentalism*, 108, 53-55.

<sup>71</sup> David Schlosberg, “Reconceiving Environmental Justice: Global Movements and Political Theories,” *Environmental Politics* 13 (2004): 517-540.

<sup>72</sup> Čapek, “The ‘Environmental Justice’ Frame,” 16.

<sup>73</sup> Roberts and Toffolon-Weiss, *Chronicles*, 209-10.

even those we did not choose.”<sup>74</sup> Risk compels both insiders and outsiders to shift from a passive to an active role, transforming a present danger into a future obligation.

### Risk Attribution and Social Justice

The demand for environmental justice doesn't speak in the name of a generalized “humanity;” it speaks, first and foremost, in the interest of communities directly affected. But environmental justice does not end there. The movement looks to attribute disproportionate risk exposure as a form of racism, gender-bias, colonialism, and other forms of historical exclusion and exploitation. To do so, it relies on an evolving forensic arsenal, deploying expert language, statistics, and administrative procedure to extend civil-rights protections to a new, environmental context. This “forensic toolkit” is comprised of three main forms of risk attribution: (a) epistemic attribution, linking disease to danger; (b) responsibility attribution, a procedural tactic that addresses discriminatory decision-making, and (c) social-injustice attribution, linking local hazards and illnesses to broader patterns and claiming freedom from toxins as a fundamental right. Each has faced significant hurdles and often all three are needed to effectively argue an environmental injustice claim.

From its early days, the movement developed extensive statistical analysis, matching its risk-allocative counterpart in scientific rigor, though with a very different aim: to highlight an unequal burden. It produced a voluminous body of empirical studies that showed, in two landmark examples, how “Blacks make up the majority of the population in three of the four

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<sup>74</sup> Judith Butler, *Notes Toward a Performative Theory of Assembly* (Cambridge: Harvard University Press, 2015), 100-101.

communities where landfills are located”<sup>75</sup> or that “three out of every five Black and Hispanic Americans lived in communities with uncontrolled toxic waste sites.”<sup>76</sup> The empirical approach was further boosted by one of the movement’s most significant legislative achievements: a 1994 executive order on environmental justice issued by Bill Clinton. The order prompted federal agencies to “collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income” and to develop strategies to combat them.<sup>77</sup> Agencies that failed to collect data (though, problematically, not ones that failed to act on it) were exposed to disciplinary measures.<sup>78</sup>

Though the studies showed strong correlation between race and the location of polluters, they were regularly met with skepticism and dismissal. One prominent opposition strategy was to reduce any evident racial disparities to economic causes, or at most a class-bias, relying on the inherent ambiguity of statistical correlations and on the compounded effects of race and class.<sup>79</sup>

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<sup>75</sup> U.S Government Accountability Office, “Siting of Hazardous Waste Landfills and Their Correlation With Racial and Economic Status of Surrounding Communities,” June 1, 1983, <https://www.gao.gov/products/RCED-83-168>.

<sup>76</sup> UCC Commission for Racial Justice, “Toxic Wastes and Race In The United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites,” 1987, <https://www.nrc.gov/docs/ML1310/ML13109A339.pdf>. For a survey of existing empirical research, methods, and critiques, Douglas S. Noonan, “Evidence of Environmental Justice: A Critical Perspective on the Practice of EJ Research and Lessons for Policy Design,” *Social Science Quarterly* 89 (2008): 1153-74.

<sup>77</sup> “Executive Order 12898 of February 16, 1994: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” *Code of Federal Regulations*, title 3, (1994), 278, <https://www.govinfo.gov/content/pkg/WCPD-1994-02-14/pdf/WCPD-1994-02-14-Pg276.pdf>.

<sup>78</sup> Alice Kaswan, “Environmental Justice: Bridging the Gap Between Environmental Laws And ‘Justice,’” *American University Law Review* 47 (1997): 250.

<sup>79</sup> Laura Westra and Bill E Lawson, *Faces of Environmental Racism: Confronting Issues of Global Justice* (Lanham, MD: Rowman & Littlefield Publishers, 2001), xviii; Pulido, “Review of

Methodological choices were also a recurrent objection, as modelling specifics would radically change scholars' findings, often tracking their broader political views.<sup>80</sup> Most perniciously, studies were often dismissed with improbable demands to establish strong causal links between exposure and sickness, even when community-wide illnesses, failed pregnancies, or premature deaths were clearly in evidence.<sup>81</sup>

A second, related environmental justice strategy, in the footsteps of the civil rights movement, was legal action. Unlike its predecessor's, however, it was shaped largely by its repeated failures. The basic problem with the EJM's legal strategy was that its grievances fell outside the purview of both environmental and civil rights protections. As Alice Kaswan shows, many environmental laws such as the Clean Air and Clean Water Acts, had the initial effect of exacerbating environmental inequalities. The clean-up efforts, cap-and-trade programs, and "citizen suit" clauses they prescribed led to the concentration of hazardous waste and gave clear advantages to affluent, usually white communities with the means to confront local polluters.<sup>82</sup> Zoning and land-use laws, moreover, tend to encourage more dumping in existing dumping grounds and "grandfather in" polluter-permit extensions.<sup>83</sup> Absent, therefore, a framework, or

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Methodology," 146; William M. Bowen and Michael V. Wells, "The Politics and Reality of Environmental Justice: A History and Considerations for Public Administrators and Policy Makers," *Public Administration Review* 62 (2002): 693.

<sup>80</sup> Paul Mohai and Robin Saha, "Racial Inequality in the Distribution of Hazardous Waste: A National-Level Reassessment," *Social Problems* 54 (2007): 343-70; Noonan, "Evidence of Environmental Justice."

<sup>81</sup> Bowen and Wells, "Environmental Justice," 692-93; See also, testimonies of Hazel Johnson and Rev. R. T. Conely in U.S. Congress, House, Environmental Justice, 8, 140-41.

<sup>82</sup> Kaswan, "Environmental Justice," 269-74.

<sup>83</sup> Michael B. Gerrard, "The Role of Existing Environmental Laws in the Environmental Justice Movement," *St. John's Journal of Legal Commentary* 9 (1994): 563.

even reason, to understand how clean air and clean water are broadly distributed, nothing about environmental laws as such guarantees an equitable outcome.

This was the backdrop for the EJM's civil-rights strategy: demanding equal protection under environmental laws to establish a more fundamental right to a healthy environment. The civil rights arena, however, was far from conducive to this effort. Early attempts to sue under the Equal Protection clause of the 14<sup>th</sup> Amendment were unsuccessful, as plaintiffs were burdened with proving a discriminatory intent behind environmental injustices. *Bean v. Southwestern Waste Management* (1979), for example, was ruled against the residents of a Black Houston neighborhood, even as the court conceded the underlying injustice. "It simply does not make sense," the judge concluded, "to put a solid waste site so close to a high school."<sup>84</sup> Other data-driven efforts to argue that siting decisions have a discriminatory "disparate impact" under the Civil Rights Act of 1964—a lower bar, and one more suited to confronting the patterns of environmental racism—were soon foreclosed by a series of Supreme Court Rulings in the late 1990s and early 2000s.<sup>85</sup>

Title VI of the Act, however, which prohibits discrimination against protected persons and communities by federally funded programs, provided another recourse: administrative complaint. It was a strategic compromise, but one which epitomized the politics of risk attribution. Grounded in the hard-won language of Clinton's executive order, which acknowledged, for the first time, both a right to a healthy environment and the fact of its very unequal distribution,

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<sup>84</sup> *Bean v. Southwestern Waste Management Corp.*, No. 482 F. Supp. 673 (S.D. Texas 1979).

<sup>85</sup> U.S. Commission on Civil Rights, "Not In My Backyard: Executive Order 12898 and Title VI as Tools For Achieving Environmental Justice" (October 2003), 79, 90, <https://www.usccr.gov/pubs/envjust/ej0104.pdf>.

administrative complaints turned directly to decision-making. A host of laws meant to safeguard the environment could now be reviewed for their equitable enforcement and exclusionary procedures in their most minute detail. In defending environmental civil rights, activists successfully drew on the duties of permitting agencies to investigate environmental justice concerns, publicly provide this information, and include relevant communities in decision-making.<sup>86</sup>

Still, the method's successes underscore its severe limitations. One of the more explicit environmental justice rulings came in 1997, not long after the executive order was issued. The Nuclear Regulatory Commission (NRC) ruled in favor of residents from Forrest Grove and Center Springs, LA, who fought the nearby siting of a uranium enrichment plant by Louisiana Energy Services (LES). In its decision, the court assigned particular importance to a staggering statistic compiled by the ACLU at the request of expert-witness Robert Bullard, an environmental-justice activist and pioneering scholar. "At each progressively narrower stage of the site selection process," Bullard testified, "the level of poverty and African Americans in the local population rose dramatically... the aggregate average percentage of black population for a one mile radius around all of the 78 sites examined... [was] 28.35%... The final site selected, the "LeSage" site, [had] a 97.1% black population within a one-mile radius."<sup>87</sup> Even with compelling evidence, however, the most the NRC could do was force a revised procedure: a new environmental impact report that will take into account the disparate impact on the local

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<sup>86</sup> Kaswan, "Environmental Justice," 285-86.

<sup>87</sup> 45 NRC 367 *In the Matter of Louisiana Energy Services, L.P.*, No. 70-3070-ML (U.S. N.R.C May 1, 1997).

population. It was the delay involved in this procedural tactic, much more than the civil rights substance of the ruling, that would ultimately defeat the proposed plant.

The procedural strategy was also met with broad institutional resistance. The business community's backlash to the LES ruling,<sup>88</sup> constant political pressure, and limited funds and personnel have left the EPA's Office of Civil Rights (OCR) unable to provide any substantial relief for communities.<sup>89</sup> Studies by the Center for Public Integrity and the Congressional Commission on Civil Rights have shown that, despite its wide-reaching mandate to investigate and sanction supported programs, the OCR, in over a decade of activity, "has never made a formal finding of discrimination, has never denied or withdrawn financial assistance, and has no mandate to demand accountability within the EPA."<sup>90</sup> Of the 265 Title VI complaints submitted between 1996-2013, 162 were rejected without investigation and another 38 cases were dismissed, in some cases only after years of waiting and court intervention.<sup>91</sup> It therefore remains a powerful symbolic strategy that is yet to materialize into reliable gains for communities.

Organizers and scholars alike, however, insist on the environmental-injustice attribution, precisely because it is, fundamentally, a political, not bureaucratic or legalistic, strategy. Procedural tactics and even the language of rights used to promote them are tools in an ongoing

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<sup>88</sup> Roberts and Toffolon-Weiss, *Chronicles*, 194-95.

<sup>89</sup> U.S. Commission on Civil Rights, "Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12898" (2016), 48, [https://www.usccr.gov/pubs/2016/Statutory\\_Enforcement\\_Report2016.pdf](https://www.usccr.gov/pubs/2016/Statutory_Enforcement_Report2016.pdf).

<sup>90</sup> U.S. Commission on Civil Rights, 4.

<sup>91</sup> Kristen Lombardi, Talia Buford, and Ronnie Greene, "Environmental Racism Persists, and the EPA Is One Reason Why," *Center for Public Integrity* (2015).

political struggle. The movement's ultimate aims go well beyond the isolated polluters and agencies it initially targets and concern the dignity and equality of marginalized communities. It also demands redress for years of harmful "development" policies and substantive public accountability.

Dewey, as Melvin Rogers writes, "envisions publics as standing in a directive and supportive relationship to the state... but insofar as the state is resistant to transformation because of reification, publics then function in a more oppositional role that builds their power external to the state."<sup>92</sup> Politically organizing around risk involves more than the compilation of data or the management of a population and its dangers. "The prevailing concerns" of the EJM, as its critics have argued, "are more about procedural inclusion, community empowerment, focusing of anger, and casting blame."<sup>93</sup> The failures of procedure, therefore, as much as its more sporadic successes, shape the movement's politics between opposition, self-determination, and structural change.

### The Participatory Politics of Risk

Risk-based organizing is a response to danger aimed at holding decision-makers to account. But it is also a more fundamental protest against the exclusion of affected communities from decision-making altogether. This is a central point for Luhmann. The definitive social conflict, he argues, in the era of risk, is the one between decision-makers and affected third parties.<sup>94</sup> A core EJM demand was and remains broad participation in the various forums in which risks are taken: the scientific community, legislation, permitting and oversight agencies, and local

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<sup>92</sup> Rogers, "Dewey and His Vision of Democracy," 84-85.

<sup>93</sup> Bowen and Wells, "The Politics and Reality of Environmental Justice," 695.

<sup>94</sup> Luhmann, *Risk*, 101.

negotiations with developers. This demand is complemented by the participatory, democratic structure of the movement itself.

While theorists, most notably David Schlosberg, have discussed the movement's participatory structure at some length, the politics of risk adds context. Participation, I argue, is not only a means but an end, a direct remedy to the main problem: a danger imposed from without. Risk also changes the context in which theorists like Carole Pateman see participation as key to transforming nondemocratic power structures.<sup>95</sup> Unlike Pateman's examples of workplace democracy or participatory budgeting, where the relevant community is predetermined, risk attribution uses participation to strengthen the bonds within the ad-hoc "public" it gives rise to. Participation, finally, forms part of the EJM's attribution strategy. With limited legal remedies available, many environmental-racism claims are structured around permitting procedures. Through years of sustained activism, these have come to include many more provisions for public input and information, not only increasing community voice, but playing into the movement's delay tactics.

The place of participatory politics has evolved since the early days of mainstream environmentalism, increasingly dominated by large lobbying organizations.<sup>96</sup> The National Environmental Policy Act of 1969 (NEPA), one of its early successes, for example, introduced participatory mechanisms into environmental-impact statements.<sup>97</sup> But "participation" in this case meant little more than a duty of full disclosure, primarily to government agencies and only

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<sup>95</sup> "Participatory Democracy Revisited," *Perspectives on Politics* 10 (2012): 7-19; *Participation and Democratic Theory* (London: Cambridge University Press, 1970).

<sup>96</sup> Dowie, *Losing Ground*, 135.

<sup>97</sup> David Schlosberg, *Environmental Justice and the New Pluralism: The Challenge of Difference for Environmentalism* (Oxford: Oxford University Press, 1999), 151.

secondarily, and quite abstractly, to “the public.” Its provisions for public information, moreover, were soon eroded by the Reagan administration, a retraction met with few protestations from the primary environmental organizations.

It was only with the emergence of the EJM that participation returned as a key demand. The movement not only extended the notion of the “public” as the primary addressee of “impact statements,” but expanded the idea of participation itself. Diverse practices now fell under its purview: from translation of public documents for non-English speakers, to “good neighbor agreements” with corporations, and provisions for public deliberation.<sup>98</sup> Public hearings became a battleground, testing residents’ ability to mobilize and offering opportunities to share information.<sup>99</sup> When hearings were successfully imposed, they were met with organized opposition, as corporations and (mostly local) government officials staged press conferences, hijacked speaking procedures, or even paid-off residents to speak on a project’s behalf.<sup>100</sup>

The “public” envisioned by EJ activists had to reflect all relevant affected parties, in their diverse social positions. The fundamental demand for inclusion was featured in widely circulated movement publications, culminating in the ratification of the *Principles of Environmental Justice* as part of the First People of Color Environmental Leadership Summit in 1991.<sup>101</sup>

“Environmental justice,” as stated in the *Principles*, “demands the right to participate as equal

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<sup>98</sup> Schlosberg, 163-65.

<sup>99</sup> Čapek, “The ‘Environmental Justice’ Frame,” 13-15.

<sup>100</sup> Roberts and Toffolon-Weiss, *Chronicles*, 81-83.

<sup>101</sup> Schlosberg, *Environmental Justice and the New Pluralism*, 112.

partners at every level of decision-making including needs assessment, planning, implementation, enforcement and evaluation.”<sup>102</sup>

Clinton’s 1994 executive order and internal EPA guidelines continued to reflect the centrality of broad participation. The order contained a detailed subsection on the duty of federal agencies to make public information accessible as well as ensure “public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice.”<sup>103</sup> The EPA’s *Environmental Justice Guidance under the NEPA* goes even further, encouraging agencies to proactively develop “effective public participation strategies.”<sup>104</sup> New laws and regulations, finally, allow a growing body of legal personnel (either community legal clinics or the mainstream environmental organizations) to submit various types of petitions for public hearing, notice, and appeal.<sup>105</sup>

Participation in decisions about risk combines the promise of inclusion and visibility with a multilayered praxis, working within existing institutional frameworks. On the one hand, it embodies movement ideals of pluralist representation and the inclusion of all those affected in decisions relevant to their well-being. On the other hand, it uses participatory methods to form

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<sup>102</sup> “Principles of Environmental Justice,” *Race, Poverty & the Environment* 21 (2017): 82-83.

<sup>103</sup> “EO 12898,” 276.

<sup>104</sup> Council on Environmental Quality, “Environmental Justice Guidance Under the National Environmental Policy Act” (Executive Office of the President, 1997), 9, <https://energy.gov/nepa/downloads/environmental-justice-guidance-under-nepa-ceq-1997>.

<sup>105</sup> Holly D. Gordon and Keith I. Harley, “Environmental Justice and The Legal System,” in *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement*, ed. David N. Pellow and Robert J. Brulle, Urban and Industrial Environments (Cambridge, MA: MIT Press, 2005), 162.

alliances and, as the next section details, to extend bureaucratic processes and pressure more recalcitrant opponents.

### Risk and the Politics of Time

Common conceptions of risk emphasize its temporal element. Whether one speaks of a probable threat or plans to mitigate potential dangers, risk, we presume, is forward facing. It is about our ability to grasp, control, and make calculated decisions about the future. It is important to note, therefore, that the idea of risk as the prospect of future loss or failure belongs primarily to the risk-allocative model. This article, however, challenges the automatic identification of “risk” with chance and probability. Risk as a label and approach focused on decisions and responsible parties cannot be limited to the future tense. It does, however, denote an elaborate politics of time.

Risk attribution is equally forward and backward facing, often both at the same time. An existing hazard, for example, requires the retroactive assessment of a decision, the institution in which it was made, or the structural inequalities which shaped the decision and its outcomes. This backwards glance, however, is assessing, in part, the quality of past decision-makers’ prospective thinking. Were they knowingly taking risks? Were these risks wise? Did they sufficiently consider their impact on local communities? Similarly, when danger is still prospective, like a plan to build a polluting plant near a Black neighborhood, risk attribution acts as a deterrent: the threat of liability for potentially catastrophic outcomes. Petitions and lawsuits asking to prevent the project will draw on similar decisions in the past, both as a warning and to indicate a discriminatory pattern.

The EJM helps clarify and further specify the temporalities involved in Deweyan organizing around “problems.” More specifically, it discloses a certain advantage to identifying and

preempting problems before they happen. In these prospective cases, risk attribution can dip into arguments resembling those of risk allocation—a language of precaution, prevention or mitigation of a future threat. But it does so in the name of social justice and equality. Not safety per se, but an insistence on equal protection under the law.

As discussed above, the ‘at-risk’ position is burdened with proving it is systematically discriminated against, whether intentionally or not. This barrier, however, is easier to overcome when one wishes to prevent rather than redress a wrong. A prolonged battle over permitting imposes the primary financial burden on the developer, rather than the affected community. In the uranium refinery example, LES ultimately withdrew its permit application, entirely abandoning the project.<sup>106</sup> The sheer duration of the process and its costs can deter developers, eliminating the need for a favorable verdict. Similarly, the advantages of uncertainty about outcomes also shift to the affected side, which can turn the debate away from technicalities to quality of life concerns by emphasizing low-probability, ‘worst case’ scenarios.<sup>107</sup>

The focus on preventative measures dominates environmental-justice strategies. If the answer to historical exclusion is participation in decision-making, such demands are more clearly answered in forward-facing institutional design and legislation, rather than the backward-facing tools of litigation. The proposed Environmental Equal Rights Act of 1993, which was never passed, was meant “to allow petitions to be submitted to prevent certain waste facilities from being constructed in environmentally disadvantaged communities.”<sup>108</sup> It uses a forward-facing

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<sup>106</sup> Roberts and Toffolon-Weiss, *Chronicles*, 208-9.

<sup>107</sup> David Vogel, *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States* (Princeton, NJ: Princeton University Press, 2012).

<sup>108</sup> U.S. Congress, House, “Environmental Equal Rights Act,” HR 1924 § 103d Congress (1993), <https://www.congress.gov/103/bills/hr1924/BILLS-103hr1924ih.pdf>.

administrative procedure both to establish the basic fact of historical wrong and to assert the collective rights of an “at-risk” community. Similarly, the Model Environmental Justice Act of the Center for Policy Alternatives sets targets for the reduction of cumulative hazardous impacts based on past injustices.<sup>109</sup> In these ways, risk-based organizing replaces intention with obligation, reframing the past and its injustices within a forward-facing, participatory demand.

## Conclusion

*Whereas climate change, pollution, and environmental destruction have exacerbated systemic racial, regional, social, environmental, and economic injustices... by disproportionately affecting indigenous peoples, communities of color, migrant communities, deindustrialized communities, depopulated rural communities, the poor, low-income workers, women, the elderly, the unhoused, people with disabilities, and youth... be it Resolved, That... it is the duty of the Federal Government to create a Green New Deal.*<sup>110</sup>

In February 2019, a “Green New Deal” was presented for the first time before the US Congress as an official resolution. Its sponsor, Alexandria Ocasio-Cortez, has traced her own decision to run for office to her participation in the Standing Rock protest against the Dakota Access pipeline in 2016.<sup>111</sup> Protesting the combined effects of structural discrimination, the legacies of colonialism, disenfranchisement, and an environmental hazard of local and international significance, Standing Rock was an environmental justice struggle.

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<sup>109</sup> Gordon and Harley, “Environmental Justice and The Legal System,” 163-64.

<sup>110</sup> U.S. Congress, House, “Recognizing the Duty of the Federal Government to Create a Green New Deal,” H. RES. 109 § (2019), 4, <https://www.congress.gov/116/bills/hres109/BILLS-116hres109ih.pdf>.

<sup>111</sup> Rebecca Solnit, “Standing Rock Inspired Ocasio-Cortez to Run. That’s the Power of Protest,” *The Guardian*, January 14, 2019.

Though the Green New Deal mostly continues to (analytically) separate inequality, unemployment, and structural racism from the problem of “climate change,” their juxtaposition and strategic linking owe their origins to the environmental-justice frame. In particular, they echo the movement’s emphasis on the distribution of risk as a necessary complement to the distribution of resources and power. Though the largely symbolic measure was defeated in the Senate, it is being adopted by broad sections of the Democratic Party and the general public. The era of COVID-19 and the resurgence of the Movement for Black Lives (M4BL) in its wake further raise the prospect of largescale social-justice risk-based movements.

Risk-based organizing, especially from the political margin, carves out a path for a popular politics of risk, shedding new light on democracy in a neoliberal age. The EJM was thoroughly defined by the local risks it identified and around which it mobilized communities. The threefold attribution of danger to specific causes, decisions, and discriminatory patterns, expanding Luhmann’s original definition, served as its focal point. The movement allowed affected parties to regain a hold over the decisions that put them in harm’s way and employed procedural interventions to impede polluters and establish members’ equal claim to environmental integrity. The EJM also helped reverse the harmful, hegemonic discourse of “personal responsibility,” itself a form of state-sponsored risk-attribution. In these ways, attribution alternates between disruption and institution-building, creating new spaces for collective decision-making on the model of a Deweyan “public.”

Through the work of movements, risk proves to be a new and unique kind of political grievance, co-extensive with, but not reducible to, class, race, or gender inequalities. The politics of risk attribution expands the meaning of distributive justice to include the distribution of harms and exposure and their compounding effect on existing inequalities. It also raises issues of

political exclusion, unequal protection under environmental and safety laws, stigmatization around exposure, and even retributive justice. It speaks to the injustice of being physically compromised, ignored, and sacrificed for the sake of someone else's profits or clean environment. Above all, risk attribution highlights a growing accountability deficit in contemporary democratic politics: a widening gap between actions and consequences, power and responsibility.

Various movements have emerged to confront the inherent precarity of the present moment: the economic fragility of the heavily indebted middle-class in the Occupy Wall Street movement, the permanent threat of racialized, fatal violence met with impunity to its perpetrators in the M4BL. Like the EJM, both movements have adopted forms of community organizing, self-help, and strategic political intervention that have cashed in on their success in the realm of perceptions and media attention.<sup>112</sup> Against the backdrop of unequal exposure to COVID-19 and renewed protests against the racist, militaristic interpretation of "public safety," the links between the slow poisoning, systematic neglect, and lethal repression of communities of color, women, and other marginalized groups have become all too clear.

The environmental-justice framework, as a model democratic politics of risk attribution, reshapes liberal ideology by fitting the language of social justice to the needs of a risk society. Environmental hazards can no longer be seen as side-effects or market "externalities." As EJM demands have crystalized, the conversation on the distribution of risk must be held in a wide,

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<sup>112</sup> Rob Aitken, "Everyday Debt Relationalities," *Cultural Studies* 29 (2015): 845-68; Rebecca Manski, "Beyond the Box: The Occupy Movement's New Vision for Disaster Relief," *Humanist* 73 (2013): 6-8; Black Lives Matter Global Network, "Celebrating Four Years of Organizing to Protect Black Lives," (2017) <https://drive.google.com/open?id=0B0pJEXffvS0uOHdJREJnZ2JJYTA>.

inclusive context. Technical risk allocation has to be publicly vetted to meet standards of equity, as social movements continue their important role of holding risk-takers and risk-discriminators to account. Finally, with an eye to the severe legal hurdles in prosecuting “risks,” it is clear that the links uncovered in recent decades between risk and structural inequality must translate into a codified, guaranteed, and comprehensive right to safety for all. The work of movements and communities, past and present, will ultimately parse out what this right might mean.