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Environmental Policy: Public Participation and the Open Information System

Harvey Frauenglass

PUBLIC PARTICIPATION AND ENVIRONMENTAL QUALITY

ARNOLD W. BOLLE†

The environmental crisis calls for new policies. The crisis has established the need for a new set of relationships between the public and governmental agencies at all levels.[1] It is possible that a new set of values can be impressed into the governmental process through greater participation in decision-making at the field level.

There appears to be a breakdown in the normal democratic process through which the public need is translated into law by the legislature and, in turn carried out by administrative agencies. Dissatisfaction is expressed in confrontation, conflict, and lawsuits as means of defending and developing environmental values. Litigation, rarely used in environmental problems until recently, has now become an important means of public access to the decision process of government agencies.[2]

Recent cases have demonstrated the usefulness of the courts in establishing environmental values. But, in the longer run we are going to have to rely most heavily on the legislative-administrative process as it is revealed in the day-to-day decisions of public administrators at all levels. As Tom Wilson puts it:

> It is possible, if not probable, that the present focus on air and water pollution and solid waste disposal will induce the public illusion that the problems can be solved by money and technology, legislation and litigation. The pervasive impact of environmental management on decision-making processes and criteria may remain out of view. But not for long.
>
> It seems more likely that the value changes predicated on the need for environmental management are more likely to emerge from hundreds of separate decisions in public and private life, as one decision after another requiring trade-offs comes up for action.[3]

Such cogent decision-making and problem-solving requires a level of public participation uncommon in public natural resource agencies. The awareness of value changes can emerge primarily through involvement of the public in agency programs at the field level. Citizen involvement in government should be welcomed by the natural resource administrators as evidence of the growing importance of these programs to the American public. Unfortunately,

†Dean, School of Forestry, U. of Montana.

1. *See* L. Caldwell, Environment, a Challenge to Modern Society (1970).
2. J. Sax, Defending the Environment (1971).
3. T. Wilson Jr., The Environment: Too Small A View (1970).

the reaction of administrators far too often is resentment. The many and growing instances of conflict between natural resource agencies and their publics are basically breakdowns in relationships because of administrators' lack of genuine understanding of the participation process. This gradual erosion of credibility over the past few years was not recognized by field administrators. Signs of discontent were ignored until an accumulation of micro and macro insults brought open splits.

The problem on the Bitterroot National Forest in Montana[4] is a case in point. Local public dissatisfaction grew from a small local issue to a national issue as the dissatisfied public found it impossible to be effectively heard by local officials.

> Over the past few years management and decisions have frequently resulted in situations that have disappointed virtually all the publics that make use of the Bitterroot National Forest. Frequently this has led to situations in which the land managers have found themselves isolated by these publics, and to situations in which their word with respect to land management policies was substantially doubted.[5]

The disparities in objectives and values between the public and the Forest Service grew as public concern with environmental quality intensified. The public felt isolated from the decision process of the agency which they felt was, in fact, standing between them and the abusers of the environment.

The field administrator was limited in his ability to react to public pressures by the system within which he operated. His bureaucratically determined policies had been established within the context of agency structure, and adjustment to public demands was restricted by procedures and regulations laid down by the Supervisor, Regional Forester, and Washington officials which were all locked into the system. The reward system determined by adherence to the system is not accommodation of the public. The local ranger is "denied the flexibility to meet local issues and problems on an ad hoc basis . . . . his decisions are always predetermined, at least with respect to major issues and problems."[6]

The Washington Office of the Forest Service has recently released an impressive policy statement in an attractive and easily read brochure. Public participation is recognized as an official goal and

4. Select Comm. of U. of Mont., A University View of the Forest Service, S. Doc. No. 115, 91st Cong., 2d Sess. (1970).
5. *Id.* at 15.
6. *Id.* at 26.

objective of the Service. Officially, the new statement sets forth that one of the official operating policies of the Forest Service shall be to "Involve the public in forestry policy and program formulation." The statement gives specific instructions to amplify the policy:

> Seek out and obtain local and national views in the process of policy and program formulation.
>
> Discharge our responsibilities in ways that make our management processes visible and our responsible people accessible.
>
> Consult with and seek cooperative action with agencies at all levels of Government and with private groups and individuals, in programs for resource management and economic development.[7]

There appears to be a regrettable gap between stated policy and the practice of that policy. The stated policy is as pure as one of the beatitudes. While consistency may be somewhat difficult to declare, there seem to be enough instances of record at this time to consider the Bitterroot situation more than an isolated case. The study concludes that: "The staff of the Bitterroot National Forest finds itself unable . . . . to involve most of the local public in any way but as antagonists."[8] Because local people do not understand the operation of the agency or the reasons for them, "they feel left out of any policy or decision-making and resort to protest as the only available means of being heard."[9] Official policy charges agency personnel to "[d]ischarge our responsibilities in ways that make our management processes visible and our responsible people accessible."[10] Why is there this great disparity between official policy and practice: possibly a cultural lag between recently recognized need at the top level and customary field practice; possibly a difference between what the field personnel hear and the signals they appear to be getting; possibly disbelief of Washington pronouncements; possibly outright disagreement between Washington and field personnel; possibly simple obtuseness by field personnel amounting to apparent insubordination. Many variations on the same theme are possible—and possibly there is some element of truth in each of them.

The desirable solution could be described as one in which there were, in truth, "a people-oriented approach" one in which the public was truly "involved in forestry policy and program formulation." A program "sensitive to the problems and needs of a changing

7. U.S. Forest Service, Framework for the Future: Forest Service Objectives and Policy Guides (1970).

8. *Supra* note 4, at 14.

9. *Id.*

10. *Supra* note 7.

society" and built-in "flexibility to meet those needs." And one in which all the various publics using the forests would be happy and more fully supporting of the agency and its problems.[11]

Some professional employees believe that the problem in the Bitterroot National Forest, for example, was really a failure of the Information and Education Division of the Forest Service. It was the attitude of some of the professionals that if the public relations people had been doing their job correctly, adequately, and professionally, the public would have raised no objection and the foresters could have gone about their proper business of getting out the logs. It seems almost inconceivable at this time that any public employee could be so insensitive to public sentiment.

An attitude expressed at upper levels of the agency was somewhat similar—that the public was unappreciative of the programs of the Service, was irresponsible because it did not accept the country's great need for wood, and seemed totally unwilling to learn. In other words, first the agency was right, second the people were wrong, and third how could the agency get these people to recognize it? The agency had determined the public interest in terms of its own professionalism. This approach provides an almost impossible basis for the public participation apparently desired. The professionalism of the foresters gets directly in the way.

The professional forester apparently accepts certain assumptions which would give him certan fundamental truths believed by him to be beyond the comprehension of the ordinary mortal. These truths are good for people in spite of what they as people might think or feel. These assumptions were found to be at the root of the professional attitude toward the public in the Bitterroot case. They lay in the belief of the primacy of timber as a use of the forest, based on the fear of a wood famine, interwoven with a puritan ethic that utilitarian or commodity uses are always more important than any amenity values. A blind belief existed in sustained yield of timber which, as Duerr put it, remains unchallenged over a period of recent history when even the existence of God has been questioned.[12] Still another belief is the strange assumption of maximum production of timber per acre which then is used to justify a blanket recommendation for intensive management, which in turn leads to totally uneconomic forest practices and destructive uses of forest land. These came as blanket recommendations which ignored local conditions and interests. Unless the forester, and the Forest Service, is

11. *Supra* note 7.

12. W. Duerr, *The Role of Faith in Forest Resource Management*, Man and Ecosystem (U. of Vermont, 1971).

willing to depart from these assumptions, or at least permit them to be questioned, any real participation in policy and program formulation is going to be a pretty one-sided business. After all, democracy is pretty difficult. And when you have a priest class in possession of ultimate truth to deal with an atheistic or ignorant public, it becomes not merely more difficult but virtually impossible. If you can't deal with the public on the basis of your preconceived conclusions, how then can you deal with them?

It should be obvious that there is only one real basis for participation, if indeed participation and not some form of acceptance is meant. Participation must mean full participation or else it is no participation in reality. The word participation does not lend itself very well to degrees. Participation implies action by those involved, not necessarily equal action but action and interaction of some kind by both and each. How then can there be mutual action in policy and program formulation?

To answer that question we must examine carefully the decision process. The decision *process*, which is fundamental to policy and program formulation, consists of several steps: problem identification, goal determination, identification and analysis of alternatives, decision, action, feedback and re-analysis, etc. The emphasis is on *process.* But note well, the question is not in which steps of the process the public should participate. To raise that query is ridiculous. If there is participation at all it must be within all the process itself—all aspects of the process or none.

We have had foresters recoil at even the thought, much less the *process.* "We would be abrogating our professional responsibility if *we* didn't work out the problem and present the public with *our* best solution," they say. What arrogant and irrelevant nonsense! To so do they would have to first identify the problem, which involves setting the goals! Foresters are no more competent to set goals for society than any other group of citizenry or citizen. Unless foresters can accept this simple fact they have no basis for participation with anyone, except as professional high priests.

Foresters have a far more important and useful function to perform than to attempt setting goals for society or determining the public interest. The professional has the responsibility to provide the public with the basic information required to understand problems and to recognize what is involved in the decisions that are made. Once the public has set *its* goals, the professional can help by applying technical skills in the attainment of those goals. Unless the professional is willing to assume this role as a contributor to the social process and hence to society, the professional may well be one of

society's major problems. Participating starts by attempting to identify the problem.

Problem identification or "definition," the initial step in the decision process, is the essence of participation. A problem exists because the present situation is not the desired situation. A determination therefore must be made of two things. First, what is wrong with the present situation? Second, what is the desirable situation? What is the goal?

Problems of environmental quality involve two main aspects: the physical or biological aspect; and, the human, including as a minimum the social, economic, and political aspects. Agency resource-trained professionals are, or should be, best informed in the physical or biological aspects. Theirs is the responsibility to be expert in these matters. But *only the public* is able to provide adequate and important knowledge and insights into the social or human aspects. The contribution of both provides the basis for problem identification.

A problem identified only as a biological problem may well lead to solutions that are unacceptable to the public. Problems identified in only their human aspects may lead to solutions which might do violence to ecological conditions. Problems identified only in their biological and economic terms might well not meet social needs. Clearcutting, for example, in certain areas has been determined to be justifiable on biological and economic terms, but it offends the public. The feelings of the public are just as important a set of "facts" as the biological or economic facts. The problem solution must take account of these as well.

Once the problem is properly identified, the way is open to recognition of relevant alternatives and satisfactory solutions. In these steps public participation is important and of significant help to the professional; provided, however, that there has been effective meaningful public participation in problem identification. Unless there has been, public participation cannot be very useful later. A special warning must be given against a simplistic problem definition. The biological and particularly the social aspects must be explored in depth. First assumptions of the problem need to be reexamined during later steps in the decision process as further information and understanding are developed.

Often the solution is found to be inherent in the definition of the problem. If the problem is not clearly and properly identified, any solution arrived at is almost certain to be wrong. If solutions are predetermined by national fiat, their chances of meeting local needs are indeed remote. Unless there is freedom to solve resource related

problems on a situational basis, there are no grounds for public participation.

There are further advantages to public participation in problem identification. First as well as foremost is the mutual education and understanding by professionals as well as by the public. Probably even more important is the feeling of public involvement and the acceptance of responsibility by the public for the successful solution to the problem. There is recognition and acceptance of the fact that most solutions will be compromises of some kind. There are seldom victories for any "side." In fact, the idea of "sides" or adversary positions gives way to helpfulness, toward a recognition of community and better understanding of all the elements that must be considered. Included is the fact that the agency does have certain limitations within which it must operate.

The attitude with which the professional approaches effective participation may be difficult for him to develop or even to accept. Instead of being *the* expert, *the* man with the answers, he must recognize that he is only a fellow learner with his publics. He does possess certainly some important knowledge to contribute to the identification and solution to the problem. But, so does the public. If mutual recognition of this situation is developed, the road to participation is opened. This, in essence, is the democratic process. "The democrat assumes that men in the aggregate pooling their resources—their shares of the truth, so to speak—will in the long run do a better job of guiding their destiny than will any leader, no matter how able."[13]

How is the public interest determined or protected by this process? Does local public interest become primary at the expense of a broader public interest?

There is no one public interest. One monolithic national interest in environmental quality clearly identified, or determined by Congress, or the administration, or by the head of any agency in Washington does not exist. There are many problems and many public interests. While *general* policies in response to expressed public needs can be set within the legislative-administrative process, the particulars of policy are to be determined through the expressions of public interest at all levels and with the use of the discretionary powers of administrative agencies. Public participation is the key in determining the particular expression of public interest to particular problems.

Public interest in any issue of national scope concerning a local issue is often best expressed by the local public, if it is expressed on an informed and thoroughly involved basis. The participation process

13. Roche and Stedman, The Dynamics of Democratic Government (1954).

lends itself to providing such information through open and frank discussion. The field administrator needs to develop his knowledge and understanding of the local publics in order to recognize to what extent the public with which he deals is expressing a broad interest or merely that of some special interest. This calls for considerable developed skill on the part of the field administrator. A skill which many have developed:

> [T]he field officers of a multi-purpose agency frequently show great talent for counter-balancing one group with another. Where there are numerous interests affected by an Administrative Service there will be great variations in the consciousness and articulateness of interest. Some vocational interests are much more alert than others: they are usually better and more insistently expressed than the more diffused social interests. A skillful field administrator will discover these differing social interests, furnish the inert groups with data revealing their stake in good and honest administration, release tongue-tied interests so they may make themselves heard, sometimes discover ambivalences among even the most active vocational interests which, when brought to consciousness, rob the driving, single-purposed pressure groups of much of their political impetus.[14]

The intent, however, must be participation, to seek, to discover, to find the common interest and to develop the desirable solution, not manipulation to engineer acceptance of preconceived solutions of preconceived goals.

Effective public participation within the decision process of natural resource agencies is vital to environmental quality. Achievement of the necessary public participation is not without difficulties. The achievement requires a new level of understanding of people, of human ecology, of the formal and informal structure of the community, of the lines of communication, of democratic processes. It calls for patience, understanding, and extraordinary sensitivity. It demands inventiveness and the trial of new systems and their continual adaptations.

Systematic, situational resource management requires greater levels of knowledge on the part of field administrators. It requires a new structure and philosophy of operation of the agency. The field administrator must have and develop the freedom to invite and require effective public participation in goal establishment and problem identification and solution. They are necessary ingredients to the achievement of public agency contributions to environmental quality. Effective participation is essential by all affected publics if policy is to be determined without litigation, challenged administra-

14. McKinley, *Federal Administrative Pathology*, 11 Pub. Ad. Rev. 17, 25 (1951).

tive fiat, public confrontations, or the continuous processes of public conflict with agency determinations that have dominated the arena within which land managers have found themselves operating. The initiative for change, in our opinion, still lies within the agencies. The changes required will come. The future will tell us whether the agencies will act as the agents of change, or merely be the recipients of the changing social process that characterizes so much of American public life today. The wise foresee the future; it is our hope that public resource agencies find themselves wisely led today.