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**ASSESSING THE HEALTH OF THE BODY POLITIC:
ARE THE CURES WORSE THAN THE DISEASE?**

Margaret A. Shannon

Corkery Professor of Forest Resources
Associate Professor of Forest Policy and Law
College of Forest Resources
University of Washington
Seattle 98195-2100

and

Associate Professor of Public Administration
Center for Environmental Policy and Administration
Maxwell School of Citizenship and Public Affairs
Syracuse University
Syracuse, New York 13210

**CHALLENGING FEDERAL OWNERSHIP AND MANAGEMENT:
PUBLIC LANDS AND PUBLIC BENEFITS**

Natural Resources Law Center
University of Colorado School of Law
Boulder, Colorado 80309

October 13, 1995

*One's-self I sing, a simple separate person,
yet utter the word Democratic, the word En-Masse.¹*

THE BODY POLITIC: THE ONE AND THE MANY

“The title page of Hobbes’ Leviathan shows a giant human figure emerging over the horizon. ... The trunk is made up of a multitude of individuals who together form the “body politic” of which the sovereign ruler is the sole “head.” The polity was an organic unity, the human body in macrocosmic form, subject to the same ethical and physical laws. ... The really startling moment comes when Hobbes announces that Leviathan, the commonwealth, is really “but an Artificial Man” and the body politic only a “fictitious body.” ... Both are fit objects for scientific scrutiny and human manipulation, but are stripped of meaningful organic interconnectedness and moral significance. That atomistic vision of ourselves and our politics haunts us still.”

[These excerpts come from the first paragraphs of a draft working paper recently presented by Professor Elizabeth Mensch of the University of Buffalo Law School to a faculty seminar.]

Three themes are evident in the papers and discussions at this conference.

- The “body politic” continues to serve as a strong metaphor for political life especially when land and resources are the topic of politics. Nonetheless, it serves as a model for inquiry and critique more than as a moral guide for political conduct.
- The tensions between two conceptions of “individualism” derived from two political traditions continue to coexist in a rough equilibrium. Are individuals merely atomistic units floating in political space whose freedom of action should be maximized so as to maintain their constant motion? Or, are individuals interconnected elements of the larger community and their motion always measured against its effect on the whole?
- Democratic politics depends on transforming professional-expert relationships into something more civic-minded and reciprocal. It is imperative that professionals are reintegrated with the life of local communities and local politics, understood as the work of public problem-solving.²

¹ Walt Whitman, “One’s-self I Sing,” in Leaves of Grass (Boston: Small, Maynard and Co., 1897) as quoted in Robert Bellah, et. al., Individualism and Commitment in American Life: Readings on the Themes of Habits of the Heart. New York: Harper and Row Publishers, 1987.

² While the theme emerges from this conference, this wording is taken from a paper by Harry C. Boyte, “Beyond Caring Community,” The American Prospect. Redraft of August 6, 1993.

THEME I: IS THE “BODY POLITIC” SICK?

The “body politic” continues to serve as a strong metaphor for political life especially when land and resources are the topic of politics. Nonetheless, it serves as a model for inquiry and critique more than as a moral guide for political conduct.

Public lands and the Constitution: Laying the Foundations

The “public lands” played a significant role in Constitutional politics at the end of the 18th century and the principles guiding public land policies can be traced to this period. Most importantly, the tensions amongst these principles based upon different political theories and philosophies remain little changed, only the names have changed.

In the 1940s, Frank Bourgin wrote a dissertation directed by Dr. Charles E. Merriam of the University of Chicago, which was not signed and remained buried for over fifty years due to its political incorrectness. The dissertation was inspired by Merriam’s role on the National Resource Planning Board and the connection between guiding the nation out of the Depression and into a better future by means of national planning. Merriam wondered, and Bourgin researched, the early history of the idea of national planning.

In the introductory chapter of his book The Great Challenge: The Myth of Laissez-Faire in the Early Republic, which is the much belated dissertation dusted off and published in 1989, Bourgin relates that he first had to wipe away the cobwebs from his own mind which declared the early 19th century as committed to a laissez-faire theory of government. Once he began to understand the words of early political writers in their own terms, he began to see their commitment to a government which affirmatively seeks to “create an environment that enables people to live better.” His working definition of “national planning” included:

- long-term rather than short-term projections, ruling out transitory political policies;
- some systematic study and research utilizing existing scientific knowledge and state of the arts;
- certain defined goals or national objectives, rationalized as necessary to achieve or enhance the national well-being.³

Looking back at his work, and the work of many others, it is clear that “national planning” as measured by the three tests above in large measure defines the history of

³ Bourgin, Frank. 1989. The Great Challenge: The Myth of Laissez-Faire in the Early Republic. New York: George Braziller. (page 25)

public land policies. Yet, the implicit reason for national planning -- the betterment of society -- often eluded those whose purposes were good and efforts commendable.

Separating frustrations with the basic framework of public land policy from the existing administration of those policies is difficult at best. Nonetheless, the relationship of the federal public lands to the efforts of nation-building are so integral and located in fundamental policy principles, that a simple shift to a different government, non-government or private entity would not address this larger institutional issue. Many federal land policy debates today are about whether the federal public lands should continue to serve nation-building purposes and, if so, are those purposes the same today as in the past.

THEME 2: SEPARATED OR LINKED: "THE INDIVIDUAL"

The tensions between two conceptions of "individualism" derived from two political traditions continue to coexist in a rough equilibrium. Are individuals merely atomistic units floating in political space whose freedom of action should be maximized so as to maintain their constant motion? Or, are individuals interconnected elements of the larger community and their motion always measured against its effect on the whole?

Individuals "and the" or "in the" Commonwealth

*America was promises to whom?
East were the
Dead kinds and the remembered sepulchres:
West was the grass.*

*America was always promises.
From the first voyage and the first ship there
were promises.⁴*

In America, it was self-evident that the Creator had endowed man with inalienable rights of "Life, Liberty, and the Pursuit of Happiness." Few ideas are stronger in the history of America. Those who journeyed to America from the many countries around the world had faith that these rights would be theirs when they stepped on American soil. For many, most of our ancestors, this faith was justified. The promise that a government could be founded on the idea that its purpose was to create an environment that enabled people to live better echoes across the decades. "I Have a

⁴ Herbert Croly, "The Promise of American Life."

Dream” cried Martin Luther King has he called for all people shall share in the beneficence of this promise of America.

This promise invokes the image of the “body politic” in which the health and strength of the whole is only as great as the health and strength of the parts. While each “part” -- citizens, organizations, communities, etc. -- is different, with different fortunes and life histories, the “whole” -- the commonwealth -- creates the environment for each to achieve a good life. While the role of government is thus partially restraint, it is also the affirmative creation of a strong and supportive set of policies within which achievement and entrepreneurial enterprise can “release the potential” (to borrow James Willard Hurst’s evocative concept) for improvement.

It is this role that the federal government cannot diminish without diminishing the life futures of us all. It is the promise that “tomorrow will be better” that still defines the American character. This conference has addressed the question of the public lands in this context:

Could the federal government simply relinquish the public lands to other government, non-government or private entities and still ensure the betterment of the Commonwealth?

The participants and discussion at this conference gave serious thought and consideration to this question. Alternative policy frameworks were suggested and debated. Frustrations of citizens feeling betrayed in their continued faith in the promise drove deep the doubts regarding the capacity of the federal government to provide an environment for the betterment of all people. The hopes of those who understand all too well the value of the public lands and resources and wish to grab some of it for their own betterment are also present, silently and spoken.

But all this brings me back to the central image of the Commonwealth as composed of US in our collective capacity, not our individual capacity. As George Coggins argues, the history of public land administration is fraught with examples where the responsibilities to the Commonwealth were abdicated in order to increase private wealth or curry political favor. His perspective derives from an interpretation of Leviathan which views the head as the sovereign and alone responsible for formulating policy and choosing the direction for action. The “body parts” are bound to carry out the wishes of the “head” and failing to do so is to fail in their duty. But this political vision of the “body politic” is only one approach.

THEME 3: PROFESSIONAL CITIZENSHIP AND CIVIC LIFE

Democratic politics depends on transforming professional-expert relationships into something more civic-minded and reciprocal. It is imperative that professionals are reintegrated with the life of local communities and local politics, understood as the work of public problem-solving.⁵

New Governance Institutions: Democracy WITH Publics

Americans are in withdrawal from public life, from any collective effort at directing their own affairs. Some regard this national doldrums as a sign of healthy approval of the established order -- but is it approval by consent or manipulated acquiescence? ... Still others think the national quietude is a necessary consequence of the need for elites to solve complex and specialized problems of modern industrial societies -- but, then, why should business elites decide foreign policy, and who controls the elites anyway, and are they solving mankind's problems? ... The very isolation of the individual -- from power and community and ability to aspire -- means the rise of a democracy with out publics. With the great mass of people structurally remote and psychologically hesitant with respect to democratic institutions, those institutions themselves attenuate and become, in the fashion of a vicious circle, progressively less accessible to those few who aspire to serious participation in social affairs. ..

As a social system we seek the establishment of a participatory democracy, governed by two central aims: that the individual share in those social decisions determining the quality and direction of his life; that society be organized to encourage independence in men and provide the media for their common participation.⁶

In our frustrations with politics in real time, we must remember the promises and hopes we share. If OUR public lands are not serving to improve our collective life, then how can we shape their administration and policies so that they do? But answering this question is not the same as contending that individuals can legitimately lay claim to personal profit and wealth from the resources and access to the public lands. The demand of citizens for their government is the improvement of the environment in which they live, not the selling of this responsibility to a few as if their increased wealth would enhance the commonwealth. This corruption of the rights to life, liberty and the pursuit

⁵ While the theme emerges from this conference, this wording is taken from a paper by Harry C. Boyte, "Beyond Caring Community," The American Prospect. Redraft of August 6, 1993.

⁶ Students for a Democratic Society, 1960, "The Port Huron Statement." Drafted by the SDS group at the University of Michigan. An excellent analysis of this period is the subject of a book by James Miller, Democracy is in the Streets, New York: Simon and Schuster, 1987.

of happiness must be as hard fought today as in the early days of the Republic, or during the tumultuous decades regularly recurring since.

The strongest theme from those whose daily work is civic political life is that the resources of expertise and abilities of professionalism must either be put to better public service or replaced. Framed this way, it would matter less what government or non-government entities had jurisdiction over the public lands and more how they acted. It would matter if private entities had jurisdiction for the political discourse would radically shift spheres and the framing of policy would no longer invigorate the body politic in the same ways. To rely on the private entities and the market as the governing political institution is to ensure that wealth will continue to be concentrated in the hands of a few and that decisions will be truly isolated behind closed board room doors. While there is no doubt that private decisions and private policies are profoundly affected by their surrounding political and economic environment, their relation to creating political life is quite different than civic politics.

Can expertise and professionalism contribute to the work of public problem-solving within the life of local communities and politics? This is the hope and promise of participatory democracy and can be seen blossoming around the country in many forms. Issues of control and corruption remain, as do fears of parochialism and selfishness. Only a truly vigorous public life can counteract these forces. By rights, the federal public lands should contribute to the strengthening of ties between local communities and local politics and the larger national or global problems. It seems simple that experts in government agencies can bring to bear the resources of the nation on the public problems of the community. We have many examples where this happens. Why doesn't it happen every time?

Seeking Interconnectedness and Moral Significance

It may be that for many of us the public lands are indeed the stage for the enduring drama of political life in America. If so, are the questions we pose to one another and the options we explore and the consequences we debate simply our scene in the play? Who should write the next scene and who will act in it?