In a Greener Voice: Feminist Theory and Environmental Justice

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The sequence of women's moral judgment proceeds from an initial concern with survival to a focus on goodness and finally to a reflective understanding of care as the most adequate guide to the resolution of conflicts in human relationships.

--Carol Gilligan [FN1]
Now you have touched the women, you have struck a rock.

--Song by women organizers protesting
South Africa's former "pass laws" [FN2]

INTRODUCTION

It may be surprising to learn that the environmental movement's next revolution is now being plotted around kitchen tables. In inner cities, in rural "poverty pockets," and on Indian reservations, poor people and people of color are meeting in kitchens and living rooms, organizing coalitions, and speaking out against environmental policies that threaten the health of their families and communities. [FN3] These grassroots campaigns, collectively called the "environmental justice movement," [FN4] are forcefully challenging traditional environmental policies that benefit society's more advantaged members and leave the poor and other marginalized groups to "bear the brunt of environmental dangers." [FN5]

While law review articles have examined environmental justice from many angles, [FN6] this Article focuses on a striking fact that is known to many students of the movement, but that has received little attention in law reviews: many of the most visible and effective environmental justice organizations in the country are led by and consist mainly of women. [FN7] As a result, while the environmental justice movement is certainly an environmental movement, a civil rights movement, and a public health movement, it is also, quite literally, a women's movement, and, I suggest, a feminist movement as well.

This Article explores the way in which women activists--and the feminist strategies they contribute--help shape the meaning and pursuit of environmental justice. [FN8] It shows how methods associated with feminism have contributed to the movement's premier concerns for family safety and social equality and have prompted creative ways to identify and attack a broad range of environmental threats. The Article is divided into four parts. Part I briefly surveys the participation of women in the environmental justice movement and examines the reasons why so many women become involved in grassroots environmental struggles. Part II shows how the strategies and goals of the environmental justice movement reflect "feminist methods" developed by women's rights activists and feminist
scholars. Part III notes a potential conflict between feminist theory, born primarily of white middle-class women, and the multiracial environmental justice movement. In response, I suggest that recent developments in ecofeminist theory can help bridge this gap. Finally, Part IV illustrates the practical link between feminist theory and environmental justice by applying them to risk assessment, a major element of environmental policy.

Before examining the relationship between feminism and environmental justice, I should make a few points clear. First, although this Article focuses on feminist theory and the effects of sexism on environmental policy, this focus does not seek to minimize the role that racism, classism, and other forms of discrimination play in environmental justice issues. Rather, this Article uses feminist principles to acknowledge the relationship among many such biases in order to understand more fully the distributional flaws in traditional environmental policy.

Second, this Article adopts an expansive view of feminist legal theory that is concerned with sexism in addition to other forms of discrimination and that remains relevant to policies affecting both women and men. Feminism's blend of theory and practical method provides a powerful tool for examining many different issues, including environmental justice.

Third, this Article seeks to expand the theoretical dimensions of environmental justice. While the number of law review articles on environmental justice has mushroomed in the last few years, most scholarship has not explored the theoretical underpinnings of the movement. Identifying the significant strands of theory running through the environmental justice movement can aid activists in planning the development of their struggles and in maintaining the strength and clarity of their message.

Finally, as both feminism and environmental justice emphasize the importance of people speaking for themselves, I do not presume in this Article to speak for either environmental justice activists or for women. Rather, I offer my arguments and analysis as, to use Mari Matsuda's term, a "theoretical co-conspirator." When possible I have brought the voices of women activists (as captured in case studies or published interviews) onto these pages to provide context and support for important points.

I. WOMEN IN THE MOVEMENT

It is almost impossible to read or talk about the environmental justice movement without considering the participation of women. Women dominate the leadership and ranks of grassroots environmental organizations. Sometimes the names of the organizations, such as the "Mothers of East Los Angeles" or "Mother's Air Watch" of Texarkana, Arkansas, underscore this fact. Women's participation is also obvious on organization membership rolls and on the streets. From mothers organizing against toxic incinerators, to Native American women fighting the mining of sacred land, to rural farm workers challenging the use of dangerous pesticides, women are everywhere in the environmental justice movement.

Indeed this fact should not be surprising, given that women constitute the majority of all community activist movements in the country, ranging from antinuclear movements, to consumer protection organizations, to campaigns against drunk driving. As Frances Farenthold, with the Institution for Policy Studies in Washington, D.C., explains, "Whatever the issue, wherever the battlefield, it is agreed that women are at the center of movements for change." [FN19]

Why are women so active in environmental justice as well as other social justice campaigns? The best answers come from women activists themselves, who often describe their motivations in terms of family roles and social connections. Many activists, as primary caretakers of young children in the home, attribute their work to a special concern for family health and safety. They see their work as the natural extension of the nurturing and parenting role. Describing her role in fighting a proposed hazardous waste incinerator, Aurora Castillo of Mothers of East Los Angeles, explains that they "were compelled to unite, because the future quality of life for our children is being threatened." If one of our children's safety is jeopardized," she continues, "the mother turns into a lioness." Sometimes one parent's more frequent contact with children also leads to faster identification of children's health problems and their potential causes. [FN22]
Other activists speculate that women are perhaps more likely to challenge existing institutions in order to redress a wrong. Ann Giannini, who participated in an opposition movement against the siting of a General Motors plant in her Polish-American neighborhood, told an interviewer: "Women are more aggressive, really. I think we find it more natural to go out and fight for what we think is right. I think the men, a lot of the time, just let it go. They figure it's a lost cause. But that's not the attitude to take." [FN23] Perhaps some women "find it natural to go out and fight" because men are more likely to accept social structures as fixed, while women see social structures as negotiable. They are, thus, more likely to associate misfortune with exploitation and more likely to rebel against it. Men may see themselves as holding larger stakes in the economic and political institutions that create environmental harm, making them less likely to challenge injustice when they see it. [FN24] Finally, some commentators believe that women in general may have existing skills that enable them to build impressive activist networks that have helped put environmental justice on the map. [FN25]

As with all generalities, one must be careful about universalizing any experience or set of personal traits. Women's strong participation in environmental justice struggles should not minimize the important role men also play as leaders and foot soldiers in the movement. [FN26]

Similarly, one must be wary of lumping female grassroots environmental activists into a single category as if they were all motivated and guided by the same needs and values. Because environmental justice advocates are often propelled into activism by the compelling circumstances of their lives, their goals and motivations understandably differ. Celene Krauss, who has studied women's environmental campaigns in white blue-collar communities, African American communities, and on Indian reservations, notes that "women's protests have different beginning places, and their analyses of environmental justice are mediated by issues of class and race." [FN27] Nonetheless, Krauss reports that women activists of all backgrounds tend to ground their struggles in their roles as wives and mothers, believing that their individual battles are linked to greater concerns of family, community, and social justice. [FN28]

II. FEMINIST METHODS IN THE MOVEMENT

One may describe the environmental justice movement as a feminist movement in two related senses. First, the movement pursues goals important to many women. To the extent that women remain the primary caregivers in their homes and communities, [FN29] responsibility over family health remains an immediate and primary goal for them. Because women may be more vulnerable than men to many environmental dangers, [FN30] concern for their own health and that of their family remains a primary concern.

Second, environmental justice activists have generally organized and pursued their goals in ways that reflect "feminist methods" developed by women's rights activists and feminist scholars in the late 1960s and early 1970s. Although descriptions by feminists vary, feminist methods generally include (a) unmasking patriarchy, (b) contextual reasoning, and (c) consciousness-raising. [FN31] I will describe each method below by introducing the concept as it is generally understood by feminists and then applying it to environmental justice.

A. Unmasking Patriarchy

1. The Method

Feminists often begin their critique of law with a series of questions designed to reveal male biases or sexist assumptions that lie veiled behind supposedly "neutral" law. [FN32] By attempting to "unmask" [FN33] patriarchy in this way, feminists seek to identify gender implications of laws and institutions and show that such implications are not inevitable. Implicit in this process is the argument that even the most seemingly neutral aspects of law conceal "the substantive way in which man has become the measure of all things." [FN34]

One way to begin identifying male bias is by asking what Katharine Bartlett calls "the woman question." She describes the inquiry in this way:

In law, asking the woman question means examining how the law fails to take into account the experiences and
values that seem more typical of women than of men, for whatever reason, or how existing legal standards and concepts might disadvantage women. The question assumes that some features of the law may be not only nonneutral in a general sense, but also "male" in a specific sense. The purpose of the woman question is to expose those features and how they operate, and to suggest how they might be corrected. [FN35]

Bartlett's description suggests two important features of the unmasking process as used by feminists. First, identifying male bias requires an understanding of women's individual personal experiences. In order to identify flaws in the system, one must first identify "experiences and values" known to women and ask whether the law recognizes these experiences and values. This need for understanding and empathy influences other aspects of feminism as well. [FN36] It also holds particular promise for environmental justice, which grounds itself in the voices and values of local communities. [FN37]

Second, recognizing the experiences and values of women suggests how biases in law "might be corrected." The unmasking process suggests the remedy for failure to take into account the lives or feelings of women: enfranchisement-- that is, blending those outside experiences into the political or legal process. Such enfranchisement may occur in formal ways (the literal right to vote, the right to organize in the workplace) [FN38] or less formal ways (seminars, protest marches, demonstrations). [FN39]

Through careful inquiries, feminists seek to expose unfairness on one of two levels by attacking the law's reliance on the differences between men and women as a means of distributing social benefits. On the first level, feminists seek to prove that the difference relied upon is empirically false. On the second level, feminists concede the existence of an actual gender difference, but challenge the way in which policymakers rely on the difference to disadvantage women for the benefit of men. [FN40]

Historically, most challenges to sex discrimination have followed the first strategy. In 1873, Myra Bradwell fought vigorously, though unsuccessfully, to debunk the myth of female "timidity and delicacy" that kept married women from practicing law in Illinois. [FN41] Almost one hundred years later, Sally Reed helped defy the notion that men are better business people by successfully challenging an Idaho statute that preferred males as estate administrators. [FN42] In 1973, Sharron Frontiero persuaded the Supreme Court to strike down a military benefits plan because the plan presumed that the wives of servicemen were economically dependent on their husbands, but that the husbands of servicewomen were not. [FN43] In cases after Frontiero, the Supreme Court continued to reject gross stereotypes about women and their abilities. [FN44]

Where underlying gender differences are real, feminists seek to discredit not the assumption of differences, but the assumption that differences justify policies burdening women more than men. Pregnancy offers the perennial example. In the 1970s women began challenging employee benefit plans that covered almost all potential disabilities except pregnancy. [FN45] Defenders of the policies argued that because pregnancy leaves were more costly than many other disability leaves, their omission was justified. [FN46] The burden to women, under this view, resulted not from the policy (which followed good economic sense), but from a biological difference (the ability to become pregnant). [FN47] To offer pregnancy leave, knowing that only women could take it, would thus amount to a special benefit to women that would discriminate against men. [FN48]

From a feminist perspective, the problem with justifying the exclusion of pregnancy from disability policies is that such policies are not based on gender-neutral principles. Rather, they are based on a set of moral and economic obligations that acknowledge an employer's responsibility toward an employee who is, normatively speaking, a man. Thus what the "typical man" needs for his minimum peace of mind (disability leave for prostate cancer, weekends to care for his children) he might receive. What the "typical woman" needs (pregnancy leave, flexible weekday hours to care for her children) are considered "extras." [FN49] The second level of unmasking, therefore, encourages feminists to push for employment policies, and similarly for environmental policies, that use both men and women as benchmarks.

The controversy in International Union, UAW v. Johnson Controls, Inc.[FN50] involved both levels of unmasking in an environmental justice context. In Johnson Controls, female workers in a battery manufacturing plant challenged a "fetal protection policy" that excluded women of childbearing age from certain jobs on the grounds that workplace exposure to lead might harm the fetuses of expectant mothers. [FN51] The Court struck
down the policy as sex discrimination under Title VII because the evidence did not show that an exposed mother posed any greater threat to a future child than an exposed father. [FN52] The Court left unanswered the question of whether fetal protection policies that exclude women on the basis of documented differences in health effects between men and women could be valid. [FN53]

The Court's holding fits comfortably within the framework of the first level of unmasking. The employer assumed lead exposure affected the offspring of potential mothers differently from that of potential fathers and therefore limited the choices of potential mothers. The Court found that the evidence did not support such differences. The question that is left open, regarding the validity of exclusionary policies based on true differences in vulnerability between men and women (or their offspring), requires an unmasking inquiry on the second level. A defender of the policy might argue that abating exposures toxic to women would amount to a special concession that men do not get or require. Feminists fighting against exclusion in this circumstance would argue that the workplace should be made safe for everyone, not just male workers, whose own health requirements have defined the standards up to this point. [FN54]

The implications of the unmasking principle prove very powerful. Unmasking provides a dramatic alternative to simply blaming the victim for social inequalities. [FN55] Widespread social disparities are properly viewed as structural problems, requiring structural (as opposed to collective or individual) solutions. The absence of women lawyers in the nineteenth century did not result from women's lack of abilities, but from sexist attitudes that did not acknowledge those abilities. Similarly, the difficulty many women have in balancing work and pregnancy follows not so much from the demands of pregnancy, as it does from the hostility many employers have traditionally exhibited toward mothers.

Focusing on the structural bias of institutions suggests a lesson from the second level of the unmasking process: that bias, although real, may not always be intentional. [FN56] Thus, while an historical devaluation of motherhood in the workplace may account for the absence of better pregnancy benefits, as a whole it does not follow that an individual employer who refuses to offer a more comprehensive policy is acting out of intentional sexism. This point is important because so much of discrimination law seems attached to the notion of rectifying only intentional discrimination against particular individuals, rather than addressing institutional, and sometimes unconscious, discrimination. [FN57] Finally, the process of unmasking cautions against assuming neutrality in almost any social construct or field of research, including scientific inquiry. [FN58] Such caution is especially appropriate when analyzing environmental policy.

2. Application to Environmental Justice

Just as feminists challenge the inevitability of employment benefits by exposing male biases in workplace management, environmental justice activists challenge the inevitability of distributional unfairness by unmasking biases in environmental protection. The process of exposing these biases begins by asking variations of "the woman question," namely, "How does environmental law fail to take into account the experiences and values of environmentally threatened people (many of whom are women and people of color)?" and "How might some features of the law reflect nonneutral values associated with white patriarchy?"

In answering these questions, environmental justice advocates have composed what is by now a litany of the many ways in which the poor, people of color, women, and other marginalized groups bear the brunt of environmental dangers. [FN59] In the words of representatives for the Southwest Network for Environmental and Economic Justice: "[People of color] are deliberately targeted through racism, sexism and a lack of economic and social justice.... Children, the elderly and women--especially women of color--are the poorest of the poor and are paying the highest price from pollution with increased work and health problems and economic devastation." [FN60]

This inequality in exposure to environmental harm flows directly from a failure to consider the experiences and values of these groups. For example, a county board voted to allow a hazardous waste incinerator in a town of mainly Latino farm workers without furnishing the means for residents--many of whom speak only Spanish--to read or comment on the impact studies in their native language. [FN61] EPA inspectors may prefer to inspect waste-generating facilities in the suburbs, rather than in urban ghettos, which may account for slower cleanups at sites in
poor communities and communities of color. [FN62] Similarly, a battery manufacturing plant allowed levels of workplace contaminants that it believed safe for male workers, but not female workers. [FN63] Inattention to these groups' experiences and values is buttressed by the false, but widespread, belief that many marginalized groups do not care about environmental issues. [FN64]

Environmental justice advocates do not believe that such insensitivity occurs spontaneously or randomly. Rather, they identify environmental injustice as the product of an American environmental movement rooted in the values and interests of "elite" society. [FN65] Commentators often describe the environmental movement, like the women's movement, as having occurred in "waves." [FN66] The "first wave" grew out of the preservation and conservation movements of the 1890s and was marked by the efforts of John Muir, Theodore Roosevelt, and other outdoor enthusiasts to protect American wilderness. [FN67] The "second wave" arose from individual activism in the late 1960s and early 1970s and was eventually embraced by national environmental organizations [FN68] in a broad campaign to protect natural resources and the environment. [FN69] This wave culminated in the canon of environmental legislation that now regulates much of our nation's air, water, and waste. [FN70]

The first and second waves both betray an elitism informed by white male sensibilities. First-wave and second-wave efforts to protect American wilderness and wildlife--including the awesome National Parks system--promoted the romantic vision of the weekend naturalist retreating into the woods for quiet hours of hiking and fishing. This vision does not always include women, a fact that any hunting and fishing magazine will, to this day, verify. [FN71] Nor does this vision normally include the poor or people of color, who may lack the money or leisure time to travel long distances for outdoor recreation. [FN72] As a result, the emphasis that mainstream environmental groups place on preservation often seems insignificant or even irrelevant to the lives of those directly threatened by environmental harm. [FN73] As Ellen O'Loughlin, who has followed the efforts of indigent farm workers, writes, "from [their] vantage, ecology is not a concern for romanticized nature; it is about transforming drudgery into respected and healthful occupations." [FN74]

Similarly, the environmental regulatory structure that emerged from the second wave perpetuated values and tactics with which white men were arguably more comfortable. The "alphabet soup" of federal environmental law [FN75] is notorious for its elevation of data crunching and technical jargon over common sense and community outreach. [FN76] Indeed, the government's faith in science to define and solve complex social and economic problems leaves many skeptical. [FN77] Some feminists argue that such obsession with scientific abstraction and technical methods, in itself, betrays a male bias. [FN78] At the very least, the complex administrative processes created under the law to exclude most people who lack training in the field. [FN79] Because scientists and others with technical background are overwhelmingly white and male, these processes lock out many women and people of color. [FN80]

The response of mainstream environmental groups to the emerging environmental regulatory structure also reveals an arguably male bias. [FN81] For example, the emphasis that such mainstream environmental groups place on litigation and other win/lose methods of problem solving might also suggest a strategy grounded in traditionally male attitudes. [FN82]

Women grassroots activists have also developed a powerful critique of patriarchy on the local level, based on their experiences in fighting for clean communities. Officials and experts often dismiss the concerns of women activists, accusing them of getting "overemotional" or labeling them "hysterical housewives." [FN83] Recognizing the sexism within such statements allows women to redirect those comments against their critics. As an illustration of this process, Celene Krauss offers the following story, told by Cora Tucker, an organizer of a toxic-waste fight in Halifax, Virginia:

"When they first called me a hysterical housewife I used to get very upset and go home and cry... I've learned that's a tactic men use to keep us in our place. So when they started the stuff on toxic waste ... I went back and a guy says, "We have a whole room full of hysterical housewives today, so men we need to get prepared." I said, "You're exactly right. We're hysterical and when it comes to matters of life and death, especially mine, I get hysterical." And I said, "If men don't get hysterical, there's something wrong with them." From then on, they stopped calling us hysterical housewives. [FN84]

Cynthia Hamilton, who has documented similar experiences within a women-led group in Los Angeles, argues that
this critique of patriarchy empowers women to confront the need for equality head-on and, in turn, to force men "to a new level of recognition." [FN85]

All of these examples, from the general to the local, unmask patriarchy in ways already familiar in feminist campaigns. On the first level, in which false differences are challenged, women activists rebel against attempts by officials or experts who treat them as hysterical or unknowable simply because they are women. Their efforts recall those of Sally Reed, who decades ago showed that her competence could not be dismissed simply because of her sex. [FN86]

On the second level of difference analysis, in which the relevance of real differences is questioned, women can appropriately ask why American environmental law has historically favored mountains and forests to inner-city children, or jargon-filled administrative processes to more accessible, community-based approaches. To say that women are just as free to backpack in the woods or enter the technical professions, even if true, misses the point. Women activists may legitimately ask why many of their primary concerns--family health, residential and occupational safety, and community involvement--command less attention in current law. Such questions echo the inquiries of female employees in the benefits cases who wondered why a benefits plan designed for all employees ignored the needs of expectant mothers. [FN87]

When women recognize the male bias buried beneath official conduct and environmental policy, they can then see that problems they experience are not their fault, but the fault of larger institutions. [FN88] This knowledge, that Cynthia Hamilton calls the "critique of patriarchy," empowers women to fight for a better world that measures society's needs with reference to both men and women.

Yet despite the similarity between the critiques of feminism and grassroots environmentalism, a significant difference calls attention to itself at almost every turn: the critical lens of environmental justice has, almost from its inception, focused not only on patriarchy, but on all intersections of bias (including racism, classism, and ageism) that affect environmental issues. [FN89] This suggests that while feminist theory may throw light on grassroots environmental activism, an analysis of environmental justice may also make feminist theories richer and more sophisticated.

B. Contextual Reasoning

To take what there is, and use it, without waiting forever in vain for the preconceived--to dig deep into the actual and get something out of that--this doubtless is the right way to live. --Henry James [FN90]

Context is all.
--Margaret Atwood [FN91]

1. The Method

Feminist theory is, at its core, an exploration of the actual. Whatever the appeal of broad principles or abstract rules, such tools cannot lead to justice unless they are understood and applied in ways that acknowledge the real-life experiences of those affected. [FN92] Thus, when examining legal or social issues, feminists pay special attention to the personal and social history of the parties, relative perceptions among the parties, and overall context. [FN93] Feminists show skepticism toward bright-line rules and "grand theories" that do not take these factors into account. [FN94] Implicit in this vision is the belief that the daily lives of real people matter, or, as the bumper sticker says, that "[t]he personal is the political." Capturing this idea, Mari Matsuda writes, "who makes breakfast, who gets a paycheck, who gets whistled at in the street--all the experiences of daily life are a part of the distribution of wealth and power in society." [FN95]

Some believe that sensitivity to experience and context is empirically associated with women. [FN96] Whether or not this is true, feminists have long invoked the realities of "private life"--marriage, family, home--to spur legislative and social change for women. [FN97] The influence of personal experience on law now permeates not only legislation, but also law review articles, brief writing, and judicial opinions. [FN98]
The issue of spousal notification provisions in abortion laws provides a useful example of the latter. In Planned Parenthood v. Robert P. Casey, [FN99] the Supreme Court considered, among other things, the constitutionality of a provision of a Pennsylvania act that prohibited (with limited exceptions) a married woman from obtaining an abortion unless she stated that her husband had been notified. [FN100] Challenging the state's view that husbands and wives should reach such decisions together, the plurality of the Court [FN101] dug beneath the assumption of a comfortably married couple and imagined how women in abusive relationships might feel:

Should these women become pregnant, they may have very good reasons for not wishing to inform their husbands of their decision to obtain an abortion.... Many may fear devastating forms of psychological abuse from their husbands, including verbal harassment, threats of future violence, the destruction of possessions, physical confinement to the home, the withdrawal of financial support, or the disclosure of the abortion to family and friends. [FN102]

Concluding that this and other fears imposed a "substantial obstacle" to obtaining an abortion, the plurality found the spousal notification provision unconstitutional. [FN103]

The plurality's empathetic response in the above passage suggests many of the characteristics that feminist scholars associate with contextual reasoning. First, by imagining the fear that a psychologically abused woman might feel in this situation, the plurality explicitly acknowledged the value of seeing a law's application from the perspective of one who is in a position of weakness relative to others. This attention to the views of less empowered individuals, which some commentators call the "bottom-up perspective," [FN104] alerts decisionmakers to injustices that might otherwise go unnoticed. [FN105]

Assuming such a contextual perspective also reinforces the belief that such concepts as "reason" and "justice" are not discovered or created by any single group, but rather emerge from the observations and analyses of "many overlapping communities." [FN106] Attempts to understand different and traditionally underrepresented perspectives broaden the scope of relevant information and enrich one's understanding of what is just. [FN107]

Second, the plurality's approach integrated intellectual reasoning with emotional experience. After delineating the "undue burden" test, [FN108] an abstract standard under which abortion restrictions will be judged, the plurality turned to a discussion of how physical and emotional contexts might create such a burden. For the Justices, the "fear"perienced by psychologically abused women is deemed not only relevant, but decisive in finding the spousal notification requirement too onerous. [FN109] By integrating emotional response into an analytical framework, the plurality proceeds--to use Catharine MacKinnon's phrase--both "connotatively and analytically." [FN110] Timeworn distinctions between the objective and the subjective erode. [FN111]

Finally, the plurality's analysis in Casey shows that the use of contextual analysis does not necessarily guarantee a particular substantive result; rather it is the process of inquiry that is important. [FN112] The plurality, in fact, makes this point very clear when, after examining the personal hardships of traveling that some women might face, it refuses to conclude as a matter of law that twenty-four-hour waiting periods are "unduly burdensome." [FN113]

2. Application to Environmental Justice

Grassroots environmental movements grow from the values and experiences of real people. Environmental justice activists, mainly women and people of color, bring previously unheard "bottom-up" perspectives to environmental issues. Drawing both from intuition and empirical analysis, these activists see connections between social welfare and the environment, pollution and the home, and pollution and discrimination, that have gone unnoticed (or conveniently ignored) by mainstream environmentalists. These connections expand the traditional scope of environmentalism, supplement the ways in which we identify environmental problems, and propose new explanations for them. As feminists did before them, environmental justice activists argue persuasively that "context is all."

a. The Connection Between Social Welfare and the Environment
Environmentalists in the first and second waves often promoted an image of environment as something removed from everyday experience. The word conjured images of relatively undeveloped, exotic, and sometimes faraway places, such as Yellowstone, the Oregon Coast, or the Florida Everglades. Similarly, environmental "harm" suggested damage (most often caused by human population growth and technology) to these unusual places or to the wildlife that inhabited them. While not universal, this telescopic view of environmentalism significantly influenced the direction of environmental policy in the United States. [FN114]

Environmental justice activists expand this view of environment and environmental harm. For them, environment also means the places where they live and work--whether those places be an Indian reservation in South Dakota, an African American community in Dallas, or the barrios of South Central Los Angeles. [FN115] Harm to that environment includes not only "media" pollution, mainly defined by effects on inanimate objects (contaminated soil, poisoned water, dirty air), but anything in the environment that threatens human health and safety. Thus, many grassroots activists now describe lead poisoning of children, traditionally seen as a health or housing issue, as an environmental problem. [FN116] Similarly, activists now use the language of environmental harm to describe human exposure to harmful chemicals in enclosed manufacturing plants, [FN117] infestations of rats in low-income housing, [FN118] and even violent crime in the streets. [FN119]

Grassroots activists shatter the walls between health, occupational, and environmental issues and reimagine the environment in ways that directly affect their everyday lives. In the words of Lin Nelson, they begin to see human health as an "ecological process," in which all things are related. [FN120] This expanded outlook enables activists to build broader coalitions [FN121] and to see their roles in protecting the environment as related to other roles, such as parent or protector, with which they are already familiar.

b. The Connection Between Pollution and Home

If reference to local context enables activists to expand the definition of environmental harm, it also allows them to identify such harms when they first appear. Scientific experts and government bureaucrats, far removed from a contaminated site, are sometimes slow to link health problems or property damage to environmental contamination. [FN122] In contrast, residents of polluted communities, who every day tend the gardens, do the laundry, and care for their children, are much more likely to notice the first clues of an environmental threat.

Activist Cathy Hinds, one of the first to suspect well-water contamination in her rural community in Maine, based her conclusions on a series of observations in the home, including black stains on laundered clothes, dizzy spells among family members, and warm bath water that felt scalding hot on the skin. [FN123] Grassroots activists in other parts of the country similarly trace their first awareness of environmental harm to rat infestations, a child's earaches, ulcers, miscarriages, or other anomalies. [FN124]

Sometimes the connections that residents intuitively draw between problems in the household and pollution are first minimized by experts or government officials. [FN125] For example, when Hinds expressed concern about her well-water to her doctor, he first "dismissed the idea and prescribed tranquilizers." [FN126] Activists respond by adopting a dual strategy in which they accumulate scientific data and form technical arguments to persuade their listeners, while continuing to confront them with the faces of real people who are being harmed. [FN127]

c. The Connection Between Pollution and Discrimination

Contextual reasoning also enables activists to link environmental threats to racism, sexism, and other forms of discrimination. The dynamic of oppression, after all, is something many women and minority activists experience every day. Living in a society in which race and gender play a role in determining what we earn, [FN128] how we are educated, [FN129] and where we live, [FN130] it is hardly surprising that women and people of color would view their alarming exposure to pollution as related to other forms of discrimination. [FN131] In this way, their reasoning recalls the efforts of earlier feminists who used women's experiences of past discrimination to develop theories that explained sexual harassment and the denial of abortion services in terms of sex discrimination. [FN132]
Environmental justice advocates have also employed contextual reasoning, combining personal stories and empirical data to convince others of the connection between pollution and discrimination. [FN133]

C. Consciousness-Raising

1. The Method

Consciousness-raising describes the process by which individuals share personal experiences with others in an effort to derive collective significance or meaning from those experiences. [FN134] Its catalysts are what Virginia Woolf called "the arts of human intercourse; the art of understanding other people's lives and minds, and the little arts of talk." [FN135] Through consciousness-raising, women begin to view what otherwise might appear to be isolated instances of insensitivity or chauvinism as symptoms of broader societal oppression. This exercise also enables participants to unmask more easily hidden biases and to identify appropriate personal contexts in which to examine issues. [FN136] Consistency in accounts of women's harm and misfortune, for instance, leads participants to question the supposed neutrality of governing rules. [FN137] Drawing general conclusions about institutional oppression from private observation grounds social theory in actual experience and affirms the union between the personal and the political.

In addition, sharing stories through consciousness-raising assures participants that they are not misguided or alone in their observations. [FN138] Such collaboration infuses the group with a sense of collective identity and power to rewrite "the meaning of women's social experience." [FN139]

For many, consciousness-raising suggests a small interactive group--the literary society, the quilting bee, the cooperative child-care center. [FN140] Yet the process can also operate on a more global, though less interactive, level through the popular media, books, and the visual arts. [FN141] Some legal scholars, too, have artfully employed personal stories to facilitate feminist consciousness-raising. [FN142] Some commentators have also depicted more formalized settings, such as trials, hearings, or interviews, as opportunities for deliberative discussion in which personal perspectives are shared in a way that resembles feminist consciousness-raising. [FN143]

Whether intimate or global, formal or informal, the underlying values of consciousness-raising remain the same: the commitment to collective engagement, the public significance of private matters, and the acceptance of individual perspective. As with the methods of unmasking patriarchy and contextual reasoning, the process--not the result--is key. Thus the sharing of stories is good per se, a "spiritual and humane value" in itself. [FN144]

2. Application to Environmental Justice

An often-heard slogan among environmental justice advocates is the phrase, "We speak for ourselves."[FN145] The words suggest unity, autonomy, and, of course, communication. The sharing of ideas among activists and with outside groups or institutions is essential to the movement's ambitious goals of mobilizing neglected communities and transforming the meaning of environmental protection. By speaking for themselves, grass-roots environmental groups promote consciousness-raising both in the ways in which they organize and in the procedural solutions they seek in environmental law.

Just as feminists in the 1970s and 1980s discovered the prevalence of domestic violence and sexual harassment through informal discussion groups, grassroots activists today discover the prevalence and institutional character of environmental inequities through similar groups. Often activists begin to identify local environmental threats by noting a common health problem and then searching for a potential cause. Cathy Hinds, whose grassroots efforts have propelled her to a national role in supporting grassroots activism, notes that "[o]ften the first alert of hazardous waste pollution in a community was through women talking among themselves about reproductive or other health problems." [FN146]

Identifying the problem and its causes through group exploration sets the foundation for future activism. As Frances Farenthold observes, "After talking and listening comes education--educating oneself and the community
about the issues. Becoming expert and establishing credibility are closely associated with this process, and they become foundations for action." [FN147] Throughout this process, the need for personal contact and feedback is constant. Also, grassroots activists emphasize the importance of rewarding themselves for good efforts and making activities “fun.” [FN148]

Hierarchical structures, common in many mainstream environmental groups and governmental agencies, are notably absent here. Cynthia Hamilton, for instance, notes that for a year and a half the Concerned Citizens of South Central Los Angeles functioned “without a formal leadership structure.” [FN149] News reporters, she writes, "were disoriented when they asked for the spokesperson and the group responded that everyone could speak for the neighborhood." [FN150]

Such democratic and interactive organizing methods produce a number of advantages. The continual sharing of information and ideas promotes a "self- reflexive" [FN151] learning style that acknowledges the positional nature of knowledge and includes diverse perspectives and opinions. Such interaction also helps maintain momentum in efforts that will span months or years. Finally, openness to new perspectives and downplaying of hierarchy facilitate the opportunity for local and national coalitions, which are essential for a sustained commitment to environmental justice.

By incorporating consciousness-raising techniques into their organizations, grassroots activists offer a new vision of the environmentalist. Here we do not see the lone voice calling for the protection of the Southwestern deserts [FN152] or the anonymous face of agency bureaucracy. Rather, we see a dynamic and interactive network of citizen-activists struggling together to protect their homes.

This impulse toward discussion and deliberation typifies the solutions that environmental justice advocates seek from governmental institutions. For example, Robert Bullard and others advocate more participation for minority community members in the land-use planning process, so that community concerns can be communicated to and considered by decisionmakers. [FN153] Deeohn Ferris, program director of the Environmental Justice Project, urges Congress to allow local communities more participation in fashioning remedies under the Superfund laws. [FN154] Eileen Gauna argues that federal citizen- suit provisions should be interpreted so as to allow poor and minority communities greater participation in the enforcement of environmental laws. [FN155] Indeed, opening lines of communication and opportunities for joint decisionmaking between local communities and government is one primary solution sought by environmental justice advocates. [FN156]

In addition, advocates also urge changes in governmental agencies themselves. Deeohn Ferris recommends the creation of a federal inter-agency council that would be responsible for meeting regularly with community organizations to identify and address environmental problems. [FN157] Richard Lazarus argues for more decentralization in environmental policymaking and in governmental organizations such as the EPA. With a looser, less hierarchical structure, he hopes that agency officials will be better able to educate themselves about community concerns. [FN158] Commentators also regularly seek to diversify the ranks of agencies such as the EPA to increase the inclusion of perspectives of women and people of color into official decisionmaking. [FN159] These recommendations reflect attempts to incorporate a kind of formalized and institutional consciousness-raising.

III. ECOFEMINISM: AVOIDING THE ESSENTIALIST TRAP

Perhaps the central problem with applying feminism to the environmental justice movement is that feminism itself has often diminished issues of color and class in its critique of oppression. [FN160] On the theoretical level, scholars have charged feminism with elevating discrimination on gender lines above all other forms of discrimination. Feminist scholarship has sometimes overlooked dimensions of race and class and has "rendered invisible" the experiences of women of color. [FN161] On the political level, national feminist campaigns, mainly headed by white women, have historically ignored the differing political priorities of women of color or have wrongly assumed that a difference in priorities did not exist. [FN162] As a result, women of color often approach feminism and feminist campaigns with understandable skepticism. [FN163] Thus, one might question an attempt to integrate feminist theory and environmental justice.

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A partial response to this critique is that there is nothing inherent in feminism that requires essentialism. Angela Harris, Mari Matsuda, and many others eloquently argue for an enlightened, "multivocal" feminism that embraces the experiences of women of color, poor women, lesbians, and others who have been traditionally left out of much feminist discourse. [FN164] The feminist methods of unmasking, contextual reasoning, and consciousness-raising seem easily transferable to the study of other forms of oppression or multiple oppressions. [FN165] For this reason, similar methods of inquiry have already surfaced in both critical race theory and gay and lesbian theory. [FN166]

The adaptability of feminist methods, however, provides for the possibility of, not for a formal commitment to, the examination of multiple oppressions. In addition, nothing guarantees that those wielding the most influence in a feminist campaign will not discount or ignore the desires of other members out of political expediency. The seeds of a potential solution, formally combining the experiences and interests of many, may already be germinating in the theory of ecofeminism.

A. Ecofeminism: A Critique of Shared Oppression

"My first step from the old white man was trees. Then air. Then birds. Then other people. But one day when I was sitting quiet ... it come to me: that feeling of being part of everything, not separate at all. I knew that if I cut a tree, my arm would bleed."

--Alice Walker [FN167]

Ecofeminism describes women's rich and varied relationships with both society and nature. Introduced in the 1970s, [FN168] ecofeminism has flowered into a stunning array of variations, with emphases ranging from economics to spiritualism, from animal rights to international human rights. [FN169] "Ask a half-dozen self-proclaimed ecofeminists 'what ecofeminism is,' " writes Linda Vance, "and you'll get a half-dozen answers." [FN170]

One vision of ecofeminism, typified by Ellen O'Loughlin, Jane Birkeland, Lee Quinby, and Linda Vance, among others, [FN171] emphasizes the intersections of multiple human oppressions within the context of environmental destruction. [FN172] Their analysis begins, where all ecofeminism begins, with the premise that the oppression of nature and the oppression of women are intrinsically linked. [FN173] According to this view, sexism and environmental degradation are both preceded by a duality in Western thought in which things associated with the mind and the spirit, such as abstract reasoning, scientific method, and technology, control and remain distinct from those things related to nature and the body, such as flora, fauna, reproduction, and intuition. In Western cosmology, the former categories have historically been associated with the "masculine," the latter with the "feminine." [FN174] While the reign of "masculine" over "feminine" attributes can be overstated, [FN175] there seems little doubt that the concurrent devaluation of nature and "feminine" values persists and is evident in a wide range of the world's activities, from forced sterilization programs to strip mining.

By definition, perpetrators would view such domination of women and nature as reasoned, economical, and dispassionate. Yet ecofeminists, striving to expose the false duality between body and mind, find male domination and "ecocidal behavior" rooted in such nonrational factors as "sexual identity," the "fear of death," and the association of "personal worth and power." [FN176] Thus, oppression, whether of earth or of woman, follows a shared dynamic of separation, fear, and resentment.

As some ecofeminists emphasize, understanding that the oppression of nature and the oppression of women are related reveals an important corollary: that all forms of oppression intersect and are subtly tied together. [FN177] This leads to a multi-layered analysis of environmental exploitation in the context of many kinds of discrimination. As Ellen O'Loughlin explains, because most women "experience [oppression] in more than one way (that is, through the dynamics of racism, classism, heterosexism, and ageism, as well as sexism), ecofeminism, in order to fight the oppression of women and nature, must look at more than just the ways in which sexism is related to naturism." [FN178]

Viewing human oppression as inevitably linked to environmental harm allows a better understanding of how to
improve the environment as well as the lives of women. It also explicitly recognizes, indeed demands, the participation of members of many oppressed groups to build a platform for societal and environmental transformation. [FN179]

At first, such calls might seem no more than a "green" interpretation of feminism's recent exploration of multiple consciousnesses. Yet the ecofeminist view of compound oppression contributes something new, which embodies both analysis and metaphor.

First, ecofeminism brings as its core principle the presence of a shared oppression (in this case, the shared oppression of women and nature). This principle not only makes the examination of other shared oppressions easier within the same framework, but also makes the avoidance of compound oppressions conceptually impossible: to take the "eco" or the "feminism" out of ecofeminism would, after all, negate the whole idea.

Second, ecofeminism provides an important metaphor for understanding shared oppression: the ecological system. In fact, the concept of ecology provides us with an almost poetic image for understanding the various oppressions that women (and many men) face. [FN180] Ellen O'Loughlin writes:

An ecologist cannot just add up the parts of a pond and think she is coming close to describing that ecosystem and how it functions. A fish in a pond and a fish in an ocean, looked at ecologically, must be understood as inhabiting different, maybe similar but not the same, places. Likewise women are in different places [in terms of occupation, class, and identity]. Whether I am in a field or an office, what I do there, my niche, is at least partially determined by the interconnection of societal environmental factors. [FN181]

It is precisely this emphasis on compound oppressions in the context of an ecological or holistic approach that makes ecofeminism particularly applicable to grassroots movements.

B. Ecofeminism as Eco-Justice: An Example of Shared Empowerment

Ecofeminists are especially attracted to grassroots campaigns [FN182] The attraction stems from their belief, shared by many feminists, that prescriptions for social change should evolve from the "day-to-day efforts of ordinary women." [FN183] But ecofeminists' attention to local community action also flows from ecofeminism's strong commitment to act upon the diversity of experience among oppressed peoples, [FN184] whose unique perspectives might be swallowed up by larger, more centralized organizations. The heroes of ecofeminist efforts, therefore, are not large organizations such as ecofeminist versions of the Audubon Society or the National Organization for Women. They are women like Lois Gibbs, who organized families against the poisoning of Love Canal, [FN185] the Akwesasne Environment/Mothers' Milk Project within the Mohawk Nation, [FN186] and the women's Chipco (tree-hugging) movement in India. [FN187]

Ecofeminists avoid what might become an endless study of particularism by simultaneously using the common goals of saving nature and ending oppression to unite the multitude of local efforts. [FN188] In addition, ecofeminists explicitly welcome, indeed, sometimes insist upon, the participation of both sexes and of all races in ecofeminist efforts. [FN189] Women describe the valuable participation of men or non-minorities in the ecofeminist movement in terms of mutual learning and benefit, rather than unilateral aid. [FN190] The commitment to inclusion not only ensures that group leadership will maintain a more decentralized, "bottom-up" perspective, but also accurately describes the interdependent benefits all members of society receive from fighting oppression in its many forms.

To illustrate the way in which a grassroots environmental effort can successfully draw from different groups while at the same time preserving group identity and autonomy, ecologist Ellen O'Loughlin offers the example of the United Farm Workers (UFW). [FN191] Since the 1960s, the UFW has taken part in an "activist-labor struggle" [FN192] that has emphasized many concerns of women and environmentalists. Through the famous grape boycotts, the UFW has fought against the dangerous work conditions of farm workers, air and water pollution, and sexual harassment. [FN193]

Although its leadership is firmly rooted in the experiences and interests of farm workers, who are primarily poor
and people of color, [FN194] the UFW has demonstrated a remarkable ability to launch nationwide campaigns by joining issues not traditionally associated with one another and by joining forces with groups across social and economic boundaries. Combining several issues, the UFW urges a consumer boycott of California wines and table grapes until the growers agree to eliminate dangerous pesticides, to test for poisonous substances in grapes sold in stores, and to allow good faith collective bargaining in labor matters. [FN195] The UFW has pressed for such changes with the help of other labor organizations, religious groups, school boards, city councils, and community organizations. [FN196] Its efforts seek to unite the concerns of farm workers, consumers, and mainstream environmentalists. [FN197]

What unites these issues and constituencies, according to O'Loughlin, is the view that "[o]ur concerns are yours too." [FN198] In its literature, the UFW alerts readers that the same toxic chemicals that farm workers inhale in the fields are also ingested by consumers at the dinner table. [FN199] In short, the UFW has created an educational and activist movement that accurately depicts all of us--farm workers, consumers, women, men, minorities, non-minorities--as the shared victims of environmental threats and exploitative business practices. [FN200] As dependent links in the "food chain" of production and consumption, we cannot afford to refuse to learn from one another; we cannot afford to ignore oppression in any form.

While the work of the UFW may not intend to be "ecofeminist" (a fact that O'Loughlin, herself, allows), [FN201] it does reflect the ecofeminist idea of shared oppression between nature and human beings. Perhaps more significantly, the UFW's efforts provide ecofeminism with a practical example of how to use the image of an ecosystem of oppression to join various groups and to promote learning and cooperation without co-opting the groups. Whether ecofeminism or environmental justice can combat national environmental inequities while at the same time serving the needs of the grassroots remains to be seen. But the chances will increase if local activist groups can forge stronger alliances based on the ecofeminist idea of shared natural and human oppression and the paramount value of caring for the earth. To demonstrate how feminist theory and environmental justice can be combined to this end, Part IV presents a concrete application of feminist theory and environmental justice to the issue of risk assessment.

IV. AN ILLUSTRATION: FEMINIST THEORY, ENVIRONMENTAL JUSTICE, AND THE ASSESSMENT OF RISK

Risk assessments, which play an essential role in environmental protection, provide an ideal setting for exploring issues of difference from the perspectives of feminist theory and environmental justice. As classically defined, risk is a product of "the severity of the threatened harm, and the probability of its occurrence." [FN202] Federal agencies use risk assessments to determine acceptable levels of toxins in setting environmental and occupational safety standards. [FN203] Thus the process of assessing risk and determining minimum levels of risk influences a broad gamut of health issues, including the location of polluting facilities, [FN204] placement of abandoned facilities on the National Priorities List (NPL), [FN205] cleanup standards under the Superfund law, [FN206] and the speed with which such facilities are cleaned. [FN207] Laws regulating solid waste, pesticides, water quality, and air quality similarly incorporate health assessments, coupled with technology-based environmental standards, to define the minimum standards of human safety. [FN208]

Moreover, the EPA's Science Advisory Board (SAB) employs comparative risk analysis in order to place the nation's environmental threats in priority and to shape federal response strategies. [FN209] In 1995, the House of Representatives approved legislation that would have subjected all new health, safety, and environmental regulations to an elaborate process of risk quantification and cost-benefit analysis before allowing them to take effect. [FN210] Although the bill later failed in the Senate, [FN211] Congress' general commitment to weighing federal environmental regulations against risk and cost factors appears firm. [FN212]

Many reasons exist to doubt the efficacy of risk assessments as currently employed. Much of the risk assessment data are manipulable and could easily be used by "captured" agencies to satisfy corporate or political goals. [FN213] The acceptability standards applied to such findings are often inconsistent among safety and environmental laws and serve to protect some groups more than others. [FN214] Further, many EPA programs fail to collect or consider data on potentially exposed people and instead rely on more generalized findings. [FN215]
For the purposes of this Article, I will focus on two other very significant criticisms that directly affect feminism and environmental justice: (a) that health studies currently used for risk assessments fail to consider the variation in vulnerability to environmental threats among different groups, and (b) that the process of identifying and evaluating risk does not sufficiently incorporate community perceptions and fears. Analysis of these topics illustrates how the feminist methods of unmasking, contextual reasoning, and consciousness-raising can be used to develop a theoretical framework that could be adopted by policymakers working to address environmental justice issues. They also suggest ways in which those living in affected communities can call attention to inequities and contribute to political solutions.

A. Risk Assessment: Beyond "One Size Fits All"

All people do not respond to environmental hazards in the same way. As many scientists and environmental agencies acknowledge, the likelihood of suffering adverse health effects from exposure to certain pollutants is significantly greater for members of some groups. [FN216] Women, for instance, may be more susceptible to PCBs, dioxins, and other dangerous chemicals that bioaccumulate in fatty tissue. [FN217] Evidence suggests that certain chemical exposures are more likely to cause damage to women's immune systems. [FN218] Women in childbearing years may be more susceptible to ozone exposure. [FN219] Environmental degradation also threatens women's capacity to bear and nurse healthy children. [FN220]

Biological and social factors also make other groups more susceptible to certain environmental threats. Some of these differences, such as smaller average lung capacity in African Americans as compared with whites, are, in fact, reflected in Occupational Safety and Health Act (OSHA) cotton dust standards. [FN221] Because minority groups and the poor suffer disproportionately from asthma, anemia, and cardiovascular disease and are more likely to give birth to low-weight babies, they are also more vulnerable to the cumulative effects of toxic exposure. [FN222] Similarly, young children and the elderly may also be at higher risk from certain levels of exposure. [FN223]

Most environmental agencies recognize the existence of such variations, but have done little to protect these more sensitive groups in any consistent way. [FN224] Citing the lack of information about sensitive subpopulations, the EPA often falls back on analyses based on toxic exposures to the "average" person who would have the average susceptibility to pollutant exposure. [FN225] This "average" person, of course does not reflect the higher sensitivity levels of certain minorities, young children, fetuses, or women in childbearing years. [FN226] Indeed, this "average" person is usually a white man. [FN227]

Although the lack of data on subpopulations may explain why the EPA does not currently incorporate more particularized information into its risk analysis, it does not explain why greater strides in this direction are not being contemplated for the future. [FN228] I suggest two related reasons. First, as environmental justice advocates have observed, the mainstream environmental movement has always shown more concern for reducing environmental degradation in the aggregate than for distributing the resulting gains and losses equitably among society's members. [FN229] Thus, while a regulatory scheme based on "average" susceptibility would unfairly burden the more vulnerable, it would promote mainstream environmentalism's primary goal of reducing the aggregate amount of pollution to a degree that society as a whole could accept.

Second, policymakers are not likely to challenge an arrangement that ignores distributional effects because the "average" susceptibility level on which protective regulations are based is not an average at all, but rather a level based on the vulnerabilities of those making policy, namely white men. [FN230] Thus, we return to the feminist notion that beneath society's normative or "average" standards, "man is the measure of all things." [FN231]

To solve the problem, we must collect more information about the variations in susceptibility among groups and enforce stricter baseline protections for all. [FN232] But lessons learned from feminism advise caution when arguing for one's vulnerabilities. As I will explain next, women have found that calls for sex-based protection have sometimes made them targets for exclusion, targets of blame, and objects of impersonal and sometimes degrading medical study. [FN233]
1. Arguing for One's Vulnerabilities: The Problem

   a. Targets for Exclusion

   Society has repeatedly cited the supposed vulnerability of women to justify "special protections" that have sheltered, and thus excluded women. [FN234] In this century, state legislatures used concern for women's reproductive capacity as an excuse for preventing women from working long hours in laundries. [FN235] Saloons denied bartending jobs to most women in order to protect their "moral and physical well-being." [FN236] More recently, prisons have used women's susceptibility to rape to justify, at least in part, the exclusion of women from some guard duties at maximum security prisons. [FN237] The possibility that mothers might die in armed combat motivates many conservatives to oppose allowing women to fly combat missions or otherwise serve in combat roles. [FN238]

   The harm in such measures lies not in the desire to protect people from danger, but in the way evidence is selected, interpreted, and used to support exclusionary policies. Sometimes exclusionary laws rest on false assumptions, such as the belief that long work days threaten women's reproductive capacity or that bartending damages women's morality. Such rationales simply become tools of sexism or economic protection. Other assumptions about female vulnerability may actually be true, but are analyzed in a biased way. A female guard's susceptibility to rape in a prison is not considered on its own terms, but only in relation to the susceptibility of an "ideal guard," that is, a male. [FN239] If the female's risk is higher, that risk is seen as a special female "weakness," rendering her "unfit" for the job. [FN240]

   While women and racial minorities must advocate for health and environmental standards that protect them from harm, they must be wary of majority attempts to convert group vulnerabilities into apologies for exclusion. Lin Nelson reports, for instance, that many industrial manufacturers in Massachusetts have sought to avoid liability for hazardous work conditions by implementing "fetal protection policies" that remove women of childbearing capacity from hazardous zones. [FN241] "In extreme cases," she writes, "women have had themselves sterilized in order to keep their jobs and keep food on the table." [FN242] As discussed earlier, the Supreme Court, in Johnson Controls, struck down a fetal protection policy under Title VII because the employer could not show that exposed women posed a greater threat to a future child than did an exposed man. [FN243] The Court, however, left open the possibility that exclusionary policies intended to protect women from harms unique to them or to their fetuses might, under certain circumstances, be upheld. [FN244]

   Although issues of protective exclusion seem most obvious in the occupational context, the threat of such exclusion is not limited to the workplace. A decision, for instance, to lower cleanup standards for a Superfund site and earmark it for permanent nonresidential use [FN245] is also a decision to exclude from that vicinity daycare facilities, retirement homes, and other facilities used by children or the elderly. While such a decision is not necessarily unwise, those in poor or minority communities can legitimately wonder if these protective measures might someday squeeze out services required by some of their most needy members. [FN246]

   b. Targets for Blame

   In addition to physical exclusion, recent experience also demonstrates that calls for protection, if not handled carefully, can result in scapegoating and backlash. As explained earlier, if a problem disproportionately affects a less powerful group, those in power will tend to see that problem as pertaining only to those affected. The problem will be marginalized and efforts to address it will be seen as "special." It is then only a matter of time before the majority begins to resent such "special" attention and to blame the victims for a problem to which others may have contributed. [FN247]

   The implications for environmental protection are significant. If variations in environmental sensitivity encourage public decisionmakers to view environmental health and safety as predominantly a "woman's problem" or a "minority problem," interest given to those concerns will wane. Rather than blame new health risks on industrial pollution or irresponsible toxic dumping, decisionmakers may instead choose to attribute some health problems to...
women's "delicate biology" or to African Americans' "unique sensitivities." This misplacement of blame may explain why federal policymakers have dedicated relatively few resources to investigating the risks associated with toxic dumping (which affects primarily the poor and racial minorities), yet has increased resources to investigate global warming and ozone depletion (which affects everyone). [FN248] An incidental effect of environmental scapegoating is that it steers attention away from health vulnerabilities that may exist among the majority. By promoting a dualist model of "eco-warriors" and "eco-weaklings," [FN249] this type of scapegoating clouds the reality that we are all, to some degree, both warriors and weaklings.

So-called "special" vulnerabilities exist in wide spectrums of the population, though at different periods in life. Age, differences in circadian rhythms, [FN250] general health, gender, diet, and individual genetic differences all affect susceptibility to health problems. [FN251] Ignoring even a small segment of the population in designing health standards, therefore, threatens to ignore everyone at a certain time in his or her life. [FN252] Indeed, the "average" person upon whose profile many standards are based is in good physical shape, disease-free, and free of nutritional problems and genetic conditions. [FN253] Such a standard hardly reflects the general population.

International Union, UAW v. Johnson Controls, Inc.[FN254] illustrates the danger inherent in assuming that environmental risks that affect one sex will not affect the other. Although Johnson Controls removed women of childbearing capacity from hazardous areas on the grounds that lead exposure could damage ova, it virtually ignored evidence that such exposure could similarly damage sperm. [FN255] Thus, Johnson Controls not only unfairly excluded women from the workplace, but also deprived men of any warnings or protection concerning their reproductive abilities. [FN256] Encouraging those in power to see the ways in which their welfare is sometimes linked to the welfare of less powerful groups is the first step in protecting victims from being transformed into targets for blame.

c. Objects of Impersonal Study

A final consequence of emphasizing a group's particular vulnerabilities occurs when "outsiders," such as politicians, scientists, and bureaucrats, approach environmental problems without the proper sensitivity to how existing fears and further inquiry will affect those being studied. Women in particular have witnessed this phenomenon as government interest in reproductive risk assessment has gradually increased. [FN257] Lin Nelson reports how women at Love Canal were left nervous and confused as lactation researchers repeatedly prepared women for collection of breast milk samples and then cancelled plans at the last minute. [FN258] The women were never properly informed of medical risks and continued to worry. [FN259] Nelson relays the following story from a nurse and environmental activist in Oregon where women had been exposed to herbicide spraying:

The [breast milk] sample collectors told me I would be notified within six months of the result. Two years later, pregnant again, I was still trying to get the results. After negotiations through my congressman, the EPA offered me my results--but only if I would sign an agreement not to make the results public. I declined. Although six months later the EPA announced that all samples tested negative, a "deep throat" within the agency told anti-spray activists that there had been positives. [FN260]

In many instances, governmental medical monitors do not share data accumulated from local communities with the community or, when they do share the data, misrepresent it. [FN261]

Treating victims of toxic exposure as only raw data for study produces several undesirable side effects. First, these impersonal and often disorganized studies deprive individuals of the proper information and warnings they need to avoid or treat illness. A second and related point is that an overemphasis on data-gathering can lead to a discounting of subjects' individual experiences and concerns and can potentially divert health-care professionals from gathering special information needed to treat the individual patient. Third, such a relationship erodes trust between the community and the government and leads to less discourse in the future. Finally, the objectification of women or people of color in the context of medical research may lead to the objectification of these groups in other contexts as well, reinforcing stereotypes and encouraging discrimination in unrelated ways. [FN262]
All of the problems discussed above boil down to a single element: control over the acquisition and interpretation of knowledge. Industrial employers have the power to identify and exclude "overly sensitive" workers because they determine what data are relevant and choose the benchmarks by which those data will be compared. Government may exercise its ability to marginalize the significance of polluted workplaces and communities by viewing the evidence in a way that ignores the structural underpinnings of distributional unfairness and by focusing only on generic victims. The objectification of patients through medical monitoring derives from a research paradigm in which "active" scientists and technicians study "passive" subjects.

For these reasons, it is insufficient for community activists to argue only for greater research into toxic susceptibility; they must also gain more control over how the evidence is collected and applied. Community organizations throughout the country are just beginning to reconstruct the medical monitoring process in this way.

Janet Phoenix, director of health education for the Alliance to End Childhood Lead Poisoning, relates an instructive example of one community's effort to learn more about lead poisoning. [FN263] When California began screening children for lead exposure in a three-county area, residents in one of the counties became concerned when the state refused to release the results of the study until it drafted its final report. As it turned out, there was cause for alarm. The collected data showed that 20% of the children in the county were lead poisoned. Moreover, 67% of the African American, Latino, and Asian children had elevated levels of lead in their blood. [FN264]

Refusing to rely on the state as the sole source of information, many of the tested minority families formed a community organization to find answers. The organization "undertook its own health survey, covering 1012 households in which eight different languages were spoken." [FN265] Among other findings, the survey revealed that 96% of those eligible for the free screening program were unaware of it and that 98% of the household members had not been screened. The survey also showed that a third of the households lacked medical insurance and that nearly as many households had received no child immunization services. [FN266]

Motivated by their findings, the organization held a series of public meetings and eventually persuaded the state to release its original survey results and to expand free testing services. Activists also won an agreement from the city of Oakland to move beyond households and to test selected schools and playgrounds for lead contamination. Eventually, they persuaded the town council to adopt a funded comprehensive screening and abatement program. [FN267]

This story illustrates the feminist tools of unmasking, contextual reasoning, and consciousness-raising at work. [FN268] While community activists initially sought only to secure the state's accumulated data, they soon reached the conclusion that the state's test, which was designed by people outside the neighborhoods, did not seek to provide answers to all of the questions that needed to be asked. The activists unmasked the apparent neutrality of the state test and showed that it reflected the narrow concerns of community outsiders. The activists then designed a complementary survey that would incorporate community members' own perspectives. Sharing ideas and personal observations in a form of consciousness-raising, the community members devised a survey that asked the "practical" (and contextual) questions about awareness of lead testing and related issues about health insurance and immunization. They showed sensitivity to the ethnic makeup of the community by conducting their interviews in several shared languages. [FN269] Recognizing that children do not just exist in "households," but in schools, parks, and other facilities, the activists pushed for screening that would address the threat on a more holistic level.

The willingness to go beyond the bounds of the "neutral" study and form a more context-based survey through group discussion will ultimately lead to a more effective solution to the threat of lead poisoning in the community. The community's participation in solving the problem places them on a more equal footing with the outside researchers and will discourage researchers from viewing them as mere "victims" or sources of raw data in the future.

Significantly, the community's efforts, which originally sprang from strictly local concerns, eventually resulted in a screening and abatement program encompassing the whole town. This willingness to spread the group's knowledge and proposals beyond the borders of immediate concern helps protect against marginalization and exclusion. [FN270] For as evidence of the widespread nature of lead poisoning continues to surface, policymakers will begin to
see that environmental health is everyone's problem. [FN271]

Although this case is but one example, reports show that many environmental justice activists are taking control of data collection in ways that resist marginalization through the feminist values of personal context and local collaboration. Women in the Akwesasne Environment/Mother's Milk Project call attention to threats posed to them by pollution within the Mohawk Nation, but take care to see that non-native researchers understand their local problems and do not "colonize" them simply as research subjects. [FN272] Activist Cathy Hinds helped retain control over health data by augmenting medical findings with her neighbors' own observations and refusing to allow local doctors to be the sole interpreters of empirical evidence. As a result, her "kitchen table" discussions with other mothers in her rural community uncovered a link between illness and local drinking water that doctors had originally brushed aside. [FN273]

These efforts round out the task of data collection and interpretation; they also suggest the importance of considering intuition, psychology, and emotion in risk assessment. The next section addresses how these factors should be considered in determining acceptable levels of risk.

B. Incorporating Community Perception into Risk Assessment: Beyond Neutrality

The [city] council is going to build something in my community which might kill my child.... I don't need a scientist to tell me that's wrong.

--Charlotte Bullock, Concerned Citizens of South Central Los Angeles [FN274]

Because risk assessment is based on statistical measures of risk, policymakers view it as an accurate and objective tool in establishing environmental standards. [FN275] The scientific process used to assess risk purports to focus single-mindedly on only one feature of a potential injury: the objective probability of its occurrence. [FN276] Risk assessors, who consider most value judgments irrelevant in determining statistical risk, seek to banish them at every stage. [FN277] As a result, the language of risk assessment--and of related environmental safety standards--often carry an air of irrebuttable precision and certainty. The EPA, for example, defines the standard acceptable level of risk under Superfund as "10-6"--that is, the probability that one person in a million would develop cancer due to exposure to site contamination. [FN278]

Feminism challenges this model of scientific risk assessment on at least three levels. First, feminism questions the assumption that scientific inquiry is value-neutral, that is, free of societal bias or prejudice. [FN279] Indeed, as many have pointed out, one's perspective unavoidably influences the practice of science. [FN280] Western science may be infused with its own ideology, perpetuating, in the view of the ecofeminists, cycles of discrimination, domination, and exploitation. [FN281]

Second, even if scientific inquiry by itself were value-neutral, environmental regulation based on such inquiry would still contain subjective elements. Environmental regulation, like any other product of democracy, inevitably reflects elements of subjectivity, compromise, and self-interest. The technocratic language of regulation serves only to "mask, not eliminate, political and social considerations." [FN282]

We have already seen how the subjective decision to prefer white men as subjects for epidemiological study can skew risk assessments against the interests of women and people of color. The focus of many assessments on the risk of cancer deaths, but not, say, the risks of birth defects or miscarriages, is yet another example of how a policymaker's subjective decision of what to look for can influence what is ultimately seen. [FN283]

Once risk data are collected and placed in a statistical form, the ultimate translation of that information into rules and standards of conduct once again reflects value judgments. A safety threshold of one in a million or a preference for "best conventional technology" does not spring from the periodic table, but rather evolves from the application of human experience and judgment to scientific information. Whose experience? Whose judgment? Which information? These are the questions that feminism prompts, and they will be discussed shortly.
Finally, feminists would argue that questions involving the risk of death and disease should not even aspire to value neutrality. Such decisions--which affect not only today's generations, but those of the future--should be made with all related political and moral considerations plainly on the table. [FN284] In addition, policymakers should look to all perspectives, especially those of society's most vulnerable members, to develop as complete a picture of the moral issues as possible.

Debates about scientific risk assessment and public values often appear as a tug of war between the "technicians," who would apply only value-neutral criteria to set regulatory standards, and the "public," who demand that psychological perceptions and contextual factors also be considered. [FN285] Environmental justice advocates, strongly concerned with the practical experiences of threatened communities, argue convincingly for the latter position. [FN286]

A feminist critique of the issue, however, suggests that the debate is much richer and more complicated than a bipolar view allows. For feminists, the notion of value neutrality simply does not exist. The debate between technicians and the public, according to feminists, is not merely a contest between science and feelings, but a broader discussion about the sets of methods, values, and attitudes to which each group subscribes. Furthermore, feminists might argue, the parties to this discussion divide into more than two categories. Because one's world view is premised on many things, including personal experience, one might expect that subgroups within either category might differ in significant ways from other subgroups. Therefore, feminists would anticipate a broad spectrum of views concerning scientific risk assessment and public values.

Intuitively, this makes sense. Certainly scientists disagree among themselves about the hazards of nuclear waste, ozone depletion, and global warming. [FN287] Many critics have argued that scientists, despite their allegiance to rational method, are nonetheless influenced by personal and political views. [FN288] Similarly, members of the public are a widely divergent group. One would not be surprised to see politicians, land developers, and blue-collar workers disagreeing about environmental standards for essentially non-scientific reasons. Politicians and bureaucrats are two sets of the non-scientific community that affect environmental standards in fundamental ways. Their adherence to vocal, though not always broadly representative, constituencies may lead them to disfavor less advantaged socioeconomic groups when addressing environmental concerns. [FN289] In order to understand a diversity of risk perception and to see how attitudes and social status affect the risk assessment process, we must return to the feminist inquiry that explores the relationship between attitudes and identity.

1. The Diversity of Risk Perception

A recent national survey, conducted by James Flynn, Paul Slovic, and C.K. Mertz, measured the risk perceptions of a group of 1512 people that included numbers of men, women, whites, and non-whites proportional to their ratios in society. [FN290] Respondents answered questions about the health risks of twenty-five environmental, technological, and "lifestyle" hazards, including such hazards as ozone depletion, chemical waste, and cigarette smoking. [FN291] The researchers asked them to rate each hazard as posing "almost no health risk," a "slight health risk," a "moderate health risk," or a "high health risk." The researchers then analyzed the responses to determine whether the randomly selected groups of white men, white women, non-white men, and non-white women differed in any way.

The researchers found that perceptions of risk generally differed on the lines of gender and race. Women, for instance, perceived greater risk from most hazards than did men. [FN292] Furthermore, non-whites as a group perceived greater risk from most hazards than did whites. [FN293] Yet the most striking results appeared when the researchers considered differences in gender and race together. They found that "white males tended to differ from everyone else in their attitudes and perceptions--on average, they perceived risks as much smaller and much more acceptable than did other people." [FN294] Indeed, without exception, the pool of white men perceived each of the twenty-five hazards as less risky than did non-white men, white women, or non-white women. [FN295]

Wary that other factors associated with gender or race could be influencing their findings, the researchers later conducted several multiple regression analyses to correct for differences in income, education, political orientation, the presence of children in the home, and age, among others. Yet even after all corrections, "[g]ender, race, and
'white male' [status] remained highly significant predictors" of perceptions of risk. [FN296]

2. Explaining the Diversity

From a feminist perspective, these findings are important because they suggest that risk assessors, politicians, and bureaucrats--the large majority of whom are white men [FN297]--may be acting on attitudes about security and risk that women and people of color do not widely share. If this is so, white men, as the "measurers of all things," have crafted a system of environmental protection that is biased toward their subjective understandings of the world. [FN298]

Flynn, Slovic, and Mertz speculate that white men's perceptions of risk may differ from those of others because in many ways women and people of color are "more vulnerable, because they benefit less from many of [society's] technologies and institutions, and because they have less power and control." [FN299] Although Flynn, Slovic, and Mertz are careful to acknowledge that they have not yet tested this hypothesis empirically, their explanation appears consistent with the life experiences of less empowered groups and comports with previous understandings about the roles of control and risk perception. [FN300]

Women and people of color, for instance, are more vulnerable to environmental threat in several ways. Such groups are sometimes more biologically vulnerable than are white men. [FN301] People of color are more likely to live near hazardous waste sites, to breathe dirty air in urban communities, and to be otherwise exposed to environmental harm. [FN302] Women, because of their traditional role as primary caretakers, are more likely to be aware of the vulnerabilities of their children. [FN303] It makes sense that such vulnerabilities would give rise to increased fear about risk.

It is also very likely that women and people of color believe they benefit less from the technical institutions that create toxic byproducts. [FN304] Further, people may be more likely to discount risk if they feel somehow compensated for the activity. [FN305] For this reason, Americans worry relatively little about driving automobiles, an activity with enormous advantages in our large country but one that claims tens of thousands of lives per year. The researchers' final hypothesis—that differences in perception can be explained by the lack of "power and control" exercised by women and people of color—suggests the importance that such factors as voluntariness and control over risk play in shaping perceptions.

Risk perception research frequently emphasizes the significance of voluntariness in evaluating risk. Thus, a person may view water-skiing as less risky than breathing polluted air because the former is accepted voluntarily. [FN306] Voluntary risks are viewed as more acceptable in part because they are products of autonomous choice. [FN307] A risk accepted voluntarily is also one from which a person is more likely to derive an individual benefit and one over which a person is more likely to retain some kind of control. [FN308] Some studies have found that people prefer voluntary risks to involuntary risks by a factor of 1000 to 1. [FN309]

Although environmental risks are generally viewed as involuntary risks to a certain degree, choice plays a role in assuming risks. White men are still more likely to exercise some degree of choice in assuming environmental risks than other groups. Communities of color face greater difficulty in avoiding the placement of hazardous facilities in their neighborhoods and are more likely to live in areas with polluted air and lead contamination. [FN310] Families of color wishing to buy their way out of such polluted neighborhoods often find their mobility limited by housing discrimination, redlining by banks, and residential segregation. [FN311] The workplace similarly presents workers exposed to toxic hazards (a disproportionate number of whom are minorities) [FN312] with impossible choices between health and work, or between sterilization and demotion. [FN313]

Just as marginalized groups have less choice in determining the degree of risk they will assume, they may feel less control over the risks they face. "Whether or not the risk is assumed voluntarily, people have greater fear of activities with risks that appear to be outside their individual control." [FN314] For this reason, people often fear flying in an airplane more than driving a car, even though flying is statistically safer. [FN315]

If white men are more complacent about public risks, it is perhaps because they are more likely to have their hands
on the steering wheel when such risks are imposed. White men still control the major political and business institutions in this country. [FN316] They also dominate the sciences [FN317] and make up the vast majority of management staff at environmental agencies. [FN318] Women and people of color see this disparity and often lament their back-seat role in shaping environmental policy. [FN319]

Thus, many people of color in the environmental justice movement believe that environmental laws work to their disadvantage by design. [FN320] The toxic rivers of Mississippi's "Cancer Alley," [FN321] the extensive poisoning of rural Indian land, [FN322] and the mismanaged cleanup of the weapons manufacturing site in Hanford, Washington [FN323] only promote the feeling that environmental policy in the United States sacrifices the weak for the benefit of the strong.

In addition, the catastrophic potential that groups other than white men associate with a risk may explain the perception gap between those groups and white males. Studies of risk perception show that, in general, individuals harbor particularly great fears of catastrophe. [FN324] For this reason, earthquakes, terrorist bombings, and other disasters in which high concentrations of people are killed or injured prove particularly disturbing to the lay public. Local environmental threats involving toxic dumps, aging smelters, or poisoned wells also produce high concentrations of localized harm that can appear catastrophic to those involved. [FN325]

Some commentators contend that the catastrophic potential of a risk should influence risk assessment in only minimal ways. [FN326] Considering public fear of catastrophes, they argue, will irrationally lead policymakers to battle more dramatic but statistically less threatening hazards, while accepting more harmful but more mundane hazards. [FN327]

At least two reasons explain why the catastrophic potential of environmental hazards must be given weight in risk assessment. First, concentrated and localized environmental hazards do not simply harm individuals, they erode family ties and community relationships. An onslaught of miscarriages or birth defects in a neighborhood, for instance, will create community-wide stress that will debilitate the neighborhood in emotional, sociological, and economic ways. [FN328] To ignore this communal harm is to underestimate severely the true risk involved. [FN329]

Second, because concentrated and localized environmental hazards tend to be unevenly distributed on the basis of race and income level, any resulting mass injury to a threatened population takes on profound moral character. For this reason, Native Americans often characterize the military's poisoning of Indian land as genocide. [FN330]

3. Understanding Through Diversity

Flynn, Slovic, and Mertz challenge the traditional, static view of statistical risk with a richer, more vibrant image involving relationships of power, status, and trust. [FN331] "In short, 'riskiness' means more to people than 'expected number of fatalities.' " [FN332] These findings affirm the feminist claim that public policy must consider both logic and local experience in addressing a problem. [FN333] Current attempts to "re-educate" fearful communities with only risk assessments and scientific seminars are, therefore, destined to fail. [FN334] By the same token, even dual approaches that combine science and experience will fall short if the appeal to experience does not track local priorities and values.

Cynthia Hamilton illustrates these points in her inspiring account of how a South Central Los Angeles community group, consisting mainly of working-class women, battled a proposed solid waste incinerator. [FN335] At one point, the state sent out consultants and environmental experts to put the community's fears into perspective. The consultants first appealed to the community's practical, experience-based side, by explaining how the new incinerator would bring needed employment to the area and by offering $2 million in community development. [FN336] But the community group found the promise of "real development" unrealistic and the cash gift insulting. [FN337] When experts then turned to quantifying the risks "scientifically" their attempts backfired again. Hamilton reports that "expert assurance that health risks associated with dioxin exposure were less than those associated with 'eating peanut butter' unleashed a flurry of dissent. All of the women, young and old, working-class and professional, had made peanut butter sandwiches for years." [FN338] The sandwich analogy, even assuming its
statistical validity, could not convince the women because it did not consider other valid risk factors (voluntariness, dread, and so on) and because it did not appear plausible in the group members' experience. In the end, Hamilton explains that the superficial explanations and sarcastic responses of the male "experts" left the women even more united and convinced that "working-class women's concerns cannot be dismissed." [FN339] Thus even the "science" of risk assessment, if it is to serve effectively, must include the voices of those typically excluded from its practice. [FN340]

4. Opening Debate and Fostering Trust

If developers and government officials are ever to win the acceptance of less empowered groups, they must move beyond the one-way conversation. Society must explore "levels of power sharing and public participation in decisionmaking that have rarely been attempted." [FN341] Such efforts must be pursued with the primary goal of engendering a relationship of trust among all participants; for only by gaining trust can one hope to persuade. [FN342]

The federal government has already begun implementing programs it hopes will help unite citizens against environmental injustice. President Clinton's much publicized Executive Order 12,898, [FN343] for instance, declares it the goal of "each Federal agency" to make "achieving environmental justice part of its mission by identifying and addressing ... disproportionately high and adverse" effects that agency activities have on "minority populations and low-income populations." [FN344] The order directs federal agencies to develop strategies to reduce disproportionate impacts, orders the creation of an interagency working group on environmental justice, and helps to provide minority and poor communities with access to public information on matters relating to human health or the environment, and an opportunity for public participation. [FN345] Some states and municipalities have also enacted laws or initiated programs intended to redress some forms of environmental injustice. [FN346]

Legal commentators have also suggested ways to help promote a more equal distribution of environmental benefits and burdens. Some call for the diversification of state and federal agencies and mainstream environmental groups to reflect to a greater extent the perspectives of women and people of color. [FN347] Others recommend reforming Superfund's community outreach mechanisms [FN348] and increasing citizen participation in siting decisions. [FN349] Regulatory agencies could also be required to consider the distributional effects that their actions have on women and children.

Remedial proposals such as these, and many more that will follow, must ultimately be judged on the degree to which they acknowledge and incorporate the attitudes and experiences of less empowered people. Feminism can propel environmental justice advocates and policymakers in the right direction by always challenging them to unmask hidden biases behind environmental law, to bring personal experience to the fore, and to remain committed to broad and open dialogue with the community.

CONCLUSION

I had been my whole life a bell, and never knew it until at that moment I was lifted and struck.

--Annie Dillard [FN350]

This decade, thousands of people are answering calls to protect their families and communities from an industrial and governmental system that places the bulk of environmental harm on the least advantaged in society. Unlike environmentalists in the first or second waves, these activists are driven out of a sense of necessity to protect their own lives and personal relationships. And, significantly, the networks they are developing are led and populated mainly by women.

The presence of women in the environmental justice movement affects its work in fundamental ways. In organizing campaigns, women draw from their own perspectives of what it is like to be the target of continuing sexism in our culture and what it is like to be a woman in the late twentieth century. [FN351] These perspectives often shape the
movement in terms of parental responsibility and resistance to business and government as usual. The presence of women has also steered the movement with strategies reflected in feminist methods.

Activists routinely unmask biases in environmental policy and in the strategies used against them. They use their own personal experiences to identify environmental problems and potential solutions. By communicating these experiences and finding common interests with others in their communities and outside their communities, grassroots activists use consciousness-raising to further define broad goals and to build lasting coalitions across boundaries of class or race. These elements hold promise for a more complete understanding of many environmental issues, including, as Part IV of this Article illustrates, risk assessment.

If American environmentalism has been nurtured by the belief that in nature "everything is connected to everything else," [FN352] the environmental justice movement, reflecting the process of feminist inquiry, now affirms that everyone is connected to everyone else. Until we heed the voices of the less powerful in society, true environmental protection will remain elusive.

[FN1] CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 105 (1982).


[FN3] For excellent studies of several such campaigns, see CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS (Robert D. Bullard ed., 1993) [hereinafter CONFRONTING ENVIRONMENTAL RACISM] and UNEQUAL PROTECTION, supra note 2.

[FN4] The term "environmental justice" is sometimes used interchangeably with the term "environmental equity." Both describe efforts to redress environmental inequalities caused by what is sometimes called "environmental racism." Each of these terms has its limitations. "Environmental racism," for instance, does not acknowledge the role that sexism, classism, ageism, and other biases play in slanting environmental policy against society's less powerful members. The word "racism" may also connote the presence of intent, which users of the term do not always mean to imply. See, e.g., Robert D. Bullard, Environmental Equity: Examining the Evidence of Environmental Racism, 2 LAND USE FORUM 6, 6 (Winter 1993) (defining "environmental racism" to include intentional or unintentional policies, practices, or directives). "Environmental equity" may imply an emphasis on equal distribution of
environmental harms throughout society, without proper attention to reducing the aggregate production of waste. See, e.g., Charles J. McDermott, Balancing the Scales of Environmental Justice, 21 FORDHAM URB.L.J. 689, 689 (1994) (contrasting "environmental equity" with "environmental justice" by noting the latter's concern with "curtailing waste generation and preventing all pollution"). "Environmental justice" is a vaguer term but more accurately captures the many forms of and motivations behind the grassroots activism that I examine. Moreover, many of the most recent legal and sociological publications use the term "environmental justice."


[FN7] See Celene Krauss, Women of Color on the Front Line, in UNEQUAL PROTECTION, supra note 2, at 256 ("[F]emale grass-roots activists have assumed the leadership of community environmental struggles."); EMPOWERING OURSELVES: WOMEN AND TOXICS ORGANIZING 25 (Citizens' Clearinghouse for Hazardous Waste) (Robbin Lee Zeff et al. eds., 1989) [hereinafter EMPOWERING OURSELVES] (on file with the Harvard Women's Law Journal) (noting that 70-80% of local environmental leaders are women); Regina Austin & Michael Schill, Black, Brown, Red, and Poisoned, in UNEQUAL PROTECTION, supra note 2, at 62 ("There are numerous examples of women of color whose strengths and talents have made them leaders of grass-roots environmental efforts."); Dorceta E. Taylor, Environmentalism and the Politics of Inclusion, in CONFRONTING ENVIRONMENTAL RACISM, supra note 3, at 53, 57 ("Women's leadership is also very strong in the environmental justice movement. In many instances women are founders or are the heads of these organizations."); FRED SETTERBERG & LONNY SHAVELSON, TOXIC NATION: THE FIGHT TO SAVE OUR COMMUNITIES FROM CHEMICAL CONTAMINATION 265 (1993) ("[A]lmost always, the most effective warriors [in grassroots environmental struggles] turned out to be women."); Bullard, supra note 5, at 7, 8 (noting participation of women in writing about and leading environmental grassroots organizations); Ynestra King, Healing the Wounds: Feminism, Ecology, and the Nature/Culture Dualism, in REWEAVING THE WORLD, supra note 2, at 106, 118-20 (noting that "women have been at the forefront of every historical, political movement to reclaim the earth" and that community-based movements against toxic wastes are "largely initiated and led by women"); Janis Birkeland, Ecofeminism: Linking Theory and Practice, in ECOFEMINISM: WOMEN, ANIMALS, NATURE 13, 51 (Greta Gaard ed., 1993) [hereinafter ECOFEMINISM] (remarking that "[a] majority of green activists" are women); Hamilton, Concerned Citizens, supra note 2, at 210 (reporting that women make up the majority of "concerned citizens" of South Central Los Angeles and often play a "primary part" in community action as a whole). In addition, the majority of the many activist groups listed in the "Resources and Contacts" section of Robert Bullard's DUMPING IN DIXIE appear to be headed by women. See ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY app. at 149- 56 (1990) [hereinafter BULLARD, DUMPING IN DIXIE] (listing contacts for "national and regional groups" and "people of color groups in the southern United States").

[FN8] In examining feminism and environmental justice struggles, this Article focuses only on events occurring within the United States. Grassroots environmental campaigns (which include calls for environmental justice) have developed in many countries around the world. As in the United States, women lead and form a large part of the membership of many foreign grassroots environmental organizations. See King, supra note 7, at 118. For an introduction to the subject of women and the environment in a global context, see Corinne Schmidt, The Forgotten Sex, NATURE CONSERVANCY, Nov.-Dec. 1995, at 23 and WOMEN AND THE ENVIRONMENT IN THE THIRD WORLD (Irene Dankelman & Joan Davidson eds., 1988).
This Article focuses mainly on feminist legal theory, rather than on other types of feminist theory, because environmental justice struggles almost always involve some contact with law or lawmakers, or at least raise questions about the absence of relevant law. Feminist legal theory is, therefore, essential in examining environmental justice.


The Mothers of East Los Angeles grew from a meeting in 1985 organized by Jauna Beatriz Gutierrez for the purpose of opposing a proposed state prison in East Los Angeles. The organization, composed entirely of women, has gone on to fight various environmental struggles, including its famous, and successful, opposition to a proposed hazardous waste incinerator in a neighboring community. For an interesting account of the organization's origin and development, see Gabriel Gutierrez, Mothers of East Los Angeles Strike Back, in UNEQUAL PROTECTION, supra note 2, at 220-33.

Mother's Air Watch is a grassroots organization of concerned parents fighting for stricter environmental regulation of toxic waste incinerators, such as the one near their community. The organization seeks to draw support not only from the immediate vicinity, but also from the surrounding areas threatened by the toxic emissions. COMMUNITIES AT RISK NETWORK, COMMUNITIES AT RISK: CONTAMINATED COMMUNITIES SPEAK OUT ON SUPERFUND (Penny Newman ed., 1994) [hereinafter COMMUNITIES AT RISK] (on file with the Harvard Women's Law Journal).

See Heather M. Little, Going for the Green, CHI. TRIB., July 16, 1995, Womanews, at 1 (describing the prominence of women's participation in environmental grassroots organizing); Austin & Schill, supra note 7, at 62 n. 27 (citing several news reports of women activists in grassroots environmental struggles).

Gutierrez, supra note 12, at 220-33; Hamilton, Concerned Citizens, supra note 2, at 209-12.
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property Love system Neighborhood Council v. City of Detroit, 304 N.W.2d 455 (1981)
upheld ultimately [FN23]

Blue Celene uranium [FN22]

[FN21]

"[w]hy are most community activists women ...?").

See ANNE WITTE GARLAND, WOMEN ACTIVISTS xi (1988) ("The leadership and ranks of community
groups are predominantly women."); Ralph Nader, Foreword to GARLAND, supra, at ix (raising the question
"[w]hy are most community activists women ...?").

See GARLAND, supra note 18, at 29-30. Giannini and her neighbors were unsuccessful. The city of Detroit
ultimately condemned the neighborhood, called "Poletown," and sold the land to General Motors, which replaced
the many residences and small businesses with an automobile manufacturing plant. The Supreme Court of Michigan
upheld the condemnation action as within the city's power of eminent domain in the well-known case, Poletown

See GARLAND, supra note 18, at xii (noting that some women activists believe that "men are more
integrated into the system that creates [public health] threats, and that since women have been excluded from that
system historically, they have less to lose than men in fighting it"). For instance, after the news of contamination at
Love Canal, "many women reported that as they worried about health, their husbands worried about declining
property values brought on by the women stirring things up." Nelson, supra note 10, at 184; see also infra part
IV.B.2.

See GARLAND, supra note 18, at xii; Little, supra note 14 (noting that "community-based groups, such as
Citizens' Clearinghouse for Hazardous Wastes and Concerned Neighbors in Action, [are] led primarily by women
who, although relatively new to social action movements, nevertheless utilize existing skills in managing homes,
raising children and juggling schedules to mobilize neighborhood residents for environmental change."). For the
general argument that women as a group are more adept at empathizing with others' views and seeing issues from
the social aspect, see GILLIGAN, supra note 1, at 167.

[FN16] See Kathy Hall, Impacts of the Energy Industry on the Navajo and Hopi, in UNEQUAL PROTECTION,
supra note 2, at 130, 138-39 (reporting that as part of their opposition "[e]lderly Navajo women and their families
have stood in front of bulldozers, torn down fences, turned away government officials, and been thrown in jail.").

[FN17] Ellen O'Loughlin, Questioning Sour Grapes: Ecofeminism and the United Farm Workers Grape Boycott, in
ECOFEMINISM, supra note 7, at 146, 149-51.

[FN18] Id. at xxii.

[FN19] See GARLAND, supra note 18, at xii.


"It's not that I don't think that women are smarter," laughs Cora Tucker, an activist who fought against
uranium mining in rural Virginia, "[B]ut I think that we are with the kids all day long.... If Johnny gets a cough and
Mary gets a cough, we try to discover the problem." Krauss, supra note 7, at 256, 260 (ellipsis in original); see also
Celene Krauss, Blue Collar Women and Toxic Waste Protests: The Process of Politicization [hereinafter Krauss,
Blue Collar Women], in TOXIC STRUGGLES, supra note 10, at 107, 111 ("Because women are traditionally
responsible for the health of their children, they are the most likely to make the link between toxic waste and their
children's health.")

[FN23] GARLAND, supra note 18, at 29-30. Giannini and her neighbors were unsuccessful. The city of Detroit
ultimately condemned the neighborhood, called "Poletown," and sold the land to General Motors, which replaced
the many residences and small businesses with an automobile manufacturing plant. The Supreme Court of Michigan
upheld the condemnation action as within the city's power of eminent domain in the well-known case, Poletown

[FN24] See GARLAND, supra note 18, at xii (noting that some women activists believe that "men are more
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[FN25] See GARLAND, supra note 18, at xii; Little, supra note 14 (noting that "community-based groups, such as
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general argument that women as a group are more adept at empathizing with others' views and seeing issues from
the social aspect, see GILLIGAN, supra note 1, at 167.
uncovering (describing consciousness-raising as a major technique of the women's movement).

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occurs Assimilation not essentialize it. (describing women's policies failures creates)

proposed siting of a hazardous waste treatment operation). (1994)

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Hasler, supra note 31, at 837. See infra part IV.A.

even Though African American women's cynicism toward government, but see local environmental problems as linked to issues of tribal sovereignty, sustainability, and cultural values. See generally id. at 262-71 (reviewing the impact of race, ethnicity, and class on women's motivations for organizing toxic waste protests).

[FN27] Krauss, supra note 7, at 270. For instance, white blue-collar women often describe a deep sense of betrayal upon learning that the government, which they believed would protect them, has failed. This sense of "violation" creates anger and spurs them to action. African American women are less likely to be surprised by governmental failures that result in environmental threats. Rather, they generally see such threats as mere extensions of racist policies already entrenched in governmental institutions. Native American women tend to share African American women's cynicism toward government, but see local environmental problems as linked to issues of tribal sovereignty, sustainability, and cultural values. See generally id. at 262-71 (reviewing the impact of race, ethnicity, and class on women's motivations for organizing toxic waste protests).

(FN28) See id. at 270-71; see also Farenthold, supra note 19, at xxii. The traditional roles of wife and mother, of course, do not explain the motivations of all female environmental justice activists. Many others, including unmarried, childless, or lesbian activists, may draw more directly from their commitments to nature or community. See, e.g., Linda Vance, Ecofeminism and the Politics of Reality, in ECOFEMINISM, supra note 7, at 118, 130-36 (describing her commitment, as a white lesbian, to environmental and social justice causes). In describing some of the dominant motivations in environmental justice activism, I seek to increase an understanding of the movement, not essentialize it.

(WN29) Women continue to assume the bulk of child-care responsibilities in American homes "regardless of how many hours they work outside the home." Jacqueline N. Hood & Christine S. Koberg, Patterns of Differential Assimilation and Acculturation for Women in Business Organizations, HUM. REL., Feb. 1994, at 159, 167. This occurs even though nearly half of all women who are both married and employed now earn as much or more than their husbands. See Tamar Lewin, Women Are Becoming Equal Providers, N.Y. TIMES, May 11, 1995, at A13 (describing a 1995 national survey that found that more than half of all employed women (married or single) provided at least half of their household's income, and that 48% of women who were married and employed provided half or more of their household income).

(FN30) See infra part IV.A.


(FN32) Bartlett, supra note 31, at 837.

(FN33) The term "unmasking" originated with the Critical Legal Studies movement to refer to the process of uncovering social biases of all kinds in legislative and judicial decisionmaking. The term has gained popularity
among those influenced by critical theory. See, e.g., Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 CAL. L. REV. 741, 748-50 (1994) (critical race theory); Cole, supra note 5, at 642-43 (environmental poverty law). In describing feminist methods, I use the term "unmasking" specifically to refer to the uncovering of patriarchal values, although the uncovering of many hidden biases--those based on sex, race, class, age, and so on--are essential to understanding environmental justice completely.


[FN36] See infra parts II.B.1, C.1.

[FN37] See infra parts II.A.2, B.2, C.2.

[FN38] See, e.g., Anne F. Scott & Andrew M. Scott, One Half the People: The Fight For Woman Suffrage, in WOMEN'S AMERICA 295, 305 (Linda K. Kerber & Jane De Hart Mathews eds. 1982) (describing the women's suffrage movement); Sally Ward Maggard, Gender Contested: Women's Participation in the Brookside Coal Strike, in WOMEN AND SOCIAL PROTEST 75, 79-92 (Guide West & Rhoda Lois Blumberg eds., 1990) (describing women's assistance in a strike at their husband's coal mine that was instrumental in obtaining concessions where men had been unable to do so); Kris Rondeau & Gladys McKenzie, Women's Ways of Organizing, Background Reading Provided for Crit Networks' Conference on the Politics of Class and the Construction of Identity, Washington, D.C. (Mar. 11, 1995) (on file with the Harvard Women's Law Journal) (observing that organizing women, such as those in the American Federation of State, County, and Municipal Employees use nontraditional union organizing methods that rely on expanding relationships among workers and planning activities to generate communication among workers).


[FN40] Bartlett, supra note 31, at 837-43 (analyzing sex discrimination cases in both ways).

[FN41] Myra Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 141 (1873) (Bradley, J., concurring) (upholding Illinois law that denied married women the opportunity to obtain licenses to practice law and noting that "[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfit[s] it for many of the occupations of civil life"). Before the 1970s, most attempts to unmask false gender stereotypes in order to question disparate treatment failed. See, e.g., Curt Muller v. Oregon, 208 U.S. 412, 421 (1908) (upholding state statute prohibiting women from working in certain establishments for more than 10 hours on the grounds that "woman's physical structure and the performance of maternal functions" justify special protections); Valentine Goesaert v. Owen Cleary, 335 U.S. 464, 466 (1948) (upholding Michigan statute that prohibited women, except wives and daughters of bar owners, from serving as bartenders to avoid "moral or social problems").
because certain conditions are met). It itself is inaccurate.

Title 20 U.S.C. ß 2611 (requiring covered employers to provide paid pregnancy leave to employees suffering from pregnancy-related disabilities) does not constitute sex discrimination under the Fourteenth Amendment's Equal Protection Clause; General Electric Co. v. Martha V. Gilbert, 429 U.S. 125 (1976) (finding that private benefits plan that excludes disabilities arising from pregnancy does not constitute sex discrimination under Title VII). As a reaction to Gilbert, Congress passed the Pregnancy Discrimination Act of 1978 (P.D.A.), 42 U.S.C. ß 2000e(k), which explicitly defines conduct that discriminates on the basis of pregnancy as sex discrimination within the meaning of Title VII. See California Federal Savings & Loan Ass'n v. Mark Guerra, 479 U.S. 272, 276 (1987) (interpreting purposes of Title VII, as amended by the Act, in relation to state law).

[FN47] See, e.g., Geduldig, 417 U.S. at 493 (quoting Carolyn Aiello v. Sigurd Hansen, 359 F.Supp. 792, 798 (N.D.Cal.1973)) (citing the state's contention "that coverage of these [pregnancy-related] disabilities is so extraordinarily expensive that it would be impossible to maintain a [benefits] program supported by employee contributions if these disabilities are included").

[FN48] See, e.g., California Federal Savings & Loan Ass'n, 479 U.S. at 297 (White, J., dissenting) (believing that California law requiring employers to provide unpaid pregnancy leave should be viewed as sex discrimination under Title VII, as amended by the P.D.A.). That leave for the birth of a child could only be made to women, of course, is itself a false assumption. An employer concerned with literal equal treatment between men and women could make a sex-neutral leave policy available to both new mothers and fathers. See, e.g., Family Medical Leave Act of 1993, 29 U.S.C. ßß 2611-19 (requiring employers to offer unpaid leave of 12 weeks to new mothers and fathers, provided certain conditions are met).

[FN49] I do not mean to endorse these images of the "typical man" or "typical woman" or even to suggest that they are accurate. I mean only to suggest that these stereotyped images exist within the minds of policymakers and must be understood if one is correctly to identify bias within seemingly neutral policies.


[FN51] Id. at 190-91.

[FN52] Id. at 199-200. According to the Court, the policy could not constitute a bona fide occupational qualification because the employer had not shown that either sex or pregnancy interfered directly with an employee's ability to
perform the job. Id. at 204.

[FN53] See MARY E. BECKER ET AL., CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 744 (1994) (questioning whether Johnson Controls would have been decided the same way had there been "firm scientific evidence that risk associated with maternal exposure is significantly higher than the risk associated with paternal exposure").

[FN54] If proper incentives exist, some employers make the workplace safer for all employees. After a 1992 study of the semiconductor industry indicated that women who manufacture chips face significant reproductive health risks, the industry association announced plans to provide additional protection to its workers. See BECKER ET AL., supra note 53, at 745. The primarily female workforce likely prompted this decision. See id. Evidence showed that the employer in Johnson Controls had reduced levels of airborne lead in its plant on previous occasions and could have lowered it further, though at considerable expense. See David L. Kirp, Fetal Hazards, Gender Justice and the Justices: The Limits of Equality, 34 WM. & MARY L.REV. 101, 109-11 (1992).


[FN56] On the first level of unmasking, explicit biases against women, such as those that prevented Myra Bradwell from practicing law, were obviously intentional.

[FN57] See Boyle, supra note 10, at 963-67; Foster, supra note 10, at 729.

[FN58] See MACKINNON, supra note 34, at 36 (noting male biases in the definitions of sports, workplace benefits and expectations, scholarship, art, military service, family, history, and sex); Martha Minow, Foreword: Justice Engendered, 101 HARV.L.REV. 10, 61 (1987) (noting that feminists have exposed the dominance in "field after field of conceptions of human nature that take a male as the reference point and treat women as 'other,' 'different,' 'deviant,' 'exceptional,' or baffling"); Feminist Discourse, Moral Values, and the Law--A Conversation, 34 BUFF.L.REV. 11, 39 (1985) [hereinafter Feminist Discourse] (citing examples of hidden patriarchy in social and technical sciences).

[FN59] See Cole, supra note 5, at 622-24 (providing an extensive review of evidentiary sources indicating "that the poor suffer disproportionately from environmental hazards," including "the impacts of toxics production and disposal, garbage dumps, air pollution, lead poisoning, pesticides, occupational hazards, noise pollution and rat bites"); Richard Lazarus, Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection, 87 NW.U.L.REV. 787. 796 (1993) (noting that "minorities ... occupy significantly more environmentally hazardous jobs"); BULLARD, DUMPING IN DIXIE, supra note 7, at 35 (noting that "[t]oxic waste facilities are often located in communities that have high percentages of poor, elderly, young, and minority residents") (citing MICHAEL R. GREENBURG & RICHARD F. ANDERSON, HAZARDOUS WASTE SITES: THE CREDIBILITY GAP 158 (1984)); U.S. ENVTL. PROTECTION AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISK FOR ALL COMMUNITIES 10 (June 1992) [[hereinafter EPA, REDUCING RISK] (noting estimates that 80-90% of the country's two million hired farm workers are racial minorities and that "as many as 313,000 farm workers experience pesticide related illnesses each year); COMMISSION FOR RACIAL JUSTICE OF THE UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE IN THE UNITED STATES 15 (1987) [hereinafter Toxic WASTES AND RACE] (stating that nationwide, "race was consistently a more prominent factor in the location of commercial hazardous waste facilities than any other factor examined").

[FN60] Letter from Southwest Network for Environmental and Economic Justice to William K. Reilly,


[FN63] Johnson Controls, 499 U.S. 187; see also supra part II.A.1.

[FN64] See BULLARD, DUMPING IN DIXIE, supra note 7, at 89-95 (challenging myth that minority and low-income communities care less about environmental issues than other communities); Cole, supra note 5, at 640 n. 67 (same).

[FN65] See, e.g., BULLARD, DUMPING IN DIXIE, supra note 7, at 9-11; Cole, supra note 5, at 634-35.

[FN66] See, e.g., Cole, supra note 5, at 634-35 (describing three waves of the environmental movement).

[FN67] Id. at 634; BULLARD, DUMPING IN DIXIE, supra note 7, at 9. Although both the conservation and preservation movements advocated protection of wilderness areas, the two movements differed sharply over land-use decisions regarding the protected land. Conservationists, exemplified by the utilitarian Gifford Pinchot, the director of the U.S. Forest Service of the U.S. Department of Agriculture, saw protected land as a source of raw materials and resources that should be wisely drawn upon. Preservationists such as Muir of the Sierra Club and Stephen Mather of the National Park Service decried any exploitation of protected lands. See generally STEWART T. UDALL, THE QUIET CRISIS (1963).


[FN69] Cole, supra note 5, at 634.


[FN71] See, e.g., FIELD & STREAM (Midwest edition), Feb. 1996 (including no female subjects in photographs and no female writers among the authors of eight "feature" articles). Indeed, men almost completely dominate our country's rich tradition of nature writing, which celebrates the relationship between human beings and the outdoors. Vance, supra note 28, at 118-19 (noting the contributions of such male writers as Henry Thoreau, Ralph Waldo Emerson, John Muir, Edward Abbey, and John McPhee, and the contributions of rarer female writers such as Annie Dillard and Gretel Erlich).

[FN72] BULLARD, DUMPING IN DIXIE, supra note 7, at 11.

[FN73] Krauss, supra note 7, at 266.

[FN74] O'Loughlin, supra note 17, at 161.

[FN75] See supra note 70.


[FN77] See, e.g., Shutkin & Lord, supra note 76, at 1128; Lazarus, supra note 59, at 842; Cole, supra note 5, at 641-54.


[FN79] See Cole, supra note 5, at 642; see also Lazarus, supra note 59, at 812-14 (discussing the significant lobbying resources needed in the political process of environmental law creation).

[FN80] It is important to note that even though the first and second waves of environmentalism promoted male values and interests, individual women and women's organizations often supported these campaigns. In the late 1800s, for instance, women's organizations supported the preservationist movement, which eventually split from the more utilitarian group led by Theodore Roosevelt. MERCHANT, supra note 78, at 293-94. Marjory Stoneman Douglas brought national attention to the Florida Everglades and was instrumental in securing protection for much of that area by encouraging its designation as a national park. See generally MARJORY STONEMAN DOUGLAS, THE EVERGLADES: RIVER OF GRASS (1947). In the 1970s, the League of Women Voters played a leadership role in pushing for clean air and clean water legislation. MERCHANT, supra note 78, at 293-94. Such contributions were significant to the cause of environmentalism. Yet these efforts reveal a shortcoming of any effort to participate in a large, centralized movement under the control of others: while one may agree with the ultimate goal pursued

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(say, a cleaner planet), one can never be sure that the means employed will be the most beneficial to one's own constituency. See Richard Delgado, Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform, 68 N.Y.U.L.REV. 639, 654-55 (1993). This lesson was learned many times in the women's movement itself, as women of color struggled to bring their issues to the top of a national agenda controlled mainly by affluent white women. See infra part III.

[FN81] Commentators have used the term "mainstream" with respect to environmental groups to refer to the policies and strategies of the nation's ten largest environmental groups. Cole, supra note 5, at 635 (referring to "mainstream" environmental movement); Lazarus, supra note 59, at 812 (referring to "mainstream environmental organizations"). The term is not without controversy. Deeohn Ferris, for instance, has argued that referring to "mainstream environmental groups," as distinguished from "environmental justice groups," serves to marginalize the latter by inaccurately suggesting that they will never be part of the norm. Deeohn Ferris, Executive Director, Washington Office on Environmental Justice, Remarks at Crit Networks' Conference on the Politics of Class and the Construction of Identity, Washington, D.C. (Mar. 11, 1995). Ferris prefers the term "conventional environmental groups" to describe what others call "mainstream environmental groups." Id. Yet at least one commentator has questioned whether it is in the interest of environmental justice for environmental justice efforts to be considered part of the norm at all. See Luke Cole, Foreword: A Jeremiad on Environmental Justice and the Law, 14 STAN.ENVTL.L.J. at 11 (1995) [hereinafter A Jeremiad on Environmental Justice], (warning against efforts to nationalize or standardize approaches to environmental inequity). Without weighing in on this controversy, I use the term "mainstream environmental groups" because it is more commonly used among environmental justice commentators.

[FN82] See Carrie Menkel-Meadow, Portia in a Different Voice: Speculations on a Woman's Lawyering Process, 1 BERKELEY WOMEN'S L.J. 39, 51-52 (1985) (arguing that Anglo-American lawyering is an adversarial system that promotes competition and win/lose situations, both of which are generally associated with males); Carol M. Rose, Environmental Lessons, 27 LOY.L.REV. 1023, 1032 (1994) (describing how "all-or-nothing solutions, or slight variations on them, have dominated much of our environmental law, particularly in the early stages").

[FN83] Krauss, Blue Collar Women, supra note 22, at 112. EMPOWERING OURLSEVES, supra note 7, at 25 ("Women are frequently ignored by male politicians, male government officials, and male corporate spokesmen."); Hamilton, Concerned Citizens, supra note 2, at 215 (describing how male experts referred to women activists in California as "irrational, uninformed, and disruptive").

In pursuing environmental activism, women sometimes encounter sexist treatment from their husbands as well, who resent their wives' decisions to spend less time doing housework or caring for their children. Krauss, Blue Collar Women, supra note 22, at 112; Hamilton, Concerned Citizens, supra note 2, at 216. In some cases, such disputes have led to more equitable divisions of family tasks. Krauss, Blue Collar Women, supra note 22, at 114; Hamilton, Concerned Citizens, supra note 2, at 216. More often, they lead to significant family stress and sometimes divorce. Krauss, Blue Collar Women, supra note 22, at 114 (noting high divorce rate among environmental activists and increased reports of wife-battering after protest events).


[FN87] See supra part II.A.1.
[FN88] Foster, supra note 10, at 735.

[FN89] In contrast, commentators have criticized feminism for diminishing the importance of racial and class biases. See infra note 165 and accompanying text.


[FN95] Matsuda, supra note 92, at 618.

[FN96] GILLIGAN, supra note 1; MARY FIELD BELENKY ET AL., WOMEN'S WAYS OF KNOWING: THE DEVELOPMENT OF SELF, VOICE, AND MIND (1986); Menkel-Meadow, supra note 82, at 39; Sherry, supra note 94, at 581.


[FN98] See, e.g., Mahoney, Legal Images of Battered Women, supra note 97 (providing excerpts from interviews with battered women); Brief for the National Abortion Rights Action League et al., as Amici Curiae in Support of Appellees, Richard Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986) (Nos. 84-495 and 84-1379) (providing excerpts of letters from people whose lives had been affected by unwanted
pregnancy).


[FN100] Id. at 844.

[FN101] Justices O'Connor, Kennedy, and Souter jointly authored the plurality's opinion. Id. at 841.

[FN102] Id. at 893.

[FN103] Id. at 893-94. Justices Stevens and Blackmun concurred with this result in separate opinions, thus supplying a majority vote to strike down the provision. Id. at 911, 922-25.


[FN107] See, e.g., Bartlett, supra note 31, at 862-63 (discussing this concept in connection with perspectives of women that have traditionally been left out of much legal decision-making); Angela P. Harris, Race and Essentialism in Feminist Theory, 42 STAN.L.REV. 581, 614-15 (1990) (arguing that understanding the perspectives of women of different racial backgrounds strengthens the feminist movement).

The Casey plurality, in fact, employs the "bottom-up" perspective several times to expand its notion of what is constitutionally just. At one poignant moment, the plurality rejects the argument that a state's majority should determine whether abortion is legal. Casey, 505 U.S. at 852.


[FN109] Id. at 887-94.


[FN112] See Sherry, supra note 94, at 613 (noting that the "feminine influence" of Justice O'Connor's opinions does not seem to change her ultimate results).

[FN113] Casey, 505 U.S. at 885-87. Contrasting the plurality opinion in Casey with the majority opinion in Jane Roe v. Henry Wade, 410 U.S. 113 (1973), reinforces this conclusion. Justice Blackmun's majority opinion in Roe
held abortion restrictions to a higher standard of scrutiny than did the Casey plurality, but was often criticized by feminist scholars as treating the subject of abortion in the abstract and focusing too much on a pregnant woman's right to make medical decisions in conjunction with her doctor. See Roe, 410 U.S. at 163. In contrast, the Casey plurality may show greater sensitivity to women's historical and social experiences, but it ultimately weakens women's right to obtain an abortion.


[FN115] For brief descriptions of grassroots environmental campaigns in each of these communities, see Robert D. Bullard, Anatomy of Environmental Racism and the Environmental Justice Movement [hereinafter Bullard, Anatomy of Environmental Racism], in CONFRONTING ENVIRONMENTAL RACISM, supra note 3.

[FN116] Francis Calpotura & Rinku Sen, PUEBLO Fights Lead Poisoning, in UNEQUAL PROTECTION, supra note 2, at 234, 234; Janet Phoenix, Getting the Lead Out of the Community, in CONFRONTING ENVIRONMENTAL RACISM, supra note 3, at 77; Cole, supra note 5, at 672.


[FN118] See Cole, supra note 5, at 679-82 (using example of tenants' challenge to landlord over rat infestation as an illustration of the practice of environmental poverty law).

[FN119] I am reminded here of a poignant remark made by Deeohn Ferris, who, in a panel discussion on environmental justice, said that the most dangerous air pollutants in some poor communities were "bullets." Deeohn Ferris, Executive Director, Washington Office on Environmental Justice, Remarks at Crit Networks' Conference on the Politics of Class and the Construction of Identity, Washington, D.C. (Mar. 11, 1995).

[FN120] Nelson, supra note 10, at 175.

[FN121] See, e.g., O'Loughlin, supra note 17 (describing coalition between labor movement and environmentalists); Hamilton, Concerned Citizens, supra note 2, at 212 (describing coalition between an African American grassroots organization and "a diverse set of international, national, and grass-roots environmental groups").

[FN122] For instance, "[a]n investigation by California Rural Legal Assistance .... revealed that between 1982 and 1988, 58% of medical reports of possible fieldworker pesticide illness were discounted by the California Department of Food and Agriculture." Marion Moses, Farmworkers and Pesticides, in CONFRONTING ENVIRONMENTAL RACISM, supra note 3, at 161, 174. Of course, some instances of environmental contamination are, in fact, known to scientists and government agencies, but are nonetheless ignored for political and economic reasons. See, e.g., Ronald Robinson, West Dallas Versus the Lead Smelter, in UNEQUAL PROTECTION, supra note 2, at 92, 95-96 (reporting that city officials had known of lead exposure in West Dallas minority neighborhoods more than 10 years before the city council appointed a task force to study the problem).

[FN123] GARLAND, supra note 18, at 90-105 (describing the efforts of Cathy Hinds and others to fight for clean drinking water and the cleanup of industrial pollution in East Gray, Maine).
[FN124] See, e.g., SETTERBERG & SHAVELSON, supra note 7, at 45-47, (describing how a mother in rural Pennsylvania became an environmental activist after making a causal connection between a nearby acid plant and family medical problems, which included flus, swollen joints, and her son's ear infections); Maryanne Vollers, "Everyone Has Got to Breathe", AUDUBON, Mar.-Apr. 1995, at 64, 70 (reporting how residents of Chester, Pennsylvania began investigating industrial polluters after noticing an increase in respiratory problems, sooty air, and rat infestation); SETTERBERG & SHAVELSON, supra note 7, at 83-84 (describing how a father in Kentucky became an environmental activist after making a causal connection between a polluted creek and community ailments, which included "lingering bouts of diarrhea, vomiting, ulcers, kidney problems, and miscarriages"); id. at 142-43 (describing how a mother in Southern California became an environmental activist after wondering if the Stringfellow Acid Pits could be related to her son's neurological ailments).

[FN125] See, e.g., Krauss, Blue Collar Women, supra note 22, at 111-13 (recounting the efforts of Lois Gibbs and others in educating an "indifferent government" about the health threats at Love Canal).

[FN126] GARLAND, supra note 18, at 91. Such treatment may not only evidence distrust of "nonscientific" observation, but also sexism. See supra part II.A.2.

[FN127] For instance, as a result of her research and her work with scientists and public officials, Cathy Hinds became an "expert" on the issue of toxic wastes and was "respected by the press as articulate and reliable." GARLAND, supra note 18, at 102. At the same time, her activism and that of her colleagues sought to educate officials about toxic dangers by forcing officials to confront the stories and faces of real people who believed they had experienced those dangers. Id. at 96-97, 104-05 (recounting Hinds's testimony before the state legislature regarding her miscarriage and the testimony of an eight-year-old boy before EPA officials regarding his leukemia). Hinds's colleagues have also attempted through demonstrations to force government officials to put themselves in the position of endangered community members. During a particularly dramatic meeting on the subject of water quality, residents in Hinds's community brought in a jar of water from a local home and demanded that skeptical officials drink from it. According to Hinds, "They wouldn't have been able to get that water up to their noses, let alone drink it." Id. at 94.

The story of activists now leading a battle against toxic incinerators in Chester, Pennsylvania also illustrates the importance of fusing personal experience with objective facts. Although some Chester residents had intuitively linked local health problems to surrounding air pollution, they could not be taken seriously until government studies later confirmed their suspicions. As one EPA official noted, "The study gives our concerns [about toxic air emissions] tremendous credibility.... I think it's a stunning revelation for scientists, though the people who live there knew it all along." Vollers, supra note 124, at 72.


[FN130] Bullard, supra note 115, at 22-23 (referring to "[a]partheid-type housing and development policies [that] reduce neighborhood options, limit mobility, diminish job opportunities, and decrease environmental choices for millions of Americans"), see also Vicki Been, What's Fairness Got to Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses, 78 CORNELL L.REV. 1001, 1017 (1993) (discussing disproportionate minority populations in neighborhoods with hazardous wastes). In addition, the feminization of poverty has limited the housing options for many women who head households. For this reason homeless women with children make up "the largest, fastest growing subgroup of all homeless people today." Lynne Soine & Mary Ann Burg, Combining Class Action Litigation and Social Science Research: A Study in Helping Homeless Women with Children, 3 AM.U.J. GENDER & L. 159, 160 (1995).


[FN133] See, e.g., Cole, The Struggle of Kettleman City, supra note 61 (telling the story of community's legal and political battles while including empirical evidence to corroborate claims).


[FN136] Indeed, Catharine MacKinnon has called consciousness-raising "the major technique of analysis, structure of organization, method of practice, and theory of social change of the women's movement." MacKinnon, supra note 31, at 231-32.

[FN137] Mari Matsuda offers the following concrete example: "[w]omen who are currently told that strict enforcement of the legal guarantee of equal pay for equal work has created an abstract condition called 'equality' look at their own experience as underpaid workers, and then redefine 'equality' as equal pay for work of equal value." Matsuda, supra note 92, at 619-20.


[FN140] Matsuda, supra note 92, at 618 n. 34.

See, e.g., Marie Ashe, Zig-zag Stitching and the Seamless Web: Thoughts on "Reproduction" and the Law, 13 NOVA L.REV. 355 (1989); PATRICIA WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991). The use of personal narrative or other forms of "storytelling" has recently become popular among many critical scholars who see the approach as a way to better convey and analyze the perspectives of various disempowered groups. Though a useful and powerful tool, the practice has not gone uncriticized, even by some sympathetic to the ends. See, e.g., Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 STAN. L.REV. 807 (1993).

See, e.g., Leslie Bender, A Lawyer's Primer on Feminist Theory and Tort, 38 J. LEGAL EDUC. 3, 9-10 (1988) (depicting litigation as consciousness-raising); Menkel-Meadow, supra note 82, at 58 (depicting client interviews as opportunities for sharing a broad range of information so as to better understand a client's perspective in a given situation); Robert R. Verchick, Engaging the Spectrum: Civic Virtue and the Protection of Student Voice in School-Sponsored Forums, 24 J. MARSHALL L.REV. 339, 386-88 (1991) (depicting classroom lessons and student-faculty hearings as opportunities to share personal perspectives in order to prepare students for citizenship).

Matsuda, supra note 92, at 621.

See Cole, A Jeremiad on Environmental Justice, supra note 81, at 15.

GARLAND, supra note 18 (quoting Cathy Hinds). Celene Krauss writes:

Extended networks of kinship and friendship become political resources of opposition. For example, in one community in Detroit, women discovered patterns of health problems while attending Tupperware parties. Frequently, a mother may read about a hazard in a newspaper, make a tentative connection between her own child's health and the pollutant, and start telephoning friends and family, developing an informal health survey. Krauss, supra note 7, at 261.

Farenthold, supra note 19, at xx.

See Calpotura & Sen, supra note 116, at 234, 255 (reminding activists to "[c]elebrate your victories" and describing how after an important city council meeting the People United for a Better Oakland (PUEBLO) celebrated with "confetti, flowers, champagne, and root beer"); Cole, supra note 5, at 681 (relaying anecdote of low-income apartment residents who arranged for the fumigation of their building while holding a "block party in the street ... inviting residents of neighboring apartments to join them in the festivities").

Hamilton, Concerned Citizens, supra note 2, at 214.

Id.
oppression.

was mainstream outside who based women themselves white \[\text{FN162}\] \[\text{FN161}\] \[\text{FN157}\] \[\text{FN156}\] \[\text{FN155}\] \[\text{FN154}\] \[\text{FN153}\] \[\text{FN152}\] \[\text{FN151}\] Birkeland, supra note 7, at 52.

See generally EDWARD ABBEY, DESERT SOLITAIRE (1968).


Lazarus, supra note 59, at 850-52.

See, e.g., id. at 819-22 (noting the lack of minority voices in environmental policymaking).

See generally Harris, supra note 107, at 585 (arguing against the notion of an "essential" women's experience that ignores issues of race, class, and sexual orientation); Marlee Kline, Race, Racism, and Feminist Legal Theory, 12 HARV. WOMEN'S L.J. 115 (1989) (noting that feminist legal scholars often overlook racial identity); Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U.CHI. LEGAL F. 139 (1989) (arguing that black women are often excluded from feminist theory).

Kline, supra note 160, at 124.

As Angela Harris explains, "In the first wave of the feminist movement, black women's realization that the white leaders of the suffrage movement intended to take neither issues of racial oppression nor black women themselves seriously was instrumental in destroying or preventing political alliances between black and white women within the movement." Harris, supra note 107, at 586-87. Feminism's second wave produced similar schisms based on race. Betty Friedan's book The Feminine Mystique, for instance, spoke to the white suburban housewife who wanted to work outside the home, but seemed irrelevant to many black women who had already been working outside the home and raising their families as well. See PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA 299 (1984). In the 1970s, as the mainstream feminist movement became dominated by the National Organization for Women (whose membership was primarily white and middle-class), many blacks questioned that organization's commitment to combatting racial oppression. Id. at 307-09. The marginalization of women of color in the national women's movement is not unlike
the marginalization of women and people of color in the mainstream environmental movements.

[FN163] See, e.g., Harris, supra note 107, at 586-88. As Toni Morrison explained years earlier, "Too many movements and organizations have made deliberate overtures to enroll Blacks and have ended up rolling by them. They don't want to be used again to help somebody gain power--a power that is carefully kept out of their hands." Toni Morrison, What the Black Woman Thinks About Women's Lib, N.Y. TIMES, Aug. 22, 1971 (Magazine) at 15, quoted in GIDDINGS, supra note 162, at 308.

[FN164] See Harris, supra note 107, at 586-88; Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 WOMEN'S RTS.L.REP. 7, 9-10 (1989).

[FN165] Martha Minow, for instance, applies a "social-relations" approach (which draws on feminist concepts of unmasking, contextual reasoning, and personal experience) to the issue of discrimination against the disabled. See MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 110-20 (1990). Minow later argues that "relational ideas of the self and relational theories of knowledge and reasoning offer much to legal thought and to the legal treatment of 'differences' that include but are not limited to gender differences." Id. at 212-13.


[FN168] "The term ecofeminisme was coined by the French writer Françoise d'Eaubonne in 1974." Carolyn Merchant, Ecofeminism and Feminist Theory, in REWEAVING THE WORLD, supra note 2, at 100.

[FN169] For two interesting and diverse collections of recent ecofeminist writing, see REWEAVING THE WORLD, supra note 2, and ECOFEMINISM, supra note 7.


[FN171] See, e.g., O'Loughlin, supra note 17; Birkeland, supra note 7; Lee Quinby, Ecofeminism and the Politics of Resistance, in REWEAVING THE WORLD, supra note 2; Vance, supra note 28.

[FN172] Not all ecofeminist writing has been as sensitive to issues of multiple oppression (that is, the relationship between sexism, racism, classism, and other biases) as the writers listed above. Some earlier ecofeminist writings, in particular, betray essentialist tendencies and, as a result, have offended current ecofeminists who do not fit the "middle-class, white, heterosexual" mold. For criticism of essentialist tendencies in some ecofeminist writing and for proposals for more inclusion, see Vance, supra note 28, at 119; Quinby, supra note 171, at 126; and O'Loughlin, supra note 17, at 147-48.
O'Loughlin, supra note 17, at 148; Birkeland, supra note 7, at 13, 18; King, supra, note 7, at 106-07.

See Birkeland, supra note 7, at 23-25 (discussing the "'masculinist' notion of reason--removed from emotion and intuition and disciplined by scientific method" and "the historic association of women, nature, and earth"); Donovan, supra note 78, at 174-75 (noting a "postmedieval, Western, male psychology" that gave rise to a scientific method that distanced itself from nature and sought to subdue many of its objects of study, including women); Susan Griffin, Curves Along the Road, in REWEAVING THE WORLD, supra note 2, at 87, 88 (explaining how society "assigns to the masculine the province of the soul, spirit, or the transcendent" and to the feminine "nature and the Earth").

See, e.g., King, supra note 7, at 106-07 (referring to "systems of hatred of all that is natural and female by the White, male, Western formulators of philosophy, technology and death inventions").

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Publication page references are not available for this document.

As Ynestra King explains, "[T]he systematic denigration of working-class people and people of color, women, and animals is connected to the basic dualism that lies at the root of Western civilization". King, supra note 7, at 106-07. Zuleyma T. Halpin, explains further:

Women have been oppressed, not so much because they have been equated to nature, but rather because both women and nature have been equated to "the Other" [and also that] ... the same dynamic that has resulted in labeling women as inferior and justified society's domination of women and nature, has done the same during most of our history, to Blacks and other people of color, Jews, the poor, and gay or lesbian persons. Zuleyma T. Halpin, Scientific Objectivity and the Concept of "The Other", 12 WOMEN'S STUD. INT'L F. 286 (1989), quoted in O'Loughlin, supra note 17, at 148.

O'Loughlin, supra note 17, at 148.

As Lee Quinby writes, "[l]istening to all voices of subjugation and hearing their insurrectionary truths make us better able to question our own political and personal practices." Quinby, supra note 171, at 127. For Quinby such voices include those of the nonhuman world as well, including "[t]he cries of factory farm animals" and "the sounds of flood waters rushing over deforested land." Id.; see also O'Loughlin, supra note 17, at 148.

O'Loughlin, supra note 17, at 149.

Id. at 149-50.

See id. at 147; Quinby, supra note 171, at 124; Epstein, supra note 10, at 150-51.

Vance, supra note 28, at 135.

Ecofeminists have praised Gibbs' efforts. See, e.g., MERCHANT, supra note 78; and Nelson, supra note 10, at 184.

See Nelson, supra note 10, at 181.

Ecofeminists have praised Gibbs' efforts. See, e.g., MERCHANT, supra note 78; and Nelson, supra note 10, at 184.

See Merchant, supra note 168, at 105.

Linda Vance writes:
Diversity of experience and expression, like diversity of life forms, is a necessary goal of ecofeminism. There can be no single set of answers, no one portal through which to enter. To insist on a single ideology, or a single praxis, is to deny the tremendous complexity of the problems that centuries of patriarchy have created.... The point is that we don't have to be in the same place; we simply have to be doing something, and seeing the connectedness of it all, and not undoing or denying each other's work.
Vance, supra note 28, at 135.

See, e.g., Birkeland, supra note 7, at 23 (noting that "men can subscribe to ecofeminism, and, in fact, their cooperation is necessary if we are to save the planet"); O'Loughlin, supra note 17, at 148 (agreeing that "diversity must be central to ecofeminism").

Recalling the words of Gloria Anzaldúa, O'Loughlin writes that in an ideal, "transformative" feminism, "whites [would] 'come to see that they are not helping us but following our lead.' " Id. at 149 (quoting GLORIA ANZALDÚA, BORDERLANDS/LA FRONTERA: THE NEW MESTIZA 85 (1987)). Here, I am reminded of Maya Angelou's chilling lines from a poem of the late 1960s: "I'll believe in Liberal's aid for us/When I see a white man load a Black man's gun." Maya Angelou, On Working White Liberals, in THE COMPLETE COLLECTED POEMS OF MAYA ANGELOU 47 (1994).

O'Loughlin, supra note 17.

Id at 147.

Id.

Id. at 156.

Id. at 151.

Id. at 149.
[FN197] Id. at 151-52.

[FN198] Id. at 150. For instance, O'Loughlin reports that "a UFW brochure asks consumers, 'What Do You and a Farm Worker Have in Common?' and then answers, 'Exposure to Poisonous Chemicals!' " Id. at 151.

[FN199] Id. at 152 (noting that according to the UFW, the same dangerous pesticides that cause illness to workers when misapplied now are thought to contaminate the ground water of 23 states).

[FN200] According to O'Loughlin, the use of the boycott as a means to redress such practices is particularly appropriate because, unlike a worker strike, a boycott encourages action on the part of both worker and consumer, thereby building a solidarity between the two groups. Boycotts also better protect workers from direct attacks by employers, since their actions are less obvious than in a strike. Finally, calls to boycott produce, which are mainly directed at female consumers, serve to educate women and empower them to effect social change en masse. Id. at 157-60.

[FN201] Id. at 147 ("I am not saying the UFW is ecofeminist; I wish rather, to show that the [ecofeminist and farm workers'] movements share common concerns and can learn from each other.").


[FN205] "The National Priorities List, developed as a result of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), is a list of the approximately 1200 worst hazardous waste sites in the country." Samara F. Swanston, Race, Gender, Age, and Disproportionate Impact: What Can We Do About the Failure to Protect the Most Vulnerable?, 21 FORDHAM URB.L.J. 577, 579 n. 8 (1994).


[FN207] See Lavelle & Coyle, supra note 62, at 141 (noting that sites located near white communities arrive on the Superfund list 20% faster than sites near communities with high minority populations).

[FN208] Id. at 584-85.

[FN209] For instance, in 1990, the SAB concluded that "hazardous waste, pesticides, and airborne toxins do not represent high risk problems, while global climate change, loss of biodiversity, and stratospheric ozone depletion
present greater risks." Swanston, supra note 205, at 580. Swanston notes that the SAB utilized only minimal amounts of data on human exposure. Id. at 580 n. 16.


[FN212] See John H. Cushman, Jr., House Bill Would Block New E.P.A. Pollution Rules, N.Y. TIMES, July 27, 1995, at A18 (noting that the House of Representatives is preparing to vote on a measure prohibiting the enforcement of air pollution regulations against the oil refining industry).

[FN213] See Donald T. Hornstein, Reclaiming Environmental Law: A Normative Critique of Comparative Risk Analysis, 92 COLUM.L.REV. 562, 611 (1992) ("Indeed, seen in this light the enormous literature on various forms of agency capture may be viewed as documenting a particularly powerful set of influences that will prevent some (perhaps many) decisions from reflecting a fully unbiased, scientific assessment of probabilities.").

[FN214] For instance, comparing the "zero risk" standard applied to cosmetics under federal law with the "no unreasonable risk" standard applied to pesticides, Samara Swanston concludes, "It is immediately apparent that the protection provided to the woman who purchases lipstick is far greater than that provided to the minority woman or individual who harvests your food." Swanston, supra note 205, at 584 n. 42 (comparing the "Delaney Clause" of the Food, Drug and Cosmetic Act with the Federal Insecticide, Fungicide and Rodenticide Act).


[FN216] Swanston, supra note 205, at 588-89 (citing EPA, REDUCING RISKS, supra note 59, at 21); Nelson, supra note 10, at 176-78.

[FN217] Swanston, supra note 205, at 592. Because women have a greater percentage of body fat than men, they tend to accumulate more damaging levels of such toxins. Id.

In what may be an example of this phenomenon, the San Francisco Department of Health recently found significantly higher than normal rates of breast and cervical cancers in the city's Bayview/Hunters Point District, a predominantly African American neighborhood near the contaminated Hunters Point Naval Shipyard. BUREAU OF EPIDEMIOLOGY, DISEASE CONTROL AND AIDS, SAN FRANCISCO DEPT OF HEALTH, COMPARISON OF INCIDENCE OF CANCER IN SELECTED SITES BETWEEN BAYVIEW/HUNTERS POINT AND SAN FRANCISCO AND THE BAY AREA 3 (1995); Jane Kay, Cancer Rates Soar in Bayview Women, S.F. EXAMINER, Aug. 18, 1995, at A1. The Department found no higher rates of cancer among men. BUREAU OF EPIDEMIOLOGY, DISEASE CONTROL AND AIDS, SAN FRANCISCO DEPT OF HEALTH, supra, at 7. So far, it has not established a cause (environmental or otherwise) for the higher cancer rates in women. Id. at 1.

[FN218] Such damage, which is sometimes called "ecological illness" or "chemical sensitivity," is often associated with either acute or chronic exposure to "formaldehyde, pesticides, natural gas fumes, perfumes, scents, and solvents." Nelson, supra note 10, at 176-77 (citing Earon Davis, Ecological Illness, TRIAL, Oct. 1986, at 34. But see Clinical Ecology: Report of the American Medical Association's Council on Scientific Affairs, JAMA, Dec. 23/30, 1992, at 3465-66 (finding a lack of well-controlled studies to establish the phenomenon). The disproportionate incidences of ecological illness in women may result from biology, exposure patterns, reporting patterns, or a
combination of these factors. Nelson, supra note 10, at 176-77 n. 2.

[FN219] This may be attributed to fluctuations in the blood progesterone levels during the menstrual cycle. Susan D. Fox et al., Enhanced Response to Ozone Exposure During Follicular Phase of the Menstrual Cycle, 101 ENVTL. HEALTH PERSP. 242, 242-44 (1993). Ozone exposure can cause airway inflammation, respiratory discomfort, and pulmonary impairment. Id. at 242.

[FN220] Toxic exposures can cause infertility, miscarriages, and harm to the fetus. Jean Maccharioli Eggen, Toxic Reproductive and Genetic Hazards in the Workplace: Challenging the Myths of the Tort and Workers' Compensation Systems, 60 FORDHAM L. REV. 843, 848-51; see also Mark R. Cullin et al., Occupational Medicine, 322 NEW ENG.J.MED. 675, 676 (1990). Toxins, such as those found in herbicides, can accumulate in lactating women and pass to a nursing child. Nelson, supra note 10, at 180; Kati Cook, A Community Health Project: Breastfeeding and Toxic Contaminants, 2 INDIAN STUD. 15 (1985).

[FN221] The standards suggest that the "average healthy black male has a vital capacity approximately 85% of the average healthy white male." Swanston, supra note 205, at 589; see 29 C.F.R. § 1910.1043(h)(2)(iii) (1995) (requiring that predicted pulmonary function measurements for blacks be "multiplied by 0.85 to adjust for ethnic differences").

[FN222] Swanston, supra note 205 at 589. See also EPA, REDUCING RISK, supra note 59, at 21 (noting that minority and low-income individuals suffer more adverse health effects as a result of exposure to polluting facilities).


[FN224] Swanston, supra note 205, at 589.

[FN225] Id. at 590.

[FN226] Id. at 590-91.

[FN227] EPA, REDUCING RISK, supra note 59, at 18 (observing that most epidemiological studies are based on white men); Swanston, supra note 205, at 597 (pointing out that "[r]isk assessment ... assumes that white males are appropriate surrogates for minorities, women, and children, a[n] inaccurate hypothesis"); Howard Latin, Good Science, Bad Regulation, and Toxic Risk Assessment, 5 YALE J. ON REG. 89, 140 (1988).

[FN228] The EPA is now planning twice as many studies on male reproductive risk as on female reproductive risk, despite women's historic underrepresentation in earlier studies. Swanston, supra note 205, at 599-600 (citing National Inst. of Envtl. Health Sciences, What's Good for the Gander May Not Be Good for the Goose, 101 ENVTL. HEALTH PERSP. 121, 121-22 (1993)).

[FN229] See Cole, supra note 5, at 642-45 (discussing differences between traditional and grassroots
environmentalism); Lazarus, supra note 59, at 792-93.

[FN230] Here I do not mean to suggest that environmental policymakers are intentionally colluding to promote standards designed primarily for men, but that such results follow, consciously or unconsciously, where decisionmaking bodies are made up overwhelmingly of one demographic group. See Boyle, supra note 10 (describing psychology of unconscious discrimination as applied to environmental justice). For authority that environmental policymakers in management roles are overwhelmingly white and male, see infra part IV.B.2.


[FN232] The two measures could occur simultaneously. As Samara Swanston notes, policymakers should not wait decades for the results of more studies, but should, instead, apply more conservative baseline protections (or even outright bans on some chemicals) until the true health consequences for vulnerable groups are known. Swanston, supra note 205, at 602-04.

[FN233] See infra part IV.A.1

[FN234] See Sharron A. Frontiero v. Elliot L. Richardson, 411 U.S. 677, 684 (1973) (arguing that discrimination rationalized by "an attitude of 'romantic paternalism' " has "put women not on a pedestal, but in a cage").


[FN238] Margaret M. Dwyer, Women and the Military 37 (Spring 1995) (unpublished manuscript, on file with the Harvard Women's Law Journal) (citing JEANNE HOLM, WOMEN IN THE MILITARY: AN UNFINISHED REVOLUTION 480 (1992)). In 1991, Congress repealed regulations prohibiting women from flying combat missions in the Air Force or Navy. Id. Even so, women remain barred from many combat positions in the military. Id. at 70; Lucinda J. Peach, Women at War: The Ethics of Women in Combat, 15 HAMLINE J.PUB.L. & POL'Y 199, 204 (1994) (noting that "the military has excluded women from almost all assignments that involve operating offensive line-of-sight weapons, in addition to all positions involving ground fighting").


[FN240] See id.

[FN241] Nelson, supra note 10, at 178. According to Nelson, a survey conducted by Maureen Paul of 200 chemical and electronics plants in Massachusetts revealed that one in five had "fetal protection policies" that removed women from hazardous zones. Id. at 178 (citing Maureen Paul, A Survey of Corporate Practices Regarding Reproductive


[FN244] Johnson Controls, 499 U.S. at 205; see also supra part II.A.1.

[FN245] Determining cleanup standards on the basis of how a polluted site will be used in the future has been a contentious issue in debates over reauthorization of the federal Superfund law. Different Standards for Industrial Use?, ENVTL.F., Nov.-Dec. 1993, at 34. Some argue that allowing abandoned industrial sites, known as "brownfields," to be redeveloped with lower cleanup standards and with permanent land-use restrictions (e.g., "for industrial use only") will encourage economic development in urban industrial areas, thus helping minorities and the poor. See, e.g., James T. O'Reilly, Environmental Racism, Site Cleanup and Inner City Jobs: Indiana's Urban In-fill Incentives, 11 YALE J. ON REG. 43, 72-73 (1994). Others fear that lowering cleanup standards near areas in which many minorities and poor people live will simply increase the disproportionate environmental burdens they already bear. See, e.g., Deohn Ferris, "Future Use" Would Continue Past Inequities, ENVTL.F. Nov.-Dec. 1993, at 36. Even without (as of this writing) a reauthorization of the Superfund law, many states and the EPA have taken actions to encourage brownfield redevelopment along these lines. John Holusha, Cities Redeveloping Old Industrial Sites with E.P.A.'s Aid, N.Y. TIMES, Dec. 4, 1995, at A1.

[FN246] The level of permanent cleanup standards is, of course, an issue that can divide even a predominantly poor or minority community. Although it is plausible that the cost of more rigorous cleanups will drive future employers away, it is equally plausible that restricting more and more land for "industrial use only" will result in a shortage of land for essential non-industrial uses, such as schools, day-care facilities, and nursing homes. How any given resident feels about this trade-off will depend on the seriousness of unemployment in the area, the expected need for future non-industrial facilities, and the degree to which that person sympathizes with the needs of children, the elderly, and others who most need those facilities.

[FN247] The debate over welfare benefits to unwed mothers is one example of such backlash. Out of resentment for public expenditures devoted to children born out of wedlock, many would place greater burdens on the mothers receiving public benefits than on the equally responsible (and often absent) father. See Hilary Stout, Some GOP Congresswomen, Uneasy with Parts of Welfare Plan, May Play a Moderating Role, WALL ST.J., Feb. 14, 1995, at A24 (reporting an uneasiness among Republican Congresswomen with some Republican proposals to overhaul welfare by "tossing poor women and children off the public assistance rolls"), Soine & Burg, supra note 130, at 162-63 (noting that "welfare mothers" are erroneously assumed "to be lazy, to give birth to additional children just to increase their welfare grant, and to be generally satisfied to remain dependent on public welfare").

[FN248] See Swanston, supra note 205, at 581 (noting the change in federal priorities). By this comment I do not mean to suggest that global warming and ozone depletion are undeserving of research funds or that such research is insignificant. Such global issues may be among the most significant environmental concerns we face. See AL GORE, EARTH IN THE BALANCE: ECOLOGY AND THE HUMAN SPIRIT 29 (1992). Indeed, people of color living in Third World countries are perhaps the most threatened by these global disasters and, accordingly, would have the most to gain from worldwide efforts to reduce greenhouse gases and ozone-depleting chemicals. My point, however, is that policymakers do not always consider the interests of people of color in determining
what issues to emphasize or de-emphasize. The United States devotes attention to the extremely important issues of ozone depletion and global warming, not because they pose great threats to the Third World, but because they also pose threats to the United States. Resources devoted to abating the threats of toxic dumping are reduced because those in the majority do not perceive that such threats affect them very much. See infra part IV.B.


[FN250] The phrase refers to daily behavioral and psychological cycles, which, in human beings, include metabolic, glandular, and sleep cycles, among others.

[FN251] Swanston, supra note 205, at 590 (citing EDWARD J. CALABRESE, POLLUTANTS AND HIGH RISK GROUPS: THE BIOLOGICAL BASIS OF INCREASED HUMAN SUSCEPTIBILITY TO ENVIRONMENTAL AND OCCUPATIONAL POLLUTANTS 26, 34-65, 93-112 (1978)).

[FN252] Id. at 591.

[FN253] Id.


[FN256] "Exposure to lead can have a variety of negative reproductive effects in men, including impotence, sterility, decreased libido, decreased spermatogenesis, and effects on sperm motility and morphological features." Mary E. Becker, Can Employers Exclude Women to Protect Children?, JAMA, Oct. 24/31, 1990, at 2113. In addition, some evidence suggests that "the incidence of fetal abnormalities has been higher than normal for the children of male workers exposed to lead." Id.

[FN257] See Nelson, supra note 10, at 180 ("In certain state departments of health and the federal Environmental Protection Agency (EPA) and the National Institute of Occupational Safety and Health (NIOSH), there is a growing momentum around reproductive risk assessment.").

[FN258] Id.

[FN259] Id.


[FN261] GARLAND, supra note 18, at 96-97; Phoenix, supra note 116, at 87; Calpotura & Sen, supra note 116, at 243-46.
When, in a given context, a person views another in a unidimensional or stereotypical way, one may expect the observer to carry those stereotypes into other contexts as well. Imagine a medical researcher who had spent weeks examining African American or Latina women in impersonal and intimidating surroundings. It might not be surprising to find that person later treating women of color as passive or vulnerable in other circumstances. The concept that stereotypes learned in one context can spill over into other contexts is a strong theme in feminism. Indeed, this idea figures prominently in some feminists' objection to pornography: that men learn harmful stereotypes about women that will later influence male conduct in both sexual and non-sexual contexts. See MacKinnon, supra note 31, at 253-55.

Phoenix, supra note 116, at 86-88 (citing Francis Calpotura, PUEBLO (People United for a Better Oakland) and Lead Poisoning (Excerpts from speech presented at the National Conference on Preventing Childhood Lead Poisoning, Washington, D.C. (Oct. 7, 1991)). Lead poisoning is of particular importance to environmental justice advocates. As Robert Bullard observes, "Lead poisoning is a classic example of an environmental health problem that disproportionately affects African American children at every class level. Lead affects between 3 and 4 million children in the United States--most of whom are African Americans and Latinos who live in urban areas." BULLARD, DUMPING IN DIXIE, supra note 7, at 98-99.

Understandably, residents often felt completely betrayed. As one mother put it, "We were just used as laboratory rats. [The state] did this study with no intention to follow up." Id. at 244.

In contrast, the local state-supported outpatient clinics at the time had few or no bilingual or multilingual staff members. Phoenix, supra note 116, at 87.

The exclusion I refer to here is not de jure exclusion, as in Johnson Controls, but de facto. Had the community failed to win its call for an abatement program, families with young children, who are more susceptible to lead poisoning than others, would have been driven to abandon their homes--effectively "excluded" by the continuing presence of contamination.

Indeed, recent evidence shows that the threat of lead contamination is much more widespread than earlier imagined. In Massachusetts, the only state with universal lead screening, preliminary results show that lead poisoning "involves children from all communities and socio-economic levels." Phoenix, supra note 116, at 88.

Nelson, supra note 10, at 181.
matters of life and death."

CULTURE

[FN284] supra [FN283]

assessments).

Folk, supra note 202, at 185-86 (citations omitted).

concerns, fears for the next generation, and unknown effects of the cleanup itself--are ignored.

law:

[FN282] Bartlett, supra note 31, at 862. As Ellison Folk argues in a discussion of risk assessment in the Superfund law:

Technical inquiries are limited by what have been called "golden rules" and "golden numbers"--immutable rules and numbers which skew the analysis and inhibit discussion of the values underlying them. As the policy debate continues, constrained by these assumptions, many of the issues that people really care about--such as health concerns, fears for the next generation, and unknown effects of the cleanup itself--are ignored.

Folk, supra note 202, at 185-86 (citations omitted).

[FN283] See Folk, supra note 202, at 188 (questioning the exclusive focus on cancer deaths in many risk assessments).

[FN284] See Bartlett, supra note 31, at 862. Some environmental or even scientific commentators agree. See Folk, supra note 202, at 189 ("Whether a particular community feels that a risk is acceptable is a political and social decision as much as a technical and rational one."); MARY DOUGLAS & AARON WILDAVSKY, RISK AND CULTURE 73 (1982) ("It is a travesty of rational thought to pretend that it is best to take value-free decisions in matters of life and death.").
[FN285] See Cross, supra note 275, at 891 (distinguishing between the "technosphere" and the "demosphere" of risk assessment issues).

[FN286] See generally Freeman & Godsil, supra note 204.


[FN288] Cross, supra note 275, at 890 n. 5.

[FN289] Id. at 937 (noting the "[p]ublic perception ... will reflect the concerns of the majority, particularly those with the resources to be heard, and may discriminate against the disadvantaged minorities"). Sometimes the distance provided by an institutional role may also lead agency staff to underestimate community fears in contaminated areas. See Folk, supra note 202, at 188 (noting that EPA's perception of risk as a "detached observer" will differ from the perception of residents actually living in a contaminated area).

[FN290] James Flynn et al., Gender, Race, and Perception of Environmental Health Risks, 14 RISK ANALYSIS 1101 (1994). I use the term "non-white" in this discussion reluctantly. The term implicitly suggests a white norm, an idea that I do not wish to endorse. Nonetheless in discussing the results of the above survey, the phrases "people of color" or "racial minorities" seem slightly unwieldy. The authors of the survey, themselves, use the term "non-white" to report their data.

[FN291] The 25 hazards were: street drugs, cigarette smoking, AIDS, stress, nuclear waste, chemical pollution, suntanning, ozone depletion, drinking alcohol, motor vehicle accidents, pesticides in food, outdoor air quality, blood transfusions, climate change, nuclear power plants, coal/oil burning plants, bacteria in food, food irradiation, genetically engineered bacteria, storms and floods, high-voltage power lines, radon in homes, video-display terminals, medical x-rays, and commercial air travel. Id. at 1102-03.

The survey also questioned respondents about the riskiness of their local environments, their attitudes toward government and business, their general "worldviews," their personal risk-taking behavior, and the demographics of their households. Id. at 1102.

[FN292] Id. at 1102-04. This finding, in fact, is corroborated by "several dozens of studies." See id. at 1101 (citing several studies).

[FN293] Id. at 1105.

[FN294] Id. at 1101.

[FN295] Id. at 1103 (Table II). In addition, and related to this finding, the researchers found that white males and white females differed considerably in their perceptions of risk, but that non-white males and non-white females did not. Id. at 1107.
[FN296] Id. at 1107. This finding is supported by an earlier study that found that even "women physical scientists perceive risks from nuclear technologies as higher than do men physical scientists." Id. at 1104 (citing R. Barke, et al., Risk Perceptions of Men and Women Scientists (1994) (unpublished manuscript)).

[FN297] See infra notes 316-319 and accompanying text.

[FN298] Indeed, Flynn, Slovic, and Mertz report that the surveyed white men who had lower risk-perception scores held markedly different social attitudes from the other groups (i.e., white females, non-white males and females, and white males with moderate to high risk-perception scores). Flynn et al., supra note 290, at 1106 (describing the methodology of this part of the survey). For instance, the white men with low risk perceptions were more likely to agree that it is acceptable for society to impose very small risks on individuals without their consent (31.7% of low-risk-perception white men agreeing, versus 20.8% of the remaining respondents) and "that future generations can take care of themselves when facing risks imposed upon them from today's technologies" (64.2% of low-risk-perception white men agreeing, versus 46.9% of remaining respondents). Id. These men also placed more trust in the ability of government and industry to manage the risks from technology properly (48.0% of low-risk-perception white men agreeing, versus 31.1% of remaining respondents), and were more likely to disagree with the idea that local residents should be given authority to shut down a nuclear plant if they think it is not run properly (50.4% of low-risk-perception white men disagreeing, versus 25.1% of remaining respondents). Id.

[FN299] Id. at 1107.

[FN300] Id.

[FN301] See supra part IV.A.

[FN302] See, e.g., BULLARD, DUMPING IN DIXIE, supra note 7, at 6-7.


[FN304] See Bullard, supra note 115, at 27 (noting that "[w]aste generation directly correlates with per capita income").

[FN305] Cross, supra note 275, at 926.


[FN307] Cross, supra note 275, at 914-15; Gillette & Krier, supra note 279, at 1076.

[FN308] See Cross, supra note 275, at 915 (regarding individual benefit); Gillette & Krier, supra note 279, at 1076-
77 (regarding control); Paul Slovic, Perception of Risk, 236 SCIENCE 280, 283 (1983).


[FN310] Robert D. Bullard, The Legacy of American Apartheid and Environmental Racism, 9 ST. JOHN'S J. LEGAL COMMENT 445, 447-48 (1994) (noting the evidence of discriminatory lending practices and the result of restricting the ability of people of color to escape from hazardous living conditions); Rachel D. Godsil, Note, Remediying Environmental Racism, 90 MICH. L. REV. 394, 399 (1991) (suggesting that "minority communities are targeted for hazardous waste facilities and other environmental hazards by waste-management firms because their residents are more likely to be poor and politically powerless"). Opposition may in some cases be undercut by a developer's offer of economic incentives to accept the hazard. Many view such gestures as cynical ways to take advantage of a community's poverty or desperation for jobs. Even if a hazard is accepted on those terms, one can legitimately question the voluntary nature of such a bargain. See Been, supra note 130, at 1041.


[FN312] See Austin & Schill, supra note 7, at 67.

[FN313] See Nelson, supra note 10, at 178 (noting that the "choice between a hazardous workplace and demotion or unemployment is no choice at all").

[FN314] Cross, supra note 275, at 919.

[FN315] See Folk, supra note 202, at 188.

[FN316] See Maria Shao et al, Affirmative Action in Crisis: Plan Has Strayed Far From Goals, Detractors Claim, ARIZ. REPUBLIC, June 11, 1995, at A1 ("White men still control more than 95 percent of senior-management jobs in America's largest corporations. They hold all but 10 seats in the U.S. Senate and more than 80 percent of those in the House. They earn more than white women, African Americans and Hispanics with comparable education."); Department of Labor, Good for Business: Making Full Use of the Nation's Human Capital Fact-Finding Report of the Federal Glass Ceiling Commission, DAILY LAB. REP., Mar. 17, 1995 (Special Supplement DLR No. 52) ("According to surveys of Fortune 1500 companies ... 95 to 97 percent of senior managers--vice presidents and above-- were men... 97 percent of male top executives are white."); see also Shari Caudron, The Concrete Ceiling, INDUSTRY WK., July 4, 1994, at 31 ("Equal Employment Opportunity Commission statistics show women held less than a third of all management jobs in 1992. At the vice-president level, women make up an even smaller percentage--less than 5% in 1990, according to Catalyst, a New York research group that studies women in business. The dearth of women in management is especially prevalent in manufacturing, where women hold only 15.9% of management positions, versus 38% in services and 41% in financial- services companies.").

Although the EPA's workforce, as a whole, is evenly divided along gender lines, and just over one-fourth of its workforce are people of color, "women and minorities continue to be underrepresented in EPA's management staff." BULLARD, DUMPING IN DIXIE, supra note 7, at 101 (reporting that in 1992 "women and minorities constituted 28 percent and 9.7 percent, respectively, of the management staff"); see also Lazarus, supra note 59, at 822 (noting underrepresentation of minorities in several federal agencies and departments charged with implementing environmental laws).

See, e.g., Gutiérrez, supra note 12, at 225 (explaining that because politically powerless Latino communities have been restricted to local confrontations, "Latino American residents have traditionally been ignored" in decisions over the siting of state projects). The relationship between control and risk has long been acknowledged in the women's movement, as evidenced in "Take Back the Night" marches and the popularity of women's self-defense classes. Recognizing that a preoccupation with one's exposure to risk can disempower and debilitate, feminists urge "victims" of sexism to seize control of their lives, bodies, and neighborhoods and to claim the power to transform society.

See Cole, supra note 5, at 646 (arguing that "poor people and people of color bear a disproportionate share of environmental burdens" and that the "environmental laws are working as designed" to effect this inequality); see also Lazarus, supra note 59, at 788.

BULLARD, DUMPING IN DIXIE, supra note 7, at 105-06; Cole, supra note 5, at 622.

See Hazardous Waste and Native Americans, in COMMUNITIES AT RISK, supra note 13 (reporting a total of 450 sites on Indian lands in which hazardous wastes have been allegedly improperly disposed); Robert D. Bullard, Conclusion: Environmentalism with Justice, in CONFRONTING ENVIRONMENTAL RACISM, supra note 3, at 195, 201.

See Melanie Mavrides, Downwind Women, SEATTLE WKLY., Dec. 14, 1994, at 22, 24 (reporting 40 years of radiation releases from Hanford, Washington and asking, "[H]ow can you remain sane when you feel the government has betrayed you and has refused to pay your mounting medical bills[?]`). This example proves especially relevant because many believe that female residents suffer greater health effects (including stillbirths and miscarriages) than do male residents. Id. (noting that ".[e]ven the biggest skeptics would find it difficult to be unsympathetic toward the women living in the shadows of Hanford").

Cross, supra note 275, at 921 (observing that ".[r]isks with catastrophic potential are reportedly perceived by the public as up to fifty times more risky than non-catastrophic risks") (citing D. Litai et al., The Public Perception of Risk, in THE ANALYSIS OF ACTUAL VERSUS PERCEIVED RISKS 213, 219 (Vincent T. Covello et al. eds., 1981)).


See, e.g., Cross, supra note 275, at 923-24 (arguing that ".[e]ven in the absence of pure risk neutrality, catastrophic potential should not be attributed substantial importance").

Frank Cross argues:
[T]he public might prefer a known, annual loss of 1000 lives for 100 years (an ultimate cost of 100,000 lives) to a 1 in 1000 risk of a single accident taking 100,000 lives (an expected value of 10,000 lives, with a maximum of 100,000). Again to a scientist, this appears irrational. Why not run the risk of a catastrophic event, since the total loss of life will never be any greater in the event of catastrophe and probably no lives will be lost?

Id. at 921-22.

[FN328] Gillette & Krier, supra note 279, at 1078-79; Furrow, supra note 202, at 1452 (arguing that "[c]atastrophic events may have effects beyond the sum of individual injuries" because of the "[s]ocial disruption" experienced when the damage exceeds the capacity of the community and society at large to deal with resulting health problems, and concluding that a catastrophic event "cannot be expressed in terms of the number of deaths and injuries it produces"); EDELSTEIN, supra note 325, at 17-117.

[FN329] An obvious example of this communal harm is the set of misguided environmental and social policies inflicted upon Native Americans in our country. Each new threat to Native American communities, whether in the form of poor social services, hazardous waste, or deprivation of important resources such as water and wildlife, not only injures individuals and families but also threatens to erode a unique human culture. The "Poletown" controversy discussed in Part I illustrates a similar point on a less dramatic scale. There, the condemnation of an historic Polish-American community in exchange for a General Motors plant not only forced several residents and businesses to move but also destroyed a social network of people bound by a common language, ethnicity, and experience that could not be duplicated. See GARLAND, supra note 18, at 20-21, 34-36; Poletown Neighborhood Council v. City of Detroit, 304 N.W.2d 455, 470 (1981) (Ryan, J., dissenting) (stating that "[i]t is easy to underestimate the overwhelming psychological pressure which was brought to bear upon property owners in the affected area, especially the generally elderly, mostly retired and largely Polish-American residents of the neighborhood").

[FN330] Celene Krauss reports this statement from a Native American woman who fought unsuccessfully to oppose a landfill on the Rosebud Reservation in South Dakota:

Government did pretty much what we expected them to do. They supported the dump. People here fear the government. They control so many aspects of our life. When I became involved in opposing the garbage landfill, my people told me to be careful. They said they annihilate people like me.

Krauss, supra note 7, at 268.

[FN331] Flynn et al., supra note 290, at 1107; see also Slovic, supra note 308, at 285 (concluding that the public's "basic conceptualization of risk is much richer than that of the experts and reflects legitimate concerns that are typically omitted from expert risk assessments").


[FN333] See supra part II.B.

[FN334] Flynn et al., supra note 290, at 1107; see also Slovic, supra note 308, at 285 (questioning use of quantitative risk assessments in influencing public's perception of risk).


[FN336] Id. at 214-15.
It is also important to see that, from a feminist perspective, the attitudes of white men and of other groups are all entitled to respect. Just as it is a mistake to discount women and people of color as overly emotional about risk, it would also be wrong to discount white men as blinded by science. The more recent lessons of feminism teach that knowledge is by definition situated and that all perspectives must be heard and understood. See Bartlett, supra note 31, at 880-86. Compare Slovic, supra note 308, at 285 (arguing that "[e]ach side must respect the insights and intelligence of the other"). Yet because racism and sexism have historically muted the voices of women and people of color, environmentalists must pay special attention to these groups in the future.


Id. at 677.


Id. 8 1-102, 3-301. For an overview of federal action following Executive Order 12,898, see ENVIRONMENTAL PROTECTION AGENCY, PUB. NO. 200-R-95-003, ENVIRONMENTAL JUSTICE 1994 ANNUAL REPORT: FOCUSING ON ENVIRONMENTAL PROTECTION FOR ALL PEOPLE (1995).

See Godsil, supra note 310, at 402-08 (examining different types of site designation laws for hazardous waste facilities in several states); Been, supra note 130, at 1077-82 (examining New York City's charter allocating a "fair share" of locally undesirable land uses among neighborhoods).

Lazarus, supra note 59, at 820-21, 851 (examining underrepresentation of racial minorities); BULLARD, DUMPING IN DIXIE, supra note 7, at 110-16. The resulting changes could prove more than cosmetic. A recent study of the effects of increased diversification of the U.S. Forest Service, for instance, found that the environmental views of female employees differed markedly from those of male employees and concludes that "[t]he large- scale introduction of women, younger nontraditional employees and minorities into the Forest Service workforce portends an agency outlook that will be more sensitive and responsive to environmental preservation and ecosystem management than to commodity resource management." Greg Brown & Charles C. Harris, The Implications of Work Force Diversification in the U.S. Forest Service, ADMIN. & SOC'Y, May 1993, at 85, 105.

Folk, supra note 202, at 215-20; see also Ferris, supra note 157, at 126-27.
[FN349] See, e.g., Freeman & Godsil, supra note 204, at 570-71.


[FN351] See Farenthold, supra note 19, at xvi.


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