

reference to broad underlying forces such as political culture, class conflict and the distribution of power.

Courts influence environmental policy in two fundamental ways in Canada and the United States. First, they arbitrate the conflict between the federal and state/provincial governments over the allocation of environmental powers in the constitution. Judicial decisions which favor state or provincial claims tend to further industrial interests, while those that support federal power tend to further the agenda of those groups claiming to represent the public interest. Second, courts referee the conflicts between governments which have decided to support a particular project likely to have a substantial impact on the environment and all those opposed to it, which may include environmental advocacy organizations, native peoples, local residents and

conservationists. Judges who tend to defer to administrators and governments will render more pro-business decisions than those who take an active role in examining independently the merits of particular projects. Judicial activism can be defined as the willingness of courts to adventure beyond the adjudication of legal conflicts to make social policies, affecting thereby many more people and interests than if they had confined themselves to the resolution of narrow disputes.

The activism of a court, thus, can be measured by the degree of power that it exercises over citizens, legislatures and governments. We can construct a four-cell table describing the relationship between judicial activism and environmental decision making.