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The Environmental Era: From Protest to Protection (1960-1980)

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Chapter Abstract

No two decades produced more environmental law than the 1960s and 1970s. This chapter examines the most concentrated burst of environmental legislation in American — and arguably world — history, and asks what made it possible.

The answer lies in a convergence that is difficult to engineer but important to understand. Rachel Carson's Silent Spring provided the scientific foundation. A cascade of visceral disasters — the Santa Barbara oil spill, the Cuyahoga River catching fire, smog alerts blanketing American cities — provided the emotional fuel. The Civil Rights and anti-war movements provided the organizational infrastructure that flowed into the first Earth Day in 1970, when roughly one in ten Americans took to the streets. And an unlikely political dynamic — Senator Ed Muskie and President Nixon competing to claim environmental leadership — provided the legislative opening. Nixon created the EPA and signed the Clean Air Act not out of environmental conviction, but because he refused to let Muskie outflank him. Political self-interest, channeled by a mobilized public, produced transformative law.

The chapter argues that this era demonstrates a recurring pattern in American legal history: disasters plus science plus social movements plus political opportunity can produce "avulsive" change — sudden, flood-like legal transformation, in contrast to the slow accretion of ordinary reform. The legal innovations of this era were genuinely novel in governance terms: citizen suit provisions, environmental impact assessment requirements, strict liability for polluters. These were not just new rules; they were new theories about who could use the law and how.

But the era's high-water mark also accumulated critical failures. Energy policy remained inadequate. Environmental justice was almost entirely ignored. And the gap between legislation on paper and enforcement on the ground would define the next era's struggles.