

Environmental Concern and the Concept of "Public Interest"

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1. Definition of Environment

When environmental protectionists speak today of environment, they seem to be speaking of the totality of human environment. This all encompassing definition of environment embraces such breadth of problems and activities of human societies that "all of the ills of man" seem to fall within its ambit. Some environmentalists do, indeed, mean to include "all of the ills of man" in their definition:

"The human environment is an immense complex of natural elements, man-made structures, institutions, societies, and other people.....Environmental quality and human welfare are not two independent values.....It is not possible for one to remain good while the other is bad....."

Under this broad definition of environment *all of the ills of man emerge as environmental problems*—poverty, prejudice, public education, health services, militarism, inner circles and pollution all qualify as environmental crisis."⁽¹⁾

Even somewhat less bold proponents are also fond of using such words as "systemic," "integrated," and/or "interdependent" when they want to underline the importance and seriousness of environmental problems. As one of the most eminent and prestigious of them all, professor Barry Commoner contends that "the environment is a complex, subtly balanced system, and it is this intergrated whole which receives the impact of all the separate insults inflicted by pollutants."⁽²⁾ The United Nations also condoned the same view at its first world environmental confernece to the effect that the very nature of environmental problems is their "intricate interdependence."

With these perspectives gaining force, there is an increasing demand in the world community of environmentalists that the environmental problem-solving must also be

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(1) cited from Fred Carvell and Max Tadlock, *It's Not Too Late*, Beverly Hills: The Glencoe Press, 1971, p. 5

(2) Barry Commoner, *Science and Survival*, New York: The Viking Press, 1966, p. 122

undertaken in terms of broad social planning, long-term trends and interrelated social forces. In other words, so much as the meaningful definition of environment have to be all-encompassing, total, and systemic, the search of problems and prescriptions for their solutions must also be total, integrative and systemic. Claiming that "environmental protection would demand changes in the nation's economic structure," a political scientist in the United States illustrates the interrelatedness and systemic linkages of the problems and solutions by the example of air pollution as in the following:

"Clearly, one cannot reduce air pollution without treating its immediate sources: power generation, industrial production, and automobiles. All of these are interrelated: Industrial demand affects the growth of the power industry, but industrial growth is also affected by the market for automobiles.....Further, the availability of electric power for domestic use is a determinant of suburban growth, and suburban sprawl increases the demand for transportation. Behind these primary causes of air pollution are a welter of secondary ones....."⁽³⁾

The current environmental protection movement, as it has come to the stage of this encompassing thrust, is a qualitative leap beyond the traditional conservation movements for nature and its resources. And certainly a qualitative leap beyond man's simple craving for clean outdoor air and open space.

Bundle of issues and problems lumped together, the all-encompassing conception of environment is now generating a new momentum for general public sensitivity toward the quality of life in general. Until we have become environmentally conscious, we have not indeed paid serious attention to the "integrated" impacts on the quality of life as a whole of "all the separate insults" wittingly or unwittingly we have been inflicting upon in our daily routine activities and institutions.

To take serious heed to the separate insults in regard to their effects on the quality of life as a whole is to take account of the implications to "public interests" of individual human activities. The concept of "public interests" has been with us much longer than that of "environmental protection." And as it has been with us for so long and also used for so many disparate purposes, it has now become almost a barren concept. Since the days when unbridled individual liberty and *laissez-faire* economic ethics began to take momentum, the concept of "public interests" has remained empty in its meaning and content. When it is ever invoked in reality, it has been merely to take notice of the

(3) Walter A. Rosenbaum, *The Politics of Environmental Concern*, New York: Praeger Publishers, 1973, p. 47

existence of the "third party" whose interests are not formally taken into consideration at a particular transaction or adjudication. Otherwise, it has often been called in to justify the expediency of a "nationhood" over the interests of its people.

Coming to the rescue of the concept of "public interests" that has become so barren and expedient, the environmental concern provides it not only with necessary contextuality but also meaningful content. In short, the wholeness and systemness of "environment" gives a real meaning to the concept of "public interests" in terms of collective benefits. Hence, the environmental concern and protection in its all-encompassing definition and thrust deserves today a very thoughtful consideration and scrutiny in regard to its various ramifications to all facets of socio-economic institutions in our societies. And in this sense, the broad definition of environment under which "all of the ills of man emerge as environmental problems" ought to be taken seriously.

2. Environmental Context of Public Interests

As prefaced above, environmental concern today provides contextuality to the meaning of "public interests." "Public interests" measures are generally understood to be those intended for the benefits of a great many people or, in other words, of the public in general. However, in the conventional interpretation of the term "public", as a practical matter it is always controversial how many and/or what proportion people of a given society constitute a legitimate "public." Because of this difficulty, most of the "public interests" measures that are supposed to benefit the whole public actually turn out to be benefiting but a limited number of people, and thereby, ensue the controversies that can never be settled to the satisfaction of the public as such.

Meanwhile, environmental protection is in nature such that once provided it will not be possible to exclude any one from the enjoyment of its benefits. That is to say, if it is available to anyone it is available to everybody. In this sense it is the most typical example that fits the category of so-called "pure public goods,"⁽⁴⁾ and this is exactly what is meant by the definition of environment in terms of wholeness and oneness. And furthermore, since our environmental concern today is not merely to keep the wholeness intact but to preserve an adequate level of quality of life within it, it is in essence the concern for the good of collective life. Within such definition of environment are logically

(4) cf. James M. Buchanan, *The Demand and Supply of Public Goods*, Chicago: Rand McNally & Co., 1968, pp. 49-50.

included all the members of the relevant community, and by this definition, the concept of "public" is given a tangible systemic boundary. In other words, in the context of environment the "public" can really be defined as a concrete collective entity: concrete in the sense that it is not of a fictitious "general will" but of the totality of living beings whose survival and maintenance of life depend upon the environment. And it is an entity collective and tangible in the sense that no parts of it can survive or fully function alone without affecting or being affected by the others or the totality. In the words of Barry Commoner, it is a systemic entity in which "everything is connected to everything else" and therefore, if parts of it are overstressed, the whole system collapses.⁽⁵⁾

This concept of systemness of the environment, however, does not connote the more traditional totalitarian doctrine of "the whole above parts." Nor does it imply that the individual wants must always be subjugated to the goal of the whole. First of all, the systemic nature of environment is not reducible to an ideological doctrine. It is of empirically verifiable property. And secondly, in the systemic network of environment, the whole, i.e., the system, is not a mere sum total of the parts but an organic whole of the parts. The individual parts do have their own intrinsic functions to perform and degrees of flexibility by which the individuals may perform their own intrinsic functions without being constrained by the need of the whole. From the point of view of the whole system, Barry Commoner states this relationship between the whole and the parts as in the following:

"The amount of stress which an ecosystem can absorb before it is driven to collapse is also a result of its various interconnections and their relative speeds of response. The more complex the ecosystem, the more successfully it can resist a stress."⁽⁶⁾ And also, ".....the complexity of the ecological network and its intrinsic rate of turnover determine how much it can be stressed, and for how long, without collapsing....."⁽⁷⁾

The human environment is the most complex ecosystem of all and thus, the resilience of the system as a whole must be great and to that extent is the degree of flexibility for the individual parts allowed.

Today's environmental concern is to maintain such systemic stability of the environment of human survival, and in this sense the domain of "public interests"-concern is coter-

(5) Barry Commoner, *The Closing Circle: Nature, Man and Technology*, Alfred Knopf, Inc. (Bantam Book), 1972, p. 35

(6) *ibid.*, p. 34

(7) *ibid.*, p. 35

minous with that of the environmental concern.

If we conceptualize "public interests" in terms of the systemic stability of human environment as outlined above, it is no longer meaningful to juxtapose public interests versus private interests. Nor is it meaningful to determine how large a population of the community legitimately constitute the "public." And furthermore, it will make it look obviously foolhardy for anybody to argue that anything when done in the name of government is in the interests of the "public." In the context of an environmental system, the individual members of the relevant community are interconnected with one another in such a way that the interconnected whole constitutes the environment for the survival of each member. In the words of a systems theorist, "whole" is "the concrete organized object, while the organization itself, the way of arrangement of parts, should be called system."⁽⁸⁾ Thus, the relationship between the parts and the whole may be conceived in terms of organizational nexus in which the positional values of individual parts are determined by the whole, i.e., the system. Thus, "in aggregates it is significant that the parts are added, in a system it is significant that the parts are arranged."⁽⁹⁾

If we conceive the "public" in terms of such a "whole" of a concrete organized object and in that sense as the environmental system of its individual members, there is no right on the part of its individual members to wreck the systemic stability of the whole. Nor should there be any "private" interests of the individual members in endangering the systemic stability of their environment, that is, in conflict with the interests of the whole. On the other hand, insofar as the individual rights or interests remain within the bound of the positional values as arranged by the system, they should not be opposed by the claims on behalf of the "public."

The environment being identified as such a systemic and concrete organized whole of all the members of the community and of all the relevant ecological elements thereof provides very concrete and operational frame of references in defining what is in the domain of "public interests." That is to say, what is "public" is to be decided not by the immanent qualities of the individual activities but rather their impacts upon the systemic stability of the environment: while the systemic impact is of the question of facts that can be empirically verifiable in reference to the existing conditions of the environment.

The last but not the least important point in this regard is on the definition of the

(8) F.E. Emery, ed., *Systems Thinking*, Middlesex, England: Penguin Books, Ltd., 1969, p. 28

(9) *ibid.*, p. 26

relevant community by which the physical domain of "public interests" is to be bounded. In the conventional discourses on "public interests," it is almost taken for granted that the national territorial boundary is the physical limit of the "public interests" concerns. However, once the concept of environment accepted as the proper scope of "public interests" concern, the physical domain of "public interests" may expand, if necessary, even beyond a national territorial boundary. As a matter of fact, in many cases the environmental concern is by its nature of the problems of trans-national character. In these cases the relevant community in which the "public interests" concern can validly be handled is the international community. And unless such a factual definition of the relevant community is first recognized by all of the individual human beings concerned as their common environment, the "public interests" will not indeed be served. The environmental concern is, thus, becoming a great challenge to the institutionalization of public order not only in the national communities but also in the world community of mankind.

3. Challenge to Legal Institution

It is still a debatable issue in many countries whether industries may emit something without any liability that may pollute the environment at large. In any community, so long as the so-called "carrying capacity" of its environment is not imminently threatened, the consensus seems to be in favor of the industries, that is, more production is deemed as uncontested virtue. People do not seem to be concerned about environmental impacts of their activities until they see the concrete results of the accumulated impacts such as dead lakes, bronchitis due to polluted air, climatic changes, polluted foods and etc. When such threatening results of environmental decays are observed and/or cited, then and only then, we begin to question the propriety of our normal way of activities and try to devise ameliorative measures for the short term improvement.

Once the "environment" is identified as the appropriate physical domain of "public interests," the legal institutions ought to be reorganized to consider the "environmental impacts" of all of our economic, social and political activities that are to be regulated by the legal institutions. In spirit this position is not very much dissimilar to the old Anglo-American common law sanction against public nuisances caused by private actions.⁽¹⁰⁾ The difference is not in the ideology but in the definition of "public" and the "impacts"

(10) cf. J. Bryson and A. Mcbeth, "Public Nuisance, the Restatement of Torts, and Environmental Law," 2 *Ecology L.Q.* (1972), p. 242

thereupon. In our proposal, the "public" is the "environment" inclusive of not only human beings but also other component physical elements of fit; and the "impacts" include any effects on the long-term systemic stability as well as the clear and present harms done. This may sound like a very extreme position considering the operational difficulties of the legal institutions. Nonetheless, if the proposition is accepted that the "environment" is only a more concrete and meaningful definition of a community, there should be no objection in principle that the community (environmental) impacts of private actions must somehow be controlled.

In so far as the letters of law are concerned, the National Environmental Policy Act of 1969 of the United States states this principle in a very appropriate way. Section 102(2) (C) of the Act declares that all federal agencies must accompany "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment" with a detailed report called an "environmental impact statement" that describes:

- 1) the environmental impact of the proposed project;
- 2) any adverse environmental effects that cannot be avoided should the proposal be implemented;
- 3) alternatives to the proposed action;
- 4) the relationship between local short-term use of man's environment and the maintenance and enhancement of long term productivity; and
- 5) any irreversible or irretrievable commitments of resources that would be involved in the proposed action should it be implemented.⁽¹¹⁾

Although this particular U.S. provision is addressed only to the Federal government's actions, the scope and aims of it can be very good examples for other countries as well in their efforts to adopt similar legal provisions. What kinds of legal sanctions each country should take with respect to particular "environmental impacts" assessment will have to be considered in the light of particular environmental conditions of each country. Yet, even just requiring the "environmental impacts statement" to be made available to the public will be an effective deterrence to the actions that may cause "any adverse environmental effects" and by the same token, will encourage people to consider "alternatives to the proposed action."

In this connection it must be noted that the so called "*emmission certificate*" notion is

(11) quoted from Walter A. Rosenbaum, *The Politics of Environmental Concern*, op. cit., p. 118

a very shortsighted and only a partial solution. This is based on the rationale that the polluters must buy the *right to pollute* the environment from the relevant community; and on the other hand, the community, by being paid for the harms done in monetary value, can pay for the recovery of the damages done. In terms of pure economics in which the environmental damages are conceived merely as social "costs," it is a rational proposition. However, as there are many "irreversible" or "irretrievable" environmental damages, monetary compensations are not always adequate means to protect the environment. After all economic wellbeing is but an element of the totality of our quality of life under a healthy environment. Certainly there are some areas where *ex post facto* recovery of damage can really be made to maintain a desirable level of total environmental quality and therefore, that in these areas the "emission certificate" system may be a useful means. Yet it is certainly not a panacea for the protection of all the "public interests" of environmental quality.

Perhaps the greatest challenge to the legal institutions of the environmental concern today is the need of internationalization of legal order and institutional effectiveness. As already mentioned in the preceding section, many of the environmental problems being by their very nature transnational, no one nation alone can effectively protect even its own environment. Furthermore, as the totality of human environment is the one and only "spaceship earth," the environmental protection in the last resort must be attended by some international or transnational institutions. Without such international institutions and transnational public order, the universal "environmental impacts" of individual nations acts will accumulate at an accelerating rate and thus, will finally make all the individual countries efforts to protect it futile.