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## A National Policy for the Environment: NEPA and Its Aftermath

Lynton K. Caldwell

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## BOOK REVIEWS

### *A National Policy for the Environment: NEPA and Its Aftermath*

By Richard A. Liroff

Bloomington: Indiana University Press, 1976

Pp. 288 plus Index. \$10.00

Liroff's account of the origin and initial implementation of NEPA describes the process by which this widely misunderstood law rapidly became an extraordinary instrument of public policy. The book is comprehensive and well-balanced. Chapters 1 and 2 provide background. Chapters 3 and 4 deal with administrative implementation—Chapter 3 with the role of the Council on Environmental Quality [CEQ] and Chapter 4 with the response of the administrative agencies. Chapter 5 reviews judicial interpretation, and Chapters 6 and 7 examine Congressional reconsideration of the NEPA and provide retrospective observations on experience with the Act thus far.

The author makes clear that, in enacting the NEPA, the Congress declared a policy for the environment, but it did not establish a policy in a fully operative sense. He observes that: "The national environmental policy in the early 1970s was not so much the congressional statement of Title I of NEPA, but rather, it was the sum of all environmental decisions that were environmentally impacting."

Whatever else may be said of the National Environmental Policy Act, it is clearly a landmark in the history of public policy in the United States. Why? Because it established, formalized, and implemented a new field of policy. The Act summarizes the new environmental ethic that unevenly and against deep-rooted skepticism and resistance, increasingly infuses the social, economic, and political attitudes of Americans. The NEPA signalizes a basic shift in the weight of popular values, confirmed by evidence widespread throughout American life.

The NEPA differed from most legislation, major or minor, in one remarkable respect. It was not the result of pressure group effort. The Act had no lobbyists—no counterpart to the Anti-Saloon League, NAACP, NEA, AF of L-CIO, or the U.S. Chamber of Commerce. The organizations representing environmental awareness generally supported the legislation, but had little direct role in its drafting or enactment. And not until some months after enactment did the conservation and environmental quality interests discover that in the environmental impact statement provision of the Act (Sec. 102(2)(C)), a potent weapon had been made available to them.

Although the Act embodies ecological concepts and thinking,

professional ecologists had little to do with its drafting. Their influence, although significant, was indirect. They should especially be absolved from any blame (or credit) for the environmental impact statement. If ecologists had drafted the NEPA, it is highly doubtful if the EIS, or anything resembling it, would have survived professional doubts and disagreements. The following experience suggests the reason. It also helps to explain the ambiguity attending the initial implementation of the NEPA, as amply illustrated in Liroff's book.

During the summer of 1964, I was a member of a working group at Syracuse University's Conference Center at Minnowbrook, New York, concerned with planning for national development. My role in this workshop was to find ways to build ecological thinking into planning and development projects, especially those in the so-called "developing nations." To this end, I explored various possibilities for bringing ecological awareness into the planning required for national development.<sup>1</sup> I arrived at the idea of the device of a cautionary check-list—a list of questions, of dos and don'ts, that might guide the planner, the engineer, and/or the developer in making decisions. It was intended to alert them to the risks of self-defeating error and to indicate when and where scientific ecological counsel should be sought. I worked these ideas into an article (unpublished) entitled "Making Ecological Concepts Operational." I then sought reaction from professional ecologists and received an almost wholly negative response.

The objections of the ecologists were twofold. *First*, there was profound doubt that the complexity of ecological relationships and processes could be reduced to any set of guidelines, or that environmental impacts could be foreseen with sufficient certainty to justify any standardized form of analysis. *Second*, there were strong objections to "bureaucratizing" ecology and, especially, to asking engineers, economists, and planners to consider or assess environmental impacts. Subsequently, some spin-off ideas were published in *Bio-Science*.<sup>2</sup> However, the idea of an action-forcing device was largely excised in deference to referees and reviewers who saw the concept as impractical or even dangerous. But a more hospitable response to the action-forcing concept came from the Senate Committee on Interior and Insular Affairs at the Hearing on S. 1075, the Senate version of the NEPA on April 16, 1969.<sup>3</sup>

The relevance of this narrative to the history of the NEPA and to

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1. Cf. Liroff, *The Biophysical Environment*, in ACTION UNDER PLANNING: THE GUIDANCE OF ECONOMIC DEVELOPMENT 84 (B. GROSS, ed. 1967).

2. Liroff, *Problems of Applied Ecology: Perceptions, Institutions, Methods, and Operational Tools*, 16 BIO-SCIENCE 524 (1966).

3. R. LIROFF, A NATIONAL POLICY FOR THE ENVIRONMENT: NEPA AND ITS AFTERMATH 16 (1976).

Liroff's book should readily be perceived. The National Environmental Policy Act became law without a well-developed body of scientific precepts or guidelines for its implementation and without a responsible, indoctrinated pressure group to oversee its administration. The Act was a response to a widely-based, nonspecific, but strongly voiced public demand that something be done for the environment. Its "pressure group" developed *after* its enactment, not before. And so the federal agencies faced the implementation of the Act without "benefit" of precept or advice from the scientific community, from ecologists, environmentalists, or even old-time conservationists. This circumstance explains the extraordinary importance of the interpretation of the Act by the courts. It also leads to the conjecture that ecological thinking had permeated American society more extensively than casual observation would have suggested. Despite confusion and resistance, most federal agencies were able to move toward formal compliance with the Act without adequate preparation to do so.

Liroff's estimate of the effectiveness of the NEPA may be paraphrased as "qualified success." The quality of the American environment is probably better today than it would have been without the NEPA. The environmental impact statement device, although abused and exploited, has had measurable impact on federal planning and decisionmaking. It has also resulted in the compilation of environmental data and analysis that may have future, as well as present, relevance. The techniques of environmental impact analysis have been stimulated and refined. What the NEPA cannot do is provide the political will to actualize its declared purpose. The only significant improvement that might be made in this book is an emphasis upon this point.

The NEPA is a better piece of legislation than anyone could reasonably expect from the United States Congress. It has been more effectively executed than anyone could reasonably expect, given the priorities of the Nixon and Ford administrations and a falling-off of vigorous support in the Congress. But the implementation of the Act has fallen short of its potential.

Whether the NEPA is a "noble experiment" or a precocious intimation of a more ecologically-committed future cannot now be ascertained. Liroff attempts no such assessment. The legislation has survived six years with relatively little impairment. It has already curbed unsympathetic administrators. In sympathetic hands, it might yet become a powerful instrument with which to shape an effective environmental policy consistent with its declared purpose.

LYNTON K. CALDWELL\*

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\*Professor of Political Science, Indiana University.