

Exam & Rx

An Insightful History, 40 Valuable Prescriptions

By G. Tracy Mehan III

NO ONE will miss 2020, but two books deserve mention as we bid farewell to that annus horribilis. The Yale Environmental Dialogue, under the leadership of professor Daniel C. Esty, pulled together a cavalcade of experts from every discipline and field imaginable, and from varied political perspectives, to produce a comprehensive collection of essays on every conceivable topic relating to sustainability — ecology, environmental justice, Big Data, public health, land protection, agriculture, economics, urban policy and, very prominently, climate change, all with an emphasis on actionable recommendations.

Edited by Professor Esty, *A Better Planet: 40 Big Ideas For A Sustainable Future* features contributions by such luminaries as Nobel Prize-winning economist William Nordhaus; Jane Lubchenco, former director of NOAA; Thomas Lovejoy, the “father of biodiversity”; and Susan Biniarz, the former lead climate lawyer for the State Department, who helped negotiate the Paris Agreement. Your reviewer was honored to contribute an essay on water reuse (“Found Water: Reuse and the Deconstruction of ‘Wastewater’”).

Indy Burke, Dean of Yale’s School of Forestry & Environmental Studies, has described the urgent need for seeking common ground amidst current “political division and deep disagreements over core principles” in order to meet contemporary environmental challenges. Says Dean Burke, “We have to do the hard work

of bridging these divides.” That is the rationale behind Esty’s Yale Environmental Dialogue and the publication of *A Better Planet*.

While the Yale project is exciting, forward-looking, and innovative, William and Rosemarie Alley seek to document the historic successes of and current challenges to EPA, the world’s premier environmental agency. In *The War On The EPA: America’s Endangered Environmental Protections*, the authors write that “in point of fact, never in the EPA’s history has

ing survey of environmental issues spanning the entire history of the agency. They combine William’s scientific expertise (he was chief of the Office of Groundwater for the U.S. Geological Survey) with Rosemarie’s professional writing skills to offer the reader a very fine and fluid narrative through technically and legally dense subject matter. It would be great supplemental material for an environmental policy or law course. Lawyers looking for a broader perspective, beyond their specialty, and a brief history of environmental regulations and the battles over same, would also benefit.

The Alleys manage to say something interesting on a long list of topics: wastewater and drinking water issues, Superfund and the Resource Conservation and Recovery Act, clean air issues and New Source Review, Waters of the United States, unregulated agricultural nonpoint-source pollution (“a wicked problem”), toxic chemicals, the Clean Power Plan, “secret science,” you name it. Their overview of the complex interaction between geology, groundwater, and toxic chemicals in the environment — along with a succinct description of the evolution from “pump and treat,” ad infinitum, to re-

mediate contaminated groundwater to a more effective bioremediation and in situ treatment — is informed yet intelligible to the non-specialist reader.

It is no criticism to say that they have also written a polemic targeting, in order, President Trump, his former EPA administrators Scott Pruitt and Andrew Wheeler, and several Republican presidents and members of Congress, including but not limited to Ronald Reagan, Newt Gingrich, and George W. Bush. They do not entertain substantive counter-arguments to EPA’s positions or take them seriously. There are good guys



A Better Planet: 40 Big Ideas For A Sustainable Future. Edited by Daniel C. Esty. Yale University Press, 2020; \$30.00; 397 pages.

The War On The EPA: America’s Endangered Environmental Protections. William M. Alley and Rosemarie Alley. Rowman & Littlefield, 2020; \$33.00; 289 pages.

there been a time when anything was simple.” In other words, EPA has always been engulfed in controversy and, given the nature of its role as regulator, caught in a perpetual crossfire between environmentalists and various regulated sectors in an endless round of regulation, litigation, re-regulation, and legislative interventions. “Virtually everything that the EPA has accomplished has come out of the crucible of intense controversy,” observe the authors. “Even in the best of times, it’s remarkable that anything gets done.”

The Alleys have written a well-researched, articulate, and wide-rang-

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and bad guys, period. Still, one may not agree with the polemic but recognize its power and efficacy in making a policy or political point. Cicero and Augustine would approve. But the reader should be forewarned.

The authors lament that science, EPA and environmental regulation, are embroiled in controversy and even disfavor in many quarters. They note the budgetary pressures the agency has experienced over many years, especially the lack of support in the Trump administration. (Congress declined the more extreme cuts.) They want to re-energize EPA's regulatory agenda and deal with a variety of issues: toxic chemicals, "forever chemicals," climate change, and a moribund Superfund program.

"The long arduous course of scientific study requires considerable time and patience. . . . For Superfund (and other EPA programs) to be effective, the agency not only needs good scientists and lawyers, but also good communicators, listeners, and decisionmakers with high ethical standards," claim the Alleys. "To accomplish all this, the bottom line is that EPA needs adequate funding and a favorable work environment to attract a capable and committed work force."

The authors of *The War On The EPA* describe a daunting set of circumstances having as much to do with the American public's current skepticism about the federal government as much as the agency. According to the Pew Research Center, "During the . . . George W. Bush administration and the presidencies of Barack Obama and Donald Trump, the share of Americans who say they trust the [federal] government just about always or most of the time has been below 30 percent. Today, 20 percent say they trust the government." Additionally, "While the share of Republicans who trust the government has increased during Trump's time as president, only 28 percent say they trust the govern-

ment, compared with 12 percent of Democrats."

Different constituencies distrust the feds for different reasons. But this is in stark contrast to 1958, the first year Pew enquired on the matter, and 73 percent expressed trust in the federal government. This is a fundamental shift in the American psyche, and EPA is collateral damage.

This distrust is aggravated by political polarization. As reported by Max Rust and Randy Yeip in *The Wall Street Journal* ("How Politics Has Pulled the Country in Different Directions," November 10, 2020), "If it feels like Republicans and Democrats are living in different worlds, it's because they are." Rust and Yeip say, "There are few places left in America where one tribe of voters is likely to encounter the other."

WHAT, IF anything, can be done about this state of affairs, at least as it relates to environmental policy? Returning to *A Better Planet*, Daniel Esty's essay "Red Lights to Green Lights: Toward An Innovation-Oriented Sustainability Strategy" may be helpful. While recognizing the undoubted success of the command-and-control regulatory strategies of the 1970s and 1980s — red lights for polluters — that "framework has proven to be incomplete. It has failed to offer signals as to what society needs businesses to do, including what problems to solve, what research and development to undertake, and what investments to make."

Moreover, the original paradigm came at a price. It was slow and inefficient "insofar as the government does almost all of the environmental work." Indeed, "This over-reliance on government as the central (and often sole) actor also leads to high costs, avoidable inefficiencies, constant litigation over standards, and

disincentives for innovation," argues Esty.

The old approach did not spur transformative change or engage the business community and financial markets as problem solvers. The red-light model does not drive entrepreneurial zeal.

What is needed to address contemporary challenges is "a systematically designed structure of incentives to encourage innovation and problem solving. In short, we need to complement our system of red lights with an expanded set of green lights," writes Esty. This entails adoption of the polluter pays principle and the "end to externalities," i.e., "those who inflict environmental harms on society must pay for them." Polluters need to be charged for their emissions or other negative impacts. Such "harm charges" would send price signals for the need to remake products or production processes.

Just as those generating negative externalities should pay, those generating positive externalities, or benefits to society, should be compensated, e.g., private landowners whose

property provides habitat for endangered species.

Esty's idea is not new, but it needs to be recalled and taken to heart by policymakers.

With a new administration taking over the executive branch, will Congress be able to come to grips with an environmental statutory regime almost a half century old and provide EPA and other agencies with the tools they need to turn red lights into green? We hope for the best.

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