

An Environmentalist's Story

*GUS SPETH was a founder of organizations and an early leader in the foundation of environmental law as a field. Herein he tells his story of the past and his concerns about the future, in an excerpt from his memoir *Angels by the River*, due out in November from Chelsea Green Publishing*

The third year of law school, as most students come to appreciate, is not a time when one learns much more about the law. But it is a time you can learn something about yourself. The prospect of having to decide on a career, or at least start one, can concentrate the mind. And so it was for me. In the fall of 1968 the big law firms sent impressive individuals to interview at Yale, and I accepted several invitations. But I knew I did not want to go with a big firm.

Fortunately, it was about this time, in October of 1968, that I had an important idea. I was riding the New Haven Railway into New York City reading the *New York Times*, and I read one story about the NAACP Legal Defense Fund's litigation. Nearby in the *Times* a story about an environmental issue caught my eye. Lawyers are trained to think by analogy, and it hit me: get a group of my impressive classmates together and start a public interest law firm for the environment.

Events then moved quite rapidly. Every fellow student I asked to join the group accepted, so we had to tell others who wanted to join with us to sit tight and wait. Lawyers, perhaps particularly Yale lawyers, tend to believe we can do anything, and it never occurred to us to doubt that we could do the job. But it did occur to us that we might not find the money and that, if we got too big, finding the needed funding would be even harder.

At that point in the history of American environmentalism, there was hardly anything called environmental law, and Yale offered no courses in the field. To the best of my knowledge, neither did any other law school. We anticipated using common law a lot — tort and nuisance law, the public trust doctrine, and property and land use law.

But I did identify one attorney in New York City who practiced environmental law. Numerous people told me: go see David Sive. So I went to visit him in his law office. He mentioned something that turned out to be crucial. He said, "Do you know, recently someone was seated in that same chair that you are in whose name is Frank Barry? He's been asked by the Ford Foundation to do a study of the creation of exactly what you're talking about."

I contacted Barry and asked him, after we had talked a couple of times, to come to Yale to meet with our group and some Yale faculty. He did come, and apparently he liked what he saw. That led to our connecting with the Ford Foundation.



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I will always be thankful to Sive and to the three Yale Law professors who took a risk and threw their great prestige behind us, vouching for us with the Ford Foundation: Boris Bittker, Charles Reich, and John Simon.

Our group quickly jelled and worked together well, often meeting around our dining room table, as my wife Cameron reminds me. By the end of November, we had a name — Legal Environmental Action Fund, or LEAF — a letterhead, the first draft of a funding proposal, a rough start-up budget, drafts of articles of incorporation and bylaws, and a list of prospective board members. Soon we were in serious and encouraging conversations with the key people at Ford, and in March 1969 we submitted a formal proposal to the foundation. Our intrepid team — which included Richard Ayres, John Bryson, and Edward Strohbehn — had had a few good innings.

Our timing was near perfect — just a bit ahead of the curve. Right after the proposal was submitted to Ford, my daughter Catherine was born. A year later Catherine could walk, and on a fine Washington, D.C., spring day very close to her first birthday, she toddled proudly in her white smock through the crowds on the Mall for the first Earth Day. It was really that year that the modern environmental movement in America was born. In April 1969, the environment was not often mentioned. A year later it was everywhere.

The story of how we got from a ragtag group of law students to the Ford Foundation grant two years later that launched the Natural Resources Defense Council is an interesting one, well told by John and Patricia Adams in their excellent book *A Force for Nature*, so I will not repeat it here.

I have to hand it to the Ford Foundation. Despite having powerful Representatives Wilbur Mills and Wright Patman as well as President Nixon after them, they persisted and funded not only NRDC but also the Environmental Defense Fund, the Center for Law and Social Policy, the Center for Law in the Public Interest, and other groups that have made extraordinary contributions. The foundation launched a new era of public interest law and advocacy in America.

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velopment of U.S. environmental law and policy. Today NRDC has a budget of about \$100 million a year. A mighty oak, it has been said, is just a little nut that held its ground.

My friend and former dean of the Vermont Law School, Geoffrey Shields, said to me recently that there is a deeper story of this period that I must tell. “Why did you strike out in the direction you did when most law graduates went into private or government practice?” he asked. “How does your story relate to America’s story?” I think Jeff is right that it is important to understand the birth of the modern environmental movement in America and, in particular, to understand the debt those of us who were “present at the creation” of modern environmentalism owed to the civil rights movement through which we had just lived. Yes, we were bright, ambitious young law students looking for something different and interesting to do with ourselves. But we were also midstream in a series of important currents in American history, part of an era worth recalling for, as I will try to explain, that recalling can inform and instruct today.

We were children of the 1960s. Our Yale group had entered college as the civil rights movement was in full swing; we became anti-war as the U.S. troops in Vietnam escalated; though unfortunately all male, we were glad to see the birth of the National Organization for Women in 1966; and though we were not hippies or drop-outs, we shared much of the counterculture’s critique of American society.

We shared the 1960s’ sense of hope and the desire to bring about serious change in American society. We had studied the civil rights litigation and other important cases, and we knew the importance of the law and good lawyering in the public interest. We had seen the impact of social movements, of citizens standing up and speaking out. We knew from the civil rights legislation and otherwise that our government in Washington could do great things, in addition to getting us into great wars, and indeed that government was essential if great things were to be done. The 1960s had taught us that activism could succeed, that government could succeed.

All this youthful energy and hope and idealism we poured into the environmental cause. There is a passage at the beginning of Hobbes’s *Leviathan* where he describes the courtyard geese alerting those inside to an intruder “not because they were they, but there.” That is not quite how it was with us and the environment. We were predisposed to the environmental cause, and did not take it up merely because it was an emerging national concern and thus a wonderful opportunity for us to

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do some good in the world. But, looking back, it is also true, I think, that we went pell-mell into environmental advocacy in part because we anticipated that the new issues “were there.”

Though one might not appreciate it today, the American environmentalism of the 1960s and early 1970s was rather radical. Reality was radicalizing. When the Santa Barbara oil spill occurred in 1969, a citizens committee there issued this powerful declaration reminiscent of earlier ones in the 1960s on different issues: “We, therefore, resolve to act. We propose a revolution in conduct toward an environment that is rising in revolt against us. Granted that ideas and institutions long established are not easily changed; yet today is the first day of the rest of our life on this planet. We will begin anew.”

Many of the nation’s leading environmental thinkers and practitioners of the period concluded that deep societal changes were needed. GDP and the national income accounts were challenged for their failure to tell us things that really matter, including whether our society is equitable and fair and whether we are gaining or losing environmental quality. The most forceful challenge to our GDP fetish can be found in Robert Kennedy’s last major speech, in 1968. A sense of planetary limits was palpable. *The Limits to Growth* appeared in 1972 and sold over a million copies. Its authors and others saw a fundamental incompatibility between limitless growth and an increasingly small and limited planet. Scientists Paul and Anne Ehrlich and John Holdren in 1973 argued for an economy that would be “nongrowing in terms of the size of the human population, the quantity of physical resources in use, and [the] impact on the biological environment.” Joined with this was a call from many sources for us to break from our consumerist and materialistic ways — to seek simpler lives in harmony with nature and each other. These advocates recognized, as the Ehrlichs and Holdren put it, that with growth no longer available as a palliative, “One problem that must be faced squarely is the redistribution of wealth within and between nations.” They also recognized the importance of creating employment opportunities by stimulating employment in areas long underserved by the economy and by moving to shorter work weeks. And they saw that none of this was likely without a dramatic revitalization of democratic life.

Digging deeper, ecologist Barry Commoner was not alone in asking “whether the operational requirements of the private enterprise economic system are compatible with ecological imperatives.” Commoner’s answer was “no.” He believed that environmental limits would eventually require limits

on economic growth. “In a private enterprise system,” he wrote in his 1971 bestseller *The Closing Circle*, “the no-growth condition means no further accumulation of capital. If, as seems to be the case, accumulation of capital, through profit, is the basic driving force of this system, it is difficult to see how it can continue to operate under conditions of no growth.”

It was these and similar ideas that motivated me during my initial years at NRDC. Yes, I had opted to work within the system, but I believed that legal advocacy could change the system. I believed that what I was doing was on the path to deeper change.

Unfortunately, mainstream American environmentalism would eventually become trapped within the system and compelled to a certain tamedness by the need to succeed there. I was part of that too. Ironically, we were trapped there in part by our own early success. That success was made possible in large measure by Senator Edmund Muskie and his remarkable aides Leon Billings and Tom Jorling and their monumental legislation, the Clean Air Act and the Clean Water Act. These new laws opened up huge areas for lawyers and others to make major environmental gains, but in doing so we were drawn ever more completely inside the Beltway, inside the system.

New environmental leaders will benefit from going back to the ideas of the 1960s and early 1970s, rediscovering environmentalism’s more radical roots, and stepping outside the system in order to change it before it is too late.

It must be hard for young people, from today’s vantage point, to imagine what it was like to be an environmental advocate in the 1970s. But let me try to recapture that period.

First of all, it was a lawyer’s heyday. The Clean Air and Clean Water acts are perhaps the most forceful federal legislation ever written, and there they were, with their deadlines and citizen suit provisions, along with the National Environmental Policy Act, just waiting to be litigated and enforced. NRDC had so many successful lawsuits against EPA that an agency assistant administrator said to me one day, “You know, you guys are running the agency.”

Second, the environmental agencies were as gung-ho as we were. Some EPA staff would quietly point out how their efforts were being stymied

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by the Office of Management and Budget and hint at needed lawsuits. The Council on Environmental Quality in the White House was 100 percent reliable — a friendly environmental ombudsman within the government. The old-line agencies like the Interior Department were struggling to catch up and, when they didn't, they were sitting ducks for our litigation.

In these early years, in the 1970s, economists were not seriously involved in setting environmental policies. We environmentalists initially ignored their calls for pollution taxes and market mechanisms, which infuriated some of them.

We think of U.S. environmental legislation as the product of the movement launched on Earth Day 1970, but that is not quite how it was. The National Environmental Policy Act passed in 1969; the Clean Air Act completed its passage through Congress in 1970. They were driven more by far-sighted legislators like Ed Muskie (D-ME) and John Sherman Cooper (R-KY) than by environmental lobbying or even public pressure. I can tell firsthand that we at NRDC had a hard time keeping up with what Muskie and his staff were doing in the development of the Clean Water Act. There was actual leadership in the Congress, and it was bipartisan. So we did not see the need then to build political muscle and grassroots support. The key politicians were already with us. Congress was actually leading.

Next, there was little organized opposition from the business community or anyone else. They were caught off guard, at least initially, though it did not take long for the opposition to materialize.

We saw little need in these years for getting into electoral politics, building grassroots strength, and supporting local groups, or even for environmental education. There was a wealth of intellectual and political capital and public support. And we were in a rush to get the job done!

Relatedly, there was no overall strategy among environmental groups, few metrics to gauge our success, and no objective but friendly environmental think tanks serving as watchdogs, assessing us, and pointing the way forward. (The Conservation Foundation filled some of this need for a while.) And environmental law and policy as it evolved was decidedly ad hoc, lacking a foundation of overarching and broadly supported principles.

Environmental law as it was created in the 1970s was federal law. Our view of the states and the cities was disdainful. They had done so little. It was time for Washington to take control, as had happened with civil rights.

In the media, the environmental beat was hot, attracting the best reporters. The media overall were powerfully supportive. None of us of this era can forget CBS's anchor Walter Cronkite and his ongoing series *Can the World Be Saved?*

I think readers will sense where this story is headed. What happens when all that support in Congress weakens or even turns hostile, and we have neglected to build grassroots support and to get into electoral politics?

What happens when we have lived so thoroughly within the Beltway and submerged so completely in the staggering complexity of the regulatory mess we have helped to create, that we — wonkish us — cannot effectively communicate to a broad public, cannot strike those notes that resonate with average Americans and their hopes, fears, and dreams? What happens when we have elevated head over heart and lost the vernacular in favor of environmental jargon like Prevention of Significant Deterioration, Corporate Average Fuel Economy standards, Total Maximum Daily Loads, and the like?

What happens when we begin to confront a mighty opposition not just from a now-alert corporate America, but equally from an anti-government, anti-regulation, anti-tax coalition of ideologically driven right wingers, and we have centered all our plans on powerful action by the federal government and neglected to develop an equally powerful grassroots force and to build strength at the state and local levels?

What happens when the anti-regulation forces come together to build a skilled messaging machine and we do not?

What happens when we need, but don't have, metrics to point out that we're winning victories but losing the war and when we need, but don't have, an independent think tank capacity to build new intellectual capital and to help us figure the way out of the mess in which we find ourselves?

What happens to the prospects for judicial remedies when half the federal judges are appointed by conservative Republican presidents? And when the environmental story no longer attracts the best reporters, the media lose interest, and the five corporations that control most of the media prefer to hear "both sides" even when "balance" becomes a form of bias?

And what happens when we find that economic

The Clean Air and Water acts are perhaps the most forceful federal legislation ever written, and they were just waiting to be enforced

issues have taken center stage and we have tended to neglect the economics profession and done too little to pioneer new ways of thinking about economics or the economy? And what happens when central pillars of our work — making the polluter pay, stopping this and that development — actually do raise prices and cost certain jobs at a time when half the country is just getting by, living paycheck to paycheck, economically insecure, and we have not forged powerful links with working people and their representatives and their research centers, and we are stuck with the reality that the only way we can save the planet is to show that it helps the economy and GDP?

What happens when those 1970s grade schoolers grow up and know distressingly little about environment or science? Only about half of Americans know how long it takes the earth to go around the sun!

And what happens when those hard-charging government agencies lose their luster and their drive and some become partly or wholly captives of those they are supposed to regulate?

What happens, of course, is what has happened. Progress slows down. Major resources shift from offense to defending past gains. New issues, like climate change, can't get traction.

So I think it is clear that the mainstream environmental organizations (with my participation) are partly responsible for the situation in which we found ourselves. There were major strategic adjustments needed but not made; new institutions and new arrangements should have been forged but were not. We carried on under President Reagan much as we had under President Carter, but the world had shifted under our feet. Recently, our mainstream environmental groups have begun to make adjustments, but they are very partial adjustments, and late.

While we environmentalists are partly responsible, it is decidedly the lesser part. To chronicle the much larger part of the blame, it is useful to begin with Frederick Buell and his valuable book *From Apocalypse to Way of Life*. He writes: "Something happened to strip the environmental [cause] of what seemed in the 1970s to be its self-evident inevitability. . . . In reaction to the decade of crisis, a strong and enormously successful anti-environmental disinformation industry sprang up. It was so successful that it helped midwife a new phase

in the history of U.S. environmental politics, one in which an abundance of environmental concern was nearly blocked by an equal abundance of anti-environmental contestation."

The disinformation industry that Buell notes was part of a larger picture of reaction. Starting with Lewis Powell's famous 1971 memo to the Chamber of Commerce urging business to fight back against regulations, well-funded forces of resistance and opposition have arisen. Powell, then a corporate attorney who would become a Supreme Court justice, urged corporations to get more involved in policy and politics. Virtually every step forward has been hard fought, especially since Reagan became president. It is not just environmental protection that has been forcefully attacked, but essentially all progressive causes, even the basic idea of government action in the interests of the people as a whole.

Over recent decades, environmental groups have grown in strength, funding, and membership, and most groups can point to a long string of victories they have won along the way. One shudders to think of where we would be today without these groups and their hard-won accomplishments. As federal environmental laws and programs burst onto the scene in the early 1970s, we pursued the important goals and avenues those laws opened up. There, the path to success was clear. But we left by the wayside the more difficult and deeper challenges noted by Commoner, Ehrlich, and others 40 years ago. And our early successes locked us into patterns of environmental action that have since proven no match for the system we're up against. We opted to work within the system of political economy that we found and neglected to seek transformation of the system itself.

And it is here that we arrive at the central issue — the paradox which every U.S. environmentalist must now face. The environmental movement has grown in strength and sophistication, and yet the environment continues to go downhill, fast. If we look at real world conditions and trends, we see that we are winning victories but losing the planet, to the point that a ruined world looms as a real prospect for our children and grandchildren. I do not exaggerate. And the United States is at the epicenter of the problem. I have looked hard at environmental conditions and trends, both global and national, in three peer-reviewed Yale Press books over the past decade, and, it is a frightening picture.

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So here we are, 44 years after the burst of energy and hope at the first Earth Day, headed toward a ruined planet. Indeed, all we have to do — to destroy the planet's climate, impoverish its biota, and toxify its people — is to keep doing exactly what we are doing today, with no growth in the human population or the world economy. Just continue to release greenhouse gases at current rates, just continue to impoverish ecosystems and release toxic chemicals at current rates, and the world in the latter part of this century won't be fit to live in. But human activities are not holding at current levels — they are accelerating, dramatically.

America has run a 40-year experiment on whether mainstream environmentalism can succeed, and the results are now in. The full burden of managing accumulating environmental threats has fallen to the environmental community, both those in government and outside. But that burden is too great.

The environmental problem is actually rooted in defining features of our current political economy. An unquestioning society wide commitment to economic growth at any cost; a measure of growth, GDP, that includes everything — the good, the bad, and the

ugly; powerful corporate interests whose overriding objective is to grow by generating profit, including profit from avoiding the environmental costs they create; markets that systematically fail to recognize environmental costs unless corrected by government; government that is subservient to corporate interests and the growth imperative; rampant consumerism spurred endlessly by sophisticated advertising; social injustice and economic insecurity so vast that they empower often false claims that needed measures would slow growth, hurt the economy, or cost jobs; economic activity now so large in scale that its impacts alter the fundamental biophysical operations of the planet — all these combine to deliver an ever-growing economy that is undermining the ability of the planet to sustain human and natural communities.

It's clearly time for something different — a new environmentalism. And here is the core of this new environmentalism: it seeks a new economy. And to deliver on the promise of the new economy, we must build a new politics.

We must ask again the basic question, What is an environmental issue? Air and water pollution, yes. But what if the right answer is that an environ-

mental issue is anything that determines environmental outcomes. Then, surely, the creeping plutocracy and corporatocracy we face — the ascendancy of money power and corporate power over people power — these are environmental issues. And more: The chartering and empowering of artificial persons to do virtually anything in the name of profit and growth — that is the very nature of today's corporation; the fetish of GDP growth as the ultimate public good and the main aim of government; our runaway consumerism; our vast social insecurity with half the families living paycheck to paycheck. These are among the underlying drivers of environmental outcomes. They are environmental concerns, imperative ones, but they rarely appear on the agendas of our main national environmental groups.

Seeing the problem this way forces us to see the environmental problem in its larger context — as one of a set of national problems that are, at base, systemic. When grave problems emerge across the entire front of national life, as they have in America today, it cannot be due to isolated failings and neglect. We have such encompassing challenges because the system of political economy in which we live and work is failing. America needs a new operating system.

That is why the new environmentalism must embrace social and political causes that seem non-environmental but are now central to its success. In effect, we have got to rediscover the serious environmental thinking of the early 1970s — thinking that looked for root causes and has been badly neglected over the ensuing decades.

We also need to answer a second question: What's the economy for, anyhow? To what ends should the economy be programmed? The answer, I believe, is that the purpose of the economy should be to sustain, restore, and nourish human and natural communities. We should be building a new economy — one that gives top, over-riding priority not to profit, production, and power, but rather to people, place, and planet. Its watchword is caring — caring for each other, for the natural world, and for the future.

Promoting the transition to such a new economy must be the central task of a new environmentalism. It is a task that obviously cannot be accomplished by environmentalists alone, but only by a powerful fusion of progressive and other forces. Progressives are all trying to make progress in the same system, which for the most part resists, undermines, and overwhelms their goals. Progressives thus rise or fall together, so they had better get together and complement efforts to reform the system with serious efforts to transform it. •

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