

legislature, than they have done in the recent past. In the United States and in Europe with their growing body of statutory law, the fundamental right to the environment seems to be no more than a directive to the legislator, and a standard of substantive rationality for legislation and administration. Of course, this is an overgeneralization which does not take into account the technical differences between the various legal systems that bear on the establishment and efficacy of an environmental right. For instance, while the Japanese and US participants believed that the environmental right (or at least basic aspects of such a right) could be developed by judicial interpretation, and Professor Lamarque reported a growing judicial trend to recognize some kind of environmental right on the sub-constitutional level, the present author was rather skeptical on the prospects for such judicial development under the law of the FRG and advocated constitutional amendment. Furthermore, the distinction between a fundamental right and a mere objective obligation of the state to protect the environment and that between the negative and positive function of such a right, common under West German and Swiss constitutional theory, were not easily understood by many of the other participants.

The second legal topic, that of "Legislative Techniques for Environmental Protection" was perhaps a little too broad to ensure a common perspective of all the speakers and discussants. Professor Sax as the main speaker only treated criteria for the choice among legislative instruments (without discussing goal-setting techniques), stressing the need for rich enforcement techniques and controlled instability of environmental law; Professor Lamarque of France was concerned with general requirements for effective legislation with respect to goals, instruments and remedies; the present author focussed on the interrelationship between goal-setting techniques and the choice of instruments to achieve these goals; and finally, the Japanese speakers touched upon a number of single legislative techniques such as the role of compensation law and the judicial development of an environmental assessment duty in Japan. In any case, there was agreement that environmental policy should make use of a wide variety of legislative instruments.

The proceedings of the congress will be published.

*Environmental Policy and Law*, 1 (1975/76)

---

## LETTERS TO THE EDITOR

[continued from p. 153]

---

provided by Western democracy, as you seem to imply by considering "essential" the presence of free public opinion and free public action (which, no doubt, are highly desirable), then two-thirds or more of the world's nature protection organizations would have to close down. Is this what we want? Some years ago, as a member of the Executive Board of the International Union for Conservation of Nature I visited the USSR and was able to gain first-hand knowledge of the job being carried out there by environmentalist institutions. Do you think they should discontinue their efforts because their model of government does not conform to your standards?

On the other hand, who can deny that the earth's living resources are receiving blows and kicks from all sides? Consider Japan and the USSR exterminating the whales, consider the USA and China indulging in multi-million bird slaughters, consider the capitalist and non-capitalist countries competing in razing the world's remaining forests, consider the opposition to population explosion control by both so-called rightist and leftist governments, consider the industrialization-at-any-cost-men-

tality imprisoning decision-makers of all shades.

We have to be realists. And, at the same time, we have to distinguish between our duties and responsibilities as members of organizations with a specific mission and our duties and responsibilities as independent and conscientious individuals. That brings me to the end of your letter (and mine) and to your good advice to the undersigned that "it should occur to him..., to extend... a concern equivalent to that shown to... beetles, butterflies, etc." to human beings as well. I do not mind telling you that the defense of and the care for human beings and their rights have indeed been my deep and active concern for over 40 years, ever since I came to Chile as a refugee from Nazi Germany and decided to do my modest share in helping other victims of persecution as well as abandoned children and people deprived of their rights. And I can assure you that I have not been alone in this work, either then or now.

Godofredo Stutzin  
Huérfanos 972, of. 508  
Santiago, Chile

---

## BOOK NOTES

---

**International Environmental Law: Multilateral Treaties.** Compiled by Robert Muecke. Vols. B 7 in the series, *Beiträge zur Umweltgestaltung*. Erich Schmidt Verlag: West Berlin. 1974-76. 3 Vols. DM 210.--. This work, undertaken at the request of the Fund for Environmental Studies (FUST), was carried out in collaboration with the IUCN Environmental Law Centre. It is the only collection of multilateral treaties relevant to the environment printed in their official form in English, French and German. The data sheet for each convention lists the date of signing, the parties and the date the convention came into force. This is a reference work which should prove useful to legal researchers and to practitioners as well. The IUCN Environmental Law Centre will continue to revise the collection to reflect further ratifications and to include new conventions.

**Environmental Law Handbook.** By J. Gordon Arbuckle, *et al.* 3d ed. Government Institutes, Inc.: Washington, D. C. Pp. xii, 308. \$ 29.50. Described as a "unique reference for engineers, scientists and managers prepared by 4 environmental lawyers", this work is a handbook of environmental law fundamentals for the non-lawyer, designed particularly to serve as a reference text for pollution engineers and "environmental managers" as legal issues arise in their work.

Confining their attention to the legal system of the United States, the authors begin with a survey of "environmental law fundamentals", hurrying through such concepts as nuisance, negligence, standing and evidence, among many others, in fewer than 50 pages. The next seven chapters deal in considerably greater detail with particular sectors of environmental law, concentrating upon

statutes and regulations at the federal level, such as NEPA, federal water and air pollution control systems, pesticide regulation and noise control, along with some of the related case law. Several relevant statutes are reproduced in the appendix.

In their efforts to avoid over-complicating matters for their non-lawyer audience, the authors may sometimes mislead by over-simplification. Still, *Environmental Law Handbook* is a useful guide to a legal wilderness, providing initial points of orientation for non-lawyers and lawyers as well. At least it should tell the engineer or businessman when to call his lawyer, and tell the lawyer where to begin researching his case.

**The Polluter Pays Principle.** By the Organisation for Economic Co-operation and Development. OECD Publications: Paris. 1975. Pp. 117. \$ 4.50. This book has to be read carefully as the first three documents alone are official texts. The rest of the volume contains analyses which do not necessarily reflect the views expressed in the first papers and which even, in some cases, differ from them.

As the polluter-pays principle is a fundamental principle of cost allocation, its analysis covers a substantial part of the vast field of environmental resource allocation. However, this book deals mainly with the definitions, the exceptions and the implementation of the principle.

The foreword states that the book does not claim to cover all the questions, nor to answer them in full. But this collection will surely help to implement environmental policies effectively.

**Man and His Environment: Policy and Administration.** By Lynton K. Caldwell Harper and Row: London. Pp. 171. £2.75. Although this book can stand alone, it is also an integral part of the series "Man and His Environment". In this volume the author strongly criticizes American institutions and public opinion which have not given sufficient priority to environmental problems to prevent their growing to proportions that now threaten the health, happiness and security of the American people.

Caldwell presents NEPA as the first "broad national commitment" to be made for the protection and improvement of the human environment. Although ecologically oriented citizens

have seen the Act as a Magna Carta of environmental protection and a cornerstone of a new era, the author deplors the lack of administrative responsiveness to NEPA.

After considering these and other US problems, the reader passes on to a discussion of the international dimension of environmental policy. Finally a set of principles are advanced, calling for decisions and actions to place humanity on the road to an indefinitely sustainable future.

This pessimistic book should especially be read by every optimistic person who is not aware of or refuses to recognize the finite nature of the Earth and its resources.

**Consumer Health and Product Hazards: Chemicals, Electronic Products, Radiation.** Vol. 1 of the Legislation of Product Safety. Samuel S. Epstein & Richard D. Grundy, eds. MIT Press: Cambridge, Massachusetts, and London. Pp. xiii, 342. \$ 15.00. This compilation includes several lengthy articles dealing with products hazardous to public health, particularly with respect to toxic chemicals and radiation.

The first article, on legislative approaches to balancing risks and benefits in the regulation of chemicals, seeks primarily to advise scientists as to how they may apply their expertise to the legislative process — how they may give effective advice to legislation. The author, Richard A. Carpenter, is probably correct in seeing an increase in expert input as a means of promoting environmental protection legislation.

An article by Samuel S. Epstein deals with public health hazards from chemicals in consumer products. In discussing the need for public regulation in this field, Professor Epstein calls for premarket testing of chemical products, but confronts the problem that such testing, as normally conducted, is insensitive to infrequent but severe effects as carcinogenicity or mutagenicity.

The following article, by Richard D. Grundy, Hanno C. Weisbrod and Epstein discusses the problem of toxic substances regulation more generally, distinguishing between a "product"-oriented approach, regulating initial production and distribution, from a "media"- or "effluent"-oriented approach, regulating air or water pollution at later stages in the cycle of production, use and disposal. The authors see toxic substances regulation as a domain in which a "product"-oriented approach is essential, because it is better able to anticipate harm and to cope with

relatively minute quantities of pollutants. They go on to discuss in detail the recent not yet successful efforts within the United States Congress to fashion a workable toxic substances control law.

The two final articles, both by Richard Grundy, deal with problems of radiation exposure from consumer electronic products and from radiological services. These articles, like those described above, treat the problems of consumer protection in relation to existing and proposed legislative requirements. In general, this work provides a thoroughly researched analysis of certain important aspects of product safety legislation and its technical background.

#### **Law of the Sea: Caracas and Beyond.**

Edited by Francis T. Christy, Jr., *et al.* Ballinger Publishing Co.: Cambridge, Massachusetts. 1975. Pp. xviii, 422.

This book is a compilation of the proceedings of the ninth conference sponsored by the Law of the Sea Institute (held in Miami, Florida, 6 - 9 January 1975) in connection with the ongoing Third UN Conference on the Law of the Sea. The material is very uneven, much of it consisting of the transcribed dialogue of conference participants, including all the mandatory pleasantries and calls to order. As is to be expected, reading the transcript of a four-day conference is even duller than the conference itself.

Interspersed among the commentaries, however, are the papers upon which they were based. Some of these papers offer useful perspectives upon the developing law of the sea. They range from a general interpretation of the Caracas Proceedings, through a paper on "Law of the Sea and the Security of Coastal States", to an analysis of legal machinery for seabed mining and several short papers on the legal impact of developing fishery technology. Perhaps the most interesting papers in the collection are a discussion by F. E. Popper on FAO's possible future role in assisting developing nations to exploit the results of the Law of the Sea Conference, and a short paper by John L. Mero on "The Great Nodule Controversy".

In sum, this is a book which should be read by anyone actively concerned with the evolving law of the sea. However, the editors' failure to separate the wheat from the chaff makes it inappropriate as a source for general background on the Law of the Sea Conference.