Introduction to Volume 10

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In the 1980's environmentalism finds itself at a crossroads. In the few short years since Earth Day 1970, America has attempted to codify in law its reawakened awareness of the physical and spiritual interdependence of man and his environment. The Toxic Substances Control Act, the Federal Land Policy and Management Act, the Clean Air Act, the Surface Mining Control and Reclamation Act, and the Alaska National Interest Lands Conservation Act are just a few examples of laws passed during the 1970's. Some of the laws of the 1960's, such as the Wilderness Act and the Land and Water Conservation Fund Act, have been around long enough and have enjoyed such outstanding success that they are considered venerable American institutions that politicians and others attack at their peril.

Imperfect as all laws are, this structure of law promises significant improvement in the way Americans treat their air, land, water, and wildlife and, in turn, how that environment will treat the human life it supports. As everyone knows, however, the full value of environmental laws cannot be realized unless they are properly administered. This, I believe, is the new challenge of environmentalism in the political world. Largely successful in the legislatures, environmentalists are now turning to the regulatory agencies of the state and federal governments and to the courts to ensure that the ethic spun throughout the body of environmental law becomes part of the way industry and government do business.

The election of Ronald Reagan and the ascendancy of Interior Secretary James Watt have brought this issue into clear focus. To my knowledge, the Reagan Administration has sent to the Congress only one piece of legislation that would significantly amend or undo the ma-

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jor environmental legislation of the past two decades.¹ Yet few of us would disagree that the assault on those laws has been concerted and unmistakable. The Administration has simply starved some programs of the funds they need to be effective, using, in the words of Secretary Watt, the budget process as “the excuse” to effect major policy changes.

And it has used the discretionary powers built into every law on the books to make judgments that Administrations before this one would not have dared to make. For example, the Wilderness Act provided a 20-year period during which mineral leasing in wilderness areas was allowed at the discretion of the Interior Secretary. No previous Administration had chosen to exercise this authority except in a very few isolated, special instances. The Reagan Administration tried to interpret the deadline as a mandate that it must issue such leases until citizens and the Congress rose up to stop them.

What the nation is seeing today is the inevitable backlash against the success the environmental movement enjoyed in the past decade. I believe that this attempt to return to the bad old days is doomed to failure because I am convinced that the legal framework of environmentalism is in the best traditions of our past and the best interests of our future, and that it enjoys the broad support of Americans today.

Already we have seen how the Reagan Administration’s anti-environment rhetoric has shocked a conservation-conscious nation and reawakened the great body of environmental sentiment in this country. In a sense, the environmental movement had become somewhat complacent and with major parts of its agenda achieved in the Congress and state legislatures, was in need of new directions.

In the near future, those directions seem rather clear. First, environmentalists have started to become more active in the electoral arena. The election and appointment of public officials who over time will defend and faithfully execute the laws that have been won with so much effort will be a necessary and, I imagine, never-ending task. And second, the courts will be the scene of numerous and critical debates over the meaning, application, enforcement, and interpretation of environmental law. These tests, which will come from conservation and citizen groups, as well as business and industry, will be vital battles in the war to preserve and institutionalize environmental ethics.

As the Reagan-Watt backlash subsides, I hope that a new era will begin to emerge, an era in which industry appreciates the environmental imperatives within which it must operate and environmentalists appreciate the environmental costs with which industry must contend.

¹ A bill recently introduced on behalf of the Reagan Administration would reopen wilderness areas to oil and gas leasing and mineral location after the year 2000. It also would place fatal limitations on Congress’s ability to create additional wilderness areas. H.R. 5306, 97th Cong., 2d Sess. (1982).
The day is coming soon when the ground rules will be defined with some finality and the atmosphere of confrontation replaced by a trend toward cooperation, or at least mutual respect.

The way to begin is with a solid understanding of the extensive and complicated field of environmental law in the United States today. The Ecology Law Quarterly, beginning its tenth volume with this issue, provides an excellent vehicle for the exchange of views between lawyers, scientists, legislators, industry, and citizens. It is through forums such as this that the friction that seems inevitable in the difficult years ahead can be minimized.