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CLEAN COAL/DIRTY AIR

BRUCE A. ACKERMAN and WILLIAM F. HASSLER

New Haven and London, England: Yale University Press. 1981. Pp. 193. \$5.95.

In *Clean Coal/Dirty Air*, Bruce A. Ackerman and William Hassler focus upon a crucial substantive policy issue: the future of the coal-burning power plant in the United States. Ackerman and Hassler analyze EPA's attempt to control the generation and discharge of SO₂ from coal-burning power plants; they argue that it should be taken as largely indicative of the way our institutions are coping with the critical environmental trade-offs generated by the energy crisis. A story is told of how our legal culture composed of Congress, executive agencies, the courts, and interest groups (eastern high sulfur coal and environmental citizen interest groups) interacted to require full scrubbing of coal over the cheaper, but "homely" alternative of physically washing coal.

The book is informative and well-written; it significantly expands our understanding of how institutions affect critical environmental decisions. The story clearly invites cynicism of interest group democracy: *Clean Coal/Dirty Air* concludes "that Congress's well-intentioned effort to improve the administrative process has driven EPA to an extraordinary decision that will cost the public tens of billions of dollars to achieve environmental goals that could be reached more cheaply, more quickly, and more surely by other means." The authors argue for an approach in which ambient air quality goals are specified in terms of monitored improvements over a time frame and the executive agencies are held accountable through deadlines prescribed in statute. Their arguments for the need to overhaul the Clean Air Act are supported by a 1981 Brookings Institution study undertaken by Lester Lave and Gilbert Omenn.

The authors use the model of a New Deal agency as the basis for normative assessment of the Clean Air Act—and the roles of EPA, Congress, and the courts. The authors consider three distinctive features of the New Deal agency to be critical for their comparison. First, the central New Deal mission is to create a decision making structure that relies upon the use of various types of expertise ranging from ecology to engineering to economics. Second, the New Deal agency is insulated from direct political interference. Third, the New Deal agency is to be insulated from judicial oversight, the role of the latter being to focus on questions that promise to support the use of expertise; e.g., did the agency give serious consideration to all relevant data and arguments, was the decision "arbitrary and capricious?" The New Deal model that they describe achieved limited success to say the

least. But this is one of their major points. It is the shortcomings of the New Deal model that led Congress to make some dramatic changes in the Clean Air Act.

Using this model of the New Deal agency, Ackerman and Hassler view the Clean Air Act as an attempt to move beyond the New Deal in a number of specific ways—these constitute the basis of the authors' arguments. The major change in the institutional design of the Clean Air Act from the New Deal model was agency-forcing. Its objective was to limit the potential for administrative passivity and "capture" by polluting interests. Ackerman and Hassler argue that Congress simply chose the wrong model for agency-forcing. Congress had two alternatives. In the first alternative, characterized by the authors as "means-oriented" agency-forcing, the agency is told precisely what regulatory approaches should be taken to reach the Congressional objective. In the second alternative, characterized by the authors as "ends-oriented" agency-forcing (the model favored by Ackerman and Hassler), Congress requires the agency to define its ends aggressively and challenges the agency to select a course that promises to reach its goals effectively. The authors argue that the choice of means-oriented agency-forcing required the Congress to indulge in judgments beyond its capacity. In this case the language of the Clean Air Act encouraged a solution based on what the authors call the "frontier" drawing board and unproven technology of dry-scrubbing. The technologically unsophisticated approach of physical coal washing, with known capability to reduce discharges by 20 to 40% and at much lower cost than full scrubbing, was dismissed. How the institutional structure led to full scrubbing and why the option of physical coal washing was never allowed to surface provided the major contribution of this polemic.

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