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Pollution & Policy: A Case Essay on California and Federal Experience With Motor Vehicle Air Pollution

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tion, should be necessary to justify initiating emergency salvage operations."⁵ But even if world concern could be generated concerning these problems, *Losing Ground* does not convince one that the necessary steps will be taken. Aside from man's humanitarian instincts, Eckholm's proposals depend on a prospect of worldwide unrest as the impetus for corrective action. This is a weak base from which to expect the kind of massive, comprehensive, sustained efforts he prescribes. Despite this weakness, Eckholm's work will have succeeded to some extent if it merely kindles interest in solving these problems in those who have the luxury of being able to contemplate them.

POLLUTION & POLICY: A CASE ESSAY ON CALIFORNIA AND FEDERAL EXPERIENCE WITH MOTOR VEHICLE AIR POLLUTION, 1940-1975. By James E. Krier and Edmund Ursin. Berkeley: University of California Press, 1977. Pp. 401. \$15.95.

Something happened in Southern California in the early 1940's. In the first year of that decade. . .the area experienced a brownish, hazy, irritating, and altogether mysterious new kind of air pollution that was more persistent than, and quite different from, the isolated instances of irksome smoke that had troubled major urban centers from at least the mid-1800's. The new problem was, of course, smog.¹

So begins *Pollution & Policy*, a book written by James E. Krier, Professor of Law at UCLA Law School² and Edmund Ursin, Associate Professor of Law at the University of San Diego Law School. *Pollution & Policy* examines the events leading to the discovery of the smog problem in California, the policies which evolved to control the smog, and the actions which have been, and may be undertaken to curtail motor vehicle pollution, a major cause of the smog problem. The increasing role of the federal government in air pollution control is also discussed throughout the book.

Pollution & Policy is a well-written, easy to read, and often amus-

⁵ *Id.* at 186.

¹ J. KRIER AND E. URSIN, *POLLUTION & POLICY: A CASE ESSAY ON CALIFORNIA AND FEDERAL EXPERIENCE WITH MOTOR VEHICLE AIR POLLUTION, 1940-1975* 1 (1977) [hereinafter cited as *Pollution & Policy*].

² Professor Krier has authored other environmental books, such as *ENVIRONMENTAL LAW POLICY* (1971).

ing account of the California and federal experience with motor vehicle pollution from 1940-1975. The California experience is discussed because the important relationship between motor vehicles and air pollution was first discovered there, and consequently, that state has led in efforts to control such pollution. This involvement by California in pollution control, arising from the severity of that state's pollution problems, has merited special federal recognition. California is the only state permitted by law to set more stringent standards for emissions from new automobiles than the federal legislation which has preempted the field.³ Thus, California now serves as a testing ground for new approaches to control pollution, some of which will undoubtedly shape future federal legislation.

Pollution & Policy is basically a historical study of pollution control. Written for the general public, the book lacks a great deal of data or technical information. Rather, through the extensive use of newspaper accounts of past incidents, interviews with persons involved in those events, and various other sources, the authors succeed in explaining the motivating factors behind present-day air pollution controls.

The authors found that a study of the process of making pollution policy before 1970 revealed "a story of sense and nonsense, of an approach based more on a reaction to circumstances than on careful planning, consisting as much in foolish mistakes and understandable errors as in wise steps."⁴ *Pollution & Policy* identifies several main themes in the policies up to 1970, including: (1) the idea that pollution policy should disturb the existing situation as little as possible; (2) the belief that a trend in controls should be continued as long as possible, with a great burden being placed on the party seeking to change the *status quo*; (3) the fact that to a great extent, only episodic crises motivated advances in pollution control; (4) the fixation of policy-makers on the idea that technology was the best solution to the pollution problem, and that technological rather than social regulation was desirable; (5) the acknowledgement that the nature and causes of smog constituted a considerable mystery; and (6) the existence of a constant but unwarranted delay between the recognition and solution of a pollution problem. As a result, little progress towards eliminating pollution resulted from these pre-1970 efforts.

³ D. Currie, *Motor Vehicle Air Pollution: State Authority and Federal Pre-Emption*, 68 MICH. L. REV. 1083 (1970).

⁴ *Pollution & Policy*, *supra* note 1, at 251.

Pollution policy in the years up to 1970 nourished a situation that could only grow worse in every relevant respect—by its fixations, its shortsightedness, its inability to impose restraints that would simply become more necessary, and in larger measure, if environmental quality were to be improved or even maintained as time went on.⁵

In the years following 1970 and the passage of the Clean Air Act,⁶ the authors of *Pollution & Policy* found that, although numerous themes of the pre-1970 period continued, pollution policy changed in several significant ways. Most importantly, whereas previously the states and the federal government had acted together to solve the pollution problem (with the states exercising considerable authority), following 1970 the relationship between the states and the federal government could only be termed uncooperative. The states were relegated to the position of merely enforcing federal legislation which they often-times disapproved. In addition, where policy prior to 1970 had “proceeded down the path of least resistance,” that is, with the least amount of change in individuals’ lifestyles and industries’ business practices, the passage of the Clean Air Act witnessed “a dramatic plunge forward, a devil-may-care foray into uncharted and presumably hostile territory.”⁷ A trend toward controlling pollution through pricing systems as opposed to direct regulation of pollution was also begun. Yet, according to Krier and Ursin, the post-1970 policies of pollution control have been, for the most part, as unsuccessful as the pre-1970 policies. This is basically because these policies attempt to accomplish too much too quickly.

Pollution & Policy concludes with a discussion of the shortcomings of federal air pollution policy, especially the motor-vehicle emissions standards. The authors contend that the present federal air pollution policy errs in striving for uniform air quality standards. Instead, the authors opt for a regional solution to air pollution problems, with greater participation by the states.

A responsible and realistic approach to the air pollution problem would take into account, as well as possible, all the advantages and disadvantages (not simply those pertaining to health) of various levels of air quality improvement in various areas. It would acknowledge that while the calculation of costs and benefits is difficult, it is also unavoidable; that one is likely to get further and waste less by making reasoned guesses than by surrendering to an irrational pursuit of uniformity in a

⁵ *Id.* at 307.

⁶ Pub. L. No. 91-604, 84 Stat. 1705, codified at 42 U.S.C. §§1857-1858a (1970).

⁷ *Pollution & Policy*, *supra* note 1, at 298.

nonuniform world. Such an approach, though rightly paying heed to the fact that state policymakers probably have insufficient regard for the impact of their policy on neighbors, would give sufficient attention to factors that might not transcend state lines—local conditions, local preferences, and so forth. It would recognize that while the expense of tailor-made standards for each region could possibly be so high as not to be worthwhile, breaking regions into even fairly rough categories might yield net gains. And perhaps most important, it would recognize that it will take time to overcome the results of three decades of halting policy, and that the time necessary will vary from area to area.⁸

Unfortunately, this final chapter of *Pollution & Policy* does not follow naturally from the earlier chapters of the book. Although many of the authors' proposals do seem meritorious, the fact remains that the priority of, and concern with, air pollution evident throughout the first chapters are not carried through to the end. For example, implicit throughout the book are the themes that air pollution is a major problem in the United States, that both technological advances and social regulation are needed to solve our pollution problems, and that the policy of following the path of least resistance must be abandoned. However, the authors conclude in the final chapter that drastic changes in life-styles cannot be forced on the general public, and that each region should determine how much air pollution it chooses to live with.

Pollution & Policy fails to clearly articulate what will be gained and what will be sacrificed by a regional approach to the pollution problem. The authors suggest that other factors besides those pertaining to health must be considered, such as the economic ramifications of pollution control; however, they do not explain the adverse health effects, if any, of such an approach. The reader is left with the feeling that serious problems will remain even if the authors' suggestions are followed. Even if it is true "that there is little sense in striving for unreasonable—and in some instances unattainable—ends,"⁹ there is little reason to hope that air pollution problems will be solved if the authors' assessment of the impact of drastic change is correct.

Pollution & Policy is a story of human beings forced to make decisions about a pollution condition which can sometimes be ignored, which sometimes becomes overwhelming, and which has never been fully understood. Although the authors suggest at the

⁸ *Id.* at 327-28.

⁹ *Id.* at 345.

beginning of the book that readers primarily interested in present policy can omit reading the middle chapters dealing with the evolution of pollution policy from 1945-1970, such a reading would miss the essence of the book. To really appreciate the severity of the pollution problem and the difficulties faced while trying to solve it, *Pollution & Policy* must be read in its entirety.

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