

THE POLITICS OF AIR POLLUTION: PUBLIC INTEREST AND PRESSURE GROUPS

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Many people have expressed dismay that the problem of air pollution should have become "embroiled in politics." It could not be any other way.

Because it is a collective problem of society, air pollution has to be dealt with at the governmental level, and government and politics go hand in hand.

The alleviation of air pollution is, in the first instance, a political problem. The choking public turns automatically to its elected representatives for relief. It is only after corrective policies have been conceived in the political arena that such other major elements of the problem as scientific data, technology and economics generally can be tackled.

As a political problem, air pollution is extraordinarily difficult. The essential function of politics is to reconcile conflicting interests of groups of citizens. In the simplest form, it's a matter of one specialized group (*e.g.*, steel manufacturers) versus another specialized group (such as steel importers). One degree more difficult, for the politician-mediators, is when the problem involves a special group (such as the cotton industry) *vis-à-vis* the public at large (cotton consumers). The ultimate degree of difficulty is when the conflicting groups are identical people, and government is forced into the psychiatric role of refereeing mass ambivalence. That is the extraordinary problem posed by air pollution.

Everybody wants clean air; it is virtually impossible to find anyone who will argue that dirty air is preferable. Yet when we inquire into who it is that is contaminating the air, it turns out to be the same "everybody" — people, with their trash burning, their factories, their power plants, their automobiles, their very breathing. If there were no people, there would be no air pollution problem.

The crux of the problem, at this juncture, is that while everybody wants cleaner air, people are not entirely ready to make the readjustments, social and economic, necessary to achieve the results they want.

Clean air, yes — but don't deprive me of my backyard incinerator. Clean air, yes — but don't ask me to pay more taxes to support a pollution control agency. Clean air, yes — but don't make the corporation I own stock in spend a lot of money on fume-suppressing equipment.

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Those are the contradictions with which government and politics have to grapple, and which underlie the often inadequate and unsatisfying results of their efforts to date.

The typical case is City C in State S, which suddenly finds its atmosphere intolerable. (Federal experts say that any community with 50,000 or more people, and the average amount of industry, automobiles, waste disposal and spells of atmospheric torpor, is subject to disagreeable air.) The citizens of City C turn in desperation to the law — and find only the rudimentary "smoke ordinances" stemming literally from medieval times. These are inadequate because what they say in effect is that if an individual polluter upwind is afflicting you with noxious vapors, you can invoke the law on him. They don't apply to the situation where thousands of polluters' small contributions of fumes combine to create a nasty community-wide situation. If the local lawmakers try to draft a more comprehensive ordinance, they find themselves in a legal area that probably has been pre-empted by the state, in some such form as "health and safety" laws.

This brings the choking citizens of City C to the state legislature seeking relief — and smack into the arena of politics. The legislators, under sufficient pressure, schedule hearings. The public pressure groups, from labor unions to conservation associations, rally around and testify plaintively. The special-interest groups — those whose oxes are about to be gored by any regulatory legislation — rally around too.

The legislators' heads spin. They're up to their eyebrows in strange things they've never heard of before — Ringelmann readings, sulphur dioxide emissions, hydrocarbon measurements. Giving them the benefit of the doubt, in our hypothetical State S, the legislators screw up their courage and, under expert guidance, frame noble corrective legislation. Then an odd thing happens. The air-breathing citizenry that was in the spectators' gallery, cheering the legislators on, suddenly fades away — and filters back into the legislature through side doors, wearing the other hats, as home-incinerator operators, automobile drivers, and corporation stockholders, resistant to regulation. As the corrective laws reach the point of enactment, it transpires that myriad bits of dentistry have pulled their teeth. The sonorous preamble extolling clean air is still there, the enabling clauses, perhaps even an imposing appropriation of money. Under the measures, control agencies can be set up and experts hired to run them. But soon it may become evident that they don't really have the authority to do much but sit there writing recommendations and reports.

That, or less than that, has been the pattern more often than not in cities and states across the country. For evidence, simply take, on the one hand, the cities and states that purport to have meaningful air pollution legislation; and, on the other hand, the cities or states that, after a reasonable period of adjustment, have indeed remedied air pollu-

tion even from stationary sources alone, leaving out the special problem of automobiles. Such places are hard to find.

The focal problem is that politics is traditionally the art of compromise. And air pollution, in the severity in which it is developing in many localities now, is something that is no more subject to compromise than pregnancy. A bucket either contains what is poured into it, or it overflows. The atmosphere either can absorb, dilute and dispel the wastes projected into it, or becomes saturated and regurgitates the excess back into people's faces. Once the saturation point has been passed, the area of possible compromise — a workable diminution of the loads of waste imposed on the atmosphere — is difficult to arrive at. The legislators, harrassed, preoccupied and technically unqualified, can't do this. At best they can set up governmental mechanisms under which experts can tackle the job. And the experts can't do the job unless they have the public support — which, as noted, at this point is equivocal.

Is, then, the extraordinary problem of air pollution too severe a test for the adversary system under which government generally deals with public questions?

On the contrary, even though the nation's skies are not spectacularly clearer than a few years back when the public first realized the problem, remedial progress is impressive. Overloading the atmosphere with contaminants was a feat that took mankind hundreds of years. It is hardly expectable that the damage can be undone overnight. Nationwide efforts against air pollution have been under way less than a decade. Yet already the structure, and many of the operations, of reform are approaching those in the field of water pollution, in which corrective efforts date back to the 1880's.

How much is the amelioration of air pollution being impeded — or, possibly, expedited — by the fact that it is a problem so inexorably committed to the political arena? It may surprise some that there is evidence in both directions. Because air pollution regulation tramples on so many toes, impinges so much on accustomed, if not exactly God-given, freedom of action, it automatically evokes a great deal of opposition. This ranges from the disinclination of citizens to give up their backyard incinerators or deodorize their automobiles, to organized, methodical resistance from segments of industry. But conversely, because air pollution is such a ubiquitous and pressing problem, it has shown itself in many instances to be much *more* sensitive than most problems to public pressures for reforms.

Air pollution intrinsically is the most non-partisan of public problems. Smog chokes alike the Democrat and the Republican. So remedial efforts seldom assume conventional partisan colorations. The hurdle that air pollution regulation has to surmount, particularly at the local level, is less likely to be labelled Republican or Democrat than Establish-

ment — the entrenched interests, the status quo — which in a particular case may be predominantly either Democratic or Republican. In either case, the entrenchment is likely to have some partisan orientation, which means that the cause of air pollution reform may not be dealt with purely on its merits, but as part of a bundle of Establishment affairs. It can become one of the logs in the great game of political log-rolling.

There is little question, for instance, that in Los Angeles, where more has been done about pollution abatement than in any other city, the process has been facilitated by the fact that city and county government (as throughout California) are by law non-partisan. When pollution control administrators — operating as a function of county government — have to go to the politicians for money or muscle, they don't have to worry about partisan cleavages among the politicians, or about whose badge a certain politician is wearing. The reign of non-partisan government for more than half a century has moderated the entrenchment of special interests, at least to the extent of not giving them the shelter of a partisan structure.

The situation contrasts sharply with New York City, the classic spawning-ground of partisan machine politics. New York, by federal definition, has a worse air pollution problem than Los Angeles.¹ New York engaged a top pollution expert, Austin Heller, to help solve its problems. The city has projected ambitious abatement programs. But when Los Angeles pollution officials were called back to New York as consultants, they were appalled by the political obstructions with which abatement officials had to contend.² Despite the ambitious programs, as recently as a few months ago diners in outdoor restaurants were still plagued with gross chunks of fly ash in their food — the most elementary and easily corrected sort of air pollution.

This is not to imply that the Establishment in any community is *per se* opposed to pollution reform. There are always progressive and regressive elements in any Establishment, or local power structure — even within the usually dominant industrial-commercial element in an Establishment. Indeed, it can be argued that Los Angeles' considerable success in dealing with smog from stationary sources (now reduced to twenty percent of total air pollution)³ was made possible only by the fact that the Establishment — thoroughly scared, as of 1946, by the implications of air pollution — took the lead in mobilizing public opinion against it.

Nor can machine politics be put down categorically as an obstruction to pollution abatement. Sometimes it works the other way. A

¹ United States Public Health Service Press Release (August 4, 1967), reprinted in *Hearings on H.R. 9509 and S. 780 Before the House Comm. on Interstate and Foreign Commerce*, 90th Cong., 1st Sess., Ser. 90-10, at 193 (1967).

² Taken from the author's confidential interviews with participants.

³ Statement by Louis J. Fuller, director, Los Angeles County Air Pollution Control District, Feb. 23, 1968.

notable example is Chicago, where more is being done about cleaning up the air than in many cities. It is an axiom of current American politics that in Chicago an important ingredient in any big public project is the personal imprimatur of Mayor Richard J. Daley. He has put his weight on the side of a pollution cleanup.

In looking at the political dynamics of air pollution, attention inevitably centers on industry. Of the nation's total burden of air pollution — estimated by the U.S. Public Health Service at some 133 million tons of contaminants a year — industrial *operations* are responsible for less than half: twenty-two million tons from manufacturing and fifteen million tons from electric power generation. Space heating and refuse burning account for 11 million tons. The rest — eighty-five million tons — comes almost entirely from motor vehicles.⁴ The extent to which the responsibility, if there is any such thing, for this automotive portion of the pollution load rests upon the automobile industry, the petroleum industry, or motorists, could be argued in many ways. But in terms of political realities, rather than moral responsibility, growing public awareness of the automobile's big part in smog has tended to put the auto industry in the same uncomfortable position as if the car effluvia were coming out of the smokestacks in Detroit. Along with it, in the air pollution picture, are such economic giants as the steel industry, the power industry, the petroleum industry, the chemical industry, the pulp and paper industry, and many lesser enterprises.

Generalizing broadly, it may be said that industry has shared the public's ambivalence about air pollution reform. On the one hand, industry has laid out millions of dollars for pollution control equipment and for research. On the other hand, it is rather consistently found in negative postures in regard to control legislation. This should surprise no one. If industry had not been inherently opposed to all sorts of regulation, it might long since have been regulated to death by well-meaning people. Corporate management's major concern is its responsibility to shareholders; and shareholders — even when as citizens they complain about foul air — are notoriously disapproving of corporate outlays for "non-productive" facilities. To be sure, all business enterprises have an implicit responsibility of good citizenship. But just what constitutes good citizenship is not always easily defined in respect to as complex a problem as air pollution, especially when the community itself may be divided on courses of corrective action.

Industry exerts pressures at all the political levels. In Washington, air pollution is one of many concerns on which industrial representatives testify at hearings, lobbyists buttonhole legislators, and public relations men grind out propaganda. Corresponding activity goes on at state

⁴ Report by Dr. John Middleton, director, National Center For Air Pollution Control (U.S. Public Health Service), Washington, D.C., March 1967.

capitals, with a particular industry or even a particular corporation having special leverage. On the local level, industry's role has ranged from taking the lead in civic cleanup campaigns to threatening to pull out of town if regulation is imposed (a familiar threat that is seldom if ever carried out).

The courts figure along with the legislative chambers as pressure-points. In Los Angeles, the basic authority of the county's air pollution control agency has been vainly challenged by oil, steel, utility and plywood companies in a series of suits that have gone as high as the United States Supreme Court.⁵ The Western Oil and Gas Association has just dropped, after a four-year legal battle, an effort to nullify the agency's regulation that during seven especially smog-prone months of the year, industry must burn natural gas instead of oil.⁶

On the other hand, industry can be very cooperative. In 1967, the Los Angeles County Air Pollution Control District promulgated perhaps the most far-reaching piece of quasi-legislation ever to come from local government in this country. The agency's technical experts calculated that an appreciable if small part of air pollution was fumes from the large amount of building painting constantly going on in a metropolis of seven million inhabitants — fumes that could be minimized by modification of paint formulas. Accordingly the agency drew up a new regulation that in effect dictated to the nation's paint industry what ingredients it could use in its products — if it wanted to sell them in Los Angeles.⁷ The requirements were arrived at through months of collaboration with paint industry trade groups, who sent representatives to endorse the measure when it was approved by the county board of supervisors without a moment's debate.

Nationally, industry has tended to react to smog's volume more as a public relations problem than as a chemical problem. This is natural and not necessarily undesirable, although it has been a perplexing relationship to many logically-minded executives who could see no correlation between chemical compounds and the public relations heat they were generating.

With some degree of regulation a foregone conclusion, industry has been torn two ways in its strategy of accommodation. One way is to try to keep regulation as much as possible at the state level, where industry may be more influential than in Washington. But there is a point — and it is being approached throughout much of our economy and particularly in the realm of pollution — where this strategy runs into diminishing returns. That is where the matter of regulation extends to many or all of the fifty states. Then an industry may find itself whipsawed vertiginously among conflicting requirements of different

⁵ See *Union Oil Co. v. California*, 351 U.S. 929 (1956).

⁶ Los Angeles County Air Pollution Control District Rule 62.

⁷ Los Angeles County Air Pollution Control District Rule 66.

states, resulting in not only complexity and confusion but uncomfortable competitive disadvantages. Then pressures develop for uniform, federally-ordained standards — although as liberal ones as can be obtained. In both the fields of water and air pollution, at this point in history, there is often a babel of expressions in both directions at the same time, varying with particular interests.

The politician's problem is to separate fact from fiction, sincerity from expediency, in representations from various quarters of industry. This calls for scientific, technological and economic data. The difficulty of assembling and collating this data into a form intelligible to non-professionals, and disseminating it to the people who need it, accounts to a great degree for the mixed results to date in politics' attack on air pollution.

Viewed through long-range glasses, the national effort against air pollution so far has been a somewhat disjointed scramble consonant with the sudden onset of the affliction — a sort of land rush, with different parties dashing in different directions, and with many of the ground-rules of logical political and administrative procedure temporarily inoperative.

As with water pollution, the states proved very laggard in taking appropriate action, so the federal government stepped into the vacuum. It moved in, anomalously, through the back-door of health, via the Department of Health, Education and Welfare — even though, from the public's current viewpoint, the health implications of smog are quite secondary to the aesthetic and economic considerations.

Congress, almost unwittingly, was persuaded to delegate to the Public Health Service jurisdiction over the state of the nation's air, even over conditions which do not demonstrably affect health. At first this looked like rather a token grant. The emphasis was on research and the funds allocated were minuscule. But this proved the stepping stone to sweeping regulatory powers.

Following the pattern set with water pollution, the Public Health Service obtained explicit authority to deal with "interstate" air pollution situations, to the point of putting recalcitrant offenders in jail. Initially this sounded like a matter of dealing with a factory near the Vermont boundary that was spewing fumes across the line into New York. It quickly transpired, however, that the problems of no fewer than seventy-five of the nation's principal metropolitan areas had interstate ramifications. One by one, the Public Health Service, through its division now entitled the National Center for Air Pollution Control, has been tackling these metropolitan areas, instituting formal abatement proceedings, and framing corrective programs which if not executed on a reasonable schedule could bring federal injunctive action and contempt of court penalties.

Early in 1967 the Public Health Service promulgated the most comprehensive air pollution control action in history: the requirement that all 1968 model cars should have special smog control equipment⁸ — a measure implicitly affecting every inhabitant of the country.

The point is that, while Congress has conducted extensive hearings and deliberations on all these steps, they were effected with a minimum of the tohu-bohu that normally surrounds far-reaching, controversial political actions. This was possible because the lawmakers had the tacit support of public opinion — a large if latent nationwide pressure group — that was strong and was impelled by the intricacies of the problem to give government virtually a blank check.

The next phase in the abatement effort will have special political interest. Federal regulation of automobiles stops, in effect, at the factories. For the mechanical requirements to be effective, there will have to be supporting state legislation covering maintenance and inspection of the equipment. This is not so urgent at the moment, because over 90 percent of the vehicles operating are pre-1968 models without fume-control equipment. It will become increasingly urgent as about 10 percent of the automobile population is replaced annually with new cars. On the one hand, there will inevitably be pressures to "go slow" on such legislation. On the other hand, if the states are sluggish about adopting enforcement legislation, federal officials are in a position to penalize them through reductions in various subsidies related to motoring.*

The fluidity of smog politics cuts two ways. It makes the progress of nation-wide remedial measures erratic and not necessarily logical. But it also makes the problem extraordinarily sensitive to citizen pressures.

An example occurred in the final stages of enactment of the 1967 Air Quality Act. Ardent reform forces collided with "go slower" opinion over two proposed features of the act. One, an amendment introduced by Senator George Murphy at the behest of California air pollution officials, said that notwithstanding federal pre-emption of jurisdiction over new-car fume controls, individual states could impose stricter standards after a simple showing of need to the Secretary of Health, Education and Welfare. An amendment introduced by Rep. John Dingell of Michigan, and supported by the automobile industry, sanctioned state variances only at the Secretary's discretion after prolonged administrative procedures. The auto industry's argument was that it did not

⁸ 33 Fed. Reg. 112 (1968).

* [See § 208(a) of the early draft of S. 780 which would have authorized the Secretary of Transportation to require emission control device inspection procedures as a condition to granting funds for highway safety programs, and after 1969, for all federal aid highway funds, under 23 U.S.C. § 402 (1966). *Hearings on S. 780 Before the Subcomm. on Air and Water Pollution of the Comm. on Public Works, 90th Cong., 1st Sess., pt. 2, at 748 (1967). Ed.]*

want to get into a tangle of differing state standards. It was nip and tuck which amendment would prevail. An avalanche of a half million letters from California at the last minute, among other representations, helped swing the decision in favor of the Murphy amendment.⁹

One citizen group that had a big hand in this pressure was a California organization entitled Stamp Out Smog ("S.O.S."). S.O.S. consists of some 200 women, only about thirty-five of whom, according to the organization's founder, Mrs. Michel Levee of Beverly Hills, could be called real activists. S.O.S., when it was founded in 1957, deliberately avoided the mass-membership approach usually favored by citizen pressure groups. Instead, it sought the written authorization of other organizations, from garden clubs to labor unions, to speak for them in the field of air pollution, which S.O.S.'s key members spent months studying until they knew far more than most legislators. S.O.S. got the proxies of some 450 organizations with an aggregate membership of over 450,000. This leverage, along with the women's expertise, has made them an influence respected alike by legislators in Washington and Sacramento, and by California air pollution officials.

Even less elaborate citizen efforts can generate important pressures. Early in 1967, several hundred boat and home owners in the Los Angeles suburb of Redondo Beach united to fight periodic showers of sulphuric acid compounds emitted by the smokestack of a Southern California Edison Company generating plant on the waterfront. Like power plants across the country it burned ordinary fuel oil with a high residue of sulphur dioxide gas, which in combination with moisture can form actual sulphuric acid. Like other power companies, the Edison Company had been smarting for years from citizens' complaints, and had spent millions on huge experimental "bag house" facilities to filter out the objectionable chemicals. But a power plant of that sort will discharge as much as 500,000 cubic feet of gases per minute, which is almost an impossible volume to treat in any way. The "bag house" facility did not work well. The plant's discharges were legally in violation of regulations of the Los Angeles County Air Pollution Control District. But, the protesting citizens found, the power company had gone over the control agency's head to a county appeals board and had obtained a succession of variance permits on the argument that the plant's air pollution was unavoidable in the absence of alternative fuel. The protesters went to the next variance hearing and argued that Edison could burn high-grade, low-sulphur oil. Edison rejoined that an assured supply of low-sulphur oil was unobtainable under existing federal oil import regulations. The protesters argued that Edison should bring more pressure on the government for revision of the import restrictions. Other concerns across the country also were pressing for a change.

⁹ Air Quality Act of 1967 § 208(b), 42 U.S.C.A. § 1857d-1 (Supp. Feb. 1968).

The focus of the battle shifted to Washington hearings on revision of the import regulations. And, almost miraculously, before the year was out tankers began arriving at Los Angeles with the necessary low-sulphur oil.

Similar pressures arose from citizens of New York City, where the Consolidated Edison Company's oil-burning power plants are responsible for an important portion of the smog. In this case the alternative fuel proposed was natural gas. But the Federal Power Commission had long maintained the policy that natural gas reserves were too limited for it to be used as boiler fuel, and had turned down previous applications for enlargement of the cross-country flow to New York City for use in power plants.

Argument on the policy was reopened in 1967. Witnesses at Federal Power Commission hearings, in addition to representatives of a score of utility companies, included spokesmen for the Department of Health, Education and Welfare, and for the New York City organization Citizens For Clean Air, Inc. On November 6 the commission, while trying to avoid a troublesome precedent by stipulating that the factor of air pollution was *not* a critical consideration in its decision, authorized an increased natural gas flow to New York for Edison boiler fuel. One commissioner, Charles R. Ross, in his concurrence, diverged from the majority to state particularly: "In my opinion, the severity of the air pollution problem in New York City and the relationship of gas supplies towards relieving that problem was a relevant and necessary consideration in my decision to grant this certificate."¹⁰

Politics is, at its best, a projection of public opinion with all its cross-currents, and the interaction between these two elements, changing from day to day, is the crux of air pollution abatement progress.

In Los Angeles, where public opinion is most firmly consolidated in favor of stiff anti-smog measures, over a period of two decades there has not been a discernible murmur of objection against the cost of supporting the nation's largest abatement agency outside of Washington. It is the Los Angeles County Air Pollution Control District, which has over 300 full-time employees and a budget of nearly \$4 million a year, which works out to more than 50 cents per capita for the population covered. Although this cost is trivial in the age of affluence and effluents, citizens elsewhere in the nation generally have either been unwilling to spend anything like this, or they are uninformed as to the desirability of spending it.

The agency's record of 36,565 citations for air pollution violations since 1955, with a conviction rate of 96 percent and some \$880,000 in

¹⁰ Transcontinental Pipeline Corp., Opinion No. 532 (1967), Federal Power Commission Docket No. CP65-181, Phase II.

fines imposed, signifies strong moral support in the community.¹¹ The record, when mentioned to civic leaders elsewhere, often evokes astonishment and incredulity — along with some obvious apprehension that they may be confronted with imposing such rigorous enforcement.

Los Angeles' control district director is Louis J. Fuller, a former high-ranking police department officer. He is an urbane and astute man, far above the oft-derided "cop mentality." But he brought to the job the conviction that in ameliorating air pollution, anything less than iron-clad enforcement of his agency's regulations would negate the whole effort.

But his success has hinged more on his keen political sense. He derives his authority from the five-member board of supervisors that is the county's governmental apex. The supervisors, preoccupied with many other community problems, often have no more than a layman's familiarity with some aspect of the pollution situation. Fuller, before seeking ratification of some important new step — such as amplification of the agency's code of one hundred-odd abatement rules — tactfully makes sure that the supervisors are thoroughly familiarized with the pros and cons of the move. By the time the matter is broached publicly, his support is "wired in." This is a diametric contrast with the familiar picture of the "smog czar," who, overestimating his mandate, acts with unilateral flamboyance that may embarrass and antagonize the surrounding political establishment. On such points of political finesse pivot success, failure, or frustration in smog abatement.

These are some of the dimensions of the politics of air pollution today. What they may be tomorrow, it should be evident from the foregoing, is fairly unpredictable.

But since the alternative would seem to be eventual mass suffocation, presumably the nation in due course will overcome its air pollution problem. When it does, politics, with all its imponderables, will have been the main avenue to achievement.

¹¹ Statement by Louis J. Fuller, director, Los Angeles County Air Pollution Control District, Feb. 15, 1968. The statistics quoted cover the period from 1955 through 1967.