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THE BUREAUCRATIC RESPONSE TO ENVIRONMENTAL POLITICS

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As a result of developments in environmental politics in the United States within the last five years, most existing resource management agencies realize that they are in deep trouble. The trouble is not primarily economic in nature, although a questioning of well-established economic tools for the management of natural resources is an important part of the total problem.¹ Rather, the difficulties are essentially political. Resource management agencies at all levels of government appear to have reached, or to be rapidly approaching, a point at which their behavior and performance are unacceptable to a substantial, vocal, and growing segment of the American public.

Many state water agencies, for example, must be wondering whether they will suffer the same fate as the Department of Water Resources in the State of Washington. The department was recently absorbed, along with several other agencies, into a new Department of Ecology. And at the federal level there exists the possibility that persistent public expression of dissatisfaction will lead Congress to reduce, or refuse to increase substantially, appropriations for programs with major environmental impacts.

Since few bureaucracies readily accept a reduction of their budget or a drastic reorganization of their programs, it is not surprising that existing agencies are looking for ways to ensure their survival, and perhaps even to improve their position by putting essentially unchanged programs in a new linguistic wrapping.² Nor is there anything reprehensible about this. Much of what is known about bureaucratic behavior suggests that this kind of response is to be expected, and therefore guarded against by those seeking fundamental change. The majority of agency personnel are sincere and dedicated public servants, giving administrative expression to the public interest as they see it. It is to some extent natural that they are inclined to be

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1. See, e.g., Dales, *Pollution, Property, and Prices* (1968); Jarrett, *Environmental Quality in a Growing Economy* (Jarrett ed. 1966); Krutilla, *Conservation Reconsidered*, 57 *Am. Econ. Rev.* 777-86 (1967).

2. In this connection, Secretary of Agriculture Clifford M. Hardin made the following interesting statement to a Department of Agriculture seminar on environmental problems in January, 1971: "I think we're operating in an environment in which the public wants more attention to these [environmental quality] items and we're going to try to take advantage of this and provide it, building on the good work of the past." *Sacramento Bee*, Jan. 15, 1971, at CL2, col. 1.

defensive in the face of the uncertainties that budget reductions and agency reorganizations generate. They do not particularly like being told that they have done a less than adequate job in the past. And this kind of criticism is especially unpalatable when it comes from groups, such as the Sierra Club, that make claims on the public's attention in the name of conservation. After all, it was the men who first provided political and administrative leadership to resource management as a public function who also first popularized the term conservation in the United States.³

One of the important questions a symposium such as this must come to grips with is the extent to which defensive and essentially short run responses by existing agencies are likely to get them out of their present difficulties. Or, to put it another way, to what extent can resource management agencies ride out the storm by promoting one form or another of administrative gadgetry? If their present difficulties are simply the product of unusual and temporary political circumstances, the agencies may eventually be able to continue with business as usual, having made at most some minor and insubstantial changes in their management and policy planning procedures. In this case a theory of environmental administration would not require assumptions about the nature of contemporary American politics and administration that are radically different from those that have been entertained in the past.

If, on the other hand, the politics of the environment are fundamentally different in kind from the politics of natural resources management, and if this difference is reflected in American political life generally, then a theory of environmental administration will be required that both reinterprets present experience and provides the basis for some drastic, long-run alterations in administrative practices.

While it would be inappropriate in an article of this length to attempt to present a thoroughly convincing case for the second of the two possibilities just described, or to pretend to have developed a suitable theory of environmental administration, I should like to discuss in the next few pages some ideas that may begin to make the second possibility appear worthy of further thought and research.

One index of the extent to which resource managers and their agencies are in trouble is to be found in the fact that they frequently have a hard time understanding the nature of the modern conserva-

3. This is not to say, however, that the first conservation movement ever became a movement with a strong popular base. See McConnell, *Environment and the Quality of Political Life*, in *Congress and the Environment* 8-9 (Cooley and Wandesforde-Smith ed. 1970).

tion movement. Their attitude is often that the Sierra Club, the Friends of the Earth, the California Planning and Conservation League, the local chapters of Ecology Action, and other groups are merely new interest groups, joining those that have traditionally fought over the material benefits to be derived from the productive use of resources.⁴ Some also argue that, as the direct descendants of the movement founded by Gifford Pinchot and the first President Roosevelt, they have always sought the ends the environmentalists now seek. What they overlook in their efforts to reconcile the modern conservation movement with those of the past, and with their own experience, is the environmentalist's primary concern with non-economic values.

When the Forest Service, for example, offers environmentalists three-quarters of a wilderness area, in return for the development of a ski resort and the continuation of grazing and a little mining on the remaining quarter, the offer is often refused. Treating the environmentalists like any other interest group does not seem to work. It seems often to be impossible to satisfy them as well as the week-end campers, the cattlemen, the miners, the subdivision developers, and the resort owners. The environmentalists appear intransigent, extremely difficult to bargain with, and unwilling to accept a compromise. The reason is that in their terms three-quarters of a wilderness area is not good enough. To them it is an all or nothing proposition because wilderness values are irreplaceable and priceless; not the kind of values that can be traded-off under the rubric of multiple use or according to the principles of professional forestry. The environmentalists even go so far as to question the rights of professional resource managers to make binding determinations about the most appropriate uses of the resources of the nation's lands.

This last position is based on the assertion that in terms of the values and long-range social goals being sought the views of the professional resource manager are not all that much more valuable than anyone else's. Indeed, they may be less valuable despite the manager's professional training, because the record shows that by training and experience resource managers tend to regard the productive use of resources as paramount. Using again the example of the Forest Service, this point was made by a university group investigating the management of the Bitterroot National Forest in western Montana.⁵ The group noted in its recent report that the position adopted by the

4. This point is discussed in L.K. Caldwell, *Politics and the Public Lands*, Paper presented to a Conference on the Public Land Law Review Comm. Rep., San Francisco, Cal., Dec. 8, 1970, at 19-20.

5. A University View of the Forest Service, S. Doc. No. 115, 91st Cong., 2d Sess. (1970).

environmentalists strikes at the root of professional forestry education.⁶ And toward the end of their report they comment on the resulting political situation that resource managers find it terribly frustrating to deal with:

We doubt that the most carefully developed arguments will ever convince opponents of the appropriateness of some of the now practiced land management practices, . . . Regardless of any developed fund of knowledge, research results, or even conditions of pure and simple fact, some of the groups involved in the Bitterroot National Forest are opposed to these land management practices under any and all circumstances; and nothing that can be said is likely to change their views, their positions or their unconditional opposition. At this point we must note that the crucial issue then becomes one of examining the process through which unpopular decisions involving public policy must be made.⁷

The modern conservation movement will not accept the claim of resource managers to determine future resource uses almost exclusively on professional grounds. Even if resource managers appeared converted to the point of pressing for the management of environments or ecosystems, rather than discrete resources, this position probably would not change. In addition to being, in their view, irreplaceable, priceless, and based on sound ecological principles, the values of the environmentalists are values that have adherents, both actual and potential, drawn from a broad constituency. Because of this the environmentalists are arguing that decisions about resources must be made by a larger public than is represented by interests likely to gain from the economic or productive use of those resources. The reluctance of resource management agencies to recognize the legitimacy of this claim is a principal reason why the politics of the environment is marked by some tough and protracted political struggles and an increasing amount of litigation.

It will not be easy for existing agencies to grant this recognition because it amounts to an admission that environmental management, and even the older form of resource management, is a much more political process than most professional resource managers are willing to concede. With it goes a reduction of the role of the professional manager to that of consultant rather than policy maker. Although this is a change that will not occur overnight, nor be perhaps as complete as the preceding sentence might suggest, it is inevitable if the general public is to reclaim in a direct and meaningful way the

6. *Id.* at 22.

7. *Id.* at 25.

control over environmental management it has heretofore placed in the professional manager's hands.

In the context of contemporary environmental politics, it is not going to be enough for resource management agencies to appoint environmental advisory boards⁸ or to broaden the educational experience of their personnel,⁹ though these are both welcome developments. Nor will it be sufficient for these agencies to argue that they are earnestly seeking new organizational concepts and arrangements because they are persuaded that environmental management demands a broader interdisciplinary approach to problem solving and a total systems approach to decision-making.¹⁰ To the environmentalist seeking a grossly observable change in the impact of administrative decisions on the quality of his environment, talk of total systems management and interdisciplinary problem solving can be just as obfuscatory as earlier slogans such as multiple use and conservation. He is more likely to be interested in bureaucratic responses that result in a more overt and participatory redistribution of influence and the power to decide.

The preceding comments relate primarily to bureaucratic responses which effect the way resource management agencies and resource managers think about themselves and their role vis-a-vis the public they serve. However, in a larger sense these actual and potential changes can be related to political developments that have affected a wide variety of institutions in the American political system. Many, but not all, political scientists would argue that in the last five years or so there has emerged a new perspective on the nature of this system. Professor William Connolly, for example, has attributed this new perspective to a critical temper among political scientists that stems in large part from dissatisfaction with the pluralist theory of American politics.¹¹ Professor Grant McConnell has explored some of the consequences of this re-evaluation of pluralist thought for environmental politics and administration,¹²

8. This is a mechanism recently adopted by the U.S. Army Corps of Engineers. Conservation Foundation Letter, Jan. 1971, at 2-3.

9. Recommendations along these lines are made by Henning, *Natural Resources Administration and the Public Interest*, 30 Pub. Ad. Rev. 134, 137 (1970).

10. These are frequent recommendations for improving environmental policy-making. See, e.g., Lieber, *Public Administration and Environmental Quality*, 30 Pub. Ad. Rev. 277, 284 (1970); Henning, *Comments on an Interdisciplinary Social Science Approach for Conservation Administration*, BioScience II (Jan. 1, 1970); Senate Comm. on Interior and Insular Affairs, Definition of the Scope of Environmental Management, Comm. Print, 91st Cong., 2d Sess. (1970).

11. W. Connolly, *The Bias of Pluralism* 19 (Connolly ed. 1969).

12. G. McConnell, *The Political Context of the Environmental Movement*, Paper presented to the Forum for a Future Conference, Aspen, Colorado, June 13-14, 1970.

and some of his tentative conclusions should be noted and elaborated in the context of the present discussion.

McConnell observes that from the findings of political science research there emerges a portrait of the political process in America that has several salient characteristics:

We have an open society, one accessible in all its aspects to all citizens. We have a set of guarantees of individual freedoms and assurances that each man has at least the opportunity to make his voice heard as common decisions are made. As a consequence, large decisions are few and even these tend to be cumulative in nature. The basic allocation of values at the heart of the process itself is aggregative, that is, it is the outcome of a multitude of individual and group choices mingled together in ways of almost infinite complexity. We are firmly convinced that the process itself is neutral as to values and that the openness of the system extends not only to all members but to all their desires and aspirations as well. If some of these are disappointed at a given moment, opportunity for a renewal of claims will come again, and the test will remain what it has always been, the construction of a majority.¹³

From among these characteristics of the political process that can be deduced from the conventional wisdom about American politics McConnell selects two for special attention. He remarks on the experience of the blacks and Chicanos, noting that this appears to deny the assumption that all individuals and groups in society have the same access as other groups.¹⁴ He comments also on the assumption of neutrality with respect to values and concludes tentatively that much of American political experience calls it into question.¹⁵ He advances the notion that American politics has revolved for the most part around questions about "the distribution of material benefits and costs, and the control of wealth and productive facilities."¹⁶ Even issues such as race and religion, treated in other political systems as non-economic issues, have been dealt with as though they were economic in nature. The American system of economic politics has served the nation remarkably well as a device for securing social peace. It has been highly pragmatic, characterized by bargaining in terms of common units of value that could be distributed in a way that would leave each side in a dispute better off in a material sense than they were originally. However, McConnell also points out that the conditions needed to sustain a system of economic politics have

13. *Id.* at 4.

14. *Id.* at 5.

15. *Id.* at 9-10.

16. *Id.* at 6.

been subject in recent years to erosion.¹⁷ In particular, a decline in the value that more and more Americans place upon material goods and a substantial reduction in the fear of major economic depression have contributed to an increasing concern with issues involving values ultimately more important than the accretion of wealth, including the preservation of natural beauty and wilderness. With respect to these kinds of issues it may be impossible "to buy acquiescence. . . by a simple substitution of some economic gain for other demanded benefits."¹⁸

McConnell underscores the possibility that, as non-economic values become more important in American politics, governmental responses typical of the past will prove grossly inadequate. He cites the example of anti-pollution programs, which typically propose the spending of more and more money for more and better ameliorative technology. Such programs do little or nothing to challenge and redefine the long term goals of society, something many environmentalists are interested in doing. They tend, on the contrary, to accept established goals and their accompanying life styles as givens. However, in addition to being applicable to the substance of governmental response, McConnell's argument has relevance for the form of the response. Many Americans are concerned not only with the quality of their physical environment, and with the extent to which its deterioration affects the quality of life, but also with the quality of their politico-administrative environment. And the re-evaluation of accessibility and value preferences within the American political process has important consequences for the means by which goals are defined and attained, as well as for the nature of the goals themselves.

A glance at some recent pieces of federal and state legislation indicates that questions of accessibility and the treatment of values have received attention in formulating new institutional arrangements. This is true of a variety of policy issues, including the poverty program, regional economic development, urban renewal, the rehabilitation of rural areas, and education.¹⁹ The kinds of responses

17. *Id.* at 13.

18. *Id.* at 15. McConnell also discusses the notion of economic politics, and the consequences of its displacement, in the reference given at *supra* note 3. These recent writings build upon his earlier work, which is particularly important for its development of the concept of constituency. See McConnell, *Private Power and American Democracy*, chs. 4 and 7 (1966).

19. For a useful general introduction to the institutional arrangements associated with these issues, see Davis and Sundquist, *Making Federalism Work* (1969); Fantini, Gittel and Magat, *Community Control and the Urban School* (1970). On the particular questions of accessibility and value biases in the context of economic development planning, see Warren, *Federal-Local Development Planning: Scale Effects in Representation and Policy Making*, 30 *Pub. Ad. Rev.* 584 (1970).

noted earlier at the level of the individual resource agency, such as the Forest Service, and the individual resource manager, reflect a concern with accessibility and value preferences in connection with environmental policy. However, the voluntary improvement of agency devices for public participation in policy planning, or the up-dating of professional resource management education, can be uneven and uncertain tools for modifying policy outcomes. The remarkable feature of some recent environmental legislation is that it has sought to overcome these limitations by granting statutory protection for the public's right to an open decision-making process and a full consideration of all relevant values. And it has done so in a way that applies equally to all resource management agencies.

The most familiar enactment with these attributes is the National Environmental Policy Act of 1969.²⁰ Among other things, this law requires all federal agencies to give explicit recognition and consideration to "presently unquantified environmental amenities and values"²¹ in their decision making. It also requires a statement describing the environmental impact of proposed agency actions which significantly affect the quality of the human environment, with particular attention to the justification of impacts that are irreversible.²² An equally significant portion of the law is that requiring copies of environmental impact statements, and agency comments thereon, to be made public.²³ Although there are conflicting interpretations of this last section of the law,²⁴ one observer has noted that presidential Executive Order 11514 of March 5, 1970, appears to conform to both the spirit of the act and the intent of Congress.²⁵ The order charges federal agencies with the responsibility of ensuring the fullest practicable provision of timely information for the public with respect to federal plans and programs with environmental impacts.²⁶ The stated purpose of this directive is to obtain the views of and provide access for interested parties, and it seems reasonably clear that without adequate information such views may be less meaningful and be less effective from the point of view of political strategy than they might otherwise be.

A review of developments at the state level reveals several similar changes.²⁷ The Environmental Protection Act of 1970 in Michigan

20. 42 U.S.C. § § 4321-47 (Supp. V, 1964).

21. 42 U.S.C. § 4332(B) (Supp. V, 1964).

22. 42 U.S.C. § 4332(C) (Supp. V, 1964).

23. *Id.*

24. Fisher, *Environmental Law*, Sierra Club Bull. 27 (Jan. 1971).

25. Not Man Apart, at 1 and 21-23 (Feb. 1971).

26. 35 Fed. Reg. 4247.

27. Conservation Foundation Letter, Nov. 1970.

provides citizens with an unencumbered right to sue.²⁸ The law allows any citizen to institute a suit against public agencies, and others, to protect resources and the public trust therein from pollution, impairment, or destruction. And it is not necessary under the act for the plaintiff to prove he has suffered direct or special damage and has legal standing.²⁹ In Illinois, the 1970 Environmental Protection Act allows any citizen to file a complaint with the Pollution Control Board and to be guaranteed both an investigation by the state Environmental Protection Agency and a hearing before the Board. The Illinois act also permits any citizen to propose new pollution control regulations and have them considered publicly if they meet certain modest criteria.³⁰ New land use laws in Maine and Vermont have required careful consideration of the environmental impact of proposed developments, and have placed the burden of proof upon the developers rather than the public that suffers if impacts are not minimized.³¹

Additional changes along these lines can be expected at both the state and federal levels. Among the first measures introduced into the ninety-second Congress, for example, were an environmental class actions bill³² and a bill to provide Constitutional guarantees for each person's right to a decent environment.³³ While there remains some uncertainty that the courts will promptly and fully sustain all of these legislative shifts, it is clear that in the future bureaucratic re-

28. Mich. Comp. Laws Ann. § § 691.1201-07 (1970). The original draft of this law was prepared by Professor Joseph Sax, School of Law, University of Michigan. It is discussed by Sax in his recent book. See Sax, *Defending the Environment* 247-248 (1970). Similar legislation for the nation as a whole was brought before Congress in 1970 [S.3575 and H.R.16436, 91st Cong., 2d Sess. (1970)] by Senators Philip Hart and George McGovern and by Representative Morris Udall. In April 1971, the Subcommittee on the Environment of the Senate Commerce Committee held hearings on the Hart-McGovern bill, reintroduced as S.1032, 92d Cong., 1st Sess. (1971). The Nixon administration, represented by the General Counsel for the Council on Environmental Quality, opposed the bill because it would assign to an already overburdened court system the task of writing environmental laws and setting pollution standards, which could better be left to Congress, the Environmental Protection Agency, and the states. However, Mr. William Butler of the Environmental Defense Fund argued that fears of a flood of litigation following enactment of the bill did not appear to be justified by early experience with the Michigan law. See National Wildlife Federation Conservation Rep., 128-29 (Apr. 23, 1971).

29. *Supra* note 27, at 11.

30. *Id.* at 8-9.

31. *Id.* at 2-4. For a more adequate treatment of the legal issues raised by recent legislation and court decisions, see Law and the Environment (Baldwin and Page ed. 1970); Beecher and Nestle, *Environmental Law Handbook* (1970); and Landau and Rheingold, *The Environmental Law Handbook* (1971).

32. H.R. 49 and H.R. 290, 92d Cong., 1st Sess. (1971).

33. S.J. Res. 14, 92d Cong., 1st Sess. (1971). An earlier version of this bill is discussed in Ottinger, *Legislation and the Environment: Individual Rights and Government Accountability*, 55 Cornell L. Rev. 666 (1970).

sponse to environmental politics will have to contend increasingly with much stronger public rights in two respects. The agencies will have to show, upon pain of litigation, that all relevant interests are afforded access to information and the decision-making procedures relevant to environmental policy issues. And secondly, they will have to establish and adhere to clearer public procedures and criteria for making value choices.

One probable consequence of these changes, at least in the short run, is a slowing down of the policy-making process. Agencies that pride themselves on their capacity to project public needs and to meet them, whether it be for power, lumber, flood control, or irrigation, are likely to protest this hinderance of their progress, partly on the grounds that they are legally constituted entities charged with these functions. Some might also protest that it is unreasonable to expect, on the basis of past experience, more extensive and informed public involvement in environmental policy-making. If the public is to realize the benefits associated with a more open system of policy-making, its response will have to differ both quantitatively and qualitatively from that of the past. All too often the environmentalists have appeared to be mere obstructionists. But the responsibility for producing better environmental policy cannot be achieved simply by forcing the agencies to make new responses of the kind analyzed here.

In the long run, therefore, we may expect to find new kinds of organizations whose purpose is to articulate the interests and values of some part of the public in environmental matters. It is difficult to say precisely what form these might take, or how they would be funded, or what provision would have to be made for those segments of the public that lack the resources to hire a spokesman.³⁴ A future symposium might usefully explore these questions and their significance for a theory of environmental administration.

34. For some interesting, if preliminary, thoughts along these lines, see Michael, *The Unprepared Society*, ch. 5 (1968).