

PERSPECTIVE

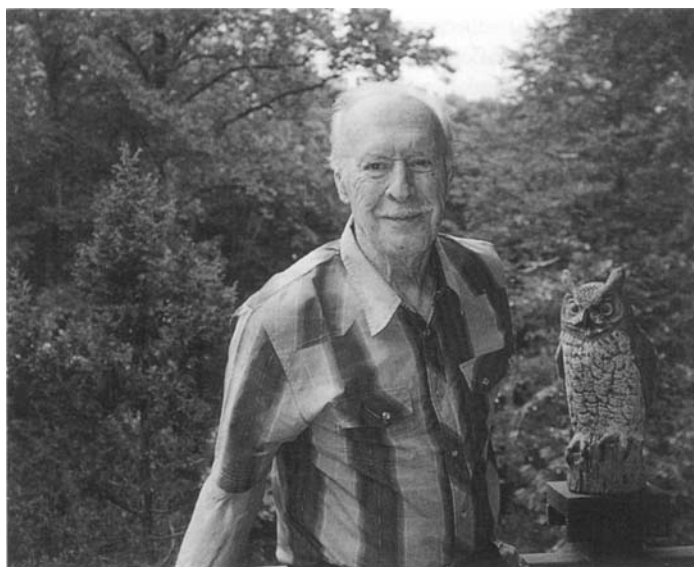
An Interview with Lynton Caldwell on the National Environmental Policy Act (NEPA)

Dr. Lynton K. Caldwell, Professor Emeritus at Indiana University, Bloomington, Indiana, was one of the primary thinkers involved in writing the National Environmental Policy Act of 1969 (NEPA). He worked closely with the staff of the late Senator Henry Jackson (D, WA); Senator Jackson, together with the late Senator Edmund Muskie (D, ME), was a major leader in moving NEPA through the Congress to the desk of the late President Richard Nixon (R). President Nixon signed the bill into law on January 1, 1970.

Environmental Practice was privileged to obtain an interview via mail with Dr. Caldwell. The questions were posed by students in the Graduate Program in Environmental Studies at The Evergreen State College after reading Dr. Caldwell's latest book, The National Environmental Policy Act: An Agenda for the Future,¹ with additional questions posed by the editorial staff of Environmental Practice.

Can you tell us about your working relationship with Senators Jackson and Muskie?

I can't say much simply because I did not have any working relationship with Senator Muskie and only some with Senator Jackson. I can say that at the time there was significant competition in the Congress between the two as to who would be known as "Mr. Environment." I think Jackson was more skillful: he had a stronger staff. Personally, I think of the two men it might have been Muskie who had the deepest commitment to the environment but he was not inclined to pay much attention to me so I am really guessing here. You have to remember that Jackson was a very powerful senator with other big commitments at that time and always very preoccupied, so I worked princi-



Lynton K. Caldwell on the deck of his home, September 2003. According to Dr. Caldwell, the owl not only represents wisdom but also helps to scare away large birds and squirrels from his bird feeder. (Photo taken by Wendy Read Wertz.)

pally with his attorney, William Van Ness, and Dan Dreyfus, a staff member. Van Ness took the big lead and most of my input went through him. Where the public was concerned, Senator Jackson and I were in a Q and A session together before Congress. And Jackson also dominated the Senate Interior Committee, especially where the EIS [Environmental Impact Statement] was concerned, so its passage was pretty well a certainty. He had a very strong personality.

How did you strategize getting the bill through the Senate? What sort of opposition did you find?

I didn't do the strategizing—that was Van Ness's job and he did all the talking with Jackson. As for opposition, there was no great risk of the bill failing in the Senate because of the wave of public concern about the environment at that time. Public receptivity to NEPA was widespread by then because the concept had sunk into the national ethos.

Opposition came more from those scientists of the day who objected to Rachel Carson's findings (in *Silent Spring*²) on the toxicity of some chemicals, for example. And concepts were

different then. Perhaps the greatest opposition came from "conservationists" who were very opposed to the "preservationists." The conservationists, who held a more utilitarian, "wise use" concept of resources, were afraid the nation would get into worse shape if greater restrictions were imposed on the use of public lands and forests and the extraction of resources. There were strong ideological differences then (and still are!) over what the "environment" consisted of and how it should be treated and managed.

For example, President Johnson talked about the "new conservation" and "natural beauty," but not about the environment as a *whole* concept. So the aesthetic aspects were there but not much was said about how the environment affects people's health and so on. Most attention was paid simply to pollution issues—the types that people could see and didn't want around them. *Life* magazine ran well-publicized articles about the bill at the time, and so did the *New York Times* and *Washington Post*. But they also tended to refer to "oh, you're going to fight over pollution" so didn't get the whole picture about environmental interactions. We were depicted as "Nixon's

pollution fighters.” And of course at the time there were a lot of objections about environmental degradation but also a lot of “NIMBY” [“Not in My Backyard”]. People didn’t want pollution by them but weren’t too interested if it was somewhere else, which was why the poor eventually bore the brunt and the environmental justice movement was born. But the politically important public—the affluent classes—were all for pollution going away, which made for very little opposition. No congressman at that time wanted to be termed an incorrigible polluter. So, overall, it was a good issue to defend, not object to.

How did the Senate bill fare in the House? What sort of problems emerged in the House committee and on the House floor?

Really, there were no problems. The bill had some strong “pushers” such as George Miller, congressman from California, and as I said above, no one wanted to be known as a polluter. By the time the Act was passed, protecting the environment had become an accepted domestic issue, so everyone wanted to be seen as doing the “right thing.” In fact, at the outset we had hoped really to achieve a joint resolution on the environment, but we ended up getting a lot more.

What was the thought, before Congressional passage, about how Mr. Nixon would receive it?

We were pretty certain Nixon would receive it well because at that time “fighting pollution” was considered a big thing as far as the media was concerned and the issue was greater than party politics. And as I said earlier, nobody, Nixon included, wanted to be seen as an “unconscionable polluter”—the President least of all!

What sort of support did you get from professional associations or activist associations?

This may surprise you, but very little. Environmental organizations were not

in on it at all. As I recall, the only one who attended the hearing was the Sierra Club. Others were invited but simply didn’t appear. When we were trying to develop the strategies to use we approached different organizations and visited quite a few. The problem was, once again, that there was no sense of a unified approach at that time—many of them wanted to follow their own agendas, pursue their own “fights.” So they were disinclined to work together with us on resolving the “nuances” of the proposed policy.

When I look back and try to explain this attitude, at the time these groups had a deep distrust of the government, especially the Corps of Engineers, who were perceived as destroyers of the environment. Also, so few of them then knew how to work with government entities—what approaches to use that would get their sympathetic attention.

Was there any relationship of events around NEPA to events around Vietnam or the civil rights movement at the time?

I did not see any relationship with Vietnam. Where the civil rights movement is concerned, this is more an impression than something I could prove, but at the time people were raging about “the common man,” “social justice,” and so forth. I was told that my interest in the environment was misplaced and asked why I wasn’t putting my efforts into human rights instead. So the only relationship was topics related to the early environmental justice movement. African Americans, for example, tended to buy homes near polluted areas, factories, and power plants because they were cheaper to purchase or rent, and whites who earned more could afford to move away—the NIMBY thing.

To what extent did you see the NEPA legislation as partisan (as opposed to bipartisan or nonpartisan)?

For the reasons described above, the NEPA legislation was really bipartisan.

Both sides were in agreement that the time had come for action to be taken and for things to change. Almost everyone could see that it was a good move, politically, to be seen to be active on behalf of the environment.

How did you like working with Nixon? Was he fully receptive, or begrudgingly so?

In my own experience, I never had any problems with Nixon. He was receptive to our ideas because he was quite able to see how things were, so he was never obstructive. He was a very intelligent man who never allowed himself to become hung up by ideology—think of how he reestablished the US’s relationship with China, for example. I met him when he was still Vice President and I found him to be a warm man with an engaging personality. To be honest, I saw him as almost a Shakespearean character—his own worst enemy.

Was there any speculation about who the chairman of the CEQ [Council on Environmental Quality] would be, i.e., did Jackson have somebody in mind that he thought would be perfect for the job?

Not that I was aware of. I was never involved in that issue, but Russell Train was highly regarded in Washington at that time, so that may have drawn the attention of people in the right places. [Editors’ note: Russell Train did end up being the first chairman of the CEQ, as well as the second administrator of the USEPA.]

Why did NEPA get written with an ideological focus rather than a regulatory approach? Was it a matter of political feasibility?

At the time NEPA was written, the nation was only just beginning to wake up to the true extent and severity of its environmental problems: for example, water, air and soil pollution, the adverse effects of toxic chemicals, and so on. We believed that the best way to introduce the new idea of a holistic approach to dealing with the environment was to go with a policy statement

that would open people's minds to what could and should be done. The idea of NEPA was to *establish* policy. Following the application of the Act, the regulatory approach would follow if the adjunct agencies recognized the validity of its contents and were then willing to do the work required to conceive and *implement* appropriate actions based on NEPA guidelines. But this requires adequate pressure from the top to prevent government agencies and other parties, like industry and business, from trying to alter or sabotage any proposals for reform because of the extra costs and expenses, as well as the time involved in having different parties sit down together and working out mutually acceptable proposals that could benefit both people and the environment.

If the framers of NEPA knew what role the presidents would have in its implementation, under the political pressure present at the time, would they have written it any differently?

Good question, but I don't think so. So much depends on the president in office, his particular views on and interest in environmental concerns, and his political agenda. I don't think NEPA could have been written any differently. Its intent is as appropriate today as it was in 1970. So much depends on who is in power and how they want to interpret it. The only difference I would have made, given today's climate, is with regard to overseas applications—more specific policy covering what American corporations and the military can do overseas, for example. These are areas where the State Department and Defense Department tend to drag their feet. And perhaps some parts could have been made more explicit and the commitment with the intent of the law more firm.

On the other hand, before NEPA, although agencies were required to hold public reviews before a project went forward, it was very loose. For example, the Corps of Engineers would

hold a single, not widely advertised meeting in a local town hall and some concerned gray-haired lady or small group might dare to raise an objection only to be told that they were too late, the ball was already rolling . . . this has changed so much . . . public support and knowledge is very important and if public pressure is strong enough politicians will usually cave in to save their seats.

Are discussions and education on environmental impacts enough, or does NEPA need regulatory teeth to reach its own objectives?

I think it does need regulatory teeth. Discussions and education on environmental impacts are fine and very necessary, but these alone cannot make any agency "do the right thing" for the environment if it is given another political agenda determined by special interests and Big Business, for example.

Given that the courts tend to see EISs (and NEPA) as procedures (processes) and tend to ignore Section 101—the vision—what recommendations would you give to environmentalists (and their attorneys) to push the envelope on this in challenges to EISs? That is, do you think this is still worth pursuing through the courts, or do you recommend that in the current political and judicial climate this is a useless route and we should stick to process issues of NEPA violations?

Today, I tend to think the latter. To the extent it can be done the best approach is to identify and indeed attack the individuals, organizations, or agencies that are undermining the demonstrable intent of Congress when it enacted the legislation in the first place. The vision is important to many thoughtful people, but in today's political climate it seems that the only way to achieve anything worthwhile is to push process issues through the courts, as being the only way to get attention and force issues.

NEPA as a policy is heavily value-laden and proactive. Given this and the con-

flicting dominant social paradigm of economic development/progress leading to environmental degradation, do you foresee any event, action, legislation, etc. that will effectively shift the paradigm to more closely correspond with NEPA's ideals and perhaps render the policy more effective? Or, do you see a continued pattern of responsive, incremental legislation within the current social framework?

NEPA sets out the guidelines for what *ought* to be done but to be effective, people must have the will and desire to use it in their thinking to achieve good solutions. At the time NEPA came into force at the beginning of the 1970s the degradation of the environment was obvious. There was general popular demand to control industrial emissions and do *something* to curb the pollution of air, water and soils, excessive logging, wildlife habitat destruction, and so forth. Today, environmental concerns are less visible and more abstract than before: people read about global warming, for example, but they can't actually see it happening. At the same time, population is increasing but the public doesn't want to reduce their consumption of waning fossil fuel supplies and other goods. In fact they are constantly exhorted to buy more and buy bigger. They want more and more gas for larger vehicles, more electricity, more water, more things in general, but so many don't seem concerned about the cost to the environment—the harm done from such destructive practices as strip mining, coal bed methane extraction, paving over wetlands, draining rivers and aquifers, oil tanker spills, and so on.

I see no change to the prevailing paradigm until and unless there is a definite political shift in ideology and concern and a desire to return to a holistic environmental approach. It seems nothing changes unless situations arise where politicians actually find themselves with "their backs to the wall," i.e., crisis situations. The recent big power failure along the East Coast has allowed the National

Commission on Energy Policy and the Energy Future Coalition to put forward constructive ideas to reduce fossil fuel demand. Here is a situation where environmental, conservation, and business experts appear to be working *together* to achieve mutually acceptable goals. This is the holistic approach needed. Perhaps we will see more of this as environmental crises become more prominent. Then the public will become involved again and NEPA again will become the bedrock on which adequate, responsive legislation can be enacted.

In your book, *The National Environmental Policy Act: An Agenda for the Future*, you target American elections and their financial dependency for campaigning on large corporations as a weakness in the political system. You are quoted as stating, "As long as candidates for Federal office are dependent on financing from sources seeking exploitation of the environment, support for NEPA in Congress and the White House is unlikely to be more than symbolic, and seldom invoked." What sort of political campaigning environment would be ideal for NEPA? Obviously one that does not depend on funding from large corporations, but when you stated the above in your book, did you have anything specific in mind?

A more "ideal" campaigning environment involves some or all of the following:

- An increase in advertising by private industry that promotes more environmental-friendly policies: for example, Toyota and Honda with hybrid cars, BP [British Petroleum] when they decided to back out of the contentious ANWR [Arctic National Wildlife Refuge] drilling issue, Jaguar—who is apparently going to provide financing to help prevent the possible extinction of their namesake, and so forth. But in such advertising I think it is important that the public can really see that they are doing what they say—i.e., these companies should publish details of their expenditures and their

accomplishments, not simply—as some do, I think—advertise to project an impression of activism. Despite my cynicism, I recognize there is a growing body of people who prefer to buy the products of a business they really feel is environmentally conscious in one way or another. So it can follow that if the activism of pro-environment organizations does attract more customers, other businesses will see it in their interest to follow their lead—and NEPA can provide the guidelines.

- Environmental organizations with greater financial "clout." It is still really the "big" ones like the Sierra Club, NRDC [Natural Resources Defense Council], Audubon, and others who can afford good lawyers and bring effective lawsuits against environmental offenders, although it is very true that small groups have achieved great results in local situations. Sadly, in today's world, litigation seems to be the only effective means of getting the attention of corporations, because it's very expensive for them as well as time-consuming. So the more *valid* lawsuits, the more publicity—and the more the public reads about and pays attention to problems.
- We need a growth of societal concern and greater awareness and understanding of environmental problems. So much attention gets focused on individual county or state concerns, for example, and too little on the "big picture." For example, most people are aware there have been serious droughts in some Western states in this last decade, but how many are knowledgeable about the underlying environmental factors that may be contributing to this situation? Also, much of Europe suffered the worst drought conditions ever recorded this year and other continents are experiencing the same situations. Why? One needs to take a holistic approach to the global pattern to try and develop remedies because envi-

ronmental concerns are global, and today problems in one part of the world impact on the United States and vice versa. So we need to devote more campaign time to increasing education on these matters in schools and universities. We have to understand more and work together better, or a few decades from now we may all be extremely sorry we refused to be enlightened. All those involved in environmental science and technological research are extremely important, but I also continue to believe in the need to teach environmental history and policy so that the upcoming generations can understand where environmentalists (although I am not really happy with that name) come from, what mistakes were made in the past, what it took—and who it took—to rectify them and what they should be guarding against in their own future. There should also be more programs and courses dedicated to global problems, their extent, and what people could do to ease the pressure. One person turning off a tap when brushing his teeth doesn't seem like much, but if a hundred million do it daily, calculate the billions of gallons of water saved each year!

- And there has to be an increase in collaboration between environmental groups and industry to achieve this more holistic approach . . . but I already talked about this.

In your book, you say, "NEPA is a manifestation of fundamental change in perspective that has been spreading throughout the world in the last half of the 20th century," and also that "NEPA articulates core values in American Society which are now finding expression." While this is encouraging, the fact that "humans demonstrate the ability to deny the apparent and adapt to a diminishing quality of life" is not. In addition, they react to crisis mentality and fail to adequately prioritize the environment at the polls. What evidence do you have, or what makes you believe, that Americans

are becoming more environmentally conscious and active in the 21st century?

I'm afraid that as I have grown older I have become more cynical. It's hard not to. It seems to me that Americans are just as willing to deny the apparent as they ever were. There is still the old frontier mentality of rugged individuality where the environment is concerned. You know, the "I can do what I like with what I own and you can't tell me what to do" outlook. People tend to look first at their own needs and wants and not look at the bigger picture, the future effects that mishandling the environment may have on the larger community. Corporations and industry still concentrate on short-term profits while paying little heed to future sustainability of resources. The crisis mentality prevails: few really care about the environment until something terrible happens to *them*. They don't look at the reasons why many of these things occur (e.g., Love Canal, Times Beach, new disease outbreaks), and what could have prevented them if only there had been better controls, better planning, better understanding of the ways that people and their surroundings are so intimately connected.

Even so, setting aside the cynicism, I do see some hope. The situation is very different from the time NEPA was enacted. There is a greater understanding about what "the environment" means. An environmental ethos has been sinking in to some extent. Although it's said only a very small percentage of the American population gives the environment any priority in polls the fact remains that millions of people, when asked, do say they care about important [environmental] issues. College students seem more concerned than they used to be. There are a huge number of active environmental groups, local and national, who are willing to press their concerns and bring more lawsuits against perceived offenders. The press is more outspoken in its condemnation of environmental cover-ups and attempts to undermine

environmental controls. Hundreds of thousands take the time to e-mail their representatives on environmental issues. There is a lot more publicity now over animal cruelty concerns. The public is more aware than before on industrial practices that can damage their health: power plant emissions, smoking, untreated sewage, the effects of certain pesticides and fertilizers, and so on. Half the population voted for Gore in the last election and I really believe a good many did so because of his pro-environment views.

So I think the movement is there and growing, but it needs a sympathetic government to work with, one that is willing to put money into new technology, and to enact legislation, despite opposition, that will reduce excessive consumption—and NEPA is still the key to working out mutually-beneficial objectives. But I'm sorry to say it looks like we need a few more crises to get the attention of the majority, reduce the greed, and end the refusal to see what the consequences of our actions may be if we fail to change our ideas—and to show our interest in improving the environment to the world, which we have been failing very badly to do. It's not enough just to refuse to ratify the Kyoto Protocol, for instance. You can't just say no in the global climate of today without at the same time putting forward other proposals that might work even better. And this administration is not doing any of that when it could and should if it wants to be perceived by the rest of the world as a nation that cares about the rest of the planet, not just its own interests.

How would you compare the success/failures of NEPA with other attempts to create interdisciplinary approaches to decision making in government; i.e., is this the right approach?

Have there been others? In my experience, everything initially meant to be "inclusive" ends up being "exclusive" as different parties push their own agendas. I think it still is the right

approach: after all, NEPA was the first Act of its kind and has been widely emulated around the world, so the concept has obviously been widely accepted as the way to go. NEPA was supposed to have been one of the most influential pieces of legislation that ever passed through Congress, and it has had a significant effect in other countries. The EIS idea is widely practiced. Here, the trouble is that the approach may be right but it is so hard not to have the original intentions perverted and divided up among the different disciplines, which tends to thwart the whole objective of a holistic or combined approach to solving problems.

How would you respond to critics who say all NEPA does is generate useless piles of paper and does nothing to protect the environment?

The fault is not in the requirements of the EIS, nor do I think the flaw is in the language of the Act itself, but in the failure of administrations to implement it properly. Parties become polarized over issues, instead of trying to come to workable and realistic conclusions on how to go forward on projects, and that is what generates the "piles of paper." When properly used, NEPA has obviously done a great deal to protect the environment in many places, and not only in the United States.

Regarding NEPA's future, what parts should be revisited? What parts retained?

I think NEPA is quite adequate as it now stands and that it really doesn't need to be revisited at this point. It just needs to be observed! But I could agree that perhaps some parts could be strengthened to prevent their intent from being stripped away or quietly dismantled. It's so difficult to judge: I don't believe I have ever seen any objective assessment of NEPA's effectiveness, no administrative follow-up.

If you had to do this process again, what would you do differently?

I hope that this doesn't sound self-satisfied, but I don't think I would do anything radically different. What was true then is just as true today and what was needed then is equally, if not more, needed now. So I think NEPA is as applicable in today's world as it ever was. It just requires the "right" people to use it well. When I say the "right people," I mean those with insight, able to visualize and understand what is happening in the world and with the vision to do something about it despite opposition.

What can NEPA practitioners do to move NEPA closer to its founding (original) ideals?

It's all a question of political strength. Activism by NEPA practitioners will obviously reap greater rewards if the political party in power is sympathetic with their vision and ideas. As I keep saying, the policy is there. Many other countries have used it to formulate their own environmental policy and planning. When environmental problems once again start getting the attention of the larger public, then stricter adherence to its original intents may well become the way to go. At least we have it to serve us well in the future, I hope.

What is the next step for achieving sustainability in the 21st century?

It is a subject politicians prefer to avoid, but the essential step is control of population growth matched with curbs on the continuing excessive and thoughtless use of natural resources—water and fossil fuels, for example. We need to get realistic about the limits of the Earth's capabilities to sustain us. We desperately need a change of thought. Instead of simply continuing the old way of taking whatever resources we can discover, we need to bring about a change of ethos towards *reducing* consumption, *reducing* the burden on the environment—reaching

a state of homeostasis, so to speak, where people and nature are in balance with each other. In those countries where rapid population growth is of considerable concern, women *should* have birth control devices made available to them to help them limit the number of children they want to have—and the financial aid required to make this possible has to come from wealthier nations like our own . . . growth is *not* always good: look at the effects of uncontrolled cancer growth. China, India, Pakistan, and African nations, for example, because of their continuing enormous population growth linked with increasing periods of drought, desertification, logging, over-fishing, depletion of aquifers and so on, face staggering environmental problems—which in turn means staggering problems for humanity.

People don't want to open their eyes, but it could happen here too if we insist blindly on following our present track. So in this country—the world's greatest power with supposedly the most clout—we should be placing far greater political focus on these issues because they affect us all, all over the world. And there needs to be an end to the current administration's tendency to obfuscate the potentially catastrophic effects to humanity and all life from such growing threats as global warming. On the one hand we have the benefit of modern technology and tremendous scientists and biologists who are daily trying to warn us of what might be coming—and we still have a little time left to rectify or alleviate the symptoms of illness. On the other, those in power refuse to do anything because they say the dangers cannot be proven absolutely. But in this case I think preventative action taken now is the *only* way to go. Cure later might be impossible because of the sheer enormity of natural disasters that could come. Yet American polls reveal that people generally place

environmental issues very low on their list of priorities. This only shows the poor job that is being done of communicating and explaining real environmental problems and potential dangers of ignoring them to the public. Curbing individual selfishness or greed is in the end only possible through the enactment of binding laws. It is a little like having to wear seat belts. People initially dislike such curbs as being detrimental to their perceived "freedoms," but most will go along with them once they recognize that their intent is to provide greater safety.

What's the best piece of advice you could offer to today's NEPA practitioners?

Implement the Act as it was intended! Honor the intent of the law and faithfully observe its requirements. Attempts to create categorical exclusions and thus break it up again into pieces can only send us back again to the time before NEPA existed, to the time when everything was dealt with in piecemeal fashion to the benefit of the few, not the majority. Surely that's the last thing we should be doing now.

Notes

1. L. K. Caldwell, 1998, *The National Environmental Policy Act: An Agenda for the Future*, Indiana University Press, Bloomington, IN, 209 pp.
2. R. Carson, 1962, *Silent Spring*, Houghton Mifflin Company, Boston, MA, 368 pp.

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