



Winter 1962

**Senate Select Committee on National Water Resources: An  
Ethical and Rational Criticism, The**

Roy Hamilton

**Recommended Citation**

Roy Hamilton, *Senate Select Committee on National Water Resources: An Ethical and Rational Criticism, The*, 2 Nat. Resources J. 45 (1962).

Available at: <https://digitalrepository.unm.edu/nrj/vol2/iss1/3>

This Article is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in Natural Resources Journal by an authorized editor of UNM Digital Repository. For more information, please contact [amywinter@unm.edu](mailto:amywinter@unm.edu), [lsloane@salud.unm.edu](mailto:lsloane@salud.unm.edu), [sarahrk@unm.edu](mailto:sarahrk@unm.edu).

# THE SENATE SELECT COMMITTEE ON NATIONAL WATER RESOURCES: AN ETHICAL AND RATIONAL CRITICISM

by

ROY HAMILTON\*

Students of the public interest are concerned with several factors which have been identified as influential in the process of public policy-making. Certainly, one of these influential factors is the particular political institution which provides the framework within which public policies are formulated. Other influential factors might be described — such as the intellectual history of the issue at stake, the personalities involved in formulating and deciding the issues, the pertinent social institutions outside the political arena (interest groups), actual events occurring at particular times, and something we shall designate, too simply, as the extent of existing consensus regarding a particular problem, its formulation and its answers.

The political institution, as an influential factor, remains one of the most important of all, if for no other reason than it often determines the strength or weakness, the presence or absence, of some of the other factors previously mentioned, in their relationships to a particular policy question.

Within the present framework, we are concerned with the Senate Select Committee on National Water Resources as a political institution. Before proceeding further, however, we might better distinguish between political institutions, such as the Select Committee, and non-political or quasi-political institutions such as the American Waterworks Association or the National Rivers and Harbors Congress. The latter two are examples of what the political scientist calls “interest groups,” although they are often reluctant to call themselves by that title because loose, popular usage of the term has given it something of a sour taste.<sup>1</sup> The “interest group” attempts to influence the course of action taken by the political decision-making institution, i.e., the persons or organizations legally charged with the responsibility for enacting, interpreting or administering laws and regulations, as well as programs and activities associated with the process of governing a democratic society. Thus, a political institution is distinguished from a non-political or interest group by the fact

---

\* Assistant Professor, Department of Political Science, Wayne State University.

1. An “interest group” is defined as “any group that, on the basis of one or more shared attitudes, makes certain claims upon other groups in the society for the establishment, maintenance, or enhancement of forms of behavior that are implied by their shared attitudes.” This definition, as well as the most extended discussion of the nature and role of interest groups in the American political process, has been given to us by Truman in his *The Government Process* (1959). For a discussion of his definition, see pp. 34ff.

of its constitutional or legal responsibility. The interest group has no such constitutional or legal responsibility except in the negative sense that it may be required to observe certain formalities for the purpose of making known its activities as an interest group, such as registering or reporting expenses in influencing legislators. On the other hand, while it has no positive legal or constitutional responsibility, it has a definite *moral* responsibility to make known the interests of the group which it represents. This is so because the existence of the democratic process depends entirely upon a free selection among competing ideas and interests, which further implies that the larger the number of ideas and interests so expressed, the wider is the range of choice and the possibility of a better decision thus increased in proportion to the increased range of choice.

In this connection, one might well argue that the present trend of public thinking which says that interest groups or "pressure groups," or lobbyists (the much-maligned representatives of interest groups), should be closely restricted in their activities, and even abolished altogether, is just so much nonsense — the very opposite of that which sociological facts seem to dictate. We now know that the working of a democratic process in a mass society *depends* upon the representation of group ideas and attitudes in the halls of power; consequently, we should be thinking of ways to encourage the formation of still more interest groups (e.g., consumer groups), and their representation before political decision-making institutions. However, we are concerned, for the present, more with the political than the non-political institution.

The Senate of the United States has seen fit to utilize the device of the select or special committee on a number of occasions and for all kinds of purposes ranging from the making of arrangements for special events—centennials, memorials, etc.—to the investigation of individuals and activities as well as questions of general interest. Besides the two party committees, the Democratic Policy Committee and the Republican Policy Committee, the Directory of the 86th Congress, for example, listed a Select Committee on Small Business, a Select Committee to Investigate Improper Activities in Labor-Management Relations and a Special Committee on Preservation of Historical Records of the Senate.<sup>2</sup>

In general, such committees are established at the instance of a particular senator who is usually already on record as being intensely interested in the inquiry to be made. Although all senators have their particular interests and the consequent desire to focus public attention on these by means of senatorial inquiry, it is generally understood that the senator will not succeed in securing the necessary authority to establish a select or special committee unless agreement with his interest is wide-spread and substantial and unless the senator commands a position of high regard among his colleagues. (The Senate of the United States has been called the "world's most exclusive club," and, like any other club, the influence and prestige of some of the members is higher than

---

2. *Congressional Directory: 86th Congress, 1st Session, 239-40* (March 1959).

others.) The decision to establish a special committee is not taken lightly, particularly since it will usually require funds and staffing. In addition, the activities of the committee are bound to compete with the enormously diverse other claims upon the member's time. Therefore, when such a committee is finally established, it signals a matter of serious concern.<sup>3</sup>

In the present case, the Senate Select Committee on National Water Resources eventually came about as the result of Senate Resolution No. 48, introduced in the 1st session of the 86th Congress, on January 27, 1959, by Senator Mansfield of Montana, then Majority Whip. It is clear from the record that the device of the select committee was chosen as an appropriate vehicle for studying water resources chiefly because no less than four standing committees of the Senate are concerned with water resources.<sup>4</sup> Indeed, when the original draft of Senate Resolution 48 was drawn up, it was provided that members would be drawn from only three of the standing committees of the Senate—someone having overlooked the fact that Agriculture and Forestry also dealt with water resource projects and policy (especially the small watersheds program administered by the Department of Agriculture).<sup>5</sup> As finally authorized by the Senate on April 20, 1959, the Select Committee on National Water Resources became a single focal point for the kaleidoscopic interests and concerns of several political institutions—the Senate itself, together with its standing committees and subcommittees, which, in the final analysis, are far more real, politically speaking, than the organization we call the Senate of the United States.

The conclusions reached by the Senate Select Committee on National Water Resources are discussed at length elsewhere in this volume. These, no doubt, will continue to be the subject of wide discussion and debate. We treat a different kind of question here—not the question of validity of the Committee's findings—but rather the question of whether it was the business of such a

---

3. A special or select committee is established by means of a simple resolution carried by a majority of senators present and voting. It does not require Presidential signature.

4. The four Standing Committees were: (1) Interior and Insular Affairs; (2) Public Works; (3) Interstate and Foreign Commerce; and (4) Agriculture and Forestry. These are concerned with substantive policy matters directly bearing on water resources. The Finance and Appropriation Committees are obviously concerned with water resource projects and indeed have been shown to be, in effect, policy-making organs. For a discussion of the tangled state of affairs among congressional committees, appropriations and the resulting policy conflicts, see Smithies, *The Budgetary Process in the United States* (1955).

5. In the one and only hearing held on Senate Resolution No. 48, Senator Mansfield, testifying in support of the proposal, suggested that the Irrigation and Reclamation Subcommittee, before which the hearing was held, should amend the language of the Resolution as introduced to expand the membership and take in members of the Agriculture and Forestry Committee. On two later occasions, the membership was again expanded for the purpose of accommodating individual senators who had expressed strong interest in the work of the Committee. See S. Res. 111, 86th Cong., 1st Sess., 105 Cong. Rec. 6879 (1959) and S. Res. 121, 86th Cong., 1st Sess., 105 Cong. Rec. 9422 (1959).

committee to make these findings. How did the Committee arrive at its conclusions? Could they have been predicted once the Committee's makeup was known? What useful purposes do such committees serve? What will be the likely impact of this Committee, and others like it on the future of water resources in the United States?

A description of the Committee's *modus operandi* and background will help toward an understanding of how it reached its conclusions.

Senator Mansfield, in his speech before the Senate introducing Senate Resolution 48 in January of 1959, commented at length on the need of the seventeen western states for intensive water development and the relationship between the economic situation in these states and the rest of the nation. Having justified a broad-gauge inquiry into the nation's water resources, and particularly the water resources of the western states, the Senator proposed that a select committee be established for the purpose. The committee, he suggested, should be patterned somewhat after the Select Committee to study the foreign aid programs of the United States Government. Just as that committee was established as a means to co-ordinate the inquiry of several standing committees interested in and having jurisdiction over various aspects of foreign aid, the Select Committee on National Water Resources seemed to offer similar advantages.

On February 5, eight days later, "full consideration of the resolution was had at a conference of the majority members of the Senate from the eleven Mountain and Pacific States, Alaska, Oklahoma, and Texas. . . ."<sup>6</sup> The Western Conference, as this group is usually called, went on record as favoring the Resolution. It should be noted in passing that the Senate Majority Leader, Lyndon B. Johnson, was among the proponents of the Resolution.

Senator Mansfield was clearly correct when he testified, before the Irrigation and Reclamation Subcommittee of the Interior and Insular Affairs Committee, that "this really is not my proposal. It is really a Western States proposal. . . ."<sup>7</sup>

The Chairman of the Irrigation and Reclamation Subcommittee, Senator Clinton P. Anderson of New Mexico, probably expressed the sentiment of his entire committee when he congratulated Senator Mansfield on his foresight in "giving us this resolution."<sup>8</sup> The Subcommittee, after all, consisted of Senators from the states of New Mexico, Washington, Wyoming, Nevada, California and Colorado, all of which were also represented in the Western Conference—and all of which have water problems of considerable magnitude. Indeed, in the hearing before the Subcommittee (the only hearing to be held on the Resolution), no opposition whatever was expressed to the Resolution. Other than statements by a number of senators, including the soon-to-be Chairman of the Select

---

6. From the record of Senator Mansfield's testimony in support of the Resolution. Cf. *Hearings Before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs, on Senate Resolution No. 48, Development and Coordination of Water Resources*, 86th Cong., 1st Sess., 1 (1959).

7. *Hearings, op. cit.*, p. 6.

8. *Hearings, op. cit.*, p. 1.

Committee, Robert S. Kerr of Oklahoma, the only other statement to enter the record was that of the legislative representative of the National Reclamation Association, which expressed the wholehearted support of that organization.

On March 17, 1959, the Subcommittee on Irrigation and Reclamation completed its hearing on Senate Resolution 48—the same day it started—and voted to report the Resolution favorably to the Senate.

One more hurdle remained before the Resolution could be voted upon by the full Senate. Under the General and Permanent Laws Relating to the Senate,<sup>9</sup> no payment can be made from the Senate Contingent Fund unless it receives sanction by the Committee on Rules and Administration. Since the Resolution contemplated an expenditure of about \$175,000 from the Contingent Fund for the Committee's expenses, it was necessary to secure prior approval of the Standing Committee on Rules and Administration. This was secured on April 15, 1959, Senator Hennings of Missouri, Chairman, giving a favorable report to the Senate. Five days later, on April 20, the Resolution was agreed to by the Senate.

The Select Committee was ultimately given the authority to expend as much as \$325,000 on the hiring of staff and the making of research contracts. It was given the power of subpoena and the power to hold hearings. In short, the Committee was authorized to draw upon every possible source of information and was instructed to report back to the Senate no later than January 31, 1960. In carrying out its mandate, the Committee spent somewhat less than \$100,000—a source of considerable pride to the Chairman, Senator Kerr, who favorably compared the record of his Committee with that of a certain mixed commission whose duties also lay in the area of natural resources. The committee compiled some ninety reports (publishing thirty-two), held twenty-two hearings in nineteen states and listened to 800 witnesses present some 3,000 pages of testimony. All this resulted in seventy-one pages of recommendations and conclusions on the subject of national water resources, expressed with some supplemental and individual views, by the entire Committee.<sup>10</sup>

It cannot be doubted that this Committee's report will have a lasting impact upon the course of federal investment in water development projects in this country, particularly in the western states, no matter how it was arrived at. Its effects will reach into places not ordinarily affected. Water-oriented agencies of the Federal Government, such as the Bureau of Reclamation and the Corps of Army Engineers, will slowly, perhaps, but surely begin to amend their thought processes so that at some point these processes will reflect the Committee's contributions. For example, it can be predicted with a fair amount of certainty that on future occasions when the Bureau of Reclamation or the Corps come to Con-

---

9. Senate Committee on Rules and Administration, *Senate Manual* (Washington: Government Printing Office, issued annually).

10. *Report of the Select Committee on National Water Resources*, 87th Cong., 1st Sess., S. Rep. No. 29 (1961).

gress with authorization or appropriation requests for specific projects, they will offer as justification all or part of the Select Committee's report. If they have not already done so, these agencies will begin to cast specific projects in the light of projections made by the Committee of water shortages in various basins and areas. In one important sense, this might be called a self-fulfilling prophecy because many elements of the Committee's final report were provided originally by these same federal agencies. (The Department of Interior scored the highest by providing, from one or another of its various agencies, no less than eleven of the thirty-two published studies. The Corps of Army Engineers managed only two reports while the Public Health Service contributed three. The Department of Agriculture scored second with a total of five studies of the thirty-two. Emphasis upon relatively new approaches to water conservation contained in the report, such as the prospect of reducing water losses through reduction and control of water-wasting plants, will give certain federal agencies added ammunition for seeking expanded research programs and budgets from the Congress. Also, that part of the report pertaining to state planning for water-resources development might eventually have the effect of producing more engineers and hydrologists to fill the jobs contemplated by the recommended nation-wide water-planning program (since even if the Committee's recommendation that state planning agencies be established with federal grants-in-aid were immediately implemented, there would not be enough professionally trained engineers and hydrologists to staff the agencies). And, of course, the net intended result will be more water for industrial, agricultural and consumptive uses.

In particular, implementation of the specific recommendations of this report would result in the full development of the five great water basins of the western states by 1980, for that is one of the few specific recommendations contained in the Select Committee's final report (see pages 9-11 of the report). Other recommendations speak of suggestions for improving flood-plain zoning, primarily of interest to the eastern states, but do not go much further than this. This is not to say that such problems as pollution abatement and navigation are ignored by the report, for they certainly are not. At the same time, it must be recognized that the only concrete recommendations refer primarily to western water problems, while the bulk of the separate supporting studies also concentrate in this area. This is not surprising, given the Department of Interior's well-known affinity for western problems. (It seems to be common knowledge that only a "westerner" is acceptable as Secretary of Interior.)

It is suggested that almost anything this Committee could have said about water needs for the future would have had approximately the same result as this report will have, perhaps with varying impact. Indeed, the report could have been issued by a totally different group of western senators and the results would probably have been much the same. For example, it is a fact that the Report on National Water Resources was written largely by the Select Committee's Staff Director, Mr. Theodore Schad, under the close direction of the Chairman, Sen-

ator Kerr. This in itself is not unusual, for some individual has to write the report—given the nature of things, it cannot be the product of joint writing efforts by a group of senators. However, the report must be written in such a fashion as to gain the approval, in large measure, of each individual member of the Committee, and the consensus of the whole Committee. In the case of water, it isn't too difficult to write such a report *provided* the required consensus will come from a group of western senators. In this instance, fifteen of the seventeen Senatorial members of the Select Committee on National Water Resources were from western or midwestern states. The other two were from the states of Louisiana and Pennsylvania—both beneficiaries of Corps of Engineers projects to a large extent.

Could it have been predicted that this Select Committee would have approved a report to the effect that more water development projects would be needed by 1980 at a projected cost of more than 50 billion dollars? Of course. Could a consensus of such a group of Senators recommend otherwise? Obviously not, for water is not only a primary concern of their constituents but also a primary requisite of continued tenure in office.

Suppose, on the other hand, that a Select Committee on National Water Resources had been authorized by the Senate, but all the appointees were Senators from the eastern half of the United States. What would have been the result? For one thing, it could be predicted that they would not have arrived at a consensus very similar to that in the present report, for most of the benefits of the western-oriented report will flow to the western states. If they could have arrived at any consensus at all, it would have been more concerned with such things as flood control, pollution abatement and navigation, while perhaps giving a tag-end emphasis to developing water supplies (just the opposite of the actual report).

But no western senator, such as Senator Mansfield, even in the far reaches of his imagination, would dream of establishing a select committee to report on the problems of water supply and then proceed to have members appointed to the committee who were unable to think of water supply as a problem. Given the composition of the standing committees from which the select committee membership was eventually drawn, it would have been difficult to appoint anyone other than western senators. Not one eastern state was represented on the Interior and Insular Affairs Committee of the Senate in the 86th Congress. Eleven of the seventeen members of the Public Works Committee were from western and midwestern states, but this is belaboring the obvious.

It should be clear that if one wants to dramatize the need for federal investment in developing water supplies, then the thing to do is establish a committee composed of western senators to make a report. They would bring to the task all the resources and prestige of the United States Senate, which are quite considerable. Material for such a report wouldn't be too difficult to secure. The Senate has been inquiring into and reporting on the development of water



resources ever since a resolution of the Ninth Congress called for a program of improving internal waterways. Federal agencies, such as the Department of Interior, have accumulated massive libraries of materials on water resources—readily available for use at any propitious moment; and private organizations are ready and willing to supply copious arguments for their favorite projects.

Those of our citizens who live in the water-short areas of the western states will undoubtedly be pleased with the Select Committee's report and the prospects of more water, which seem to be encouraged by that report. But what about our citizens who live in the densely populated and urbanized areas of the eastern United States—would they prefer that the projected 50 billion-plus dollars for water be spent, let us say, on parks and forests and beaches to meet the recreation needs of the city dweller who cannot afford to travel to Yellowstone Park? Would our eastern citizens be somewhat startled if they could compare the amount of money spent by the Federal Government in developing water and land resources in the thinly-populated western states with the amount spent by the Federal Government (rather negligible), in making the conditions of urban living in the east somewhat easier to bear?

In spite of a lot of glib words to the contrary,<sup>11</sup> the interests of the eastern and western halves of the United States are not the same; yet, they must somehow be balanced. In modern political theory, we hold that it is the primary task of the legislative body to strike a balance between interests, whether they be interests of local groups, business groups, labor groups, religious groups, or other myriad interests held by groups in our society. It is the function of the Congress of the United States, for example, to strike a balance between the naturally opposed interests of railroad and trucking organizations and groups. It is the function of the Congress to balance the naturally opposed interests of those groups who wish to preserve natural "wilderness" areas with the interests of those groups who make it their business to cut timber. It is the function of the Congress to balance the interests of the "Rivers and Harbors" advocates of the eastern United States with the interests of the "Irrigation and Reclamation" interests of the western United States; and, equally important, it is the function of Congress to balance all water interests, whether eastern or western, with all other non-water interests. It is never too trite to repeat James Madison's words:

A landed interest, a manufacturing interest, a mercantile interest, a money interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.<sup>12</sup>

---

11. See, for example, the discussion of "National Interest" in the Select Committee's Report, *op. cit.*, pp. 20-21.

12. Madison, *The Federalist* 56 (The Modern Library ed.).

Modern political scientists have not improved on James Madison's insight. To be sure, we know more than he did about the structure and functions of interests and interest groups, but this knowledge has done nothing to lessen our belief in the responsibility of the Congress to mediate these interests. Indeed, volumes have been written on this responsibility of the Congress as well as the principles to be followed by Congress in attempting to fulfill its role of balance-striking. All in all, it is quit clear that some one political institution, with constitutional and statutory powers, *must* play this role, and the Congress is the chosen institution for the United States, where the problem is one of balancing national, rather than local, conflicts of interest.

As the Upper House of Congress, composed on the basis of equal representation of the states, the Senate of the United States has a particularly heavy responsibility for mediating between opposing interests and forces. In fact, many of its operational procedures can be explained as built-in devices for bringing into the open a congeries of conflicting interests, thus providing a means for publicly scrutinizing them individually and together. The device of the "committee hearing" is one such procedure. Likewise, the elaborate rules of the Senate insure a hearing for every senator, no matter how hot the issue. Case studies of individual pieces of legislation coursing through the Congress have made the Senate appear as a battleground upon which opposing armies struggle in the public eye—and this is all as it should be.<sup>13</sup> For, as we know, there are not any absolute and universally accepted standards which will enable the Congress to strike the proper balance between opposing interests; instead, we rely on the democratic process of public debate, accompanied by a marshalling of forces in the public eye, to accomplish the balance that will finally be struck.

If the Senate's responsibility is to act as a mediator between opposing interests, then it clearly cannot do anything which would deny or subvert that responsibility. If it is to exercise its responsibility as mediator, then it must be impartial, even as justice requires the trial judge to purge himself of all prejudice which might influence his decision. The judge must consciously prepare himself to give a fair hearing to all parties; and, the Senate, if it is to be a fair mediator, must prepare itself collectively, to give an unprejudiced hearing to all parties, recognizing that for every interest, there exists an opposite interest.

When the Senate of the United States established the Select Committee on National Water Resources, it violated every principle here set forth. The Senate, in effect, allowed some of its members to speak as an interest group. The Senate, in effect, gave some of its members the opportunity of using all the power, resources and prestige of the legislative branch for the purpose of arguing for the expenditure of huge sums of money for a single purpose—that of water resources development, particularly in the western states.

---

13. Gross, *The Legislative Struggle* (1953). For a description of the Congressional Committee as a public battleground for opposing interests, see Huitt, *The Congressional Committee: A Case Study*, *The American Political Science Review* 340-65 (June, 1954).

No one will deny that this country's water supplies, wherever found, need and will receive further development. But the choice is not simply that of either developing water resources or not developing them. Instead, the rational, democratic choice lies between spending money on water resources development *and all other demands made upon the Federal Government*. Once a political institution such as the United States Senate, charged with mediating opposing interests, allows its own members to argue *officially* for one particular interest (in this case, water resource development), then it has prejudiced all future judgments in which that interest stands as a party to controversy.

The content of the final report of the Select Committee on National Water Resources could and *should* have been produced by a non-political institution or interest-group organization such as the National Reclamation Association. The production of such a report should have been placed in the hands of one or more of those organizations which every year lobby before Congress for larger appropriations for water resource development. Such is the proper function of such organizations. If the United States Senate would recognize that expenditures for water resource development, particularly in the western states, must be balanced against all other needed federal expenditures (and not merely balanced against water resource development expenditures in the eastern half of the United States), then it would recognize that the establishment of the Select Committee was an improper function of the Senate and not in accordance with the traditional ethical view of the responsibilities of the Senate of the United States.