NATURAL RESOURCES JOURNAL

Volume 12
Issue 2 *The Human Enviornment: Toward an International Solution*

Spring 1972

Individual and the Environment, The

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THE INDIVIDUAL AND THE ENVIRONMENT

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Since pollution control first captured the public attention several years ago theoreticians and amateurs alike have been looking for a means whereby the individual would be encouraged to take greater cognizance of the health of the environment in his day-to-day activities. The range of these inquiries can be broken down into four areas: prohibition through law, manipulation through economic incentives and disincentives, control through institutional structures, and development of the public conscience.[1] The one area which appears to hold the key to all the others is the latter one, an attempt to have people reassume the burden of the individual and collective responsibility which forms the cornerstone of our jurisprudence.

In the area of pollution control it appears that little can be accomplished until the individual recognizes his role in the creation of the problem and modifies his behavior. At the moment, man does not extend to the environment the notion of good neighborhood. Laws are an imperfect control mechanism however attractive they may appear as a visible course of action demanding little from the public purse. Schemes to install a market mechanism for disposal rights are unwieldy and uncertain of success. Institutions mean more of the same pattern of faulty management of environmental problems. Therefore, the only conclusion when searching for mechanisms for improved environmental management is to look at the common denominator to all these areas, the individual.

There are several reasons to suppose that the individual can rise to these demands for personal responsibility when external forces have not led to change. This article will outline some of the current trends that seem to be pointing towards greater individual involvement. Among these are the changing values of society that have given a new perspective to environmental issues; a new sense of the immediacy of the environment; a recognition of the value of restraint by the individual; and the interest of governments in public input to policy planning. In short, cause and effect relationships are being perceived

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1. A. R. Thompson, *Legal Responses to Pollution Problems–Their Strengths and Weaknesses* (Twelfth Pacific Science Congress unpublished manuscript, 1971).

on a more mundane plane, and people are responding with their own sense of strategy and place.

NEW GOALS

Currently society is in the midst of questioning its value system. One dimension of this review is the introduction of a new parameter into the range of goals of society—that of the well-being of the environment as the ultimate warrant to our continued dominance on the planet, if not survival. Gradually we are coming to consider that in addition to those traditional goals shaping our lives such as health, food, shelter and self-realization is the right of the individual to a healthy environment. This may well have arisen out of the fear that these other goals would not be attainable without this one, but nonetheless it is a beginning of a greater sense of responsibility by the individual towards his surroundings.

A FINITE WORLD

Questions of the environment have impinged very little upon our consciousness so far. Garbage and sewage disposal have long been delegated tasks in which the citizen takes little interest as to techniques or end results. In many cases, this is to be regretted since the tangible costs of these essential services are obscured by the distance which our ethics command we should maintain from these "unmentionables." Similarly, in industry the simple act of physically removing wastes beyond the factory fence has long been thought a sufficient form of management. Even personal nuisances such as litter, noise and automobile exhausts have not generally been perceived individually as a part of the overall environmental crisis.

But this is changing. Man is beginning to realize that his environment is finite. Large populations have been drawn into cities by urban and industrial forces which in combination have placed a great burden upon the immediate surroundings. The results are a strain upon the resource base and the destruction of the only physical outlet to the urban maze. We see that some form of reallocation of the environmental supply must take place. Although man first looks for outside sources to blame, he must inevitably return to the individual either in his corporate or private role. It is man, by his dereliction of responsibility, his unconcern for the finality of his actions and his irresponsibility towards the capital value of his physical and natural environment, who is the primary force. We have met the enemy and to quote Pogo, "he is us." What we must now look for is some means to exercise this new sense of individual

responsibility first through self-restraint and then through a communality of action.

THE ROLE OF RESTRAINT

The individual accepts many constraints on his behavior in the interests of the common good. These are meted out in rewards and penalties to physical, social and economic well-being of which most people understand and to which most subscribe. In general, however, this code of behavior is based on directly observable interests such as home, property and business. It is part of the fabric of our life that in order to make rights tangible there must be countervailing obligations upon them.

As the environment becomes something in which the individual perceives a specific personal interest as part of the general public right, we can expect that he will seek means to exercise his claim. He will look for systems of regulations, penalties and payments which parallel those applied to private property rights to enforce responsibility toward the public good. This can already be observed in the recent turn to litigation on environmental issues, particularly in the United States. These endeavors have unfortunately met with only partial success as a device of environmental management, largely because a parallel situation has not been deemed to exist between private and public property. The claim of the individual to a voice in what has heretofore been regarded as a common issue has not generally been granted.

SOME LEGAL PROBLEMS

The legal system in the western world is largely based on a tradition of personal responsibility through private property rights. When a matter comes into dispute, the purpose of the ensuing legal proceedings is either to determine responsibility and thereby assign blame, or to speak from a position of right and obtain prohibition. Each of the two parties to the dispute has a status recognized by the court through private holdings. Should their rights be held in common property, however, the situation is viewed quite differently. The right to engage in a dispute is called into question on the grounds that being one of many with rights, the individual can claim no uniqueness of position in terms of the injury suffered. Furthermore, one person cannot generally act as a representative of an affected group even though its members may have suffered identifiable damage.

Some advance has been made in the question of standing before

the courts in common property questions. Certain judgments have recognized the rights of a group by reason of a special concern with the issues of aesthetics and environmental management to be heard on an issue involving these considerations.[2] These cases are currently being judged individually, with no guarantee of parallel results for parallel claims. Rather, one can expect that given the apparent reluctance of the courts to open up the limitations on access, these precedents may be overlooked in future rulings.[3] What appears necessary is a concerted effort by the legal profession to review this situation and bring it up to date with current expectations and current views of justice.

As environmental issues appear more frequently for judgment in the courts, difficulties will become increasingly apparent in levying penalties in keeping with the social setting which led to the initiation of the action. The goal in environmental litigation is not merely the imposition of a penalty but an attempt to force a greater consciousness of our abuses of the environment. Fines or payments of damages, even when imposed at maximum levels, risk being viewed by the offenders as part of the cost of operation and do nothing to deter or to ameliorate environmental degradation. Injunctions, the other likely result of legal action, while they can work to obtain the cessation of a new or impending activity, are not likely to be as freely applied to an established activity because of the greater displacement of investment.[4]

In the whole area of sentencing, there are many innovations the courts could consider which would render more appropriate the penalties to the intention of the plaintiff. Where fines or injunctions are inadvisable the courts should follow the trend of certain recent judgments which offer the accused the opportunity of substitute action applied elsewhere within the jurisdiction to recondition a portion of the environment similarly degraded to that part named in the suit. This would have the beneficial result of forcing those involved into a full realization of the extent of man's transgression upon nature. Forcing a look at environmental consequences might lead ultimately to a modification of the original situation which produced the litigation.

In anticipation of this impending problem of appropriate conclusions to litigation, the courts should be looking for new weights in

2. H. R. Eddy, *Locus Standi and Environmental Control: A Policy for Comparison*, 6 U.B.C. L. Rev. 207 (1971).

3. *Id.* at 212.

4. J. C. Juergensmeyer, *Common Law Remedies and Protection of the Environment*, 6 U.B.C. L. Rev. 229 (1971).

order to balance the interests of those speaking on behalf of the environment and those taking traditional positions of paramountcy of economic endeavors. The apparent disservice of compulsory pollution control measures has in numerous cases led to new profits through more efficient processing or recovery of valuable by-products. The courts must therefore become more conscious of the true justice of the situation and not be influenced by vested interests. The danger of building a structure of decisions on precedence which overlooks the original intent of a law or the basic trends of social preference is nowhere more evident than in this new face of environmental litigation.

Legal action is only one area that can facilitate the development of individual responsibility towards the environment. Although it is very much in the public view at the moment, and has several strong advocates, it is possibly not the most important area. Litigation has the undeniable drawbacks of differential access, expense, slowness in resolution, resistance to change and, perhaps most important of all, a position after the fact, that lead one to look for other mechanisms. Furthermore, it is a substitute for direct action and reflects a certain breakdown in the transfer and dissemination of social goals.

PUBLIC PARTICIPATION

If the individual is to have this sense of responsibility towards the environment which seems so necessary if any real progress is to be made in safeguarding the environment, then the individual must be able to perceive his own involvement not merely with the environment as a retreat but in the routine activities that affect his surroundings. The public must become increasingly involved, through individual and group inputs, in the decision-making process both at the point when a development scheme first becomes a possibility and then during its formulation and implementation. In this way not only will the public become committed to the well-being of the environment, but also it will understand more fully the implications of environmental quality.

Governments seem increasingly interested in new ways of receiving expressions of the public view. They are aware of the inadequacy of the ballot box to voice public desires on specific issues. In Canada, for example, both the federal and provincial governments are searching for mechanisms to involve the public, knowing that this wider input will assist in clarifying the goals of society and give those taking part in this clarification a greater sense of commitment to the end results.

One of the difficulties governments have experienced in the recent shift in public preferences to a greater consideration of environmental issues has been an uncertainty as to how deeply these views run into the fabric of society. At first glance, the environmental issue has been espoused only by a minority of committed, outspoken individuals and groups. Since implicit to environmental issues are some very difficult questions of industrial development and job security, governments have had to be certain of the breadth of this view.

The mechanisms for determining the public view are by no means certain. Public hearings have been widely used but they have acquired a dubious reputation as a result of two notable areas of mismanagement. Because public hearings tend to be held after the details of a plan are sketched out they often result in a confrontation between the polarized viewpoints of supporters and attackers, precluding any constructive discussion or positive outcome. Hearings have also been used as a vehicle for public education which runs counter to their primary purpose of facilitating a flow of information from the public to the government and which tends to bias the eventual product.

Currently, governments are looking to more general inquiries with the public to define initial premises and to evaluate alternatives. The several instances that have been tried have been most productive and have successfully avoided a conflict between representatives of diverse opinions.[5] People appear to appreciate a situation of open inquiry and respond with constructive inputs of their own. Problems arise only when the inquiry is set up as a meaningless ritual apart from the process of planning and implementation.

The importance of this search for mechanisms for public input rests on the need for communality of view before joint assumption of responsibility to the environment can be workable. At times this may appear unattainable, particularly between persons with diametrically opposing interests each of whom views the other's stand as irresponsible. Often however, the two sides can bridge the gap between them when they realize more fully the factors influencing the position of the other.

In this respect, it must be recognized that there are several kinds of agreement possible between people: agreement on substance, agreement not to agree on substance, and agreement as to why there can be no agreement on substance. Until now we have generally been

5. Canadian Council of Resource Ministers, *Proceedings of Prairie Water Seminar* (unpublished manuscript, 1971); the program of public participation to determine the location of the terminus of highway 417, Ottawa, Canada.

satisfied with first order agreements on substance. In fact, it has often been convenient not to recognize that more than first order agreements are possible. But we can no longer be satisfied with this simple view, particularly in the face of growing social and environmental pressures which may render first order agreements impossible. It is only through creative approaches to the interaction between groups that a fuller exploration of issues is possible and a move beyond standard outlooks can be made. The goal towards which we must move cannot be obtained by legal coercion either prescriptive or punitive. It is not amenable to the marketplace and probably cannot be successfully institutionalized in the formal sense of that word. It must proceed with each event so that gradually under pressure from the public to advance, and with the willingness of the government to respond, there will emerge a general expectation for individual response to these issues and an understanding of the individual role.

CONCLUSION

The development of environmental procedures in contemporary society must rest on a cornerstone of public commitment and responsibility. This implies a public dialogue on current and changing values, doctrines and choices so that the response formulated may be characterized by relevance, clarity and finality. The role of the jurist and the administrator is to apply their traditional crafts in new ways to translate the emerging ethic into workable systems. The result must reflect the social sense of justice and not necessarily the view of clinical excellence held by these professions. Done in a creative way many of the apparently insoluble problems now facing us will resolve themselves. Anything less will reduce these professions to technicians patching up after the fact.