

BOOK REVIEW

James E. Starrs,¹ LL.M.

A Review of *Environmental Dispute Resolution*

REFERENCE: Bacon, L. S. and Wheeler, M., *Environmental Dispute Resolution*, Plenum Press, 233 Spring St., New York, NY 10013, 1984, 372 pp.

If you have always wanted to know whether the current and ongoing despoiling of the environment will result in the "silent spring" against which Rachel Carson forewarned, this book is not for you. But if you are driven to know whether environmental disputes can have either a zero-sum or a nonzero-sum resolution, then this book will definitely suit your tastes.

If you are of the fixed opinion that an economic cost-benefit analysis is inapposite when environmental pollution necessarily results in the loss of lives, either in the workplace or beyond, this book is not for you. But if you can tolerate a certain number of industry-caused fatalities in the name of commodity enhancement, job enrichment, and a higher standard of luxurious living, then this book is grist for your mill for it extols the merits of negotiated settlements for environmental disputes and eschews an absolutist position which would say nay to polluters no matter what the incremental benefits to society the pollution may produce.

If you are of the opinion that industry-related environmental disputes are susceptible to easy palliatives, this book will shock you out of such complacency. That clean air and unpolluted water, to mention only two headliners among environmental concerns, are ecologically and socially desirable objectives cannot be gainsaid. But what level of purity of air and water is to be acceptable? And how is such a minimum standard to be expressed in statutory enactments, which will inevitably delegate enforcement authority to one or more administrative agencies? Through what testing methodology, called "models" by the authors, shall this minimum standard, once understood, be implemented and enforced? Such questions and others redound throughout the pages of the 13 chapters of this book, which, in truth, is more a volume of unanswerable conundrums than a primer for the concerned citizen or the neophyte environmentalist or the forensic scientist.

If you are a forensic scientist on the lookout to plant new roots in the burgeoning and financially fruitful field of environmental disputation, this book is not for you. Aside from the truncated and overly simplified version presented in Chapter 5 of the negotiated settlement between the Environmental Protection Agency and the Tennessee Kodak Company of the effluent levels in the Holston River dispute, this book is devoid of any useful treatment of the place of science or scientists in the resolution of environmental conflicts. But the authors do affirm that scientists should play a role in the solution of environmental conflicts. Yet that old shibboleth, the science court, is once again trotted out, dusted off, and proposed as a

¹Professor of law and forensic sciences, The George Washington University, Washington, DC 20052.

means whereby the views of scientists can best have their day in a court of law. Certainly, there must be something better and more creative than this shopworn body of impartial, court-appointed experts, here called the science court, which the authors exhort.

If the catastrophic leak of methyl isocyanate at the Bhopal (India) pesticide plant in December of 1984 which resulted in the death of more than 2 000 persons and injuries to more than 20 000 others has caused you to comb the literature for prescriptions against future recurrences of such global accidents, this book is not for you. The horizons of this book do not encompass environmental chaos of such a direct and immediate nature. Its aims are much more modest and, indeed, its authors seem oblivious or indifferent to the Bhopals that lie aborning across this land.

If you are looking for a treatise of "the everything I always wanted to know about environmental issues but was afraid to ask variety," this book is not for you. Its scope is much more restricted, even though the issues embraced in it are no less complex than they would have been in a book of wider dimensions on the same subject.

The book is a farrago of case studies concerning actual environmental disputes over either clean air or unpolluted waterways, which controversies were settled by negotiation. The book is national in scope for its studies range from the Grayrocks Dam power plant on the Laramie River in Wyoming to the Brown Paper Company's spewing sulfur dioxide in gargantuan quantities into the air in and about Berlin, New Hampshire.

By the very nature of the venture out of which this book eventuated, it was bound to be inordinately duplicative and overly simplistic. The costs and the benefits of the Holston River water pollution were essentially the same costs and benefits as the Brown Paper Company air pollution. Such was also the case with the Foothills Water Treatment Project, the Grayrocks Dam, and so on, and so on.

This book was intended for classroom use in a course in environmental dispute resolution. As such, it would have better served its purpose if a glossary of terms had been appended. To those who are new to the field and even to seasoned veterans, it might be heavy going to wade through "oxygen deficits," "reaeration coefficients," and "biological oxygen demands," or, more arcane yet, the great BOD.

The main shortcoming of the book is that it offers an historical study of negotiated settlements in environmental disputes as the yardstick to use in measuring the settlement potential of future environmental conflicts. But negotiated settlements are creatures of the moment, not motivated by principles for the ages. Without objective principles in the resolution of environmental disputes, the citizenry and its environment are merely pawns in a will-o'-the-wisp enterprise between profit seekers and profit hedgers.