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Cases and Materials on Environmental Law and Policy, by Eva H. Hanks, A. Dan Tarlock, and John L. Hanks

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CASES AND MATERIALS ON ENVIRONMENTAL LAW AND POLICY. By Eva H. Hanks, A. Dan Tarlock, and John L. Hanks. St. Paul, Minnesota: West Publishing Company. 1974. Pp. xxx, 1242. $20.00.

I

Problem: How does a law teacher singularly interested in empirical research address the task of reviewing a textbook designed for use in a law school course in Environmental Law?

Solution: He adopts the book and then generates data by inducing a relevant population of consumers of the textbook—students using it in his class—to prepare ongoing assessments of their studies. This information is systematically collected and evaluated and then integrated with his own observations made while teaching from the textbook, and the results are reported.

While the solution stated above may not represent an ideal empirical strategy for preparing a review of a new casebook, it does have one strong feature which commends it over conventional formats for reviewing law-related books chiefly intended for uses outside the classroom. Although many criteria may apply equally to textbooks and other scholarly works, one important characteristic of a textbook is how well it holds up in the daily give and take of the classroom. Thus, systematic recording by students and teacher of their reactions to the book's utility as a vehicle for facilitating learning of the subject matter ought to furnish valuable data in evaluating this critical facet of textbook quality.

It would be dishonest, however, to create the impression that the review which follows is the result of such a carefully planned research strategy as that described above. Rather, this review is a good illustration of the pervasive role serendipity plays in scholarly pursuits.[1]

[1] In September of 1974 I began teaching Environmental Law at Stanford using tear sheets of this casebook, which had not yet emerged from West's bindery in final form. I was then finishing another book review at the time, and was impressed at the extent to which it was necessary to achieve a thorough command of the substantive content of the area covered by a book to attempt a serious evaluation of its utility as a teaching tool. Activated by this insight, I decided to expose my students to the same intellectual process by requiring a review from them. In December, I distributed this question as a part of the final exam:

Prepare a book review of the portions of Hanks, Tarlock & Hanks assigned

Before considering the students' and my own assessments of the casebook as a teaching tool, several comments should be made about the book from a somewhat broader perspective. This review discusses many aspects of the book, and the individual comments should not be considered to be an evaluation of the whole. At the outset, the authors should be strongly commended for their courage in attempting to create a comprehensive textbook in this subject at this time. Lesser spirits would have easily been discouraged by the prospect that the next round of congressional action or the next wave of judicial decisions would moot or render obsolete substantial portions of their work. This is not to suggest that the authors were foolhardly in undertaking their project; quite the opposite is true. They clearly appreciated the temporal quality of much of the material used and sought to counteract the probability of its early obsolescence by using it not as an end in itself, but rather as a means to construct and illustrate an analytical framework for dealing with issues of environmental quality which hopefully will have a more enduring utility. Their relative success in developing, communicating and defending this intellectual framework will be taken up later. For now, it is sufficient to observe the potential transcience of much of the legal material and to praise the authors' strategy in attempting to suggest ways of thinking about the basic problems which will not be significantly affected by even major changes in the controlling statutes, regulations, or judicial decisions.

Many law teachers, including some who teach the subject, still regard Environmental Law as a non-subject. It is easy to understand why this skepticism should exist, considering that as recently as six years ago no law school offered a regular course in the subject. The

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for coverage in class. Besides addressing such obvious matters as organization, comprehensiveness and clarity of presentation, your review should also consider the extent to which cases, readings and notes explore basic principles and develop unifying themes in ways which lend coherence to the subject.

One month later, I received 35 student reviews of the book, which averaged ten pages in length. (Most students, I might add, agreed that the question was pedagogically successful in causing them to work harder to gain control of the whole course and to search for underlying themes and organizing principles.) Between the time the examination question was distributed and the time the answers were received, I was invited to prepare this review of the book, and then first saw the potential for using the evaluations as raw material in my own writing—serendipity in its purest form.

To organize the data I simply took careful notes of each student's views as I graded the question. The comments which follow represent an attempt to integrate the students' evaluations of the textbook with my own reactions, which are based on six years' accumulation of reflections on the subject and its teaching.

first published teaching materials in the field were marketed in 1970.[2] Yet today almost every reputable law school has at least one offering for which this volume would be an appropriate textbook. Other reservations relate to the substantive content of the material. The concern is that Environmental Law is not a separate and identifiable body of legal doctrine, but is rather an amalgamation and application of principles and policies currently explored in other standard courses. To particularize the charge, Environmental Law consists of one part applied civil procedure (access to courts), one part natural resource law (water and mineral rights and public land laws), a dash of torts (nuisance notions), a pinch of constitutional law (due process and state-federal relations), and four parts administrative law (rulemaking, discretionary decisionmaking, public participation, and judicial review functions). This characterization is accurate, as far as it goes, but exactly the same sort of

[2] Although earlier Water Law and Natural Resources Law books had touched on environmental protection problems, the first true environmental law textbook was prepared by Professor Gray and published by the Bureau of National Affairs (BNA) in 1970. A second edition of O. GRAY, CASES AND MATERIALS ON ENVIRONMENTAL LAW was published in 1973. BNA staked out a further claim on this embryonic subject with the commencement in 1970 of its *Environmental Reporter* series, the volume which reprints cases being the most frequently cited source among environmental law sources (E.R.C.). Also in 1970, the Environmental Law Institute first began publishing its *Environmental Law Digest.* In 1971 this publication matured into the *Environmental Law Reporter* (E.L.R.).

The year 1971 brought to the fore a veritable flood of environmental law teaching materials. Professors Meyers and Tarlock captured a lion's share of the early market by publishing a paperback adaptation of several chapters of their Water Law textbook, C. MEYERS & A.D. TARLOCK, SELECTED LEGAL AND ECONOMIC ASPECTS OF ENVIRONMENTAL PROTECTION (1971). Professors Jaffe and Tribe published their course materials for a somewhat wider ranging and more thoughtful examination of environmental law problems. L. JAFFE & L. TRIBE, ENVIRONMENTAL PROTECTION (1971). Professor Grad also published an interesting and reasonably comprehensive textbook in 1971. F. GRAD, ENVIRONMENTAL LAW: SOURCES AND PROBLEMS (1971). But of all the 1971 books, it was Professor Krier's work that most clearly established the tone for later efforts. J. KRIER, ENVIRONMENTAL LAW AND POLICY (1971), focuses on a single environmental problem, air quality, and examines it with great rigor from both legal and economic perspectives.

In 1972 two new entries appeared. E. TUCKER, LEGAL REGULATION OF THE ENVIRONMENT: TEXT, CASES AND PROBLEMS (1972) is a short paperback survey of a broad spectrum of legal problems related to environmental protection. It is the first textbook prepared with students outside the law school clearly in mind. The second textbook to issue in 1972, 1 A. REITZE, JR., ENVIRONMENTAL LAW (1972), contains the richest collection of nonlegal material and is presumably intended for multiple-purpose teaching use. A second volume of Professor Reitze's work was published in 1974 as A. REITZE, JR., ENVIRONMENTAL PLANNING (1974).

Aside from the second edition of Gray's book, the only further contribution from the academic community in 1973 was Grad's *Treatise on Environmental Law,* which is not intended for classroom use.

The law has developed so rapidly that without current supplements most of the books produced before 1973 are seriously deficient in major areas. Thus the Hanks-Tarlock-Hanks book has arrived on the scene at a propitious moment in terms of the potential market for its adoption.

observations could have been made about the field of labor law during its infancy, and perhaps about trade regulation and other commonly recognized legal specialties in which the major thrust of the law school course is to examine the ways in which the legal system affects and is affected by a significant emerging social problem.

Since 1970 the heightened federalization of the legal response to environmental quality problems, organized chiefly around NEPA,[3] the Clean Air Act of 1970,[4] and the FWPCA Amendments of 1972[5] has created a comprehensive and complex body of law that now directly or indirectly affects every citizen in the land. The full social and economic impact of environmental regulation under these new federal statutes is yet to be felt. Viewing these laws against the background of their state level counterparts and other local, state, and federal controls on private and public activities which have spun off from the environmental movement, it would now appear difficult to sustain the argument that Environmental Law has no independent legal content.[6]

It probably was never easy to construct a teachable textbook, but market forces have developed recently which make the task increasingly difficult. The standard textbook today must not only present legal source material in a cogent and orderly form, it must also provide extended notes discussing problems related to the primary materials as well as encyclopedic references to collateral authorities and further readings, some of which are necessarily in other disciplines. In short, many popular law school texts are also first-rate research tools in their fields, and are consciously purchased and retained as such by their consumers. *Environmental Law and Policy* provides a good illustration of a few of the pitfalls associated with production of a heavily annotated textbook. First, it should be stated that the book is indeed thoroughly researched and richly documented. As might be anticipated in situations of multiple authorship, however, the character and pedagogical import

[3] National Environmental Policy Act of 1969 [hereinafter NEPA], 42 U.S.C. §§ 4321–35 (1970).

[4] 42 U.S.C. §§ 1857–58 (1970).

[5] Federal Water Pollution Control Act Amendments of 1972, 12 U.S.C. § 24, 15 U.S.C. §§ 633, 636, 31 U.S.C. § 711, 33 U.S.C. §§ 1251–65, 1281–92, 1311–28, 1341–45, 1361–76 (Supp. III, 1973).

[6] Doubters should examine the recently published 1600 pages in ENVIRONMENTAL LAW INSTITUTE, FEDERAL ENVIRONMENTAL LAW (E. Dolgin & G. Guilbert eds. 1974). The fact that the implementation of these laws embroils the traditional agencies of government in the same problems of role identification, policy formulation, statutory construction, and constituency management that are encountered in other fields of law surely does not justify the subsumption of Environmental Law into Administrative Law or any other conventional law school course on which it may be thought to impinge.

of the notes and questions is somewhat uneven. For example, a brief two-page note is tacked on the end of the NEPA section surveying difficulties experienced in dealing with scientific uncertainty with respect to the regulation of potentially toxic materials. The *Reserve Mining* case,[7] the long battle to cancel the registration of DDT and other persistent pesticides, and the 1972 FIFRA amendments[8] are all covered in this short note (at 427–29). As one of the authors has demonstrated in a subsequent work, techniques for handling scientific uncertainty about potentially toxic substances are deserving of considerably greater attention.[9] In contrast, in a later chapter substantial portions of three recent circuit court opinions are reprinted without comment in a 13-page note (at 1027–40) focused on the relationship of state and federal proceedings in the approval and enforcement of state implementation plans under the Clean Air Act. The substantive content of these three cases could easily have been summarized in a few paragraphs. These examples were deliberately selected to make the point about unevenness; fortunately they are atypical, for the book generally reveals a good sense of proportion with regard to this type of material.

A somewhat different problem that several students reported concerning the notes was that they occasionally were so attenuated or discursive that they blurred the main point the authors wanted students to think about. One possible example of this complaint is the highway litigation material surrounding *Overton Park*,[10] a case ostensibly presented to provide groundwork upon which to construct analyses in later cases involving judicial review issues. *Overton Park* is also fine vehicle for examining the difference in judicial function between cases where the court recognizes a clear congressional preference as to how agency should rank competing factors and the more typical case where no such preference is found. The extended discussion of related Highway Act

[7] Reserve Mining Co. v. Minnesota Pollution Control Agency, 2 E.R.C. 1135 (Minn. Dist. Ct. 1970), *aff'd in part, rev'd in part,* 294 Minn. 300, 200 N.W.2d 142 (1972); United States v. Reserve Mining Co., 56 F.R.D. 408 (D. Minn. 1972) (approving parties), 380 F. Supp. 11 (D. Minn. May 11, 1974) (granting injunction), *injunction stayed,* 498 F.2d 1073 (8th Cir. June 4, 1974), *application to vacate stay denied,* 418 U.S. 911 (July 9, 1974), *supplemental opinion recommending reinstatement of injunction,* 380 F. Supp. 11, 71 (D. Minn. Aug. 3, 1974), *application to vacate or modify stay denied,* 419 U.S. 802 (Oct. 11, 1974), *injunction modified, case remanded,* —— F.2d ——, 7 E.R.C. 1618 (8th Cir. Mar. 14, 1975).

[8] [Federal Insecticide, Fungicide, and Rodenticide Act] 7 U.S.C. §§ 136–136y (Supp. III, 1973).

[9] *See* Tarlock & Gelpe, *The Uses of Scientific Information in Environmental Decisionmaking,* 48 S. CAL. L. REV. 371 (1974).

[10] Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971), reprinted at 233.

cases was felt by some students to distract their attention from the major points of *Overton Park*, with the result that later they had to keep rechecking to get the salient ideas firmly in mind.

Although I did not find fault with the textbook on this ground, from a teaching perspective the students may be correct in sensing that a point of diminishing returns has been reached in some of the new generation of textbooks in which the volume of the detailed information presented overwhelms and obscures the central contours of the subject matter.[11] The argument that such a wealth of material enables the instructor to be creative in tailoring the course to his or her own preferences ignores the fact that it ordinarily takes two or three passes at teaching a course from a particular textbook to develop a sufficient feel for how best to handle the materials to be confident in loosing one's creative impulses. By this time many teachers are ready to switch texts in the interest of avoiding staleness. Yet this may be a fair tradeoff for using a coursebook that can justifiably be retained for reference purposes.

Earlier the authors were praised for undertaking a comprehensive text in such a dynamic area as environmental law. One risk of opting for the heavily documented style of book it its early obsolence as a research tool. Ideally, in so rapidly developing a field a book of this type should be published in looseleaf form so that it could be conveniently updated at relatively frequent intervals. I assume the authors do intend to prepare periodic supplements. If so, this will alleviate most of the problems in using the book as a reference work, but classroom use of the text grows more cumbersome as the supplements expand. The recent reversal of Judge Bue's monumental opinion in *Sierra Club v. Froehlke*[12] illustrates the point. The authors devote 60 pages to reproduction of this veritable judicial anthology of environmentalists' favorite holdings. The Fifth Circuit reversal by no means saps the opinion of its intellectual vitality, at least for pedagogical purposes, but of all the issues are ultimately resolved contrary to Judge Bue's views, what is to be done with this roughly 5 percent of the book? How satisfying it would be to have the opportunity to open a binder lock and replace the obsolete case with fresh material.

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[11] For an example of a textbook which presents sufficiently copious note materials to raise the "diminishing returns" issue, see C. DONAHUE, JR., T. KAUPER & P. MARTIN, CASES AND MATERIALS ON PROPERTY (1974). In fairness, much of the note materials in this book seem addressed to the student whose curiosity is piqued by a topic, and are designed to stimulate hard thinking about the central problems.

[12] Sierra Club v. Callaway, 499 F.2d 982 (5th Cir. 1974), *rev'g* Sierra Club v. Froehlke, 359 F. Supp. 1289 (S.D. Tex. 1973).

A final criticism relating to the presentation of the note material must be addressed primarily to the publisher and not to the authors. The students unanimously reported confusion bordering on exasperation in trying to follow changes in notes among the authors' comments, statutes, quotations from secondary sources and quotations from cases. Part of the difficulty could have been avoided had the authors subdivided note materials with more headings, subheadings, and other change signals, but most of the problem stems from the seeming incompatibility of extensive note treatment with West's two-column layout.[12a]

II

A brief sketch of the substantive content of the book might be helpful at this juncture to better understand the detailed comments which follow. The book is divided into five chapters[13] followed by an extensive appendix containing reprints of key statutory and regulatory materials. As noted earlier, the authors have attempted to organize the presentation of material around unifying themes which hopefully provide a durable framework for rigorous analysis of the hard issues raised by efforts to factor environmental protection into public decisionmaking. Their basic approach is to focus steady attention on the allocation of decisionmaking responsibility and then frequently to substitute an econ-

[12a] What may be a new alltime high point in textual ambiguity occurs in the notes following the *Getty Oil* case in chapter V (pp. 1026–43). For some 13 pages the reader must circumnavigate what appears to be a continuously revolving judicial opinion in which the judge is deciding three cases simultaneously. Careful inspection of colons and imperceptible changes in type font reveal that there are, in fact, three different opinions, some of which quote from others. Cryptography skills ought not to be required for reading law materials.

[13] The first chapter provides 92 pages of introductory nonlegal material designed to acquaint the reader with some of the major intellectual issues associated with the environmental movement. Chapter II is roughly twice as long and is focused on Population, one of the current issues introduced in chapter I. With chapter III, which covers 270 pages, the reader begins the major substantive coverage of the book. The chapter is entitled Judicial Review of Complex Decisionmaking. It examines briefly various types of decisionmaking models, considers problems of access to courts and conventional notions about the function of judicial review, and then devotes extended coverage to the problems of adjusting the legal process to accommodate requirements created by NEPA. Chapter III concludes with a short excursion into public utility regulation.

Chapter IV is designated Land and Resources Management and Control. In 250 pages it deals mainly with the policies and structures for the management of the public domain, looking at both multipurpose management and withdrawals for exclusive use, such as the Wilderness System. The chapter also provides a short survey of recent developments in the planning and regulation of private land use.

The final chapter addresses Pollution Control in 383 pages. Nearly half of the chapter is devoted to private rights and remedies for pollution and includes an extended development of the nuisance concept from both legal and and economic standpoints. The balance of the chapter takes up public measures to control pollution, with primary attention given to air pollution control.

omic lens for purposes of evaluating both the process and the decision.

A question which recurs throughout the book is where, within the legal process, should primary responsibility rest for determining the proper balance between environmental protection and other important social objectives. Most often the issue materializes in the context of the need to posit a role for the court in reviewing discretionary decision-making by an administrative agency under circumstances where the tradeoffs between environmental risks and other costs are uncertain. The recent explosion of legislative, administrative, and particularly judicial decisions wrestling with environmental issues makes this a logical and almost sure-fire organizing theme; sure-fire because it casts the course in the same mold as most other law school courses which also are primarily oriented towards exploring the inevitable series of interinstitutional conflicts and adjustments we grandly label "legal process."

To facilitate thinking about the who and how questions regarding environmental decisionmaking, the authors regularly interject insights borrowed from modern microeconomic analysis. Under ideal conditions such an analysis can provide a framework for thinking about both the process of decisionmaking and the decision to be made. Unfortunately, ideal conditions seldom obtain. The economic analysis seems mislocated at times, and on occasion it plainly gets in the way of efforts to obtain a clear grasp on legal process issues. Further, because the authors generally are unwilling to offer their own economic analysis of a problem, the rigor with which the economic analysis is applied is inconstant. The quality of the analysis depends largely on the extent to which the particular problem under study or its analogue has been worked through by competent economics writers. The relative scarcity of such work means that too often the intended analysis sharpness either because it must be extrapolated from writing originally prepared for a quite different purpose or because the best available direct material is unclear. Where the selected economic literature is well written, the approach usually succeeds in engaging the law students' attention temporarily (no small achievement); when the note material is weak it reinforces the students' instinctive bias against nonlegal material.

An even more serious problem arises from the fact that in hard cases where the analysis would be most useful, the information base is usually so deficient that it is impossible to bring the theory to bear on the problem. Under such circumstances the main utility of economic analysis is to identify factors which should be considered and suggest how they

may interact, to indicate techniques for acquiring needed information and for hardening "soft" data, to provide methods for deciding whether the acquisition of certain needed data is worth the cost, and to compare the cost effectiveness of alternative methods for achieving specific desired results. These are useful things to know, but they rarely impress law students who have been inculcated with the common law urge to resolve today's case today on the basis of the best information at hand.

The authors should be commended and encouraged for their efforts to integrate law and economics in this area where decisionmakers often seem to have lost a firm grip on economic reality. On the other hand, their plan to bind together the diverse decisionmaking exercises by applying the gauze of economic analysis suffers from a noticeable, though perhaps inevitable, shortfall. Until economics more seriously turns its attention to the practical problems of applying theoretical models in the real world, it is doubtful that the objectives of the authors' integrative design can be fully realized.

Returning briefly to the role of the court in respect to the basic legal process theme, the casebook's organization of the materials stymied development of a valuable historical perspective on the changing role of the judge in what we now denominate environmental cases. If major attention is to be focused on the judicial function in environmental law, it probably aids student understanding to begin the inquiry with pollution control and particularly with the private nuisance cases where the judge has long had a distinct balancing responsibility involving public interest considerations. Moving through public nuisance into the development of state level regulatory agencies charged with controlling pollution draws attention to the narrowing role of the court. It also provides a comfortable occasion for examining the conventional administrative law principles governing the relationship between courts and regulatory agencies. A brief look at the history of state level regulation facilitates understanding the sense of urgency that permeates the current generation of federal pollution control laws and leads naturally into an analysis of the tough issues regarding the judicial role that have emerged under the new federal acts.

In pollution cases the court is trying to work out its function in relation to an agency the primary mission of which is environmental protection, but which must consider other factors in the public interest. From here only a mild dislocation is experienced in shifting the inquiry to cases where the court is dealing with agencies that have other basic missions, but which under NEPA or other specific statutory directives

also have a clear duty to include environmental factors in their calculus of the public interest. I submit that formulating a sensible judicial role in these cases is easier with the pollution developments in the background than vice versa. To appreciate the issues regarding the proper allocation of decisionmaking power that underline the current cases, it plainly helps to have an historical perspective on the evolution of the legal system's response to environmental protection needs. In this connection it is worthwhile to note the number of times the authors found it necessary to include cross references to chapter V in chapter III, in comparison to the paucity of cross references running the opposite direction. My recommendation is that users of the book consider taking up the material in chapter V before tackling chapters III and IV.

III

The material in chapter I, "Perspectives," is both essential to the purpose of the book and difficult to use effectively in the classroom. The chapter introduces the reader to most of the important ideas or issues which permeate environmental protection. The selections explore viewpoints mainly from ecology, philosophy, and economics. Covered are such questions as the validity of various ecocatastrophy predictions; whether a basic rethinking is in order concerning our economic goals and the way we perceive our relation to nature; what are the causes of our current problems—technology, population, affluence, decrepitude of our social institutions, or some mix of these; what are the ethical foundations of policies designed to protect and conserve resources; what relative reliance should be placed on natural science disciplines versus social sciences and law in defining and solving environmental problems. By and large the material selected fulfills its mission. The only selection which seems somewhat out of place is Justice Douglas' dissent in *Sierra Club v. Morton*,[14] which endorses Professor Stone's suggestion that legal standing should be granted to natural objects.[15] Although it does reinforce the prior article calling attention to the homocentric tendencies of our intellectual traditions, this is the only selection with a narrow legal focus, and it would appear to fit better in the later discussion of standing. If it is deemed imperative to develop this ethical theme further, excerpts from Aldo Leopold or Thoreau would add both insight and elegance to the study.[16]

[14] 405 U.S. 727, 741 (1972).

[15] Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

[16] Although these sources have become available since the book was published, two

The teaching difficulty in using this material would be no greater that that experienced in handling other nonlegal readings, except that ordinarily such material is intended for immediate application to a discrete legal problem. Here the material is presented for the purpose of initially exposing students to a number of valuable concepts with the hope that later the relevance of the ideas to specific problems will be seen and reflected upon. Although the students generally enjoyed these readings and did not resist spending classroom time in discussing them, these ideas were quickly repressed when the examination of the "law" commenced. In part the students' failure to search for occasions to relate most of these perspectives to later inquiries is attributable to the fact that the authors choose to reinforce continually only the economics theme. As a teacher, I found keeping the legal and economics concepts clearly in mind enough of a challenge to prevent worrying about the dropping out of other perspectives; but notes or questions tying the noneconomic perspectives into the remainder of the materials where relevant would undoubtedly enrich the course and also serve to counteract the student's view that such material is extraneous.

My class skipped the chapter II treatment of population due to time constraints, so there are no student reactions to report. The thrust and location of the chapter raised two questions in thinking about if and when to take it up. First, it is a debatable pedagogy to defer for too long examination of the mainstream problems of environmental law. To the extent chapter II continues the exploration of nonlegal perspectives introduced in chapter I, there is a risk of losing the interest of students who are strongly oriented towards more conventional lawyer's fare. Second, the choice of legal materials is perhaps inappropriate to the rest of the course. To be sure, the privacy and other basic personal questions addressed in the cases raise facinating policy issues, but this material will have already studied by most students in their Constitutional Law course, and probably from a perspective not significantly different than that presented by chapter II. To the extent that population control concepts provide a different perspective on environmental law questions, it would seem more relevant to take up the difficult problems to population concentration and dispersal arising under current pollution control strategies employing transportation and land use plans, as well as under exotic new schemes adopted

other prime candidates for developing the ethical-philosophical perspective are Meyers, *An Introduction to Environmental Thought: Some Sources and Some Criticisms*, 50 IND. L.J. 426 (1975); Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315 (1974).

by local governments to control growth and development.[17]

The title to chapter III, "Judicial Review of Complex Decisionmaking," is slightly misleading in the sense that not only this chapter but the rest of the book is more or less focused on this basic theme. This is the part of the book, however, where the authors choose to look most closely at the legal structure for environmental decisionmaking. The examination starts with a brief introductory look at alternatives to the traditional judicial model for deciding factual and policy issues. Because this short excursion proceeds at a highly generalized level and is dropped abruptly in favor of a note outlining the case for greater judicial involvement in environmental decisionmaking, it is difficult to know how seriously to take the authors' professed interest in alternatives to the juridical model. Information about the operation and utility of nonadversary modes of decisionmaking is important to rigorous thinking about the institutional choices faced in environmental cases. A more thorough coverage would seem appropriate,[18] though undertaking the investigation after probing the efficacy of the judicial approach would make even more sense.

Access to the courts is the next topic addressed in the chapter. The section heading indicates that only "selected issues" will be presented; the students uniformly felt that the authors were too selective in their coverage. The material presented on standing is excellent. My only reservation concerns the decision to explore at length Sax-type statutes in connection with standing questions. I fear the sharp issues raised by such proposals in respect to basic themes concerning the scope of judicial power are blunted by viewing their remedial impact as primarily addressed to standing problems. The sovereign immunity and Freedom of Information Act sections are also solid, but no explanation is offered as to how an environmental litigant might use the latter. Also unclear is why the authors chose to take up these two topics, which so far have rarely arisen in environmental lawsuits, and to omit coverage of the other, more common jurisdictional and procedural issues that are frequently troublesome. Without converting the text into a litigant's handbook, it would appear helpful to explore cursorily such topics as the statutory basis for an environmental claim, jurisdictional amount, value, requirements for obtaining temporary relief in equity, bonds,

[17] *See* Lamm & Davison, *The Legal Control of Population Growth and Distribution in a Quality Environment: The Land Use Alternative*, 49 DENVER L.J. 1 (1972).

[18] As a minimum expansion, I would recommend using some of Professor Tribe's writings. Most apropos would be Tribe, *Policy Science: Analysis or Ideology?*, 2 PHIL. & PUB. AFF. 66 (1972).

and class actions. Some of the material which is awkwardly placed in chapter V under the heading "Emerging (and Submerging) Modes of Environmental Litigation" might be profitably covered in this context.

Also relevant at this juncture is the whole range of administrative law devices that may be employed by a court to refuse to accept a case: these would include such principles as exclusive jurisdiction, finality, ripeness, exhaustion of remedies, laches, and primary jurisdiction. The coverage of these doctrines need not be thorough, but some road map should be provided to prevent unnecessary wandering in the "wilderness of administrative law."[19] A survey of the full range of potential legal problems that may prevent getting to court in a typical environment lawsuit should not only facilitate getting at the tough systematic problems raised later in complicated cases examined for that purpose, but may also satisfy the yearning of some students for a touch of reality in this somewhat conceptual area. One method for structuring this exercise in applied federal jurisdiction and procedure would be to trace an imaginatively designed hypothetical case through the complete sequence from preparation to appeal.

If the full dimensions of the access-to-court problem are to be sketched, more should also be presented concerning the peculiar difficulties of the organizational plaintiff acting as a public interest litigant, including judicially awarded attorney's fees as a possible alternative for financing such activity. The notes on standing introduce this area of inquiry, but nowhere does the text follow through with a thoughtful examination of the critical role that has been played by the public interest litigant in shaping contemporary environmental law. I cannot say exactly how or where this topic should be developed, but somewhere in a book like this consideration should be given to the operation and functions of watchdog groups like the Sierra Club, EDF and NRDC, which exert so crucial an influence on the development of environmental law.

Chapter III next takes up the central issue of standards to be applied by a court reviewing a decision affecting the environment. The material presented focuses on *Overton Park*[20] and *Scenic Hudson*[21] as landmark cases announcing what the authors refer to as "common law" principles for judicial review of environmental decisions. The "common law" designation obviously refers to the pre-NEPA chronology of the

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[19] *See* Sive, *Some Thoughts of an Environmental Lawyer in the Wilderness of Administrative Law*, 70 COLUM. L. REV. 612 (1970).

[20] Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971), reprinted at 233.

[21] Scenic Hudson Preserv. Conf. v. FPC, 354 F.2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966), reprinted at 247.

cases, since both involved APA review of agency compliance with specific legislative directives. Adverting further to chronology, no clear reason appears for the authors' choice to present the two cases in reverse of their historical order. Putting aside notions of "leading from strength," I can see value in taking the cases in the natural order, particularly in view of the Supreme Court's endorsement of the Second Circuit's approach to the task of judicial review.[22] Also, although intervention in agency proceedings was taken up in the preceding section as it related to standing, it would seem advantageous to use *Scenic Hudson* as a vehicle for developing the topic somewhat more fully. Other than in these respects, the material presented is thorough and generally develops the conventional judicial review doctrines lucidly. The one suggestion that most students offered for improvement of this section was to set out the relevant APA sections at one place and in their entirety so that the courts' discussions in these and later cases could be more easily followed. Besides the statutory provisions themselves, some further development of the judicial tradition in interpreting and applying the APA would also be a useful background for handling the problems raised by recent environmental cases.

Having laid the groundwork for the thinking about judicial review, chapter III next introduces NEPA and examines both agency and court efforts to interpret and implement the legislative policies, with the emphasis placed on judicial response. The NEPA section opens strongly, presenting the Act, along with a good note on legislative history, and then moves directly to the landmark *Calvert Cliffs* case.[23] Enough has been written about the significance of Judge Wright's classic opinion in shaping the legal future of NEPA to make further remarks here superfluous. It is interesting to note, however, that the matter-of-fact style in which the case is presented by the authors tends to underplay its impact, particularly in comparison with the seminal role one of the authors has attributed to the case in other writings.[24]

To set the stage for later cases, it might have been useful to devote some attention in the notes to Judge Wright's ideas regarding the standards for judicial review under NEPA at different stages in an agency's implementation of the Act's requirements. The notes after *Calvert*

[22] *See* Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971) (by implication).

[23] Clavert Cliffs' Coordinating Comm. v. AEC, 449 F.2d 1109 (D.C. Cir. 1971), reprinted at 266.

[24] *See* Tarlock, *Balancing Environmental Considerations and Energy Demands: A Comment on Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 47 IND. L.J. 645 (1972).

Cliffs (pp. 278–85) do trace in detail the AEC's efforts to carry out the court's directives in adjusting the agency's decisionmaking procedures. This is one of the few times in the text that such impact data are presented. A number of students noted this fact and expressed disappointment at the lack of similar follow-through notes in respect to other leading cases. In defense of the authors, the AEC experience is somewhat atypical; reliable information is not currently available on the internal adjustments made by most other federal agencies to the procedural demands of NEPA, nor, for that matter, have there been developed any data from which an evaluation can be made of the impact of the NEPA process on final agency actions.

The notes after *Calvert Cliffs* also introduce the *Greene County*[25] problem of delegation of responsibility for preparing the impact statement. This is an appropriate juncture in the casebook to consider this issue because it relates primarily to the agencies' operating procedures for complying with NEPA requirements. The discussion of *Greene County* is thorough and leaves the student with the correct impression that the issue is far from settled.

The next step in exploring the legal developments under NEPA focuses on "threshold" determinations. The section begins solidly with the *Hanly* cases[26] and the development of the "negative declaration" requirement. The note following the cases rigorously examines the issue of the standard for review of an agency's threshold determination that NEPA does not require preparation of an impact statement, and it accurately suggests that, while courts have difficulty agreeing on a verbalization of the appropriate standard, most of them use a strict standard, but one which falls short of de novo review.

Up to this point, the development of the NEPA materials is nearly flawless, mut starting with the note after *Hanly*, signs begin to appear of organizational trouble ahead. While the *Hanly* notes adequately consider some related threshold questions, such as at what point in the execution of a federally funded private project do NEPA obligations attach, and does the "lead agency" concept approved by the CEQ Guidelines[27] conform to the policies of the Act, they noticeably omit another class of issues that are arguably of threshold significance. These issues

[25] Greene County Planning Bd. v. FPC, 455 F.2d 412 (2d Cir.), *cert. denied,* 409 U.S. 849 (1972).

[26] Hanly v. Mitchell, 460 F.2d 640 (2d Cir.), *cert. denied,* 409 U.S. 990 (1972), reprinted at 285; and Hanly v. Kleindienst, 471 F.2d 823 (2d Cir.), *cert. denied,* 412 U.S. 908 (1973), reprinted at 289.

[27] 36 Fed. Reg. 7724–29 (1971), discussed at 310–11.

might be grouped together as "timing" problems. Retroactivity questions, for example, are briefly discussed in isolation 80 pages later. More importantly, the *S.I.P.I.*[28] case and related timing problems, such as the use of umbrella or programic impact statements, are treated in the book as problems of scope or adequacy of impact statements. This organizational choice is eminently defensible, but NEPA is a sufficiently difficult area to understand to make it desirable, whenever possible, to segregate functionally similar issues, both for purposes of exploring the reach of the substantive requirements under the Act and for addressing questions relating to standards for judicial review. It is submitted that the problems at issue are more closely related to other threshold questions than they are to typical cases involving issues of the adequacy of impact statements. Treating them as threshold problems leads to application of a more appropriate standard of judicial review.

While proper functional treatment of retroactivity, *S.I.P.I.*, and the umbrella impact statement is clearly debatable, the same cannot be said for the authors' handling of the distinction between judicial review of the adequacy of an impact statement and review of an agency decision using the impact statement to balance environmental considerations against other factors the agency must consider. In fairness, the courts do not always see this distinction clearly, and admittedly there is a class of cases in which the agency has already made its decision and the main function of the impact statement is to serve as a check to determine the need for a reconsideration, but these exceptions do not excuse the authors from a duty to promote straight thinking about the issue. In the 121-page section dealing with judicial review of the impact statements, students uniformly voiced dissatisfaction with this section. Without doubt, the section contains all the material necessary for a close analysis of both the standards applied to determine the adequacy of impact statements and the review role played by the court, but the organization poses a formidable obstacle.

Rather than report how this section is organized, I will attempt to suggest how I think the inquiry should be approached. The suggestions that follow are almost 180° different than the casebook's order. In the first place, it would be helpful to reproduce somewhere in the book the CEQ Guidelines. Though without the force of law, the Guidelines play a prominent role in the way agencies seek to carry out their NEPA duties, and they are regularly adverted to by courts. Next, it would be

[28] Scientists' Inst. for Public Info. v. AEC, 481 F.2d 1079 (D.C. Cir. 1973), reprinted at 415.

appropriate to explore the judicial interpretation given to section 102(2) and specifically the handling of the five points in section 102(2)(c). Examination should be made of the concepts of "full disclosure" and "good faith objectivity." *NRDC v. Morton*[29] should certainly be read and contrasted to *National Helium*[30] on the duty to identify and evaluate alternatives.

Only then would it be desirable to investigate the extent of a duty to perform, within the impact statement, a cost-benefit analysis comparing environmental harms and benefits with the technological, economical, and social aspects of the proposed activity. A substantial part of this section of the book is devoted to an investigation of various maximization theories that might be useful in carrying out such a balancing exercise were it a required element of the impact statement, which it generally is not.[31] At this juncture the unit would close with an attempt to develop a workable standard for judging the adequacy of an impact statement. Without wishing to be pinned down too closely, I think the standard should run something along these lines: Could a conscientious decisionmaker be reasonably expected to make a responsible decision among the alternatives on the basis of the environmental information presented in the impact statement?

Having disposed of questions of impact statement adequacy, the discussion would then turn to formulating a standard to guide judicial review of the agency's final decision on the proposed activity, the decision being based on the impact statement. Here it would be appropriate to consider Judge Oakes' proposal for differing standards based on the relative expertise of the agency with respect to the factual issues involved in the decision.[32] It would also be fruitful to examine anew the literature on policy science maximazation analyses and other ideas about the characteristics of "good" public decisionmaking. In the final analysis, however, the judicial standard settled upon for general use in reviewing final agency actions under NEPA is likely to bear a strong resemblance to the formula announced in *Overton Park*.[33] The courts will scrutinize closely the manner in which decisions are made to ensure that agencies

[29] Natural Resources Defense Council v. Morton, 148 U.S. App. D.C. 5, 458 F.2d 827 (D.C. Cir. 1972), reprinted at 403.

[30] National Helium Corp. v. Morton, 361 F. Supp. 78 (D. Kan.), *rev'd*, 486 F.2d 995 (10th Cir. 1973).

[31] *See* EDF v. Armstrong, 487 F.2d 814 (9th Cir. 1973); Daly v. Volpe, 376 F. Supp. 987 (W.D. Wash. 1974). In fairness to the authors, it must be admitted that at the time the text was written it was much less clear how receptive the courts would be to the proposition that the impact statement should present a careful cost-benefit analysis.

[32] *See* Oakes, *Developments in Environmental Law*, 3 E.L.R. 50001 (1973).

[33] Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971), reprinted at 233.

take a "hard look" at environmental factors, but the decision itself will be subjected to only the most rudimentary commands of rationality.

The outline above is neither novel nor original. It is the conventional mode of thinking about issues of judicial review of impact statements and agency decisions based on those statements. Why this organization should have so completely eluded the authors I am at a loss to explain.

The final section in chapter III takes a brief look at selected issues in public utility regulation. Other than a short examination of marginal cost pricing, the section concentrates mainly on problems of determining sites for power plants and transmission lines under both state and federal requirements. The section holds together well, but it is not clear why it is located in chapter III instead of with the other land use planning material in chapter IV.

It would be unfair to characterize chapter IV, "Land and Resources Management and Control," as either dull or prosaic, but it lacks the sense of dynamism conveyed by chapters III and V. Few students had any comments about the chapter. This may be because it was deferred until the end of the course and was covered quickly, but more likely the lack of student comments was a function of the subject matter itself and of the learning responsibility it placed on the students. The main challenge in chapter IV is the assimilation of the public land laws, hardly a stimulating undertaking. In this context, even the public trust doctrine comes across as a charming, but largely irrelevant, refugee from another legal era.

The inherent arbitrariness of the executive withdrawals doctrine and the potential for plunder under the General Mining Law of 1872[34] are revelations which cause initial shock, but they are soon accepted as part of a basically exploitive system of public land management. Within this context the discretionary powers of the Forest Service to oversee the harvest of the national forests, and of the Bureau of Land Management to permit grazing on the public domain, appear downright rational. Excerpts from the *Public Land Law Commission Report* and samples of proposed statutes make it appear doubtful that these bureaucratic fiefdoms will be toppled in the near future. Students did not react favorably to the authors' description of the Forest Service's internal decisionmaking procedure and suggested that more material of this type would be valuable elsewhere in the book.

There is some effort to inject an economic frame of reference into

[34] 30 U.S.C. §§ 22–42 (1970).

chapter IV, but the seeming boundlessness of administrative discretion in this area makes these analyses appear more peripheral than usual. The legal process facets of the chapter serve mainly to reinforce and illustrate insights acquired in chapter III. For example, while NEPA is a powerful tool for compelling public land managers to study the environmental impacts of their plans, once the studies are completed, it is doubtful whether the range of administrative discretion has been significantly narrowed. Most of the public domain is managed under broad multiple-use policies. The difference in judicial scrutiny between final administrative acts done under a multiple-use management authorization and those done under a single purpose mandate (such as the Wilderness Act[35]) is reminiscent of the contrast between ordinary NEPA cases and *Overton Park*. Where the court can perceive a legislative preference for environmental preservation values, it is strongly enforced; but in the absence of such a preference, the management agencies are given a relatively free rein to determine the public interest.

The one part of the chapter that attracted particular student comment was the section on user participation in decisionmaking (p. 495). The aim of the book in this area is to call attention to the public interest problem in confiding participation to citizens benefiting from the exploitive features of the agency programs. The students pointed out, however, that this is one of several places in the book where the authors could have rationally included a discussion of the potential problems in implementing the highly visible, maximum-citizen-participation style of public decisionmaking that is frequently recommended as a partial cure for agency decisions which shortchange environmental values. NEPA and the new federal pollution control acts, for example, envisage extensive public participation in administrative decisions involving significant environmental impacts. Questions that occurred to the students about putting this theoretical model into practice were: 1) Could citizen inputs reasonably be expected to "correct" potentially unsound bureauratic decisions, assuming that the inputs were presented in a timely and usable fashion? 2) Could the latter assumption ever be fully realized given the lack of resources and the inconstancy that typify citizen efforts? and 3) Is there a danger that too much citizen participation could hamstring needed agency action, and if so, what limitations on participation should be allowed? Materials presenting perspectives for evaluating these questions would be useful somewhere in a book like this one. This short section on private land use control appears well

[35] Wilderness Act of 1964, 16 U.S.C. §§ 1131–36 (1970).

conceived and executed, but it was omitted from coverage in my class on the ground that the students had already studied the cases in their Property course—a not uncommon situation, I would expect.

The chapter V coverage of pollution is divided between private rights and public control. Time constraints plus the knowledge that my students had explored much of the material in their Torts course led me to omit the private rights material. I am generally familiar with the material presented, however, and judge the book's treatment to be both thorough and rigorous.

The public control section opens with an extended consideration of economic alternatives to traditional legal regulation for the control of environmental pollutants. The material selected makes the points well, but I wonder if the readings would not have a greater impact after the student has worked his or her way through the regulatory approach.

At the end of the economics introduction, the reader is abruptly confronted by the lengthy *International Harvester* case[36] and the complexities of moving source regulation under the Clean Air Act.[37] Students suggested that an introductory note tracing the legislative history of the Clean Air Act (along the lines of the note preceding NEPA) might have both eased the transition and facilitated an understanding of the background of the case. As noted much earlier, I would add to this suggestion the thought that it would be useful to include some historical material on state efforts to regulate air and water quality.

The material after *International Harvester* raises, but does not pursue, the judicial review theme; rather, it traces further developments in the issues raised in the principal case and the implementation of controls on fuel additives. The track taken is certainly worthwhile; however, the authors miss the opportunity to carry forward their judicial role theme. The majority and concurring opinions in *International Harvester,* along with law review follow-ups by judge Leventhal[38] and Judge Wright,[39] provide rich material for discussing the role of the court in reviewing agency decisions based on complex scientific evidence. Of special interest is the issue of how hard courts should push, through application of such judicially created norms as "principled desision-

[36] International Harvester Co. v. Ruckelshaus, 478 F.2d 615 (D.C. Cir. 1973), reprinted at 902.

[37] 42 U.S.C. §§ 1857–1857*l* (1970), reprinted at 1090.

[38] Leventhal, *Environmental Decisionmaking and the Role of the Courts,* 122 U. PA. L. REV. 509 (1974).

[39] Wright, *The Courts and the Rulemaking Process: The Limits of Judicial Review,* 59 CORNELL L. REV. 375 (1974).

making"[40] and "Kennecott Statements,"[41] to judicialize agency decision-making processes.

The chapter next takes up stationary source regulation under the Clean Air Act and again off with a tough case, *Portland Cement*,[42] without any prior introduction, except a terse warning to read the Act. Particularly helpful at this juncture would be an introductory note addressing the difference between ambient standards and emission standards, differenting emission standards based on ambient standards from ones based on technological capability, and discussing the distinction between existing polluters and new sources of pollution. Consistent with the treatment of *International Harvester*, the notes do not press the student to analyze the principal opinion in terms of the standard of judicial review the court is applying; instead, the authors initiate a thorough and lucidly presented review of the Clean Air Act provisions relating to the establishment and enforcement of emission standards. The student is encouraged to evaluate, from an economics perspective, the drive for uniformity in emission standards.

The chapter moves on to consider *Sierra Club v. Ruckelshaus*[43] and EPA's reluctant response to the court's recognition of a nondegradation policy implicit in the Act. Strict enforcement of a nondegradation policy is so likely to create significant diseconomies, it is surprising the authors forgo the opportunity to expose the policy to economic analysis. The authors' inclusion of the lengthy EPA documents analyzing implementation of a nondegradation policy is particularly timely in view of subsequent developments that have made the concept a major issue in both air and water quality control programs.[44]

The remainder of the air pollution materials examines problems in approving and enforcing state implementation plans under the Clean Air Act. The authors present a detailed reprise of legal difficulties experienced to date as reflected in court decisions seeking to resolve ambiguities in the Act in ways which both preserve the integrity of the overall regulatory design and recognize the large stakes at issue. Many of the difficulties stem from the basic design of the Act, which

[40] EDF v. Ruckelshaus, 439 F.2d 584, 597–98 (D.C. Cir. 1971).

[41] *See* Kennecott Copper Corp. v. EPA, 462 F.2d 846 (D.C. Cir. 1972). For an example of such a statement see *Supplemental Statement in Connection with Final Promulgation*, 37 Fed. Reg. 5767 (1972).

[42] Portland Cement Ass'n v. Ruckelshaus, 158 U.S. App. D.C. 308, 486 F.2d 375 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974), reprinted at 946.

[43] 344 F. Supp. 253 (D.D.C.), *aff'd per curiam*, 4 E.R.C. 1815 (D.C. Cir. 1972), *aff'd by an equally divided Court*, 412 U.S. 541 (1973), reprinted at 970.

[44] *See* 40 C.F.R. § 52.21 (1974), 39 Fed. Reg. 42510 (Dec. 5, 1974); 5 BNA ENV. REP. CURRENT DEV. 1655 (Feb. 21, 1975).

seeks to implement a federal program through primary reliance on state regulatory agencies. Among the issues covered by the text are tensions between state and federal agencies in specifying what types of state standards and regulatory strategies will meet federal requirements, in administering temporary relaxations of statutory timetables and requirements, in determining the extent to which federal facilities must adhere to state regulations, and in establishing enforcement strategies during periods of shared state-federal responsibility.

Special attention is given to defining issues for which restrictive judicial review is provided with respect to standards and implementation plans. The urgency that infects this task is caused by section 307(b) of the Act, which forecloses consideration of these issues in subsequent enforcement actions. Because the Act specifically authorizes citizen suits for certain purposes, an effort is made to identify the decision points which can trigger citizens' actions. Neither the potential utility nor disruptive effects of such suits are explored, however.

Another issue addressed briefly in the chapter is the character of the hearing required before the adoption of implementation plans containing emission standards. Here again the courts, in determining what the Constitution requires and what Congress intended, are challenged to suppress their own ideas on the best system for such decision-making. The task of reconciling the Act's hearing provisions with the recognized APA models is difficult and sensitive. Both regulated parties and interested citizens are pressing for an adequate opportunity to make their case on the reasonableness of the standards and control strategy. The case materials selected by the authors are good, but the focus of the inquiry could have been improved with the inclusion of some note material raising some of the hard systemic questions.

The final matters taken up under the Clean Air Act are the requirement and implementation of regulations governing indirect or complex sources of pollution and the necessity for including transportation plans and land use plans as part of state implementation plans. These control measures raise extremely difficult administrative questions, few of which are yet close to resolution. The materials do as good a job as possible under the circumstances of alerting the student to the legal and economic implications of these control strategies.

The chapter ends with a lengthy note on the FWPCA Amendments of 1972,[45] followed by a recent case expanding the concept of navigability

[45] *See* note 5 *supra.*

to its outermost bounds. The authors do not explain their decision to relegate to note treatment the most significant legislative overhaul of the nation's water pollution control effort. Perhaps they assumed that the parallel to the Clean Air Act developments would be so great as to make extensive treatment of water pollution control redundant. Although the Acts are similar and many of the implementation issues will develop along parallel paths, the differences between the regulatory efforts are sufficiently great to make likely the hypothesis that the authors simply ran out of steam and decided to shut down. The same theory would explain the absence of any treatment of noise and solid waste disposal as pollution problems. Given the length of this review, I have great sympathy for the notion that there must ultimately be a stopping point. Therefore I will not comment further on what appears a premature termination to the pollution chapter, other than to lament the lost opportunity for useful cross-media comparisons in evaluating efforts to apply similar legal control strategies to different resources.

IV

In conclusion, there are several points that should be emphasized about the Hanks-Tarlock-Hanks book and the foregoing review. While some readers may detect a predominantly critical tone to this review, it would be wrong to conclude that the final judgment is negative—it is not. The authors are too serious about their work to appreciate hearing only the things they did well; nothing is duller to write or more boring to read than unmitigated praise. On the other hand, one of the risks in undertaking this type of detailed evaluation of teaching materials is that the reviewer ultimately finds fault with the book for not presenting exactly the materials, in precisely the order, to enable him to teach the course he wants to teach. I hope my comments stress appropriately the strong features of the book, while escaping the teacher's natural tendency to be overly picky. All comments, favorable and critical, are offered in a constructive attempt to join with the authors in enhancing our collective grasp on the subject and in improving our teaching effectiveness.

Environmental Law is a new and evolving subject, still lacking a well-defined structure. Under these conditions, the authors have rendered an invaluable service to students, teachers, and other in the legal community by publishing a challenging set of classroom material that double as a first-class reference book. In my opinion, the book is without peer among its competitors; therefore I highly recommend it to

other teachers of the subject. Perhaps of greater significance, the students' reaction to the book was equally favorable.

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