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Limiting Leviathan's Power Over Natural Resource Management

by Stephen Lazarus

In a chapter from Public Interest Institute's *Limiting Leviathan*, Dr. Bruce Yandle explains how the unchecked growth of the federal government's power over natural resources harms citizens and the natural resources such power aims to protect. To illustrate, he offers the case of Mr. Rick McGown, a Missouri farmer whose land was taken by the government when it was declared a "wetland." After the government robbed him of his livelihood, Mr. McGown eventually declared bankruptcy. Under current law, government can seize land such as Mr. McGown's without compensation if it is needed by the U.S. Corps of Engineers, or if it is an especially suitable habitat for waterfowl and wildlife designated "endangered" by the Endangered Species Act.

Yandle cites Mr. McGown's reaction:

> If my country needs my land for a public purpose, let them have it. But if they are going to take it for a public purpose, let them do it in a legal way and let the public pay for it, not send individual farmers into bankruptcy by taking away what they have spent much of their lives working for.

How can this happen in a country founded on the principle of limiting the power of government? Yandle argues that the history of natural resource management in the U.S. shows a clear pattern of government power crowding out the power of private property rights, local custom, and community traditions to manage land and waterways. By writing statutes and regulations, the federal government limits how land may be used, and in many cases, redistributes ownership or monopolizes management of resources. By taking control of land and water from the local community or private owner, government enacts unwise and unjust policy, according to Yandle.

The job of preserving natural resources should be left to the people who have the most knowledge and incentive to do that, he explains. In many cases, the local landowner of land has managed resources over a long period of time. This history and his property rights motivate him to protect the land and keep it useful to ensure his livelihood. When bureaucratic control replaces personal control, the new management lacks the same commitment to ensure the land's continued longevity once possessed by the previous owner.

Yandle contrasts the command and control bureaucratic model of managing resources with an approach based on local custom and tradition. The latter approach, he argues, invariably displays more innovation and encourages the development of management techniques more suited to the specific needs of the resources to be managed. Before passage of the Federal Water Pollution Control Act of 1972, he explains, water quality in several Western states was managed by local water-quality councils with little administrative expense. From the 1800s onward, communities

had evolved a system of state and local resource management that established a patchwork of different environmental goals for different rivers, based on the needs of specific local communities. State law recognized the usefulness of the local councils' diverse management approaches rooted in time-honored tradition, knowledge of the area, and regional custom.

However, passage of the federal law in 1972 standardized these management practices and took control away from the local councils. The federal government claimed monopoly control for establishing water-quality standards. "We then observed," Yandle explains, "how state law began to conform to the new federal rules, and how common-law rules played a diminishing role in the protection of environmental rights. The federal regulatory approach markedly displaced process and institutions for managing water quality in the eight states as they quickly began to resemble one another. By federal statute, a period of innovation, adaptation, and reproduction ended...A new era of high-cost, sometimes ineffective, water-quality management ensued."

Instead of resolving environmental protection disputes through federal regulation and control, Yandle recommends turning to what the Founders assumed would provide the "legal bedrock" for the new republic: common law, the law of property and torts that protects citizens from harm to their property or person. Common law continually develops through less formal decisions made by local judges on a case-by-case basis. Statutes and regulations, however, easily become rigidly enshrined and frozen in time. Inappropriate environmental regulation is adjusted only infrequently, when special interest groups can demand change loudly enough.

Yandle concludes that there are two distinct approaches to natural resource management. One involves centralizing power at the federal level through regulation and statutory law; the other — the path too seldom traveled in the age of the Leviathan state — relies on property rights, personal incentives to care for one's land, and local customs and tradition to protect the environment and produce social order. As the case of Mr. McGown suggests, by limiting the scope of government, we can preserve not only valuable natural resources, but also our liberties.

This Institute Brief is one in a series on the chapters of an upcoming book, Limiting Leviathan, *edited by Dr. Don Racheter, Executive Director of Public Interest Institute, and Dr. Richard Wagner, Economics Professor at George Mason University and Chairman of the Institute's Academic Advisory Board.* Limiting Leviathan *makes a case for limited government and discusses the types of limitations on government that are appropriate and necessary.*

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This summary of Dr. Yandle's chapter was written by Stephen Lazarus, a Research Analyst with Public Interest Institute.

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