

# Learning from Experience, Planning for the Future: Beyond the Parable (and Paradox?) of Environmentalists as Pin-Striped Pantheists

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## INTRODUCTION

### WHITHER ENVIRONMENTAL POLITICS AND LAW?

Those who have grown old, as the modern environmental movement itself has grown old, show signs of weariness, and even of mid-life crisis.<sup>1</sup> The laws and policies the movement forced onto the political agenda in the late 1960's and early 1970's and steered through implementation and enforcement in the halcyon days of the Carter presidency,<sup>2</sup> have been doubted, and even damned.<sup>3</sup> NEPA, the National Environmental Policy

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1. Peirce, *Middle-Age Crisis for Environmental Movement*, Sacramento Bee, July 28, 1985, § D, at 5, col. 1.

2. The halcyon days of the Carter presidency are most usefully recalled in Culhane, *Natural Resources Policy: Procedural Change and Substantive Environmentalism*, in *NATIONALIZING GOVERNMENT: PUBLIC POLICIES IN AMERICA* 201 (T. Lowi & A. Stone eds. 1978), and Belsky, *Environmental Policy Law in the 1980s: Shifting Back the Burden of Proof*, 12 *ECOLOGY L.Q.* 1, 12-36 (1984).

3. The idea that environmental policy approaches used in the 1960's and 1970's are no longer viable, given the circumstances that now prevail and are expected to characterize the rest of this century, is explored in Fielding, *Environmental Policy: Beyond the Mindset of the 1960's*, 4 *ENVTL. F.* 6, 10-15 (1985), and Ruckelshaus, *Risk, Science, and Democracy*, 1 *ISSUES IN SCIENCE AND TECHNOLOGY* 19, 20-25 (1985). Similar doubts are expressed in O'Riordan, *Research Policy and Review 6: Future Directions for Environmental Policy*, 17 *ENVIRONMENT AND PLANNING* 1431 (1985); Sandbrook, *Towards a Global Environmental Strategy*, in *ENVIRONMENTAL POLICIES: AN INTERNATIONAL REVIEW* 289, 299-302 (C. Park ed. 1986); and W. ROSENBAUM, *ENVIRONMENTAL POLITICS AND POLICY* 17-25, 285-312 (1985). An early condemnation of environmental policy initiatives appeared in R. NEUHAUS, *IN DEFENSE OF PEOPLE* (1971). More recent criticisms of the political left are reviewed and synthesized in F. SANDBACH, *ENVIRONMENT, IDEOLOGY AND POLICY* (1980). The conservative indictment appears in W. TUCKER, *PROGRESS AND PRIVILEGE: AMERICA IN THE AGE OF ENVIRONMENTALISM* (1982), but also see the superb review of this book by Willey, *Book Review*, 11

Act of 1969,<sup>4</sup> which was regarded at its birth as a great constitutional act, has become a teenager!<sup>5</sup> Some observers have already shunned the Act as a disastrous and dangerous delinquent,<sup>6</sup> and others have recently consigned it to a quiet and obscure adulthood.<sup>7</sup> Rescuing NEPA from either fate is something not even critical legal studies in the *Harvard Environmental Law Review* may be able to accomplish.<sup>8</sup>

Many of the best and the brightest in law, in government, and in the academy, who fifteen years ago believed with Richard Nixon (of all people!) that the nation stood at the threshold of a bold, new, environmental era<sup>9</sup> have grown skeptical of their past<sup>10</sup> and deeply disturbed and uncertain about their future.<sup>11</sup> They are as a great Greek chorus to the Reagan

ECOLOGY L.Q. 95 (1983). Among environmental lawyers, the most thoughtful, even indispensable, exchange occurs in Latin, *Ideal versus Real Regulatory Efficiency: Implementation of Uniform Standards and "Fine Tuning" Regulatory Reforms*, 37 STAN. L. REV. 1267 (1985) and Ackerman & Stewart, *Reforming Environmental Law*, 37 STAN. L. REV. 1333 (1985).

4. Pub. L. No. 91-90, 83 Stat. 852 (1969) (codified at 42 U.S.C. §§ 4321-4370 (1982)).

5. The expectations at birth are captured by Hanks & Hanks, *An Environmental Bill of Rights: The Citizen Suit and the National Environmental Policy Act of 1969*, 24 RUTGERS L. REV. 230 (1970); Peterson, *An Analysis of Title 1 of the National Environmental Policy Act of 1969*, 1 ENVTL. L. REP. (ENVTL. L. INST.) 50,035 (1971); and F. ANDERSON, *NEPA IN THE COURTS* (1973). Bill Futrell, President of the Environmental Law Institute, refers to NEPA as a "quiet teenager" in one of four short articles published to celebrate the Act's fifteenth birthday. Futrell, *NEPA, Environment's Own 'Quiet Teenager,' An Error to Assume All Is Well*, 3 ENVTL. F. 39 (1985).

6. Fairfax, *A Disaster in the Environmental Movement*, 199 SCIENCE 743 (1978); Fairfax & Ingram, *The United States Experience*, in PROJECT APPRAISAL AND POLICY REVIEW 29 (T. O'Riordan & W. Sewell eds. 1981).

7. Murchison, *Does NEPA Matter? An Analysis of the Historical Development and Contemporary Significance of the National Environmental Policy Act*, 18 U. RICH. L. REV. 557 (1984).

8. Pollack, *Reimagining NEPA: Choices for Environmentalists*, 9 HARV. ENVTL. L. REV. 359 (1985). On the nature and purposes of critical legal studies as an academic movement, see Menaud, *Radicalism for Yuppies*, THE NEW REPUBLIC, Mar. 17, 1986, at 20-23; Gordon, *New Developments in Legal Theory*, in THE POLITICS OF LAW 281 (D. Kairys ed. 1982); Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561 (1983); *Critical Legal Studies Symposium*, 36 STAN. L. REV. 1 (1984); and D. KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* (1983).

9. President Richard Nixon's much quoted suggestion that the 1970's be regarded as the environmental decade was made on the day he signed the National Environmental Policy Act and is reported in the N.Y. Times, Jan. 2, 1970, § A, at 12, col. 6.

10. Changing interpretations of the history of the environmental movement are traced in Rakestraw, *Conservation History: An Assessment*, 41 PAC. HIST. REV. 271 (1972) and White, *American Environmental History: The Development of a New Historical Field*, 54 PAC. HIST. REV. 297 (1985). Much of the skepticism can be traced to the shock administered to environmentalists by the Reagan Administration, see Pollack, *supra* note 8, at 361-64, but seems to have little basis in the level of public support for environmentalist causes, as revealed by systematic analyses of survey data, see Mitchell, *Public Opinion and Environmental Politics in the 1970s and 1980s*, in ENVIRONMENTAL POLICY IN THE 1980S: REAGAN'S NEW AGENDA 51 (N. Vig & M. Kraft eds. 1984) [hereinafter cited as ENVIRONMENTAL POLICY IN THE 1980S].

11. One of the more thoughtful and provocative studies of the legal and political strategies used by environmentalists in the past, and of the steps they must take to cope with an uncertain future, deals specifically with land use. See F. POPPER, *THE POLITICS OF LAND USE* (1981). The adjustments changing times demand of environmental group leaders are the sub-

revolution in environmental policy,<sup>12</sup> darkly chanting Baldwin's lament<sup>13</sup> and seemingly unable to explain whether they are in the midst of a healthy evolution or on the verge of becoming extinct.<sup>14</sup>

Underlying this outbreak of doubt and confusion, expressed in the press, in the journals, and, as we shall see, in the books and learned monographs, is a fear that environmentalists have failed to learn from experience. And, what is more, and perhaps worse, that they are still sadly ill-equipped to plan for the future.

The environmentalists' disturbing failure to learn and chronic inability to plan is rarely linked today, as it would have been fifteen or twenty years ago, to the end of the world.<sup>15</sup> There is, unless I am very

ject of J. DAVIES, F. IRWIN & B. RODES, *TRAINING FOR ENVIRONMENTAL GROUPS* (1980), and *ENVIRONMENTAL LEADERSHIP: A SOURCEBOOK FOR STAFF AND VOLUNTEER LEADERS OF ENVIRONMENTAL ORGANIZATIONS* (S. Langton ed. 1984).

12. See particularly Kraft, *A New Environmental Policy Agenda: The 1980 Presidential Campaign and Its Aftermath*, in *ENVIRONMENTAL POLICY IN THE 1980s*, *supra* note 10, at 29, and Vig, *The President and the Environment: Revolution or Retreat?* in *id.* at 77. A major theme of the book is that the Reagan Administration had less impact on both policy and the environment than is commonly supposed because it made a major miscalculation of the political strength of the environmental movement. The most fascinating and carefully documented account of the evolution and content of the Reagan agenda appears in Belsky, *supra* note 2, at 37-77.

13. Malcolm Baldwin, for many years a senior staff member at the President's Council on Environmental Quality, laments in response to Fielding (*supra* note 3) that "notions of what is 'environmental' have narrowed down to concerns about toxics, hazardous waste and pollution regulation." He says the movement of the 1960's was critical of government and business but, had high hopes for government intervention.

Perhaps we have lost sight of the objectives for lawyers that some of us had for the first environmental law conference in 1969. Fielding is right; some environmental organizations give us too much simple rhetoric. But others thrive on politically 'safe,' unconflictual and often unimaginative recommendations . . . As a result, the environmental 'movement' is slightly boring and not much of a change agent.

Baldwin, Letter to the Editor, 4 ENVTL. F. 46 (1986).

14. The divergence of views about how to explain the nature and causes of the most recent leadership changes in the movement, and about what these mean for the evolution of the movement as a political force in Washington, D.C. is very well captured in Stanfield, *Environmental Lobby's Changing of the Guard is Part of Movement's Evolution*, 17 NAT'L J. 1350 (weekly ed. 1985).

15. The catastrophic, suicidal, and explosive consequences attached in the environmental literature of the late 1960's and early 1970's to the failure to learn and to plan tends to be conveniently forgotten now, but can be glimpsed from these titles: P. EHRLICH, *THE POPULATION BOMB* (1969); EDITORS OF *Ramparts*, *ECO-CATASTROPHE* (1970); EDITORS OF *The Progressive*, *THE CRISIS OF SURVIVAL* (1970); C. FADIMAN & J. WHITE, *ECOCIDE . . . AND THOUGHTS TOWARD SURVIVAL* (1971); R. LINTON, *TERRACIDE: AMERICA'S DESTRUCTION OF HER LIVING ENVIRONMENT* (1970). Even reputable scientists thought reason had been cast aside and that the circle was closing: B. COMMONER, *SCIENCE AND SURVIVAL* (1968); B. COMMONER, *THE CLOSING CIRCLE: NATURE, MAN AND TECHNOLOGY* (1971); R. DUBOS, *REASON AWAKE: SCIENCE FOR MAN* (1970). The tenor of these books, which seems quite old-fashioned today, was also reflected in much more sober texts on environmental politics and law: L. CALDWELL, *ENVIRONMENT: A CHALLENGE FOR MODERN SOCIETY* (1970); F. GRAD, G. RATHJENS & A. ROSENTHAL, *ENVIRONMENTAL CONTROL: PRIORITIES, POLICIES, AND THE LAW* (1971); *THE POLITICS OF NEGLECT: THE ENVIRONMENTAL CRISIS* (R. Meek & J. Straayer eds. 1971); *THE POLITICS OF ECOSUICIDE* (L. Roos ed. 1971); W. ROSEN-

much mistaken, however, a clear sense that by losing its grip on political reality the environmental movement runs the risk of jeopardizing the vision its gurus and political leaders have regarded for some time now as their most saleable political product—what has come to be widely known but not, I think, very widely appreciated or even very clearly understood as “the sustainable society.”<sup>16</sup>

A dark cloud has thus been cast on the once pleasing prospect offered by Schumacher, Daly, and others:<sup>17</sup> the prospect that Americans at least, and most others in the developed world, would be able to live happily ever after in a post-industrial tomorrow.<sup>18</sup> There is a fear of being overwhelmed by a new-found enthusiasm for growth and development at home,<sup>19</sup> and by growing, desperate, and famished masses

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BAUM, *THE POLITICS OF ENVIRONMENTAL CONCERN* (1973). Whether or not such views are really out of date, as opposed to being merely out of fashion, is uncertain, as new warnings of impending disaster surface. See, e.g., Johnson, *Earth's Atmosphere a Hot Topic*, Sacramento Bee, June 11, 1986, § E, at 20, col. 4. Not everyone is persuaded that planning has very much to offer policymakers, especially in the United States. See Wildavsky, *If Planning Is Everything Maybe It's Nothing*, 4 POL'Y SCI. 127 (1973).

16. The unofficial bible of the sustainable society movement is probably INTL UNION FOR CONSERVATION OF NATURE AND NAT. RESOURCES (IUCN), UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP) & WORLD WILDLIFE FUND (WWF), *WORLD CONSERVATION STRATEGY: LIVING RESOURCE CONSERVATION FOR SUSTAINABLE DEVELOPMENT* (1980). See also R. ALLEN, *HOW TO SAVE THE WORLD: STRATEGY FOR WORLD CONSERVATION* (1980); L. BROWN, *BUILDING A SUSTAINABLE SOCIETY* (1981). The idea that much of the literature on sustainable development, most especially in the Third World, has not been thought through very carefully is a major contribution of *DIVESTING NATURE'S CAPITAL: THE POLITICAL ECONOMY OF ENVIRONMENTAL ABUSE IN THE THIRD WORLD* (H. Leonard ed. 1985). The comments on the economics and politics of sustainability in developing countries in the first four chapters of Leonard's book are particularly good and especially deserving of wider appreciation because of their critical discussion of the linkage between development and income distribution. See also P. DASGUPTA, *THE CONTROL OF RESOURCES* (1982); Sandbrook, *supra* note 3.

17. E. SCHUMACHER, *SMALL IS BEAUTIFUL: ECONOMICS AS IF PEOPLE REALLY MATTERED* (1973); H. DALY, *TOWARDS A STEADY STATE ECONOMY* (1973). See also E. MISHAN, *THE COSTS OF ECONOMIC GROWTH* (1967); H. HODSON, *THE DISECONOMIES OF GROWTH* (1972); D. BELL, *THE COMING OF POST-INDUSTRIAL SOCIETY: A VENTURE IN SOCIAL FORECASTING* (1973); F. HIRSCH, *SOCIAL LIMITS TO GROWTH* (1976); H. STRETTON, *CAPITALISM, SOCIALISM AND THE ENVIRONMENT* (1976); R. INGLEHART, *THE SILENT REVOLUTION: CHANGING VALUES AND POLITICAL STYLES AMONG WESTERN PUBLICS* (1977); E. MISHAN, *THE ECONOMIC GROWTH DEBATE: AN ASSESSMENT* (1977); A. SCHNAIBERG, *THE ENVIRONMENT: FROM SURPLUS TO SCARCITY* (1980); Watts & Wandesforde-Smith, *Postmaterial Values and Environmental Policy Change*, in *ENVIRONMENTAL POLICY FORMATION: THE IMPACT OF VALUES, IDEOLOGY, AND STANDARDS* 29 (D. Mann ed. 1981).

18. “There is a currently rather fashionable view that resource problems will decrease in ‘post-industrial’ societies, as material consumption hits some satiation plateau. But the evidence for this is rather slender . . .” J. REES, *NATURAL RESOURCES: ALLOCATION, ECONOMICS AND POLICY* 243 (1985).

19. Apart from the economic and environmental policies announced by the Reagan Administration (see Clark, *Reaganomics and the Environment: An Evaluation*, in *ENVIRONMENTAL POLICY IN THE 1980S*, *supra* note 10 at 341), this concern has been given intellectual respectability by the publication of books like J. SIMON, *THE ECONOMICS OF POPULATION GROWTH* (1977) and J. SIMON, *THE ULTIMATE RESOURCE* (1981).

overseas.<sup>20</sup> And, in the distant background, there lurks the ominous spectre of a lifeboat, the "Mutual Coercion,"<sup>21</sup> sculling towards the shore, its helmsman proclaiming a dreadful ethic of human survival.

On occasion, the level of hysteria, the spirited denigration of existing institutions, and the willingness to propose the most astonishingly unrealistic and outrageously technocratic reforms to breathe new life and vigor into the movement approaches that of the late 1960's and early 1970's.<sup>22</sup> For the most part, however, the mood is somber and expectations for institutional reform (though not, perhaps, for a transformation of personal and public values) have been lowered.<sup>23</sup>

In this Essay, contemporary commentary about the crisis of confidence in the modern environmental movement is evaluated against the background of several recent contributions to the professional literature. One way to make sense of recent events would be to interpret them as the inevitable result of the maturation and consequent increasing professionalism of the movement. Section I explores both this view and the alternate and more attractive notion that the nature and aims of the movement are shaped by the people within it, rather than by unavoidable historical necessities. The next three Sections of the Essay ask, in effect, what could give the people who participate in environmental politics and law this capacity to shape events. In Section II, the focus is on the individual and the question is explored through a detailed review of Lester Milbrath's *Environmentalists: Vanguard for a New Society*. In Section III, the focus shifts to the agencies charged with implementing the present agenda of environmental policy and law, and the discussion centers on *Staking Out the Terrain: Power Differentials Among Natural Resource Management Agencies* by Jeanne Nienaber Clarke and Daniel McCool. In Section IV, the agenda of environmental politics is itself the focus of discussion and is explored through a review of *An Environmental Agenda for the Future*, a recent, landmark publication of ten of the leading environmental groups in the United States.<sup>24</sup>

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20. See, e.g., U.S. COUNCIL ON ENVTL. QUALITY & DEP'T OF STATE, THE GLOBAL 2000 REPORT TO THE PRESIDENT: ENTERING THE TWENTY-FIRST CENTURY, 3 vols (1980); Repetto, *Population Policy after Mexico City*, JOURNAL '85, at 5 (World Resources Institute 1985).

21. I have named the vessel to recall Garret Hardin's conclusion that there was no way out of the tragedy of the commons except mutual coercion, mutually agreed upon. Hardin, *The Tragedy of the Commons*, 162 SCI. 1243 (1968). The dreadful ethic of the lifeboat is developed in Hardin, *Living in a Lifeboat*, 24 BIOSCIENCE 561 (1974).

22. For a particularly egregious example of technocratic thinking running riot over existing international institutions, see Perry, *International Institutions: Managing the World Environment*, 28 ENV'T 10 (1986).

23. The reform agenda outlined in W. ROSENBAUM, *supra* note 3, at 285-311, is extremely modest, even dull. But, perhaps this is in keeping with the new image of environmental groups as "problem-solvers, not screamers" (Fred Krupp, Executive Director of the Environmental Defense Fund, quoted in Peirce, *supra* note 1, at col. 5).

24. In addition to L. MILBRATH, ENVIRONMENTALISTS: VANGUARD FOR A NEW SOCI-

As the level of discourse in Sections II, III, and IV of the Essay shifts from the individual to the agency and again to the political agenda as instruments for accomplishing changes in policy and social conditions, and as different contributions to the literature are brought to bear, three possibilities emerge for explaining why, despite their present malaise, environmentalists are likely to remain a political and legal force to be reckoned with in America. One possibility is that the capacity of environmental leaders and their groups for leadership and influence stems from superior knowledge. Another possibility is that it stems from the moral superiority of their vision of the future of American society. A third possibility is that their power to shape social change comes from their skill and courage in striking a successful balance in their appeals for public support between their claims to expertise and their affirmation of important social values. The Conclusion briefly recapitulates what the publications under review have to say about these several possibilities.

## I

### PIN-STRIPES VS. PANTHEISTS, RATIONALITY VS. RESPONSIVENESS: A FALSE SENSE OF NECESSITY?

Learning from experience and planning for the future have special relevance as criteria by which to evaluate the condition and accomplishments of environmentalists, as revealed in a new crop of literature. These are the standards against which, a decade and a half ago, the environmental movement gauged the performance of government and the private sector, and found them lacking. They are the rational ideals used to attract the support of social and political elites, the attention of the media, and the approbation of the public at large. Many of the laws drafted and adopted at the instigation of environmental interests were quite explicitly designed to eliminate the lack of wisdom and foresight in public and private decisionmaking by promoting learning and planning,<sup>25</sup> as well as by deploying regulation and subsidy.<sup>26</sup>

The continuing relevance of learning and planning as criteria for

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ETY (1984); J. CLARKE & D. MCCOOL, STAKING OUT THE TERRAIN: POWER DIFFERENTIALS AMONG NATURAL RESOURCE MANAGEMENT AGENCIES (1985); and AN ENVIRONMENTAL AGENDA FOR THE FUTURE (R. Cahn ed. 1985) [hereinafter cited as AGENDA FOR THE FUTURE], this Essay focuses on W. ROSENBAUM, *supra* note 3, and ENVIRONMENTAL POLICY IN THE 1980s, *supra* note 10.

25. The distinction made here is very usefully developed by D. ZILLMAN & L. LATTMAN, ENERGY LAW 229-314 (1983). The most generic and widely applicable of the planning statutes is the National Environmental Policy Act (*supra* note 4), most usefully discussed and evaluated in J. BONINE & T. MCGARITY, THE LAW OF ENVIRONMENTAL PROTECTION: CASES, LEGISLATION, POLICIES 1-234 (1st ed. 1984). See also T. SCHOENBAUM, ENVIRONMENTAL POLICY LAW: CASES, READINGS, AND TEXT 75-190 (1985).

26. The early intellectual and policy justifications for regulation are brilliantly explored in T. MCCRAW, PROPHETS OF REGULATION (1984). Valuable notes on the evolution of environmental regulation at the federal level appear in BONINE & MCGARITY, *supra* note 25, at

sorting out the current confusion over the meaning of the past and the direction of the future of environmental politics is nicely captured by the author of a leading textbook, who was a harsh critic in the early 1970's of the failure to learn and to plan among the economic, social, and political institutions then in place:<sup>27</sup>

Looking at the magnitude of the environmental ills the nation faces, it should be obvious that environmental decades are no solution. Restoring the nation's magnificent heritage and preserving it for future generations will require years, if not centuries. It should be abundantly clear that there are no "quick fixes," either institutionally or technologically, that will substitute for decades of committed, patient, and educated . . . efforts . . . . In only its second decade, the environmental movement . . . must avoid the ideological rigidity and programmatic dogmatism that prevents it from receiving new ideas and profiting from its own critics. One small but significant test of this flexibility is the capacity . . . to adopt, when possible, economic incentives to encourage private compliance with environmental regulation. In an important sense, these reforms reflect the capacity of government and environmental leaders to *learn from experience and mistakes* and to maintain a healthy resiliency essential to *prudent environmental planning for the future*.<sup>28</sup>

The thoughtful reader will notice here how Rosenbaum asserts the importance of enhancing the rationality of policy and decisionmaking while leaving up in the air the question of how and by whom the improvement is to be realized. Government and environmental leaders are mentioned as agents of policy learning. And, we can infer that critics of the environmental movement and private sector advocates of economic incentives for regulatory compliance have a role to play. There is something odd, however, about learning from experience and planning for the future as important processes in a democratic society if they are conceived to be processes essentially, perhaps even necessarily, dominated by

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235-75, and L. ORTOLANO, ENVIRONMENTAL PLANNING AND DECISION MAKING 111-31 (1984).

27. W. ROSENBAUM, *supra* note 3, is in some ways an up-to-date version of Rosenbaum's earlier book, although the parentage is only briefly acknowledged in the Preface (*id.* at v). In the first, 1973 edition of Rosenbaum's earlier book, the tenth and last chapter was called "The Future Fight for Environmental Planning." W. ROSENBAUM, *supra* note 15, at 252-86. Although in the second, 1977 edition the tenth and last chapter was rechristened "The Unplanned Revolution: Ecology as a Subversive Movement," it still began with a discussion of "the planning problem." Moreover, as in the first edition, the book was extremely critical of existing institutions and of the environmental attitudes of business and industry, and optimistic that the environmental movement would continue to push for reforms using tough new political tactics. The conclusion argued that political style determines policy substance in America, worried that a style among public officials that favored buying their way out of environmental problems would preclude "environmentally constructive policies," and lamented the "pernicious political logic that delays full governmental and public acceptance of the responsibilities inherent in sound environmental management." W. ROSENBAUM, THE POLITICS OF ENVIRONMENTAL CONCERN 71-76, 81-87, 280-97 (2d ed. 1977).

28. W. ROSENBAUM, *supra* note 3, at 311-12 (emphasis added).

various elites: government officials, environmental group leaders, private sector managers, and a limited assortment of critics.

Such a restricted cast of characters in the drama of learning and planning does not seem to be at all what Pollack had in mind when she wrote:

Environmentalism is and should be many things to many people. Technocratic expertise, grassroots participation, and deep ecological imagining all have a role to play. . . . No collection of experts and computers can replace the insight, passion, and optimism that people can bring to the fight for our environment. The time has come to rework the discourse of . . . environmental law to ensure that environmental beliefs can play a role in people's daily lives and to help them solve their problems as members of a community of people and nature.<sup>29</sup>

Here Pollack is emphasizing grassroots involvement and learning by ordinary people in the course of everyday life as the keys to reform, rather than the enhancement of rationality by elite learning. Her call for people to be captivated and motivated by "deep ecological imagining" purposefully exploits the image of environmentalism as a secular religion.<sup>30</sup> The idea that large numbers of ordinary people are inspired by pantheistic Nature worship is somewhat fanciful.<sup>31</sup> But even the latest and originally pin-striped manifesto of the environmental establishment sometimes takes this tack:

This agenda for the future has roots deep in the American tradition of citizen action. We are sincerely asking for the help of all concerned people. We feel that success in the coming years depends on a framework that defines public environmental needs, offers guidelines for channeling public energies in positive ways, and facilitates public participation at every level . . . .

The key to the solution of most of the problems raised in this agenda . . . is public awareness of the issues and a recognition of the interconnections among population growth, natural resource availability, development, and environmental impacts.<sup>32</sup>

29. Pollack, *supra* note 8, at 418.

30. The most thoughtful treatment of the motivational importance of the moral and religious aspects of environmentalism in explaining why people join the environmental movement and work for the political agendas of environmental groups is S. FOX, JOHN MUIR AND HIS LEGACY: THE AMERICAN CONSERVATION MOVEMENT 358-74 (1981). Another recent but much less illuminating discussion of the moralism associated with environmentalism as a cultural phenomenon appears in M. DOUGLAS & A. WILDAVSKY, RISK AND CULTURE: AN ESSAY ON THE SELECTION OF TECHNICAL AND ENVIRONMENTAL DANGERS (1982), which is criticized by White, *supra* note 10, at 331-33, and very soundly debunked by Cheit, Book Review, 11 ECOLOGY L.Q. 241 (1983).

31. *But see* Wood, *Modern Pantheism as an Approach to Environmental Ethics*, 7 ENVTL. ETHICS 151 (1985). Other varieties of nature worship are delightfully explored in B. DEVALL & G. SESSIONS, DEEP ECOLOGY (1985). The limitations of these beliefs as spurs to conventional forms of activity in the political system are made quite plain in the chapter on 'ecological resisting.' *Id.* at 193-206.

32. AGENDA FOR THE FUTURE, *supra* note 24, at 1-2, 23. The first edition of this book

On the other hand, one can read in this same pin-striped manifesto that an acute public awareness of environmental issues needs to be coupled with a "faith" on the part of the public that other people will be able to reconcile conflicting goals, and that they will be sensitive, in "working for sound resource management," to the prospects for rational trade-offs and choices.<sup>33</sup>

The clear implication is that only a few are called to do such work, a few who might not be uncomfortable wearing pin-stripes, or asking others in similar garb to read a pin-striped manifesto. The job of the rest of us is, perhaps, to support the work of these chosen few with all the passion and fervor that can be expected of a mass public addicted to the opiate glow of pantheistic Nature worship. We will presumably also be asked and expected to legitimize the trade-offs made by these people in our name and on our behalf.<sup>34</sup>

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was published in a green and gray pinstriped cover by Agenda Press of Washington, D.C. in 1985. Although Agenda Press retained copyright to the contents, the book was again published in 1985 by Island Press, with offices in Covelo, California, and now also in Washington, D.C. Funds to support Island Press and its version of the book came from the Donner Foundation, the Ford Foundation, the Joint Foundation Support, the Rockefeller Brothers' Fund, and the Tides Foundation. The two editions differ only in their title pages. The Agenda Press title page credits Robert Cahn as editor of the book. The Island Press edition simply lists Cahn's name in the Library of Congress cataloging publication data on the reverse of the title page. The acknowledgments in both editions give Cahn and his wife, Patricia Cahn, credit for editing the book into final form. Page numbers in both editions are identical throughout.

33. *Id.* at 6. Differences of view about the extent to which and the ways in which people balance knowledge (based on learning from experience) and faith—both in defining environmental problems and in selecting policies to deal with them—are central in the dialogue between M. DOUGLAS & A. WILDAVSKY and Cheit, *supra* note 30. Importantly, the differences stem from alternative ways of approaching some of the most basic theoretical issues in postwar social science. Whether or not (and if so in what sense) sound resource management can involve "rational" choices, and whether resource managers should confine themselves to behaving as if they were trying to maximize rationality are, of course, among those issues. For a brief and dated, but still very useful introduction to the central theoretical questions involved, see Schoettle, *The State of the Art in Policy Studies*, in *THE STUDY OF POLICY FORMATION* 149-79 (R. Bauer & K. Gergen eds. 1971). In the specific context of environmental law and policy, the issues are superbly treated in Sagoff, *Economic Theory and Environmental Law*, 79 *MICH. L. REV.* 1393 (1981). Important recent experimental research designed in part to test some of the propositions advanced by Hardin, *supra* note 21, about rationality, altruism, and the tragedy of the commons is reported in Messick, *Social Interdependence and Decision Making*, in *BEHAVIORAL DECISION MAKING* 87 (G. Wright ed. 1985).

34. Discussions of the modern environmental movement often distinguish between an elite leadership, a membership, and an attentive but otherwise inactive public. Mitchell, *Public Opinion and Environmental Politics in the 1970s and 1980s*, in *ENVIRONMENTAL POLICY IN THE 1980s*, *supra* note 10, at 51. Research also sometimes focuses on differences of opinion within various segments of the membership, see, e.g., Mitchell, *How 'Soft,' 'Deep,' or 'Left?' Present Constituencies within the Environmental Movement for Certain World Views*, 20 *NAT. RESOURCES J.* 345 (1980), and between environmental leadership elites and other social, economic, and political elites. See, e.g., L. MILBRATH, *supra* note 24, at 43-64, and S. COTGROVE, *CATASTROPHE OR CORNUCOPIA?* (1982). The further question of whether definition of the agenda of environmental politics is more a function of mass public attitudes and values than of elite manipulation of values is less often asked in the United States than in other countries, and less often asked than it should be. See, e.g., P. LOWE & J. GOYDER, *ENVIRONMENTAL*

Using the distinction between pin-stripes and pantheists as the basis for a parable of competing belief systems to describe what is happening to the environmental movement begins to suggest the paradoxical nature of the internal forces shaping modern environmental politics and law. Would the environmental movement be better off, for example, if its leaders threw in their lot with the pin-striped rationalists instead of arousing popular protest and discontent with the environmentally exploitive materialism of modern life? Is it inconceivable that they could be both pin-striped and pantheist?

On the other hand, the idea that rational and responsive instruments for improving the performance of political and administrative institutions are opposed, and that a choice must be made between them, may be false.<sup>35</sup> If history shows, for example, that first one then the other is emphasized, the present renewal of interest in a more rational and effective environmental policy based on learning and planning can simply be explained as the direct and logical outcome of earlier successes in making the environmental policies of the Reagan Administration more responsive. And, looking more generally over the history of environmental politics in America as far back as the Progressive Era, we might imagine that periods emphasizing responsiveness as the basis for policy change and institutional reform are followed by periods emphasizing rationality, in a cyclical progression.<sup>36</sup>

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GROUPS IN POLITICS 31-32 (1983); Andrews, *Class Politics or Democratic Reform: Environmentalism and American Political Institutions*, 20 NAT. RESOURCES J. 221 (1980); and J. REES, *supra* note 18, at 377-90.

35. Substantive rationality in decision making . . . implies the selection of means or behavior appropriate for achieving desired ends . . . In contrast, responsiveness connotes sensitivity to relevant values or interests. Unlike rationality, under which goals are given, the concept of responsiveness is based on the assumption that the decisional process involves the definition of objectives. Rationality and responsiveness each have an impressive heritage . . . [and] have probably served as at least implicit guides in our thinking about bureaucracy and its role in government from the time of our founding fathers, and one or the other has provided the very foundation for practically every significant theory or model of the administrative process.

W. WEST, ADMINISTRATIVE RULEMAKING: POLITICS AND PROCESSES 189-90 (1985).

36. The idea of such a progression is explored in Kaufman, *Emerging Conflicts in the Doctrines of Public Administration*, 50 AM. POL. SCI. REV. 1057 (1956), and Kaufman, *Administrative Decentralization and Political Power*, 29 PUB. ADMIN. REV. 3 (1969). In the environmental context, the efforts of the progressive conservationists to make the federal government responsive to a mass public were never very serious or very successful (S. HAYS, CONSERVATION AND THE GOSPEL OF EFFICIENCY (1959); McConnell, *The Conservation Movement: Past and Present*, 7 WESTERN POL. Q. 463 (1954)). Their appeals for responsiveness did find sympathetic ears in the executive branch, however, and to a lesser extent in Congress, leaving a substantial institutional legacy devoted to the pursuit of rational and scientific management of resources (E. RICHARDSON, THE POLITICS OF CONSERVATION: CRUSADES AND CONTROVERSIES, 1897-1913 (1962); D. SWAIN, FEDERAL CONSERVATION POLICY, 1921-1933 (1963)). Demands for responsiveness to a broader range of interests and values brought these institutions under increasing attack in the 1950's and 1960's from leaders like David Brower and Howard Zahniser (E. RICHARDSON, DAMS, PARKS, AND POLITICS: RESOURCE DEVELOPMENT AND PRESERVATION IN THE TRUMAN EISENHOWER ERA (1973); R. NASH, WILDER-

A cyclical theory cannot account, however, for those periods in the history of environmentalism marked by the simultaneous pursuit of rationality and responsiveness.<sup>37</sup> It also excludes from the analysis people who are pessimistic about the contribution to policy relevant learning and planning that can be expected *either* from improvements in rationality *or* from improvements in responsiveness.<sup>38</sup> Although some might argue that these people and their ideas have only a marginal influence at best on the evolution of the movement, Pollack sees them as an effective counter to a premature conclusion that the environmental movement has already passed through a critical period of transition—that it has already abandoned one dominant belief system in favor of another. She worries that the movement has of necessity become too professionalized,<sup>39</sup> that its leaders have had to become indistinguishable from those they are ostensibly fighting. And, she is concerned with the prospect that professionalized environmentalists, who might also be called pin-striped pantheists, “may increasingly disable lay-people from helping solve the environmental problems that more and more people are experiencing every day.”<sup>40</sup>

Her way of dispelling such a “false sense of necessity”<sup>41</sup> in the evolution of the movement is to invent stories about environmentalism. Each story “presents the history, philosophy, and doctrinal approach of one strain of environmentalism by looking to the arguments, images, and

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NESS AND THE AMERICAN MIND 200-37 (3d ed. 1982); S. FOX, *supra* note 30, at 250-90), and eventually led in the 1970's both to the creation of new institutions like the United States Environmental Protection Agency and to the reform (though not the abolition) of most of the techniques of rational resource decisionmaking and analysis used by all the federal resource management agencies, including benefit-cost analysis. J. REES, *supra* note 18, at 306-36, traces the essential outlines of this evolution, and T. SCHOENBAUM, *supra* note 25, at 238-67, is excellent on the changing uses of benefit-cost analysis in connection with water resources development projects. For a broader treatment at greater length and with more attention to the political background, see D. MCALLISTER, *EVALUATION IN ENVIRONMENTAL PLANNING: ASSESSING ENVIRONMENTAL, SOCIAL, ECONOMIC, AND POLITICAL TRADE-OFFS* (1980).

37. W. WEST, *supra* note 35, at 200, is one of the few people to recognize that the history of environmental impact assessment is marked by such simultaneity.

38. Within the modern environmental movement, *very* broadly defined, the self-styled deep ecologists are the principal occupants of this category. See W. Devall, *The Deep Ecology Movement*, 20 NAT. RESOURCES J. 299 (1980). Those who worry about whether it is meaningful to speak of an environmental movement should read P. LOWE & J. GOYDER, *supra* note 34, at 1, 15-27.

39. Pollack, *supra* note 8 at 362-63. The necessity supposedly arises from a process of rational socialization the environmental movement has to undergo in order to deal adequately with the technically complex and global issues it now confronts. Or, as Tom Graff of the Environmental Defense Fund put it: “The successful environmental organizations from now on will be those that become professional in economics and science but also know how to advocate colorfully—including, on occasion, embarrassing their adversaries in the media.” Peirce, *supra* note 1, at col. 4.

40. Pollack, *supra* note 8, at 416.

41. *Id.* at 363.

assumptions invoked by its adherents."<sup>42</sup> Equipped with the stories, readers are able "to compare the societies envisioned by each approach and decide in which one they would prefer to live."<sup>43</sup> The paradox of the parable of the pin-striped pantheist is thus avoided, and the possibility that a more palatable future for the environmental movement can be deliberately chosen by the people who make up the movement is left open.

The technique of telling stories, which has some currency among those active in critical legal studies,<sup>44</sup> has the effect, the powerful and useful effect, I think, of provoking an interesting confrontation between the belief system of the reader and the three environmentalist belief systems Pollack postulates—technocracy,<sup>45</sup> grassroots democracy,<sup>46</sup> and deep ecology.<sup>47</sup> There is a disjuncture, however, between her three stories and the much larger number of stories that can be discerned in the "activities of everyday life."<sup>48</sup> Three stories cannot make sense of a movement that is reported on one day, for example, to harbor a shadow Environmental Protection Agency,<sup>49</sup> on another to contain David Foreman and the Earth First! saboteurs,<sup>50</sup> on another to be mimicking corpo-

42. *Id.* at 364.

43. *Id.* at 366. Pollack never addresses the question, however, of how and from where people are going to get the resources and training to make the comparison, or if these are needed. She thus begs the question of whether it is possible for environmentalists to choose their future, as she says they must.

44. According to Pollack, *id.* at 364 n.30, the term "story" is defined in Note, *Subjects of Bargaining Under the NLR Act and the Limits of Liberal Political Imagination*, 97 HARV. L. REV. 475, 476 n.9 (1983), and discussed further in Frug, *The Ideology of Bureaucracy*, 97 HARV. L. REV. 1276 (1984).

45. Pollack, *supra* note 8, at 368-83.

46. *Id.* at 383-400.

47. *Id.* at 401-13. Notably, Pollack vitally observes that the stories cannot be used to make a discrete description of three separate branches of environmentalism, to represent an historical progression of environmentalism, to categorize environmental groups, or to place environmentalists in one tradition or another, "for most of us are technocratic, grassroots, and deep environmentalists at different times and at the same time." *Id.* at 365. Rather, the stories are used in a variant of Karl Klare's decodification technique to reveal the assumptions about environmentalism that underlie legal and political doctrines surrounding NEPA. Decodification alerts us to the danger that the environmental movement might become "overly bureaucratized, politically unimaginative and generally on the defensive." *Id.* at 366-67 (citing Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1978), and quoting Klare, *Labor Law as Ideology: Toward a New Historiography of Collective Bargaining Law*, 4 INDUS. REL. L.J. 450, 482 (1981)).

48. Pollack, *supra* note 8, at 416. Through these activities, "[e]nvironmentalists make choices about the future each time they accept the tenets of one story or act to combine elements of the stories." *Id.* at 366.

49. Wall Street J., Jan. 13, 1986, at 48, col. 1 (Natural Resources Defense Council as a shadow EPA).

50. Sacramento Bee, Feb. 1, 1986, § A, at 2, col. 1. Earth First! has no chapters, no officers, no roster of dues-paying members and pursues its goals, which include stopping "the encroachment of civilization" and the reintroduction of endangered species into their original habitats, without reliance on courts, Congress, or corporations. David Foreman, one of the founders, is quoted as saying that "the environmental movement has been timid, has been a

rate merger behavior,<sup>51</sup> and on still another to be giving birth in one of its most staid and established groups, the Save-the-Redwoods League, to the direct action tactics of Mark Dubois.<sup>52</sup>

Moreover, there is only a tenuous link between the story telling Pollock hopes will inspire people to understand and to participate actively in environmental politics and what was called, in the *American Political Science Review* more than ten years ago, "the base of knowledge for analyzing the substance of problems and the process of policy in [a] given issue-area."<sup>53</sup> This base of knowledge, understood as a body of "accumulated political wisdom" that testifies to "the obvious importance of political intelligence to environmental policy action,"<sup>54</sup> might serve us better than story telling in making sense of environmentalism's mid-life crisis.

Suppose we ask of the new literature who the environmentalists are, where they come from, where they are going, why the laws and agencies they have helped to create do not seem to work as well as was expected, and what they intend to do about it. What answers do we get?

## II

### WHERE ENVIRONMENTALISTS COME FROM: LEARNING, PLANNING, AND THE MORAL EDUCATION OF THE VANGUARD OF CHANGE

Turning first to the question of who environmentalists are and where they come from, almost none of the recent popular commentary on environmental politics has been well-informed by the major scholarly contributions to understanding the environmental movement in the last decade.<sup>55</sup> Many observers are inclined to attribute environmentalism to self-interest.<sup>56</sup> There is occasionally recognition that environmentalism

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bunch of wimps who are afraid to really ask for what they want." Earth First's newsletter is reported to have 10,000 subscribers in every state and 30 foreign countries. *Id.*

51. Christian Science Monitor, Oct. 7, 1985, at 6, col. 1 (merger of Conservation Foundation and the World Wildlife Fund-U.S.).

52. Christian Science Monitor, Dec. 13, 1985, at 3, col. 1 and 4, col. 1 (environmentalists are ready to chain themselves to trees if it will save more redwoods). The traditionally staid nature of the Save-the-Redwoods League is brilliantly portrayed and explained in S. SCHREPFER, *THE FIGHT TO SAVE THE REDWOODS: A HISTORY OF ENVIRONMENTAL REFORM, 1917-1978* (1983). The direct action tactics of Mark Dubois, one of the founders and leaders of Friends of the River who chained himself to a rock to save portions of the Stanislaus River in California from inundation by the reservoir behind the New Melones Dam, are described in T. PALMER, *STANISLAUS: THE STRUGGLE FOR A RIVER 160-85* (1982).

53. Jones, *From Gold to Garbage: A Bibliographic Essay on Politics and the Environment*, 66 AM. POL. SCI. REV. 588, 588 (1972).

54. *Id.* at 589.

55. To the excellent bibliography in P. LOWE & J. GOYDER, *supra* note 34, at 186-97, one should add A. MCFARLAND, *PUBLIC INTEREST LOBBIES: DECISION MAKING ON ENERGY* (1976); J. BERRY, *LOBBYING FOR THE PEOPLE* (1977); and L. MILBRATH, *supra* note 24.

56. L. MILBRATH, *supra* note 24, at 79, notes this attribution but then adds "it often is

is associated with demographic variables such as age, sex, education, income, and occupation.<sup>57</sup> Most popular commentary and even some scholarship fails to come to grips, however, with the secular transformation of beliefs and values that has been under way since the end of the nineteenth century<sup>58</sup> and that has affected significant fractions of the mass publics of advanced industrial societies since the end of World War II.

Lester Milbrath is a leading student of these changes in values and beliefs, and his book, *Environmentalists: Vanguard for a New Society*,<sup>59</sup> offers an important assessment of environmentalism in the 1980's. The book appears in an interesting new series on environmental public policy that Milbrath edits for the State University of New York Press. Milbrath is one of several prominent political scientists who significantly changed the direction of their careers in the late 1960's and early 1970's.<sup>60</sup> He took with him to the State University of New York at Buffalo, where he directs the Environmental Studies Center, a strong reputation as an analyst of the ways in which and the reasons why people participate in politics.<sup>61</sup>

Milbrath also carried with him strong convictions: "There is no way for a scholar to inquire into the human condition or into the capacity of his civilization to provide quality of life for its people without identifying major deficiencies that cry out for recommendations for improvement."<sup>62</sup> Milbrath has, in short, been radicalized by his study of environmentalism and its role in politics and social change. Some readers will feel that his point of view has led him to conclusions that are beyond the limits of his data. If anything, however, Milbrath has stuck too closely to his numbers, thereby missing the chance to interpret his

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not clear what one's self-interest really is." Schoettle, *supra* note 33, at 155, says the observation that people pursue their own self-interest, given their identification of a value with their self-interest, is tautological. She also affirms the value of studying the perceived self-interest of actors in the policy process, however, citing Simon, *Theories of Decision-Making in Economic and Behavioral Science*, 49 AM. ECON. REV. 255, 269 (1959) for the proposition that "the substitution of adaptive man for economic man involves the recognition that man must engage in costly processes of acquiring knowledge about his environment, and . . . his knowledge will be incomplete and his perception of his environment distorted." *Id.* at 269.

57. L. MILBRATH, *supra* note 24, at 74-78.

58. The imaginative tracing of this development into the nineteenth century in the specific case of the environmental movement occurs in P. LOWE & J. GOYDER, *supra* note 34, at 15-31.

59. L. MILBRATH, *supra* note 24.

60. Others would include Keith Caldwell, the intellectual father of NEPA. See Caldwell, *Environment: A New Focus for Public Policy*, 24 PUB. ADMIN. REV. 132 (1963); L. CALDWELL, *supra* note 15.

61. L. MILBRATH, *POLITICAL PARTICIPATION: HOW AND WHY DO PEOPLE GET INVOLVED IN POLITICS?* (1965).

62. L. MILBRATH, *supra* note 24, at xiii.

cross-sectional survey data in a broader historical and theoretical perspective.

The data come from a cooperative study of environmental beliefs and values in Britain, Germany, and the United States.<sup>63</sup> Researchers administered a mail questionnaire that was made as comparable as possible in all three countries, once in 1980 and again in 1982. Respondents included a sample drawn from the general public and several elite samples, including environmentalists, business leaders, public officials, and, in the United States, labor leaders and media gatekeepers.<sup>64</sup> The questionnaire was designed to tap the fundamental belief and value structures, which Milbrath and others also call social paradigms or, more simply, ideologies,<sup>65</sup> lying beneath the information about attitudes that is generated by responses to survey questions. The resulting data constitute one of the largest sets of information about environmental attitudes and values in advanced industrial societies ever collected systematically by established survey research techniques.

In any project this ambitious and complex, the dozens of detailed questions about methodology and logistics that have to be faced by the investigators are not always resolved to the satisfaction of the Monday morning quarterbacks who later pick over the research reports. Milbrath is extremely careful to explain how the entire study and the United States portion in particular were conceived and implemented. Sixty-two of the 180 pages in the book as a whole are given over to copies of the 1980 and 1982 questionnaires, a description of the thinking that led to the three nation study, and a discussion of the fieldwork and sampling procedures.<sup>66</sup> There are also detailed presentations of scaling techniques used in the analysis of the data, and of much of the data itself, in table form.<sup>67</sup> Indeed, one of the great values of the book is the introduction it provides to the assumptions and methods survey researchers use in taking cross-sections of reality and in designing panel studies.

The largest portion of the book is devoted to a discussion and analysis of the survey results. Chapter 2 outlines the two contrasting ideologies most useful in understanding the beliefs and values people have, and the way these are related to political and social change. The essential difference is between people, on the one hand, who subscribe to the New Environmental Paradigm, put a high value on environmental protection,

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63. *Id.* at xv, 15-16, 135-41.

64. "Gatekeepers," including people who work in the print and electronic media, have the ability to assert a measure of control over the agenda of politics. See D. EASTON, A FRAMEWORK FOR POLITICAL ANALYSIS 122 (1965); R. COBB & C. ELDER, PARTICIPATION IN AMERICAN POLITICS: THE DYNAMICS OF AGENDA-BUILDING (1972); S. GOLDMAN & T. JAHNIGE, THE FEDERAL COURTS AS A POLITICAL SYSTEM (2d ed. 1976).

65. L. MILBRATH, *supra* note 24, at 7-8.

66. *Id.* at 103-65.

67. *Id.* at 119-33.

and are in the vanguard of those advocating social change; and people, on the other hand, who believe in the Dominant Social Paradigm, put a high value on material wealth, and are in the rearguard of those defending the existing social order.<sup>68</sup> Chapter 3 discusses three key beliefs that distinguish people in the vanguard from those in the rearguard, and shows how these are associated with attitudes to political means for accomplishing social change.<sup>69</sup>

Chapter 4 shows how measures of beliefs and values are more highly correlated with environmentalism than with demographic variables, and argues therefore that peoples' belief systems are much better indicators of whether or not they will become environmentalists in the vanguard of social change than demographic factors or perceptions of self-interest.<sup>70</sup> Chapter 5 deals with the propensity of members of the rearguard and the vanguard to support political strategies for reform such as direct political action, changing political parties, and trusting in elites to solve environmental problems.<sup>71</sup> In the sixth and final chapter, Milbrath turns to an assessment of the likelihood that people in the vanguard will be able to redirect society through a process of social learning, and will thus be able to stave off the probability "that our civilization will fail."<sup>72</sup>

There is no question, I think, that this book is significant. It is a benchmark presentation of environmental attitudes and values at two points in time in the early 1980's. It is a serious attempt to identify the root causes of environmentalism in advanced industrial societies. And, it forces us to look in basic theoretical terms at the relationships between beliefs and behavior, and most particularly at Milbrath's conception of that relationship as a process whereby systems of belief, or social paradigms, or ideologies—the terms are used interchangeably—are modified by learning from experience.

In simple outline, the argument is that a quiet revolution in values and beliefs has been under way in Britain, Germany, and the United States for some time. Although the public in these countries respond to survey researchers with support for both the Dominant Social Paradigm and the New Environmental Paradigm, a surprisingly high proportion have embraced the latter, and Milbrath believes their numbers are gradu-

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68. *Id.* at 21-40. For more on the origins of the phrases "New Environmental Paradigm" and "Dominant Social Paradigm," see Dunlap & Van Liere, *The New Environmental Paradigm*, 9 J. ENVTL. EDUC. 10 (1978), and Catton & Dunlap, *A New Ecological Paradigm for Post-Exuberant Sociology*, 24 AM. BEHAVIORAL SCIENTIST 15 (1980). See also Masterman, *The Nature of a Paradigm*, in CRITICISM AND THE GROWTH OF KNOWLEDGE 59 (I. Lakatos & A. Musgrave eds. 1970).

69. L. MILBRATH, *supra* note 24, at 43-64. The means include changing political parties, direct political action, joining environmental groups, and relying on the market to allocate goods and services.

70. *Id.* at 67-80.

71. *Id.* at 81-94.

72. *Id.* at 91-101.

ally increasing.<sup>73</sup> Among leadership elites, the process of discarding dysfunctional values and beliefs "in favor of those more suited to collective survival"<sup>74</sup> is even further advanced. One of the central beliefs in the New Environmental Paradigm important in gauging the political and legal agendas these leadership elites are likely to pursue, if and when they come to power, is that "foresight and planning for the public good" are preferable to "the supply and demand market" in allocating resources.<sup>75</sup>

On the basis of his data, Milbrath thinks he can paint "a classic portrait of the dynamic forces involved in revolutionary but peaceful social change."<sup>76</sup> At the heart of this portrait is a theory about the way these dynamic forces produce a process of social learning:

The social learning process begins with growing awareness that the present system is not working well. This is perceived first by an emerging elite [here the environmentalist vanguard of social change] who gather more adequate information and undertake analysis of society's ills. This . . . eventually leads the elite to perceive a better way. Next, all of these . . . have to be communicated to other members of society. As more and more people are enlightened, they may be persuaded to join the movement. Sooner or later it will become obvious that the persons in the movement must try to affect governmental policies and, if possible, win elections. If they can be successful in this effort, the policies and messages coming from the government, and contained in the political discourse that always surrounds government, may further advance the desired social change.<sup>77</sup>

Milbrath believes social learning is a much preferable and more hopeful process of social change than either evolutionary succession or scientific and technological development; alternative processes of social change with which social learning is briefly compared.<sup>78</sup> Does Milbrathian social learning capture, then, the essential dynamics of the learning and planning that many others believe are the preconditions for the reformation of environmental politics and law?

The answer to this question is not as clear as it should be, in part because Milbrath sticks too closely to the data from his cross-sectional research design. As impressive and imaginative as that design undoubtedly is, the theory that sustains it cannot adequately be tested with data sets based on survey responses, even with the added benefit of a panel study design. Two examples of what I mean will have to suffice. Take, first, the problem of how exactly it is that values change.

Early in the book, Milbrath asserts that values "*do change* over time

73. *Id.* at 60.

74. *Id.* at 7.

75. *Id.* at 36-37.

76. *Id.* at 61.

77. *Id.* at 95-96.

78. *Id.*

for reasons that we only partially understand."<sup>79</sup> In a later discussion of why some people become environmentalists and join groups in the environmental movement, and others do not, he argues that "nature is our most powerful teacher."<sup>80</sup> He cites some of his own earlier research in support of the observation that the many instances of people learning to become environmentalists are not matched by a similar number of instances of people learning to become non- or anti-environmentalists.<sup>81</sup>

The clear implication here is that social learning is individual learning drawn large, and that it is the product of individuals' confrontations with their experience of the real world that surrounds them. Milbrath might arguably have tested this thesis by asking how many of his respondents changed their beliefs in the direction of the Dominant Social Paradigm in the light of what they learned about the world between 1980 and 1982. Apart from the fact that a two year interval is a short period for belief change to be effected, however,<sup>82</sup> a closer look at Milbrath's theory of social learning shows that it is a more complicated and uncertain

79. *Id.* at 8.

80. *Id.* at 79.

81. *Id.* at 80 (citing several previously unpublished papers).

82. Milbrath himself makes this point, *id.* at 17-18 and 99-100, when he refers to the slow learning, unlearning, and relearning of both beliefs and behaviors that occurs when a fundamental social change is underway.

The problem here is absolutely fundamental to understanding how environmental policy can be improved over time on the basis of learning and planning, and to how that improvement comes about. If beliefs and behaviors do change only slowly, for example, what does this mean for understanding how belief changes are related to policy changes, and how both kinds of change are affected by learning? Policies can change very quickly and nonincrementally, as the flood of environmental legislation approved by Congress in the early 1970's and the revolution effected by the Reagan Administration in the early 1980's both attest. In both of these cases, it would be hard to argue, however, that policies were changed primarily on the basis of existing and reliable understandings of what would work. The ideas policymakers had about what ought to be done were also important, and may have carried at least as much if not more weight than what they knew. See generally A. MacIntyre, *The Politics of Nonincremental Domestic Change: Major Reform in Federal Pesticide and Predator Control Policy (1982)* (unpublished Ph. D. dissertation, University of California, Davis); MacIntyre, *A Court Quietly Rewrote the Federal Pesticide Statute: How Prevalent is Judicial Statutory Revision?*, 7 *LAW & POLICY* 249 (1985); Vig and Kraft, *Environmental Policy from the Seventies to the Eighties*, in *ENVIRONMENTAL POLICY IN THE 1980s*, *supra* note 10, at 23.

The possibility that the beliefs people hold and incorporate into law and policy are structured, so that most policy change is associated with changes in secondary rather than central portions of belief systems, has also been explored. Thus, according to Paul Sabatier:

[Whereas] [m]ajor alterations in the policy core will normally be the product of changes external to the [policy] subsystem [made up of actors who are trying to get their beliefs translated into government action programs] . . . changes in the secondary aspects . . . are often the result of policy-oriented learning by various [political advocacy] coalitions or policy brokers . . . . [P]olicy-oriented learning refers to relatively enduring alterations of thought or behavioral intentions which result from experience and which are concerned with the attainment or revision of policy objectives . . . [and a principal concern of policy analysts interested in policy learning is] to analyze the institutional conditions conducive to such learning and the cases in which cumulative learning may lead to changes in the policy core.

P. Sabatier, *Top-Down and Bottom-Up Approaches to Implementation Research: A Critical*

process than is implied by the notion that individuals learn to change their beliefs, and then their behavior, on the basis of experience.

Because the basic unit of analysis in survey research is the individual, it is hardly surprising that Milbrath conceives of social learning, at least initially, as an individualized process. By his own description, however, social learning also involves the collection and analysis of information by the vanguard about environmental problems, the communication of this to people at large, and the attempts to influence the decisions people make to join groups and influence government policy.<sup>83</sup> In these stages of the social learning process, it is less obvious why individuals should be the essential units of analysis, rather than social collectivities of one sort or another. Attempts to influence government policy have to be understood in the light of the activities of interest groups, for example, as well as individual political actors.<sup>84</sup>

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Analysis and Suggested Synthesis 27-28 (1985), to appear in *J. PUB. POL'Y* (1986); see also Lakatos, *History of Science and Its Rational Reconstruction*, 8 *B. STUD. PHIL. SCI.* 42 (1971).

This view may leave open, however, or render tautological, an explanation of how people come to think that some beliefs are central and some are peripheral for policy purposes. It also tends to treat policymaking and implementation as processes of rational problem solving, as processes that can usefully be understood as the detection and correction of errors and thus akin to problem solving in science, rather than as political processes. See Argyris, *Ineffective Regulating Processes*, in *REGULATING BUSINESS: THE SEARCH FOR AN OPTIMUM* 173 (1978), and C. ARGYRIS & D. SCHON, *ORGANIZATIONAL LEARNING* (1977), cited therein. But see also K. DEUTSCH, *THE NERVES OF GOVERNMENT: MODELS OF COMMUNICATION AND CONTROL* (1963); J. MARCH & J. OLSEN, *AMBIGUITY AND CHOICE IN ORGANIZATIONS* (1976); Hyder, *Implementation: The Evolutionary Model*, and Lewis, *Conclusion: Improving Implementation*, in *POLICIES INTO PRACTICE: NATIONAL AND INTERNATIONAL CASE STUDIES IN IMPLEMENTATION* 1, 203 (D. Lewis & H. Wallace eds. 1984); R. BROWNING, D. MARSHALL & D. TABB, *PROTEST IS NOT ENOUGH: THE STRUGGLE OF BLACKS AND HISPANICS FOR EQUALITY IN URBAN POLITICS* 43-45, 72-74, 135, 208-14, 224-25 (1984); M. LEVIN & B. FERMAN, *THE POLITICAL HAND: POLICY IMPLEMENTATION AND YOUTH EMPLOYMENT PROGRAMS* (1985); L. ETHEREDGE, *CAN GOVERNMENTS LEARN? AMERICAN FOREIGN POLICY AND CENTRAL AMERICAN REVOLUTIONS* (1985).

83. See *supra* text accompanying note 77.

84. In a strict sense, social scientists would want to maintain that only individuals are capable of learning. Although the attribution of a capacity for learning and adaptation to other units of analysis like organizations and interest groups runs the risk of personifying social collectivities, it nevertheless has a long and honorable lineage. Schoettle, *supra* note 33, is still a useful starting point for those who want to follow the dialogue. People who do use units of analysis other than the individual have to be wary, however, of falling into the trap recently described by J. REES, *supra* note 18, at 392, in discussing whether the values of elites have more influence on decisions than the values held by the public at large:

In much of the literature on the nature of decision-making there has been a tendency to depersonalize the actors; people vanish behind generic titles: industry, capital, bureaucracy, the state, labour, and so forth. But the individuals concerned are all part of the public and, as such, are not immune from the forces influencing wider social values . . . . The attention paid in pluralistic interpretations of [policymaking and decisionmaking] to value shifts begs the question of how these shifts come about. At one level of analysis they are clearly responses to the emerging problems created by the process of economic development . . . . As industrialization, urbanization, agrarian change and resource exploitation proceed, so political, economic and social systems, including values and aspirations, will adapt . . . . But it is impossible to regard the pattern of cause-response events as neutral. What problems

Moreover, Milbrath makes it clear at the beginning of his book that belief systems that guide behavior are only partly shaped by what individuals take to be the facts about the way their world works, whether perceived through their own experience or through the results of scientific research they believe to be intersubjectively reliable ("socially shared definitions of reality").<sup>85</sup> Paradigms also contain ethical and normative structures by which people guide and evaluate their own behavior and that of others.

Milbrath thinks these "beliefs . . . about proper relationships" among people and between people and nature,<sup>86</sup> are not totally independent of what subjective experience and organized science tell us about the way the world works. In the "pre-scientific era when humans had less capability to dominate and exploit nature"<sup>87</sup> many people learned their ethical code from organized religion. But, as ethics and science got too far out of step, people began to question "the wisdom of following the normative prescriptions from the old traditions."<sup>88</sup> From this line of reasoning, Milbrath concludes that the environmentalist vanguard is a new group of leaders "trying to combine a sophisticated understanding of the natural workings of the world with a newly developing environmentally oriented ethic."<sup>89</sup> They are, if you will, a wise new generation, one of whose most important purposes is moral education.

This is a fascinating observation, with implications for the social and political leadership role of environmentalists and environmental groups that have largely gone unrecognized. We explore some of them in the following Sections. The immediate question is what it means for an explanation of how values change. The answer has to be that two slices of life, two years apart, are an insufficient basis for knowing whether the learning that occurs when nature is our teacher is more or less important in transforming social paradigms than the learning that comes from our moral education, and reeducation. And, if we are uncertain on this score, then the role each form of learning will play in the reformation of policy and law as instruments of social change is equally uncertain.

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are perceived to be critical, and the nature of the response, cannot be understood without reference to the established structure of society and to the power and influence of the different interest groups.

85. L. MILBRATH, *supra* note 24, at 7. Interestingly enough, Milbrath also, refers to such a shared definition as a story. *Id.* at 6; *cf.* Pollack, *supra* note 8, at 364.

86. L. MILBRATH, *supra* note 24, at 8.

87. *Id.* at 6.

88. *Id.*

89. *Id.* at 7. Milbrath's insistence here that ethical structures must be combined with scientific knowledge to produce learning and meaning in human relationships needs to be understood in the light of his insistence that science and scientists are an insufficient and unacceptable source of moral guidance for our behavior in the world. *Id.* at 6, 101; *see also* Pollack, *supra* note 8, at 395-98, and Sagoff, *Fact and Value in Ecological Science*, 7 ENVTL. ETHICS 99 (1985).

This is why there is something very unsatisfactory about Milbrath's theory of social learning. It is unable to distinguish the conditions under which reformers have to depend on belief change leading to behavior change from the conditions under which they can rely on "forced behavior change"<sup>90</sup> to bring belief change in its wake. The importance of being able to make this distinction can be grasped quickly by thinking about the controversy surrounding the goals and standards approach and the technology-forcing provisions of the pollution control laws, or the action-forcing provision of NEPA.<sup>91</sup> If the conditions under which stigmatizing pollution and enforcing standards on polluters produces desirable changes in environmental quality were known, then the controversy over whether that strategy or relying on polluter incentives and initiatives was the right approach, given current conditions, could (and would) be seen in a very different light.<sup>92</sup>

The other vitally important question that has to be asked about any theory of social learning is what it says about the reversibility of learning. Suppose it is true, for example, that significant numbers of both ordinary people and political leaders learned in the late 1960's and early 1970's to believe in the New Environmental Paradigm. Will they never go back to believing in the Dominant Social Paradigm? What about their children, and their children's children?

Again, these are issues difficult for Milbrath to address without developing his argument beyond the confines of his survey responses. He reports that there is remarkable stability in his data about beliefs and values, if the response measurements taken in 1980 and 1982 are compared.<sup>93</sup> But, the lack of change over this interval is hardly compelling evidence that once a social paradigm takes root in the mind of a person it is never erased or reversed.<sup>94</sup> At another point, he cites the example of

90. L. MILBRATH, *supra* note 24, at 18.

91. The ambiguity of recent experience with these policy instruments is discussed in Latin, *supra*, note 3; W. ROSENBAUM, *supra* note 3, at 6-17, 286-94; J. BONINE & T. MCGARITY, *supra* note 25, at 369-71, 402-17, 452-512, 576-651; L. CALDWELL, SCIENCE AND THE NATIONAL ENVIRONMENTAL POLICY ACT: REDIRECTING POLICY THROUGH PROCEDURAL REFORM (1982). See also R. MELNICK, REGULATION AND THE COURTS: THE CASE OF THE CLEAN AIR ACT 5-23 343-93 (1983).

92. This is the clear implication of S. KELMAN, WHAT PRICE INCENTIVES (1981), whose discussion of the ideological issues bound up with the choice of control instruments quickly reveals the shallowness of other recent discussions (see, e.g., Ruckelshaus, *supra* note 3). See also J. REES, *supra* note 18, at 267-68, 307-08.

93. L. MILBRATH, *supra* note 24, at 16.

94. Milbrath, *id.* at 17-19, 99-101, clouds this issue by talking about the learning, relearning, and unlearning of beliefs (from which policy consequences eventually flow, presumably) without ever distinguishing among these processes, or saying whether it is necessary to do so. L. ETHEREDGE, *supra* note 82, at ix, 66, 141-62, argues that government learning is blocked by systems of strong imagination policymakers bring with them into government and rarely relearn. The impact of such a strong system of moral imagination on President Reagan is suggested in a story written for the *New York Times Magazine*, Gelb, *What Makes This President Tick?*, Sacramento Bee, October 6, 1985, § G, at 2, col. 1. On the reversibility of the

slavery, observing that: "The social structures built around slavery and colonialism have crumbled and given way to new structures that reject those once accepted patterns for relationships among people."<sup>95</sup> This introduces social structure as an important variable in a theory of social learning. It also develops a concept of the process as a slow, gradual conversion requiring "many months, or years, of reinforcements and social structural support to get the mass of people in society to change their basic behavior patterns."<sup>96</sup> Given his further statement that "beliefs about the proper relationship between humans and nature are, if anything, more fundamental than . . . beliefs about . . . relationships among people,"<sup>97</sup> Milbrath would like to have been able to show, I think, that the social structures sustaining present-day beliefs about nature are crumbling and falling away, just as the institutions of slavery did earlier. By virtue of his research design, however, Milbrath cannot gauge this possibility. Survey data do not measure the presence or absence, or the effectiveness, of the social structures that might act either as originators or reinforcers of patterns of behavior and belief.

Milbrath has to resort to an assertion that social structures will change "as our resources begin to run out, our biosphere is increasingly poisoned, and our socio-economic-political systems begin to collapse,"<sup>98</sup> and to an expression of hope that efforts by environmentalists in the vanguard of change will succeed in reforming social institutions before it is too late. The changes in individual values and beliefs Milbrath actually studies are causally so distant from the data needed to warrant these statements, however, that they have a hollow ring to them, even the appearance of wishful thinking.

We are, thus, left in the dark about what it is in the first instance that causes people to value particular qualities of nature, or to abhor slavery. There are several candidates for prime causal variable: the raw reality of the world;<sup>99</sup> the perceptions individuals develop of the world directly, through the filters of social and psychological characteristics, especially early childhood experiences and personality;<sup>100</sup> the manipulations of reality initiated by political elites and media gatekeepers;<sup>101</sup> and the social structures and institutions that embody the central values of

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policy changes that have benefitted minorities, see R. BROWNING, D. MARSHALL & D. TABB, *supra* note 82, at 255.

95. L. MILBRATH, *supra* note 24, at 8.

96. *Id.* at 18.

97. *Id.* at 8.

98. *Id.* at 100.

99. *Id.* at 79 (nature is described as our best teacher).

100. See, e.g., Craik, *Environmental Psychology*, 24 ANN. REV. PSYCH. 403 (1973); Honnold, *Predictors of Public Environmental Concern in the 1970s*, in ENVIRONMENTAL POLICY FORMATION: THE IMPACT OF VALUES, IDEOLOGY, AND STANDARDS 63 (D. Mann ed. 1981).

101. P. LOWE & J. GOYDER, *supra* note 34, at 31-32, 181.

society and embed them in people through education and socialization.<sup>102</sup> Without a clearer determination of which of these, singly or in combination, causes values and beliefs to shift and whole social paradigms to change in a particular and valued direction, we cannot be sure which of them, if any, might be best able to prevent a reversal.

I think it is fair and important to say that others besides Milbrath share the hope that the paradigm shifts of the 1960's and 1970's were not unique to a young, well-educated, affluent, and professional cohort in the generation alive at the time.<sup>103</sup> Milbrath's use of the slavery example suggests very effectively how unpalatable to environmentalists the prospect is that, once we have learned to live gently on the earth,<sup>104</sup> we might go back to the bad old days of dominion over nature in pursuit of material wealth.<sup>105</sup> The sincerity and desirability of these sentiments is undiminished, I think, by the hard-headed observation that, in the last analysis, Milbrath like many others is forced to interpret value shifts by begging the question of how they come about, and whether therefore they will prove durable across generations.<sup>106</sup>

### III

#### LEARNING TO MAKE ENVIRONMENTAL AGENCIES WORK: MORAL EDUCATION AND THE REFORMATION OF BUREAUCRACY

Although the reach of Milbrath's theory is not matched by the grasp of his survey data, he clearly hypothesizes that the successful accomplishment of social change is dependent in part on changing the performance of political institutions. Agencies of government charged with implementing and enforcing environmental laws are among the most important of these institutions and, as Clarke and McCool correctly observe at the beginning of *Staking Out the Terrain*, another new book in the SUNY Press environmental public policy series, "how policies get twisted, changed, modified, distorted, and even at times successfully executed has become . . . a flourishing subfield within the disciplines of polit-

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102. J. REES, *supra* note 18, at 385.

103. The debate over whether or not this was the case continues most vigorously. See Inglehart, *Aggregate Stability and Individual-Level Flux in Mass Belief Systems: The Level of Analysis Paradox*, 79 AM. POL. SCI. REV. 97 (1985).

104. Living gently on the earth is a principal theme of R. CAHN, *FOOTPRINTS ON THE PLANET: A SEARCH FOR AN ENVIRONMENTAL ETHIC* (1978).

105. Alternatively, as Welch and Miewald suggest: "the attainment of affluence [will lead] to an increased demand for material prosperity to be delivered in prettier packages," instead of simply a return to the bad (good?) old days of the pursuit of wealth for its own sake. *Natural Resources Scarcity: An Introduction*, in SCARCE NATURAL RESOURCES: THE CHALLENGE TO PUBLIC POLICYMAKING 9, 10 (S. Welch & R. Miewald eds. 1983).

106. On the other hand, the theoretical and methodological complexity of the issues raised in Inglehart, *supra* note 103, suggests the question will not soon have an answer from anyone.

ical science and public administration."<sup>107</sup> Like a growing number of implementation scholars,<sup>108</sup> Clarke and McCool believe that implementation success has a lot to do with learning. In contrast to Milbrath's theory about individual learning and policy change, they offer, by analogy to biology, an organismic and synergistic theory of how agencies learn by adaptation:

We . . . see bureaucracies as entities, even organisms, that are constantly changing and adapting to their environments, which are also in a certain state of flux. Some agencies are better equipped to make the necessary changes to secure their continued influence, and even survival, than are others. This former group, those that compete better than the others, is blessed with a potent combination of resources. In the case of the Corps [of Engineers] and the Forest Service, these include: a pro-development, multiple-use mission; a pragmatic or utilitarian ideology; a clear beginning (through a direct congressional statement of purpose at the time of [the agency's] creation . . .); a scientific and/or military basis of expertise; internal recruitment to leadership positions; a coherent, well-defined public image; and unusually strong support from Congress (or sometimes from the chief executive) as well as from large, well-organ-

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107. J. CLARKE & D. MCCOOL, *supra* note 24, at 2.

108. See *supra* note 82 and the references cited therein. There is actually nothing very new about the learning perspective, if it is viewed as the gradual correction over time of decisions and policies through trial and error, as unanticipated problems arise and opportunities for new initiatives appear. MacIntyre, *Administrative Initiative and Theories of Implementation: Federal Pesticide Policy, 1970-1976*, in PUBLIC POLICY AND THE NATURAL ENVIRONMENT 205, 208 (K. Godwin & H. Ingram eds. 1985) (citing Lindblom, *The Science of "Muddling Through,"* 19 PUB. ADMIN. REV. 79 (1959), and J. PRESSMAN & A. WILDAVSKY, IMPLEMENTATION (2d ed. 1979)). See also C. LINDBLOM, THE POLICY-MAKING PROCESS (1968); H. HECLIO, MODERN SOCIAL POLITICS IN BRITAIN AND SWEDEN (1974). A more subtle, creative, but metaphorical treatment of learning is used in W. MUIR, LEGISLATURE: CALIFORNIA'S SCHOOL FOR POLITICS (1982). Greater interest in learning may also come to be characteristic of students of policy initiation, according to N. POLSBY, POLITICAL INNOVATION IN AMERICA: THE POLITICS OF POLICY INITIATION 159-74 (1984).

Judgments about what constitutes the principal mechanism of policy learning differ widely. For a fascinating argument that "the competition of interests" and "the education of judges" have been central to the implementation of Title VII of the 1964 Civil Rights Act, see Gold, *The Similarity of Congressional and Judicial Lawmaking under Title VII of the Civil Rights Act of 1964*, 18 U.C.D. L. REV. 721, 740, 746-48 (1985):

In time, the judges learned as much about the effect of the statute as Congress had known . . . . One may expect that two large groups (such as legislators and judges) that are composed of persons who think in similar constructs, share similar economic interests, and adhere to similar political philosophies, will arrive at similar solutions to social problems—when, of course, these persons have the same facts in mind. If the foregoing observations are accurate . . . courts make law in much the same way as do legislatures. Both institutions are strongly influenced by interests. Courts are most likely to abide by legislative intent if the judges are as informed as was the legislature on the effects of a possible decision . . . . Eventually, the judges will take possession of a statute and, for practical purposes, convert it to a common law doctrine that courts are free to modify. For as time passes, the judges will deal with more aspects of a social issue than the legislature could have foreseen. Also, circumstances will change. The legislature may not react, but cases will be brought to court, and decisions will have to be rendered.

*Id.* at 748.

ized constituencies outside the formal institutions of government. Both the Corps and the Forest Service are, of course, constituent parts of what are commonly referred to now as iron triangles [of power], whose purpose is to protect and promote the interests so arranged.<sup>109</sup>

Clarke and McCool look for confirmation of this theory in the history of seven federal natural resource management agencies. As the preceding extract suggests, they conclude that two of the seven, the Corps of Engineers and the Forest Service, can be characterized as bureaucratic superstars.<sup>110</sup> Another group are agencies that survive by muddling through, a term made famous by Lindblom<sup>111</sup> as a generic description of decisionmaking. Here, it refers to agencies that move along at a steady pace in the competition for resources and influence but do not soar like the superstars.<sup>112</sup> This group includes the National Park Service, the Soil Conservation Service, and the Fish and Wildlife Service. A third group includes the Bureau of Reclamation and the Bureau of Land Management, agencies that burn brightly for a time, but then have trouble facing a precarious future.<sup>113</sup> They are the shooting stars of the federal establishment.

Clarke and McCool contend that the history of these seven agencies shows "different patterns of response to essentially the same stimuli."<sup>114</sup> The differences stem from idiosyncratic factors in the history of the agencies and their sources of power—the genetic endowments of the agencies, if you will. These produce not only several types of agencies with characteristic performance records but also a competitive syndrome whereby the rich get richer and the poor get left behind.<sup>115</sup> Indeed, the extent to which the superstar agencies seem able to dominate in the struggle for resources and power is such that in their final chapter Clarke and McCool look for ways to intensify competition among resource management agencies and to impose limits to their organizational growth.<sup>116</sup>

The idea of a book that pulls together much of what is known about the history of the major federal resource agencies is a good one, I think, particularly given the tendency to treat them all for reform purposes as if they were the same.<sup>117</sup> The book brings the historical record up to date, with particularly useful descriptive analyses of shifts in federal resource policy and budget allocations in the late 1970's and early 1980's, includ-

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109. J. CLARKE & D. MCCOOL, *supra* note 24, at 46-47.

110. *Id.* at 13-47.

111. Lindblom, *supra* note 108.

112. J. CLARKE & D. MCCOOL, *supra* note 24, at 48-91.

113. *Id.* at 92-124.

114. *Id.* at 4.

115. *Id.* at 4, 144.

116. *Id.* at 146-50.

117. *See, e.g.*, the comments on traditional diagnoses of and prescriptions for administrative ills in Fairfax & Ingram, *supra* note 6, at 31-34.

ing the first term of the Reagan Administration.<sup>118</sup> "The flora and fauna of what is commonly referred to as 'the federal bureaucracy,'" write Clarke and McCool, "is actually rich in its diversity and complexity."<sup>119</sup> Their belief that history teaches this lesson is what leads them to argue strongly at the end of the book that reform efforts have to be tailor-made for each agency, in the light of the reform advocate's understanding of the natural history of the agency, and of what gives that particular agency a life of its own.<sup>120</sup>

On the other hand, despite Clarke and McCool's optimism that vigilant oversight by ordinary citizens can prevent autonomous agencies from running out of control, their book could also be read as a counsel of despair. Anyone taking on the bureaucratic superstars, for example, must contend with the legendary ability of the Corps and the Forest Service "to put together their various resources [of expertise and political clout] in such a way as to produce a powerful combination."<sup>121</sup> But, if that is so, why is it more reasonable to believe that such agencies can be controlled in "the public interest" than it is to believe that they will simply pursue "some very realistic assessments of their own self-interest"<sup>122</sup> (which may or may not have much to do with a public interest, somehow defined)?

This question goes to the heart of a very old and fundamental debate about how to keep bureaucracies in their place in a democratic society.<sup>123</sup> In periods when external intervention has been in favor, attention has

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118. J. CLARKE & D. MCCOOL, *supra* note 24, at 19-33, 42-46, 59-63, 74-77, 86-89, 99-106, 114-21. These values of the book are somewhat marred, however, by a number of annoying editorial and typographical errors. The numbering of the headings in Table 1-1, *id.* at 6, for example, does not correspond with that in the text, *id.* at 5, the paragraph at the bottom of page 90 ends in mid-sentence, and the discussion in the text of Tables 2-1, 2-2, and 5-1, *id.* at 20-21, 129-32, does not square with the labeling of the columns of data displayed in the tables.

119. *Id.* at 2.

120. *Id.* at 146-47.

121. *Id.* at 46.

122. *Id.* at 150. Although it is no longer fashionable, the idea that resources and environmental policies should be able to meet a public interest test has intrigued students of environmental policy and law for more than thirty years. N. WENGERT, *NATURAL RESOURCES AND THE POLITICAL STRUGGLE* (1955). The history and limitations of benefit-cost analysis, still widely used as a measure of the public interest in a project, are usefully reviewed in D. MCALISTER, *supra* note 36, at 85-143, and J. REES, *supra* note 18, at 306-24. For a longer treatment, see Baram, *Cost-Benefit Analysis: An Inadequate Basis for Health, Safety, and Environmental Regulatory Decisionmaking*, 8 *ECOLOGY L.Q.* 473 (1980).

123. Useful contemporary perspectives on the debate, which can be traced to the turn of the century in the professional literature on politics and public administration, and which can otherwise be traced to the early history of the United States, can be found in W. WEST, *supra* note 35, at 15-34; D. YATES, *BUREAUCRATIC DEMOCRACY: THE SEARCH FOR DEMOCRACY AND EFFICIENCY IN AMERICAN GOVERNMENT* 1-61 (1982); *ADMINISTRATIVE DISCRETION AND PUBLIC POLICY IMPLEMENTATION* (D. Shumavon & H. Hibbeln eds. 1986) [hereinafter cited as *ADMINISTRATIVE DISCRETION*].

focused on clearer statutory mandates,<sup>124</sup> or increased public participation,<sup>125</sup> or more vigorous judicial review.<sup>126</sup> At other times, the inevitability and necessity of statutory delegation and bureaucratic discretion have been stressed,<sup>127</sup> and people have tried to manipulate the internal variables that influence agency behavior—changes in the way bureaucrats are educated,<sup>128</sup> changes in the mix of personnel that agencies recruit and promote,<sup>129</sup> or changes in methods for allocating agency resources and organizing work.<sup>130</sup> The former is essentially a quest for responsiveness, the latter a search for greater rationality in agency behavior. This distinction can be and often is blurred, however, and we noted earlier that improvements in rationality and responsiveness have sometimes been pursued simultaneously.<sup>131</sup>

From this perspective, Clarke and McCool's theory is less a theory of adaptive agency learning than just another variation in the endless debate about the influence of internal and external factors on agency behavior. They are saying that not much can be done, in effect, to alter the genetic endowments agencies have for learning to adapt to environmental change.<sup>132</sup> If an agency gets a vague but multiple-use mission in its organic act,<sup>133</sup> for example, and is staffed by self-consciously professional people trained to accept and obey orders,<sup>134</sup> and if these factors are reinforced by the agency's cultivation of political allies in a closed iron trian-

124. The classic recent analysis and prescription is T. LOWI, *THE END OF LIBERALISM* (2d ed. 1979).

125. Morgan & Rohr, *Traditional Responses to American Administrative Discretion*, in *ADMINISTRATIVE DISCRETION*, *supra* note 123, at 211, 213-16.

126. See, e.g., Marcel, *The Role of the Courts in a Legislative and Administrative Legal System: The Use of Hard Look Review in Federal Environmental Litigation*, 62 *OR. L. REV.* 403, 403-10 (1983).

127. Graham & Hays, *Citizen Access and the Control of Administrative Discretion*, in *ADMINISTRATIVE DISCRETION*, *supra* note 123, at 233, 234-35.

128. See, e.g., F. MOSHER, *DEMOCRACY AND THE PUBLIC SERVICE* (1968).

129. The impact of this strategy, and others, in shaping the response of the United States Army Corps of Engineers to the National Environmental Policy Act is traced in D. MAZMANIAN & J. NIENABER, *CAN ORGANIZATIONS CHANGE? ENVIRONMENTAL PROTECTION, CITIZEN PARTICIPATION AND THE CORPS OF ENGINEERS* (1979).

130. The most important administrative law development affecting the way agencies organize their work has been the growth of rulemaking, nicely traced and explained in W. WEST, *supra* note 35, at 35-66.

131. See *supra* text accompanying notes 35-37; see also D. YATES, *supra* note 123, at 107-19, 171-77.

132. Essentially this same pessimism, leading to quite different recommendations, characterizes Fairfax, *supra* note 6 (amendment of agency organic acts more effective than the Environmental Impact Statement (EIS) requirement in NEPA), and Sax, *The (Unhappy) Truth about NEPA*, 26 *OKLA. L. REV.* 239, 245 (1973) (NEPA will not induce agencies to reform themselves).

133. J. CLARKE & D. MCCOOL, *supra* note 24, at 7-8. For the example of the United States Forest Service, see *id.* at 34-42.

134. *Id.* at 8-9.

gle of power,<sup>135</sup> then the only way to exert control is to force agencies to learn new lessons by pressuring them from the outside. (Where are you now that we need you, Joseph Sax?)<sup>136</sup> Perhaps this is where Milbrath comes in, to argue that learning the New Environmental Paradigm, both among the ordinary citizens Clarke and McCool rely on to guard the guardians<sup>137</sup> and among the guardians themselves, will be essential and effective ways of forcing agencies to learn new lessons.

Unfortunately, this leaves us with a number of extremely important but unanswered questions. Do agencies learn, or only the people who work in and with them?<sup>138</sup> Is external pressure quicker and more effective than other stimuli to learning?<sup>139</sup> Will any form of pressure do, or are some more effective than others, and if so under what conditions?<sup>140</sup> How do the lessons agency people are forced to learn overcome the lessons learned in engineering school, or the college of forestry at

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135. *Id.* at 11-12. The classic portrait of an agency's development of close relations with congressional committees and subcommittees, and with local and national groups representing potential beneficiaries of agency projects, and of the effort expended to nurture these relations over time, was written by A. MAASS, *MUDDY WATERS: THE ARMY ENGINEERS AND THE NATION'S RIVERS* (1951). The major works that developed this portrait into a concept of iron triangles of power, and more recently of subgovernments, policy subsystems, and issue networks are cited in N. POLSBY, *supra* note 108, at 153, n.5. See also A. MELTSNER & C. BELLAVITA, *THE POLICY ORGANIZATION* (1983); A. GRAY & W. JENKINS, *ADMINISTRATIVE POLITICS IN BRITISH GOVERNMENT* 61-62, 79-81 (1985).

136. J. SAX, *DEFENDING THE ENVIRONMENT: A HANDBOOK FOR CITIZEN ACTION* (1970).

137. J. CLARKE & D. MCCOOL, *supra* note 24, at 150.

138. Given that only people are capable of learning, that agency learning is a metaphor, and that a great deal of the policy-relevant learning people do occurs in the context of a network of relationships among people in and out of agencies, the creation of networks and the way networks promote and impede learning are important topics. Further, the knowledge that networks exist must be supplemented with information about how and why they are created and sustained. The informal network James Moorman took with him to the United States Justice Department, for example, and developed further in 1977, after he was appointed Assistant Attorney General in the Lands and Natural Resources Division, was in some respects an asset but also became a liability when it led to conflict-of-interest charges. Brown, *Justice's Rough Rider*, 1 *AMICUS J.* 28 (1980). See also M. LEVIN & B. FERMAN, *supra* note 82, at 95-99, 102-10. The question of whether networks really are important influences on the evolution of policy, and if so how best to define them for research purposes and find them empirically, continues to be hotly debated. It is the subject of most of the essays in *POLICY IMPLEMENTATION IN FEDERAL AND UNITARY SYSTEMS* (K. Hanf & T. Toonen eds. 1985) [hereinafter cited as *POLICY IMPLEMENTATION*].

139. This was certainly Sax's thesis, in *DEFENDING THE ENVIRONMENT: A HANDBOOK FOR CITIZEN ACTION* *supra* note 136. But see Fairfax & Andrews, *Debate Within and Debate Without: NEPA and the Redefinition of the "Prudent Man" Rule*, 19 *NAT. RESOURCES J.* 505 (1979).

140. The impact of citizen suits, for example, which Sax and others have suggested are more effective than environmental impact assessment in some respects, continues to be monitored and debated in Slone, *The Michigan Environmental Protection Act: Bringing Citizen-Initiated Environmental Suits into the 1980's*, 12 *ECOLOGY L.Q.* 271 (1985). On state-level impact-assessment requirements, see Renz, *The Coming of Age of State Environmental Policy Acts*, 5 *LAND & WATER L. REV.* 31 (1984).

Berkeley?<sup>141</sup> Are new tricks learned by old dogs for good? Or, are they unlearned or relearned or forgotten with time?<sup>142</sup> And, above all, who actually does the learning, and what do they learn?<sup>143</sup>

Clarke and McCool do not tell us enough about the mechanism of adaptive agency learning to let us deal with these issues. They comment at several points, for example, on the political adeptness and astuteness of people in the Corps and the Forest Service.<sup>144</sup> They do not say, however, who exactly it is in these agencies who does this work, or how agencies acquire and develop such people. An agency's political astuteness is vaguely associated with leadership,<sup>145</sup> a "founder's myth,"<sup>146</sup> and the

141. On the impact of the lessons learned in graduate and professional school on the behavior of resource and environmental managers, see, e.g., A. SCHIFF, *FIRE AND WATER* (1962); Schiff, *Innovation and Administrative Decision Making: The Conservation of Land Resources*, 11 ADMIN. SCI. Q. 1 (1966); the classic work, H. KAUFMAN, *THE FOREST RANGER* (1960); and, more recently, Bratton, *National Park Management and Values*, 7 ENVTL. ETHICS 117 (1985).

142. L. ETHEREDGE, *supra* note 82, at 215, n.127, concludes that "each new generation of policymakers will begin with the same lessons to learn, and will learn them too late."

143. Analysts of environmental policy and law, like policy analysts generally, are inclined to focus on the learning that occurs (or should be occurring) among political and administrative officials. These are the actors typically looked to for initiative and leadership in improving policy performance, through the application of intelligence and the pursuit of planning. For example, a recent monumental discussion of state hazardous waste regulation pays a great deal of attention to the behavior and performance of EPA and state and local agencies, but has little to say about firms. Lennett & Greer, *State Regulation of Hazardous Waste*, 12 ECOLOGY L.Q. 183 (1985). There is nothing improper about such a focus. Given the fact, however, that most of the policy networks or subsystems dealing with significant environmental problems are made up of actors from a wide array of public and private organizations (who are usually faced with responding to many statutes, rules, and regulations, rather than just one), the possibility that different lessons about what to do and how to do it will be learned by different actors, at the same time and at different points in time, must somehow be dealt with. Otherwise, the probability that policy analysts will seriously overstate the ability of policymakers and implementing officials to change the behavior of target groups is very real. See Hjern & Hull, *Small Firm Employment Creation: An Assistance Structure Explanation*, in POLICY IMPLEMENTATION, *supra* note 138, at 131.

The idea that the learning occurring within and between organizations is and should be a specialized function of people, called reticulists, is explored in J. FRIEND, J. POWER & C. YEWLETT, *PUBLIC PLANNING: THE INTER-CORPORATE DIMENSION* (1974). The ability of interorganizational units to facilitate learning and planning has also been explored in several contexts. See, e.g., Metcalfe, *Systems Models, Economic Models and the Causal Texture of Organizational Environments*, 27 HUMAN RELATIONS 639 (1974); *Designing Precarious Partnerships*, in HANDBOOK OF ORGANIZATIONAL DESIGN 503 (P. Nyström & W. Starbuck eds. 1981).

144. J. CLARKE & D. MCCOOL, *supra* note 24, at 18, 33, 45-46. The idea that luck may play a larger role in organizational adaptation than adeptness, astuteness, or any deliberate strategy pursued by either people or interorganizational entities is developed in H. KAUFMAN, *TIME, CHANCE, AND ORGANIZATIONS: NATURAL SELECTION IN A PERILOUS ENVIRONMENT* (1985).

145. *Id.* at 9.

146. *Id.* The leading example would presumably be Gifford Pinchot, under whose leadership the Forest Service began its long history as the epitome of technical competence and scientific management. *Id.* at 36 (quoting S. DANA & S. FAIRFAX, *FOREST AND RANGE POLICY* 96 (1980)).

public entrepreneurship of a J. Edgar Hoover (or a Robert Moses).<sup>147</sup> The problem goes much deeper than this, however. Even if we grant that people who gather, evaluate, and act on political intelligence are important to the learning an agency must do to change policies and adapt to environmental change, there is the further problem of explaining how these data are mixed and matched with new information about, for example, the causal theories Pressman and Wildavsky said were such a vital part of effective policies,<sup>148</sup> or about a new court interpretation of the legislative intent underlying statutory language.<sup>149</sup>

The search for an answer starts, I think, with a recognition that people at several different levels in an agency and its interorganizational network are engaged at the same time in varied kinds of learning. Next comes the basic theoretical insight, developed a decade ago by March and Olsen,<sup>150</sup> that the substantive meaning of what is learned within and between organizations is essentially shaped by the processes through which learning occurs. The key lies in uncovering the mechanisms people use to negotiate the meaning of what they think they are learning.<sup>151</sup>

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147. J. CLARKE & D. MCCOOL, *supra* note 24, at 9. Robert Moses would have been the more appropriate example, given his influence on park and recreation policy in New York. See E. LEWIS, *PUBLIC ENTREPRENEURSHIP: TOWARD A THEORY OF BUREAUCRATIC POLITICAL POWER* (1980) (discussing both Hoover and Moses, as well as Admiral Hyman Rickover).

148. J. PRESSMAN & A. WILDAVSKY, *supra* note 108.

149. A classic case would be the California Supreme Court's interpretation of the California Environmental Quality Act. Andrews, *Aftermammoth: Friends of Mammoth and the Amended California Environmental Quality Act*, 3 *ECOLOGY L.Q.* 349 (1973).

150. J. MARCH & J. OLSEN, *supra* note 82.

151. One such mechanism, much in vogue in recent years, is environmental mediation. See Amy, *The Politics of Environmental Mediation*, 11 *ECOLOGY L.Q.* 1 (1983); Tice, Book Review, 12 *ECOLOGY L.Q.* 665 (1985). The tendency for participants in mediations to learn different lessons from the same experience, and for the meaning of what constitutes success and failure in mediations to be negotiated, is very nicely illustrated in Buckle & Thomas-Buckle, *Placing Environmental Mediation in Context: Lessons from "Failed" Mediations*, 6 *ENVTL. IMPACT ASSESSMENT REV.* 55 (1986).

The negotiation of what constitutes success and failure in the enforcement of regulations, another mechanism through which people learn, as opposed to the measurement of success or failure in accordance with a legislatively defined criterion, has also been recognized for some time. See, e.g., M. HOLDEN, *POLLUTION CONTROL AS A BARGAINING PROCESS: AN ESSAY ON REGULATORY DECISION-MAKING* (Cornell University Water Resources Center Publication No. 9, 1966); Schuck, Book Review, 90 *YALE L.J.* 702 (1981); DeLong, *Models of Regulation*, 80 *MICH. L. REV.* 885 (1982); G. RICHARDSON, A. OGUS & P. BURROWS, *POLICING POLLUTION: A STUDY OF REGULATION AND ENFORCEMENT* (1982); *THE REGULATION GAME: HOW BRITISH AND WEST GERMAN COMPANIES BARGAIN WITH GOVERNMENT* (A. Peacock ed. 1984); K. HAWKINS, *ENVIRONMENT AND ENFORCEMENT: REGULATION AND THE SOCIAL DEFINITION OF POLLUTION* (1984); *REGULATORY POLICY AND THE SOCIAL SCIENCES* (R. Noll ed. 1985).

Moreover and much more importantly, there lies beyond the task of uncovering the mechanisms people now use to learn about and evaluate policy the very challenging task of designing better instruments. There is a fascinating account of how one prominent legal scholar came painfully to this conclusion in Costonis, *Law and Aesthetics: A Critique and A Reformulation of the Dilemmas*, 80 *MICH. L. REV.* 355 (1982), in which Costonis explores the constitutional elements of the processes whereby the content, success, and failure of aesthetic

and in isolating the effect the various mechanisms have on policy and law. Take as just one example the impact of litigation on policy learning in environmental agencies.

A good brief serves many purposes, only one of which is to secure a victory in court. It can deflect and delay agency action, give agency people, their allies, and their opponents time to think, and perhaps most importantly give them something to think about. It is in this sense that the classic educational cases in NEPA law,<sup>152</sup> the cases where briefs and arguments are most clearly designed to force agencies to learn new lessons, are the cases litigating the alternatives section of the EIS provision in the statute.<sup>153</sup>

Moreover, the educational value of a case like *NRDC v. Morton*<sup>154</sup> or *Vermont Yankee*<sup>155</sup> is almost never found in the technical or theoretical soundness of the alternatives environmental public interest litigants favor.<sup>156</sup> They usually lack the resources to be totally convincing on that score.<sup>157</sup> The test of the value of such cases comes less, therefore, from agency adoption of a particular alternative<sup>158</sup> than from the moral education lawsuits force agencies to undergo, the questions they force agencies

regulations might be negotiated. A more profound and useful preliminary treatment, however, of the way legal and political processes have to reconcile diverse belief systems (utilitarian and moral absolutist) in making and enforcing environmental policy is probably Schroeder, *Rights Against Risks*, 86 COLUM. L. REV. 495 (1986).

152. NEPA is not the only statute, of course, to invite such litigation. See J. BONINE & T. MCGARITY, *supra* note 25, at 216-34. On the strategic uses of environmental litigation, see generally LAW AND THE ENVIRONMENT (M. Baldwin & J. Page eds. 1970); W. RODGERS, ENVIRONMENTAL LAW (1977); L. WENNER, THE ENVIRONMENTAL DECADE IN COURT (1982).

153. 42 U.S.C. § 4332(2)(C)(iii) (1982).

154. *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827 (D.C. Cir. 1972). The purpose of this case, in addition to registering opposition to a proposal by the United States Department of the Interior to lease some 80 tracts of submerged lands off the Louisiana Gulf Coast, was to argue that the Department was obligated by NEPA to study and evaluate a wide range of alternatives for meeting the energy needs that would have been met by the energy produced on the tracts in question.

155. *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978). In one of the two protests considered in this case, a crucial issue involved the ability of intervenors to compel the Atomic Energy Commission (now the Nuclear Regulatory Commission) to study energy conservation alternatives.

156. Energy conservation can be a viable alternative to power plant construction under some circumstances and for a period of time. The question in *Vermont Yankee*, however, was whether the intervenor groups had done enough work to establish (and to persuade the Commission) that it was a viable alternative to the particular power plants Consumers Power Co. wanted to build in Midland, Michigan. In other cases (see, e.g., *Pacific Legal Found. v. State Energy Comm'n*, 659 F.2d 903 (9th Cir. 1981), which also involved a struggle over the viability of alternatives to nuclear power), the lack of analysis may be less troublesome.

157. Trubek & Gillen, *Environmental Defense II: Examining the Limits of Interest Group Advocacy in Complex Disputes*, in PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 195 (B. Weisbrod ed. 1978); Peirce, *supra* note 1.

158. Whether or not the environmental group prevails over the agency is often but erroneously taken as the standard against which to judge the utility of protests, including lawsuits, involving environmental impact statements. See, e.g., J. REES, *supra* note 18, at 324-28.

to ask about what is the right thing to do, not just what will work.<sup>159</sup> The best cases force people in and out of agencies<sup>160</sup> to work on putting the lessons of a lawsuit next to the lessons of professional judgment, or of budgetary feasibility, or of the meaning of congressional and presidential elections.<sup>161</sup>

Whether litigation is always or even in particular circumstances the best mechanism for solving a problem is debatable. But, in order to get the job done, as Clarke and McCool say,<sup>162</sup> and to be judged successful, environmental agencies have to do more than solve problems.<sup>163</sup> They

159. K. HAWKINS, *supra* note 151, at 207, similarly argues that regulatory enforcement as an instrument of pollution control "is done in a moral, not a technological world." A review of a book of essays on the reform of environmental regulation in the United States also highlights the ethical and moral issues the practice of regulation involves. Au & Dernbach, Book Review, 11 *ECOLOGY L.Q.* 731, 743 (1984) ("public law questions are ultimately questions of social morality; . . . [and] the best mathematical analysis in the world does not provide a self-evident means for making policy choices").

160. Again, although the focus here is on the uses of litigation in the education of agency personnel, they are not the only people who have to learn new lessons if policy is to be changed in the "right" direction. That there is often disagreement on what lessons everyone is learning and should be learning is clear in the landmark *Vermont Yankee* case, *supra* note 155, from the following limited selection of commentary by leading analysts of environmental policy and law: Byse, *Vermont Yankee and the Evolution of Administrative Procedure: A Somewhat Different View*, 91 *HARV. L. REV.* 1823 (1978); Stewart, *Vermont Yankee and the Evolution of Administrative Procedure*, 91 *HARV. L. REV.* 1805 (1978); Rodgers, *A Hard Look at Vermont Yankee: Environmental Law Under Close Scrutiny*, 67 *GEO. L.J.* 699 (1979); Davis, *Common Law and the Vermont Yankee Opinion*, 1980 *UTAH L. REV.* 3; Verkuil, *Judicial Review of Informal Rulemaking: Waiting for Vermont Yankee II*, 55 *TUL. L. REV.* 418 (1981); Schoenbaum, *A Preface to Three Foreign Views of Vermont Yankee*, 55 *TUL. L. REV.* 428 (1981).

161. "Sooner or later," wrote Milbrath, "it will become obvious that the persons in the [environmental] movement must try to affect government policies and, if possible, win elections." *Supra* note 24, at 96. In fact, with the exception of the League of Conservation Voters, groups in the environmental movement have generally shied away from direct involvement in election campaigns, and even from party politics. Springer & Costantini, *Public Opinion and the Environment: An Issue in Search of a Home*, in *ENVIRONMENTAL POLITICS* 195 (S. Nagel ed. 1974). They have preferred to think of environmental issues as bipartisan, even though it has been clear for some time that Republicans and Democrats tend to treat environmental issues differently in both houses of Congress. H. Kenski & M. Kenski, *Partisanship, Ideology, and Constituency Differences on Environmental Issues in the U.S. House of Representatives and Senate: 1973-1978*, in *ENVIRONMENTAL POLICY FORMATION: THE IMPACT OF VALUES, IDEOLOGY AND STANDARDS* 87 (D. Mann ed. 1981) and H. Kenski & M. Kenski, *Congress Against the President: The Struggle over the Environment*, in *ENVIRONMENTAL POLICY IN THE 1980s*, *supra* note 12, at 97. A brief analysis of the 1980 presidential election campaign, of the uncertain meaning of the election results for environmental groups, and of the subsequent involvement of those groups in both the 1982 congressional and 1984 presidential elections appears in Kraft, *supra* note 12, at 45-47. Belsky, *supra* note 2, makes the most compelling case that elections can profoundly alter the climate in which environmental policy learning takes place, although he does not argue or try to demonstrate that election results can be associated with changes in beliefs. The implication, if anything, of Belsky's analysis is that the presidential election outcome in 1980 reinforced deeply held beliefs on both sides.

162. J. CLARKE & D. MCCOOL, *supra* note 24, at 46.

163. C. LINDBLOM, *supra* note 108, at 105-06, would say that they have to engage in reconstructive leadership, appreciating the possibilities of reconstructing the preferences of cit-

have to negotiate an understanding that they are doing the right thing. And, it is beyond question that litigation is a superb instrument for persuading them to start such negotiations.<sup>164</sup>

#### IV

#### WINNING THE HEARTS AND MINDS OF THE PEOPLE: THE ENVIRONMENTALIST AGENDA AS A STATEMENT OF MORAL LEADERSHIP

The previous Sections underline the importance of setting the recent publication of *An Environmental Agenda for the Future* in the context of strategic political choice making by the leaders of ten of the principal environmental groups in America.<sup>165</sup> The leaders who developed the agenda—they chose, significantly, to refer to themselves as chief executive officers<sup>166</sup>—make it clear that this is their own work (and the work of an army of advisers and assistants drawn almost exclusively from non-governmental groups).<sup>167</sup> These executives therefore cannot claim our attention and allegiance by saying that this is the first *official* statement by the American environmental movement of a comprehensive national policy agenda.<sup>168</sup> They would like to think that the book and the agenda it outlines will nevertheless have wide appeal. And, what they say is that this appeal rests partly on their superior knowledge of environmental policies that will work and partly on the moral superiority of their vision of the future.<sup>169</sup> Both elements are, of course, included in any attractive

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izens and other actors in the policy process—not simply compromising existing preferences, and thus altering the range of alternatives within which policy decisions can fall. *See also* Diver, *Policymaking Paradigms in Administrative Law*, 91 HARV. L. REV. 393 (1981); Diver, *Engineers and Entrepreneurs: The Dilemma of Public Management*, 1 J. POL'Y ANALYSIS & MGMT. 402 (1982).

164. For a fascinating demonstration of this principle, even after a decade and a half and despite much concern that NEPA litigation may have lost its educative power in the wake of *Vermont Yankee*, *supra* note 155, and *Strycker's Bay Neighborhood Council v. Karlen*, 444 U.S. 223 (1980), see Hapke, *Thomas v. Peterson: The Ninth Circuit Breathes New Life into CEQ's Cumulative and Connected Actions Regulations*, 15 ENVTL. L. REP. (ENVTL. L. INST.) 10,289 (1985).

165. AGENDA FOR THE FUTURE, *supra* note 24. The contributing leaders are: John Adams, Natural Resources Defense Council; Louise Dunlap, Environmental Policy Institute; Jay Hair, National Wildlife Federation; Frederic Krupp, Environmental Defense Fund; Jack Lorenz, The Izaak Walton League of America; Michael McCloskey, Sierra Club; Russell Peterson, National Audubon Society; Paul Pritchard, National Parks and Conservation Association; William Turnage, The Wilderness Society; and Karl Wendelowski, Friends of the Earth.

166. *Id.* at 1. In some groups, different executives will have the job of pursuing the agenda, because several were recently replaced. *See* Stanfield, *supra* note 14.

167. AGENDA FOR THE FUTURE, *supra* note 24, at v-viii.

168. "Although the document does not represent the official positions of the organizations whose executives have authored it, we believe the *product* as a whole does represent a positive vision . . ." *Id.* at 23 (emphasis added).

169. *Id.* at 6, 8, 22-23 (referring to what has been learned, to the expertise of the group, to their capability for foresight, and to their vision).

agenda.

The more subtle and profound truth is, however, that the balance between what can be done and what should be done also has to be right. Like John Muir and David Brower before them, modern leaders have to choose political strategies that mix the attainable and the ideal in what people hopefully will perceive to be the right combination to work for "a sustainable society and a better quality of life."<sup>170</sup>

The strong suit of Muir and Brower was always in exhortation and moral leadership, rather than the nuts and bolts of practical policies.<sup>171</sup> Over time, presumably, as more has been learned about what policies are effective, the need for leaders of environmental groups to pitch their appeal to the moral sensibilities of their followers may have been reduced.<sup>172</sup> Along with this, bureaucratization of many of the larger environmental groups may also have reduced their dependence on individual charismatic leaders.<sup>173</sup> The influence of inspirational leadership is unlikely ever to be eliminated, however, and there is a question whether it should be.<sup>174</sup> Thus, the appeal of *An Environmental Agenda for the Future*, as well as its significance as a landmark in the history of environmental politics and law,<sup>175</sup> stems from what it tells its readers

170. *Id.* at 2.

171. Muir is the subject of several biographies including, most recently, S. FOX, *supra* note 30, and M. COHEN, *THE PATHLESS WAY: JOHN MUIR AND AMERICAN WILDERNESS* (1984). Brower is the central figure in J. MCPHEE, *ENCOUNTERS WITH THE ARCHDRUID* (1968), and is a major figure in S. SCHREFFER, *supra* note 52. The best accounts of Muir's involvement in practical politics are in S. FOX, *supra* note 30, at 103-47. My judgment of Brower is unfair to his early, brilliant and original work in conservation politics. See R. NASH, *supra* note 36, at 200-37.

172. *But see* P. LOWE & J. GOYDER, *supra* note 34, at 18-21, 22 (they observe that a recent statement by the Green Alliance, a British group, makes an appeal that would have been as relevant in 1899 as in 1979).

173. *Id.* at 46-56; S. SCHREFFER, *supra* note 52, at 163-85. Charismatic leadership in small environmental groups is a major theme of M. Peterson, *Interest Group Origins, Incentives, and Leadership: The California Wilderness Coalition, 1975-1985* (1986) (unpublished M.A. thesis, University of California, Davis). The impact of bureaucratization on groups generally is a central concern of R. SCHUTT, *ORGANIZATION IN A CHANGING ENVIRONMENT: UNIONIZATION OF WELFARE EMPLOYEES* 14-34, 174-84 (1986).

174. Pollack, *supra* note 8, at 417-18. The importance of such leadership would be easier to assess if more were known about the role it plays in attracting people to environmental groups, and in persuading them to work for those groups, often, indeed typically, without pay. Although the modern environmental movement is more than a decade and a half old, astonishingly little is known about why people join environmental groups. Peterson, *supra* note 173; Mitchell, *National Environmental Lobbies and the Apparent Illogic of Collective Action*, in *COLLECTIVE DECISION MAKING* 87 (C. Russell ed. 1979); P. LOWE & J. GOYDER, *supra* note 34, at 2; Hansen, *The Political Economy of Group Membership*, 79 *AM. POL. SCI. REV.* 79 (1985); Smith, *A Theoretical Analysis of the "Green Lobby,"* 79 *AM. POL. SCI. REV.* 132 (1985).

175. Changes in political strategy are nothing new for individual national groups, see Peterson, *supra* note 173, at 31-52, 56-63, and are always under review and evaluation. See, e.g., Scott, *The Anatomy of a Sierra Club Victory*, 71 *SIERRA* 53 (1986). Nor are accommodations with the business community. S. SCHREFFER, *supra* note 52, at 185. The development of an

about where the present leadership of the movement thinks the strategic balance lies.

What we learn is that the leaders of the principal environmental groups in America have decided, at least for the moment, to downplay their moral authority as the key to winning the hearts and minds of the people. They have chosen instead to emphasize their claim to leadership on the basis of their expertise and their willingness to be perceived and to behave as corporate good neighbors. I think this could turn out to be a serious strategic mistake. Indeed, if this new agenda is really aimed at "the broadest spectrum of the American people,"<sup>176</sup> meaning more specifically "industry, labor, educators, scientists, lawyers, students, government workers, [and] homemakers,"<sup>177</sup> the book might actually accelerate the erosion of environmental group membership and broader public support to be expected in the wake of the first Reagan term.<sup>178</sup> If this seems like a harsh judgment, consider both the background and content of the book.

Early in 1981, the chief executives of the organizations associated with this book began informal meetings "to enhance our effectiveness in helping to protect the nation's environmental quality."<sup>179</sup> That is a euphemistic way of saying that they were appalled and deeply worried at the impact the Reagan Administration might have on environmental policies and institutions,<sup>180</sup> particularly on those put in place since 1970.<sup>181</sup> The Administration's initiatives were called "destructive, disdainful and uncomprehending of environmental values" on the front cover of a book published by Friends of the Earth in 1982<sup>182</sup> on behalf of ten environmental groups.<sup>183</sup> The book contained an indictment aimed directly at

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agreed upon, even if unofficial, national agenda by ten of the major environmental groups in the country is quite unprecedented, however. R. NASH, *supra* note 36 at 212, notes the shaky beginnings of attempts at national coordination of political effort, in the controversy over Dinosaur National Monument.

176. AGENDA FOR THE FUTURE, *supra* note 24, at 1.

177. *Id.* at 23.

178. The tremendous buildup of membership in the first term is briefly treated in Mitchell, *supra* note 34, at 61-62.

179. AGENDA FOR THE FUTURE, *supra* note 24, at 1. They called themselves the "Group of 10." Stanfield, *supra* note 14, at 1351.

180. This was clearly revealed in FRIENDS OF THE EARTH, RONALD REAGAN AND THE AMERICAN ENVIRONMENT (1982) [hereinafter cited as REAGAN AND THE AMERICAN ENVIRONMENT].

181. These are the achievements, summarized usefully in Belsky, *supra* note 2, at 12-26, and in D. ZILLMAN & L. LATTMAN, *supra* note 25, with which the modern environmental movement, quite rightly, feels most closely identified.

182. REAGAN AND THE AMERICAN ENVIRONMENT, *supra* note 180.

183. Of the ten groups that sponsored the 1982 indictment, *id.* at 5, Environmental Action, Defenders of Wildlife, and the Solar Lobby did not appear on the list of sponsors for the agenda published in 1985. AGENDA FOR THE FUTURE, *supra* note 24. Their places were taken by the National Wildlife Federation, the Izaak Walton League, and the National Parks

the President himself,<sup>184</sup> as well as critical analyses of the Administration's budget proposals<sup>185</sup> and energy plans.<sup>186</sup> Together with other initiatives,<sup>187</sup> the book was clearly designed to mobilize public opinion, increase the membership of environmental groups, and provoke a political confrontation with the Administration in the media, in Congress, and in agency proceedings.<sup>188</sup> The later resignations of Watt and Gorsuch are merely the most visible symbols of what this campaign of criticism and protest accomplished.<sup>189</sup>

In the new book, there is no mention of this earlier indictment. There is, in fact, no reference to the President or his Administration at all. By 1983, the group leaders who had been meeting together were persuaded to shift from criticism to the statement of a positive agenda, this in response to a suggestion that they "step back and think about where the environmental movement should be going and what goals it should be pursuing."<sup>190</sup> They also recognized that "solutions to emerging environmental problems require a public dialogue"<sup>191</sup> and that looking to the future might "spawn fresh ways of thinking and new ideas."<sup>192</sup> This desire to look ahead and plan for the future need not have involved an Orwellian reconstruction of the past. The history in this book is worthy, however, of the best efforts of the Ministry of Truth and comes to us in a version of Newspeak.<sup>193</sup>

We learn, for example, that marked progress in environmental problem solving in the sixteen years since NEPA was enacted has occurred in the face of "recalcitrant elements in industry and government agencies."<sup>194</sup> These are probably members of the same gang of unnamed "public officials and business executives"<sup>195</sup> who have suggested that "environmental regulations are strangling business and industry and have sought to weaken or abolish the environmental protection laws

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and Conservation Association, all much more conservative groups. Otherwise, the sponsoring groups of the 1982 indictment and the 1985 agenda were the same.

184. REAGAN AND THE AMERICAN ENVIRONMENT, *supra* note 180, at 7.

185. *Id.* at 85-137.

186. *Id.* at 37-84. The critique of "the Reagan energy plan" drew on somewhat different groups, including the Center for Renewable Resources, The Cousteau Society, the Environmental Action Foundation, the Federation of American Scientists, The Nuclear Club, the Nuclear Information and Resource Service, and the Union of Concerned Scientists.

187. Kraft, *supra* note 12; Mitchell, *supra* note 10; Culhane, *Sagebrush Rebels in Office: Jim Watt's Land and Water Politics*, in ENVIRONMENTAL POLICY IN THE 1980s, *supra* note 12, at 293, 296-97.

188. REAGAN AND THE AMERICAN ENVIRONMENT, *supra* note 180, at 139-43.

189. Kraft & Vig, *Epilogue*, in ENVIRONMENTAL POLICY IN THE 1980s, *supra* note 12, at 359.

190. AGENDA FOR THE FUTURE, *supra* note 24, at 1.

191. *Id.* The agenda was not developed, however, with the benefit of any public dialogue.

192. *Id.*

193. G. ORWELL, NINETEEN EIGHTY-FOUR (1949).

194. AGENDA FOR THE FUTURE, *supra* note 24, at 4.

195. *Id.* at 5.

enacted in the 1960s and 1970s.”<sup>196</sup> The book assures us that most “citizens and economists”<sup>197</sup> perceive that fundamental tradeoffs of environmental quality for economic opportunity are unnecessary and unlikely to happen on a scale that would adversely effect the economy. But, the very next page exhorts government and industry to work together to help the communities and families affected “when the national interest requires environmental protection measures that do result in some degree of local or regional economic dislocation.”<sup>198</sup> The tradeoffs and stalemates that ensue when “there is conflict over objectives [and] various interests predictably bring different perspectives to the role environmental concerns have in shaping other important national goals”<sup>199</sup> are thus homogenized into a phenomenon less threateningly labelled “economic change.”<sup>200</sup> And, the locally adverse impacts of regulation on community economies become examples of “American ingenuity”<sup>201</sup> turning environmental challenges into rewarding economic opportunities.

The twelve chapters in the book differ considerably in their employment of this new language for thinking about environmental politics.<sup>202</sup> In the chapters on energy and water,<sup>203</sup> for example, and in general discussions of resource use and regulation,<sup>204</sup> efficiency is frequently invoked and there is talk of charges and prices and markets and cost-sharing.<sup>205</sup> When it comes to toxics and pollution control, however, the “cauldron of controversy”<sup>206</sup> in which federal policy has been concocted in the past is not to be replaced by the market but only set aside on sufferance and for a trial period, during which around-the-table negotiating forums might provide opportunities to pursue “regulatory experiments.”<sup>207</sup> By the time the reader gets to the chapters on wild living

196. *Id.*

197. *Id.* The idea of keeping citizens and economists distinct in our minds, so that the latter are not confused with the former, may not be entirely unattractive to many, but is perhaps not something this group of environmental chief executives should be promoting!

198. *Id.* at 6.

199. *Id.* at 5.

200. *Id.*

201. *Id.*

202. The topics of the eleven substantive chapters are: Nuclear Issues; Human Population Growth; Energy Strategies; Water Resources; Toxics and Pollution Control; Wild Living Resources; Private Lands and Agriculture; Protected Land Systems; Public Lands; Urban Environment; International Responsibilities. *Id.* at 8-23 contains a useful summary of each chapter.

203. *Id.* at 41-63.

204. *Id.* at 5-8.

205. *Id.* at 49, 58-60.

206. *Id.* at 78.

207. *Id.*

resources,<sup>208</sup> protected land systems,<sup>209</sup> and the public lands<sup>210</sup> (which is where cynics will say the real interests of the authors of this book lie)<sup>211</sup> the more familiar language of government intervention, controls, standards, planning, and management has come to the fore.<sup>212</sup> Fair enough, perhaps, given that different environmental and resource problems have different causes and characteristics, and call for different policy treatments.<sup>213</sup> But why, in the overall plan and approach of this book, is it so important for the chief executive officers of America's ten leading environmental groups to go as far as they have in appeasing the chief executive officers of other corporate entities in business and government?

The answer could lie in a desire on the part of the boards of directors and executives<sup>214</sup> of the groups that developed this new agenda to be taken seriously in the political climate of the second Reagan term, a climate in which business and industry have many friends in court. The environmental chief executives want to be seen as people who not only have to be bargained with but who also have something to bargain about.<sup>215</sup> Their groups have, after all, had very little experience over the last decade and a half in dealing with an overtly hostile Administra-

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208. *Id.* at 81-88. This chapter deals with species preservation, habitat conservation and restoration, and wildlife and plant management. The discussion of the reasons why preservation and management of wild living resources are important is a particularly good example of the tendency throughout the book to fudge the issues while at the same time trying to sound tough and principled. After outlining four different and potentially conflicting reasons for conserving these resources—educational, utilitarian, recreational, and ethical—the book simply asserts that certain “convictions” about how and why to do it are “shared,” without ever explaining who shares them or why. *Id.* at 81-82. There is thus very little basis for believing that the agenda outlined is indeed broadly supported, or that it is politically feasible.

209. *Id.* at 101-10. The protected systems include the national parks, wilderness areas, national wildlife refuges, national wild and scenic rivers, and marine sanctuaries and estuaries.

210. *Id.* at 111-21.

211. *See, e.g.*, W. TUCKER AND F. SANDBACH, *supra* note 3. There has been a greater willingness in Britain than in the United States to look at the substance of this charge, and the results are not altogether reassuring for environmentalists. *See* P. LOWE & J. GOYDER, *supra* note 34, at 98-105.

212. AGENDA FOR THE FUTURE, *supra* note 24, at 85-88, 95-96, 107-10, 115-19.

213. A perspective developed very well by J. REES, *supra* note 18, and by O. YOUNG, NATURAL RESOURCES AND THE STATE: THE POLITICAL ECONOMY OF RESOURCE MANAGEMENT (1981), whose caution against thinking of the state (here the federal government) as a purposive actor capable of pursuing reasonably well-defined goals does not always seem to have been heeded by the authors of this agenda.

214. The kind of conflict that erupted in 1968 and 1969 between David Brower and the Board of Directors of the Sierra Club, S. SCHREFFER, *supra* note 52, at 163-85, is rarely a matter of public knowledge. The oligarchic structure of many environmental groups keeps such fights within the family. “Nevertheless, it is widely understood within the movement that most of the departing staff leaders were asked to leave for a variety of reasons, including lack of management capability, inability to cope with the organization's financial difficulties, advocacy that was too vocal for a more conservative board of directors and personality clashes with the board.” Stanfield, *supra* note 14, at 1351.

215. As an appeal for public support, the AGENDA does not explain which half of the environmentalist loaf that it outlines will be bargained away once serious negotiations begin, although a willingness to accept half a loaf appears now to be a hallmark of successful groups

tion.<sup>216</sup> The *Agenda* can thus be understood as effecting an improvement in the ideological alignment of the elites who now have power in Washington, D.C. and the elites who want that power used for environmentalist purposes.<sup>217</sup> It is, if you will, a document asserting environmentalists' right to have access to and influence on Administration policy—and thus a contemporaneous admission on their part that “protest is not enough.”<sup>218</sup> Looking at the book from this perspective one has to conclude, I think, that its intended audience consists primarily of other chief executives rather than the much vaunted public at whom the book is ostensibly aimed.<sup>219</sup>

On the other hand, this book comes with a warning label, which reads: “Any consideration of the future must remain dynamic (*sic*). Hence this agenda will be subjected to periodic review and revision as trends and circumstances require.”<sup>220</sup> One of those circumstances could be the replacement of a conservative Republican Administration with one that is more liberal, perhaps even Democratic. In which case, there is the clear implication that sails will be trimmed to the new political winds, and the environmental movement will strike a new strategic bal-

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in Washington. Ward & Floyd, *Washington's Lobbying Groups: How They Rate*, 3 ENVTL. F. 9, 14 (1985). Moreover, as J. REES, *supra* note 18, at 404, observes:

It, of course, trivializes the whole debate over environmental futures to talk in terms of individual species or landscapes but the fact remains that, at the grassroots level, the issues are normally expressed as crude trade-offs: Arctic alpiners v. water supplies, dragon-flies v. houses, wetland habitats v. food production or the aquatic status of Scandinavian lakes v. increased electricity charges.

216. According to Bill Turnage of the Wilderness Society: “We’re not used to taking the President head on day after day after day. That wears you out institutionally and emotionally.” Stanfield, *supra* note 14, at 1351.

217. In this sense, and from the perspective of the environmental movement, the election of President Reagan might be thought of as a realigning election, one that forced environmental group leaders and strategists to reassess their earlier rejection of values such as individualism and laissez-faire that the Administration has reasserted. In general, the possibility that elections signal a political realignment is assessed by looking at the implications of voting behavior for the composition of the major parties. A. CAMPBELL, P. CONVERSE, W. MILLER & D. STOKES, *ELECTIONS AND THE POLITICAL ORDER* (1966). In this case, however, voting behavior and election returns would be of less value in the efforts of environmental leaders to interpret the meaning of an election than the character of the appointments and budget recommendations made by an incoming administration on the assumption that it had a mandate for changing policy.

218. The implication for minorities of the realization that protest is not enough is that the assertion of leadership (the making of choices by political actors) to mobilize support, to form electoral coalitions, and thus to secure political incorporation and responsiveness, at the local level is all-important. R. BROWNING, D. MARSHALL & D. TABB, *supra* note 82, at 262-64. Environmental groups have traditionally sought political incorporation and policy responsiveness by nonelectoral means, in large part through their participation in the policy networks that grow up around agencies and programs. If electoral efforts are the key to the quest of minorities for political equality, *id.* at 263, efforts to reform and realign network relationships may be the key for environmentalists in the pursuit of their agenda.

219. *AGENDA FOR THE FUTURE*, *supra* note 24, at 1, 23.

220. *Id.* at 23.

ance.<sup>221</sup> From this perspective, the conclusion would have to be that environmental leaders have not broken faith with and are really addressing their attentive public<sup>222</sup> in this book. The faithful just need to understand that the pin stripes on the cover<sup>223</sup> and the other trappings of corporatism<sup>224</sup> are merely devices to lull the opposition into a false sense of security.

I think it more than likely that both of these explanations of appeasement have some plausibility. Indeed, any realistic assessment of strategic political choice making by the leadership of the environmental movement would have to recognize that a stubborn refusal to bring their thinking into line with that of an incumbent Administration and its allies runs the risk of exclusion from decisionmaking.<sup>225</sup> The practical question, then, is not whether they should adapt to changing political circumstances but how they should do it.<sup>226</sup> At this level, reasonable people can debate the merits of the policy proposals outlined in the agenda and the way they are packaged. Beyond this, however, there is a basic theoretical question about the relationship of periodic ideological and political realignments<sup>227</sup> within and among environmental groups to the process

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221. In the days before the advent of modern polling techniques, this would have been a much more difficult task than it is today. Polls have been used skillfully, both by environmental groups and by environmental agencies over the last ten to fifteen years (Mitchell, *Public Opinion and Environmental Politics in the 1970s and 1980s*, in ENVIRONMENTAL POLICY IN THE 1980S, *supra* note 12, at 51), and are surely now one of the important means by which shifts in public attitudes and values are sensed by environmental elites, and are used by them to adapt their own preferences.

222. See *supra* note 34.

223. See *supra* note 32.

224. For example, the authors of AGENDA FOR THE FUTURE, *supra* note 24, at 1, identify themselves as chief executive officers, and deliberately use the language of economics and business throughout the book.

225. Such exclusion was practiced, at least for a time, by Interior Secretary James Watt. Culhane, *supra* note 187, at 296. Watt was not able to pursue this strategy successfully for very long, however. This raises a serious question as to why the leaders of the major environmental groups thought they had to issue a national agenda like that under discussion here in order to get the Administration's attention and be taken seriously as actors in national environmental politics.

226. The same question has to be faced, of course, by the other side. How it was faced after the 1980 presidential election by the incoming Administration and its supporters is revealed by Belsky, *supra* note 2, at 37-77, who traces each of the major strands in the Administration's strategic thinking, and the political convictions that underlay them. Other useful insights into the way political convictions shape policy changes, by promoting seemingly vigorous debate on what are actually tendentious partisan theories subsumed within the framework of a shared belief system, are in P. NIVOLA, *THE POLITICS OF ENERGY CONSERVATION* (1986).

227. In addition to the possibility of realignments attendant on election outcomes, see *supra* note 217, Lowe and Goyder associate realignments of strategy and of organization (a) with the aging of voluntary groups and their association with different generations, a factor internal to the environmental movement, and (b) with phases in the world business cycle, an external factor. P. LOWE & J. GOYDER, *supra* note 34, at 23-25.

of learning, and to the further and (in Milbrath's scheme, at least)<sup>228</sup> logically subsequent process of policy change.

The language and imagery of learning is extensively deployed not just in contemporary political agenda statements but also in the scholarly literature of policy analysis and law.<sup>229</sup> Environmental leaders tell their followers they think policy needs to be changed on the basis of what experience has taught them.<sup>230</sup> Scholars want to believe that policy can be changed the same way, that it can evolve intelligently from lessons built on valid causal theories, instead of lurching unpredictably and disappointingly from one crisis or outburst of creedal passion to another.<sup>231</sup> People in general want to believe both in the possibility and in the value of learning as a basis for change, and are prepared, I think, to give their hearts and minds to political leaders who tell them that things will get better because policy learning can be, indeed *is*, the basis for change.<sup>232</sup>

Very concretely, then, the question comes down to what people will find in *An Environmental Agenda for the Future* that will cause them to believe in it, *and to work for* its implementation. Take the important case of regulation, where a serious effort is made to distill the essence for public consumption of the lessons of experience and the best plans for the future. The book says regulation is needed but steps must be taken to correct its "many deficiencies,"<sup>233</sup> by reforming regulatory agencies and techniques, and by experimenting with alternatives to regulation. Clearly, people are being asked to believe here that environmental leaders have learned lessons in the last five years<sup>234</sup> about how to perfect regulation in order, in turn, to improve public health and the environment.

228. Although it allows that changes in behavior can lead to changes in beliefs, the general form of Milbrath's model of social learning suggests that causation runs from awareness to perception to analysis to communication to reinforcement to persuasion to policy change and finally over time to societal change. L. MILBRATH, *supra* note 24, at 17-19, 95-96.

229. See *supra* notes 82 and 108.

230. This is precisely the claim in *AGENDA FOR THE FUTURE*, *supra* note 24, at 6, 8.

231. For a view that crises and outbursts may themselves contribute to political learning, however, see S. HUNTINGTON, *AMERICAN POLITICS: THE PROMISE OF DISHARMONY* (1982).

232. This is the essence of reconstructive leadership, as C. LINDBLOM, *supra* note 108, at 105-06, defines it, although Lindblom is careful to point out the educative as well as the facilitative role of leaders.

233. *AGENDA FOR THE FUTURE*, *supra* note 24, at 67.

234. This is the period during which the argument that environmental regulation does not work, or that it does not work as well as deregulation, has been most forcefully advocated, although Belsky *supra* note 2, at 42, points out that it has been a consistent theme of presidential public policy since the late 1960's. The implicit question then becomes why the lessons recently learned about the deficiencies of regulation were not learned earlier. Was it because new information about how regulation works has just come to light? Or because people who value information about the workings of regulation differently than their predecessors have just come to power? Unfortunately, the most prestigious and authoritative new survey of social science research on both regulation and deregulation provides no clear answers to these questions. See *REGULATORY POLICY AND THE SOCIAL SCIENCES* (R. Noll ed. 1985), *supra* note 151.

They are also being asked to treat the bad old concept of regulation like the bad old idea of slavery recalled by Milbrath<sup>235</sup>—as something we shall never again believe in or go back to.<sup>236</sup>

Although the perfectibility of regulation is certainly an intriguing ideal, I doubt that large numbers of people can be motivated or mobilized by it. I also suspect the vast majority of the people who joined, and joined with, the environmental movement to protest the Administration agenda and appointments of the early 1980's will be unimpressed with the notion that by participating in experiments to perfect regulation environmental leaders are also learning how to deal effectively with the environmental impacts of Administration policy. The possibility that environmental leaders are thus confusing their own appetite and that of their policy analysts for theoretical knowledge<sup>237</sup> with a public thirst for practical political intelligence has disturbing implications for the future of environmental politics.

#### CONCLUSION

I began this Essay by noting some of the doubts and uncertainties that now seem to afflict the environmental movement and that invite some reassessment of its past, present, and future. Although I have not argued that the environmental movement is in any danger of disappearing as a force to be reckoned with in American political life, I do think the doubts and uncertainties are real, even palpable, to the people in the groups that make up the movement, and to their allies and opponents in the American polity. Much time and energy has been invested in self-consciously analyzing why the movement finds itself in its present predicament, and what can be done about it. *An Environmental Agenda for the Future*, reviewed in the previous Section, is one of the most visible and fascinating results of this self-examination. It would be wrong to make too much of this one book, however, and wrong to imagine that the present climate of doubt and confusion is unprecedented in the history of environmentalism in America. Remember Hetch Hetchy! And Glen Canyon Dam.

Nevertheless, it is important and I think useful to ask whether and how environmentalists will find a path out of their present slough of

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235. L. MILBRATH, *supra* note 24, at 8.

236. In some quarters, however, the virtues of good, old-fashioned regulation are beginning to be reappraised. See, e.g., TRB, *The Deregulation Era*, THE NEW REPUBLIC 4, 42 (Mar. 17, 1986).

237. "To exaggerate the importance of theoretical thought in society and history is a natural failing of theorists. It is then all the more necessary to correct this intellectualistic misapprehension. The theoretical formulations of reality, whether they be scientific or philosophical or even mythological, do not exhaust what is 'real' for the members of a society." P. BERGER & T. LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* 15 (1967). But see also F. SANDBACH, *supra* note 3, at 90-91.

despond, which coincides, ironically, with unprecedented growth in the numerical strength of the environmental movement in response to Reagan Administration personalities and policy initiatives. It is also important to outline and debate the composition of that path. These are the tasks to which *An Environmental Agenda for the Future* hopes to call the faithful. In reviewing the book, however, I have shied away from commenting on its detailed suggestions about the agenda of environmental politics, reserving evaluation for a future occasion and focusing attention instead on the intent and form of the message rather than its content.

Beyond these immediate and practical questions about whether and how environmentalists will adapt to the political climate of the late Reagan years, however, there lie deeper and more profound issues. In the last analysis, we want to know whether or not, and if so how and why, progress is being made with the reform agenda of environmental politics and law in America. And, it is the search for answers to these questions that leads us, along with many other students of politics and law, to ask what role learning plays in making public policy a legitimate and effective instrument of social change.

In Section I, I relied on Pollack for the proposition that environmentalists have the capacity to shape their own future. In truth (and with all due respect to Ms. Pollack and the *Harvard Environmental Review*), this will strike some readers as a shaky foundation for an argument about how causation runs in human affairs, when it is set against the discussion of free will and determinism that have raged among learned philosophers for the last two thousand years. On the other hand, and despite Pollack's failure to explain just exactly how it is that environmentalists can acquire and deploy their skills in swimming, if you will, against the strong tides of historical inevitability, I think her evaluation of the falseness of deterministic arguments about what shapes the course of environmental politics and law is as useful as many others and fundamentally correct.

As we saw in Section II, a focus on the individual as a unit of analysis can be extremely useful in trying to understand how environmentalists might be able to influence the course of change. It is useful not only in explaining how and why people come to subscribe to environmentalist beliefs but also in explaining how the dynamics of learning lead some people to become pinstripes, some pantheists, some advocates of a new environmental paradigm, some defenders of the existing social order, and so on. At the level of the individual, then, a powerful model of social and political learning can be built around the notion that people respond to information—first with awareness that there are problems to be solved, later with personal and organizational commitment to a set of solutions, and eventually with engagement in the public policy process of enacting and implementing those solutions.

At the heart of Milbrath's book (and many others!), we thus find a

conviction that progress with the reform agenda of environmental politics and law is most likely to come from a concern with the production and dissemination of true knowledge, which is what validates the fact that people have learned from experience and forms the basis of their planning for the future. From here it is but a short step to the notion that competition in the search for true knowledge, whether at the individual level or among social institutions, is the surest guarantee that progress will continue to be made.

We also saw in Section II, however, that there are limits to what we can understand about social change by assuming that the dynamics of individual and institutional learning are entirely or even primarily driven by a concern for true knowledge. For many individuals, and for instruments of collective action such as natural resource management agencies, their ideas about change and their behavior in pursuit of change are also driven by a concern for right action. In part, agencies converge on the right thing to do by combining knowledge with internal or organizational preferences. In addition, agencies' decisions are influenced by external groups and interests, and in Section III, we saw how Clarke and McCool conceive of this as a process of organismic coevolution.

This metaphor of evolution is less important, however, than the more fundamental notion that conclusions about whether we are making progress in environmental politics and law are the negotiated outcome of a process of political exchange. Moreover, this is a process in which some of the participants clearly and legitimately derive their influence from the superiority of their ethical stance, rather than from the truth of their assertions about how the world works, and how it can be changed.

In the last analysis, then, it would seem that people who want to make progress with the reform agenda of environmental politics and law must balance their concern for what is true with their concern for what is right. And, in Section IV, it was against this standard that we reviewed *An Environmental Agenda for the Future*. The book surely represents a strategic choice by the leaders of the environmental movement to win friends and influence people by lauding the virtues of learning from experience and planning for the future. But, it comes at a time when, perhaps more than ever before in recent history, people have been joining the environmental movement to protest the ethics of environmental policy choices, not just the poor quality of the empirical judgments on which in part they rest. We should know soon how much attention people give the book, how seriously they take it, and how well it appeals to their sense of what is just as well as what is true.