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## Regional Conflict and National Policy, Kent A. Price, Ed.

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## BOOK REVIEWS

### REGIONAL CONFLICT AND NATIONAL POLICY

KENT A. PRICE, Ed.

Baltimore: The Johns Hopkins University Press. 1982. Pp. 142. \$6.95,  
s.c.

Conflicts among states and regions over natural resources seem to be growing both in number and intensity. This is the important theme this book explores by bringing together an outstanding group of contributors who discuss *History and Perspective* (Nathan Rosenberg); *Energy "Haves" and "Have-nots"* (Hans H. Landsberg); *Typical Cases Involving Natural Resources* (Allen V. Kneese); *The Legal Structure of Interstate Resource Conflicts* (Richard B. Stewart); *Externality, Conflict, and Decision* (Clifford S. Russell); and *Epilogue* (Gilbert F. White). There is no doubt that the conflicts are real, important, and often heated, in asking the question of how effective are our institutions in mediating these disputes. The authors look primarily to the courts, the Congress, and the market place.

The courts seek guidance from the commerce clause of the Constitution itself, in an effort to avoid fragmentation of the national economy and, ultimately, to allow the market place to determine the directional flow and priorities of the economy. However, as Stewart points out, the market is not foolproof. He cites environmental degradation "as an especially telling instance of market value" (p. 97) and concludes that market failure is one of the reasons that the Supreme Court may defer to the Congress to resolve resource disputes.

In the Montana severance tax case, *Commonwealth Edison Company v. Montana*, for example, the court upheld the tax because it was non-discriminatory—"it applied equally to coal consumed within and without the state" (p. 94), and left the final question of resolving the dispute to the Congress while emphasizing "the inability of the Court to determine the ultimate incidence of tax measures or the policy question of how states should go about allocating the burdens of taxation" (p. 95). Stewart concludes that "as long as a state takes care to adopt measures that do not discriminate on their face against out-of-state citizens or enterprises, the Supreme Court apparently will not invalidate the measures as an unconstitutional burden on commerce" (p. 95). This judicial deference to the states, however, does not leave a legal void; it simply leaves the resolution of such regional natural resources disputes to the legislative arm of the government, the Congress, to resolve.

In recent decades, Congress has exercised its powers to deal with natural resources development extensively, by delegating broad responsibility to federal administrative agencies such as the Department of the

Interior, the Department of Energy, and the Environmental Protection Agency. Stewart sees the judicial deference to Congress as being desirable in some types of regional disputes, and undesirable in others. "The courts," he argues, "should not in the absence of discrimination invalidate state regulations or taxation of natural resource development as an un-constitutional burden on interstate commerce. They also should decline to hold that such measures are preempted by federal law unless Congress expressly so provided. But in other contexts, such as interstate pollution, . . . courts should take the lead in confronting problems that cannot simply be left to the states or to Congress. In still other areas, including preservation of scenic resources, and hazardous waste disposal, new institutional approaches seem needed" (p. 105).

Allen Kneese provides some very illuminating case studies, one dealing with the Waste Isolation Pilot Plant controversy in New Mexico, which involves a federal effort to locate a radioactive waste site in that state. He also describes the fascinating interplay between the federal government and the Rocky Mountain Southwest region in resolving the international dispute with Mexico over salinity levels of the Colorado River, pointing out "the internal forces are especially clear in this agreement. The basin states seem to have been determined not to lose a single drop of water to Mexico, no matter what it might cost the general taxpayer in the United States" (p. 66). In his discussion of the Montana severance tax case, Kneese raises some uneasy questions, suggesting that while "the Court's ruling permits states to set rates as high as they wish, on the other hand, if the populous, net-energy-consuming states could get political support, they could decide that less populous states like Montana should have a rate of close to zero" (p. 74). This is the other side of the coin from the Court holding that the "appropriate level or rate of taxation is essentially a matter for legislative, not judicial, resolution" (p. 72).

The stresses between state, region, and nation over natural resources are not going to go away. One that is now emerging even after this book was published is that dealing with interstate groundwater. The court is just now beginning to grapple with this problem, reaching for a delicate adjustment of federal and state roles in the dispute using the tool of the commerce clause to protect the federal economy, while not yet having fully thought through how to reconcile the commerce clause with the federal common law of equitable apportionment which provides each state an exclusive share of interstate water.

This is a much needed book to help clarify our thinking about regional conflict and national policy. How do we establish the criteria for making principled decisions as to when national policy can dictate that the environmental quality of a state should be degraded (for a radioactive dump

site in New Mexico) while simultaneously dictating that another state cannot degrade its environmental quality (to preserve a national park in Utah), also for the national interest? The book has many good insights which inform, ranging from what constitutes a region, to the observation that regions do not even exist legally: "states, not regions, are the entities recognized by the law" (p. 3), to a most helpful introduction and overview by Kent Price. This is a thoughtful book, a helpful book, and one which is provocative as we try to maintain the delicate balance between national integrity and regional and state viability.

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