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# Let the Locals Rule Their Home Environments

David Schoenbrod

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**David S. Schoenbrod**

The federal government has seized the environmental issue from the states. By setting an obligatory regulatory agenda down to the farm and septic-tank level, the federal government has harnessed the states to do its bidding. In the process, governors, mayors, state legislators, and town council members have lost the power to resolve even the most local of environmental issues in cooperation with local industries and environmental groups. These state and local officials must follow excruciatingly detailed instructions that come from Washington instead of responding to the wishes of the people most directly concerned–the voters who elected them.

The federal instructions evolve through complex interplay among members of Congress, the political appointees at the Environmental Protection Agency (EPA), their respective staffs, and other public and private centers of power in Washington. These include businesses whose products (or byproducts) affect the environment, pollution control service companies, associations of pollution control officials, and national public interest groups. It would be naive to suppose that any of these players are immune to the temptation of putting self-interest above principle.

No elected official is directly responsible to local voters for the federal regulations that control the resolution of local environmental problems. Congress and the President enact idealistic statutes that deflect the hard choices. Only after the EPA applies its regulations in local cases does anyone know which strategies must be implemented, or how and when this will be done. By this time, Congress and the President are so far up the chain of command that they escape accountability for the consequences. Thus, voters are stripped of power to influence the resolution of the environmental problems in their own backyards. Perhaps that is why public opinion polls support shifting power over environmental protection from Washington to the states, villages, and cities.

Even if the unaccountable environmental elite in Washington were driven only by altruistic motives, it would fail to provide sensible solutions. The federal instructions are meant to apply across the country to a dizzying array of pollutants in a dizzying array of settings in which the environmental consequences and practicalities of control can differ radically. Because no organization could hope to deal sensibly with such complexity, the federal takeover of environmental law imposes vast waste and needless regulatory complication, while sometimes failing to clean up local environmental problems.

The national takeover of environmental protection substantially diminished the federal government's accountability to the public for three reasons. First, attempting to protect the nation's environment from one central location–Washington, D.C.–is such a massive undertaking that Congress has a ready excuse for failing to discharge its constitutional obligation to create law. Instead of enacting the environmental law in statutes, Congress enacts statutes that tell the EPA to make the law by promulgating regulations. Thus, bureaucrats, rather than legislators directly accountable to voters, make the law.

Second, voters have less impact at the federal level than at the state and local levels. They have easier access to legislators in the village hall, city council, and state capital than they do to the bureaucratic decision makers in Washington. If legislators or other local officials fail to respond to the complaints of a neighborhood group, their failure is more likely to

have an impact on their re-election campaigns. Washington bureaucrats, on the other hand, can deny the consequences of their actions with ease before every election.

Third, by imposing federal mandates on state and local governments, Congress and the President take credit for the benefits of environmental programs. Blame for the concomitant costs, however, is placed on the EPA or state and local officials.

Popular disgust at such Federal opportunism resulted in the passage of the Unfunded Mandates Reform Act of 1995, an attempt to keep Congress from imposing requirements on state and local governments without providing necessary funds to obey them. In other words, if Washington politicians take credit for the benefits promised by a new mandate, they should also take responsibility for the costs of carrying out the mandate. Instead, Congress loaded the act with loopholes. Existing statutes that impose mandates were grandfathered in place, leaving the EPA's vast authority untouched. Moreover, Congress can still mandate states to regulate or impose taxes without taking responsibility for the costs. In fact, the most important mandates in federal environmental statutes require states to regulate or tax the private sector.

The popular desire for a clean environment can be realized with far more common sense by returning control of local environmental issues to state and local governments. There are several arguments in favor of Washington's takeover, but none of them, once examined, justify anything like the present scope of national control. One justification is that states won't stop their industries from polluting other states. But the EPA has in fact concentrated on intrastate pollution, and largely neglected interstate pollution.

Another justification for the national takeover is that the states failed to do the job. But empirical research shows that air pollution control proceeded at a steady pace from 1900 to the present with no noticeable increase in the rate of improvement when Washington took over in 1970. Indeed, the states did more to reduce pollution from factories in the 1960s than the EPA did in the 1970s.

The final traditional justification for the national takeover was that states won't adequately control intrastate pollution because they compete with each other to attract industries. But, here as well, theoretical and empirical research show this to be a politically convenient assumption, not a fact.

**Congress should leave pollution control to state and local governments.**

The framers of the Constitution believed that issues should be left to states and their subdivisions except in those instances where they could not do the job. In the same spirit, Congress should leave pollution control to state and local governments except for those cases in which only the national government can do the job. That the federal government would obtain a different result if it took over is not reason enough to do so.

The EPA would therefore be limited to three tasks. First, it would provide information on environmental issues by gathering and publishing data on pollution levels and evaluating pollution control technology. State and local governments would decide what to do with this information.

Second, the EPA would propose to Congress rules of conduct to protect against interstate pollution that state environmental controls cannot handle, such as protecting federal properties (e.g., the Grand Canyon). This does not mean that the federal government should control all "interstate pollution." Every backyard barbecue emits particles that can easily end up in another state. The state of origin would normally have the incentive to adequately regulate most forms of pollution Exceptions would include installations such as big power plants just upwind of a neighboring state.

Third, the EPA should propose rules of conduct for durable goods, such as new cars, when state-by-state regulation would greatly hinder interstate commerce.

I first suggested such a radical reduction in the national role for pollution control at a conference attended mostly by current and former EPA officials (whose law practices are built upon their knowledge of the agency's inner workings). They reacted as if I had released a mouse under their chairs. However, they posed only three arguments in response, revealing much of what is wrong with the federal environmental aristocracy.

They argued that many state pollution-control agencies are short of staff. But their idea of the amounts of staff needed is a function of their insistence that state agencies continue to slavishly follow the compulsively complicated and wasteful federal procedures.

EPA loyalists further argue that only the national government can confront locally powerful industries because local governments might forestall regulation out of fear that their local tax base will go bankrupt (or leave town). To use Vietnam War-era parlance, the Federal Government wants the power to "bomb the village to save it." Fear that an industry might wrongly influence its local political cohorts is an argument based on the assumption that the national government is controlled by the politically virtuous. Concentrated interest can buy "access" on Capitol Hill just as easily as they buy "clout" on Main Street. The difference exists only in the minds of those who wish to see the center of power stay where they like it.

Finally, the EPA loyalists claim that state governments are not competent to produce sound regulations. Since former EPA officials took part in writing the agency's contributions to the Federal Register, they seem to throw stones at a glass house. EPA regulations are opaque, arcane, repetitive, and evasive. Indeed, the agency is so muscle-bound by its own complicated, top-down procedures that it is often pitifully slow in reacting to newly perceived dangers.

In the downsized EPA that I envision, the agency, stripped of fiat power, could retain a leadership role only by convincing states to adopt its proposals because of their timelessness, quality, and sense. Americans need an EPA that succeeds by earning its leadership, not by bringing the states down to mind-numbing mediocrity.

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