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Review of Environmental Protection Policy, by E. Rehbinder and R. Stewart

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BOOK REVIEW

COMPARATIVE ENVIRONMENTAL POLICY IN FEDERAL SYSTEMS

ENVIRONMENTAL PROTECTION POLICY. By Eckard Rehbinder & Richard Stewart. Berlin and New York: Walter de Gruyter, 1985. Pp. xxiv, 350.

*Reviewed by James E. Krier**

Environmental problems have been on the agenda of the federal government in the United States for roughly a century now, about half of the government's life, and a dominant concern for the last two decades. The European Economic Community ("EEC"), itself a system perhaps on its way to some brand of federalism, presents a similar but much foreshortened picture. The EEC has been concerned with the environment for about the last half of its thirty year life. *Environmental Protection Policy*[1] ("*EPP*") is a richly detailed study of environmental policy in these two very different systems.

EPP lacks a preface or other introductory statement of objectives by the authors,[2] so one has to guess from the final product what the initial ambitions were and how well they have been met. Some fairly clear objectives emerge. One objective apparently was to consider the development and present condition of environmental law and policy in the EEC and the U.S.[3] The book succeeds admirably here. A related objective, not revealed until the last chapter, was comparative policy analysis of the two systems in question. Actually, all of the book is comparative, but most of it only implicitly so. The last chapter, Chapter 10, is an exception in this regard, but unhappily a rather limited one. A third objective

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1. E. REHBINDER & R. STEWART, ENVIRONMENTAL PROTECTION POLICY (1985) [hereinafter cited by page number only].

2. *EPP* is part of a series. *See* 1 INTEGRATION THROUGH LAW, EUROPE AND THE AMERICAN FEDERAL EXPERIENCE, METHODS, TOOLS AND INSTITUTIONS (M. Cappelletti, M. Seccombe & J. Weiler eds. 1986) [hereinafter VOL. ONE]. The book under review, though designated Volume Two, was copyrighted, and presumably published, a year before the introductory volume. The series editors' foreword to the present volume says little about the precise ambitions of the book, other than the promise of a "tight comparative analysis," an interdisciplinary approach, and an analytic framework. *See* pp. v–viii.

3. *EPP* devotes eight of its ten chapters to this objective.

was to model the "logic" (p. 9) of policy integration in federal systems.[4] In this context, "integration," sometimes called "harmonization" or "coordination," refers to the problems and processes of meshing policy in a legal regime comprising a central authority and decentralized member states, each with distinct powers and desires. In the U.S., of course, the actors are the federal government and the states; in the EEC they are such Community institutions as the Commission and the Council, on the one hand, and the member nations of the Common Market on the other.

The policies of concern in *EPP* all have to do with environmental quality,[5] an obviously appropriate focus for a study of coordinated lawmaking in systems that mix centralized and decentralized authority. Pollution ignores political boundaries, so sensible coordinated programs of control must sometimes do so as well. The decentralized governmental units clustered together—in a problem shed and a union—have to recognize that the environmental problems and programs of each affect the others. The central governmental authority faces related problems: it might wish to impose uniform requirements on member states, but these could neglect political, economic, and geographic diversity; it might wish to respect diversity by tailoring non-uniform requirements, but these could exacerbate the problem of coordination.

The wayward nature of pollution is a general reason to center an examination of integrated policymaking on environmental problems. There are other, particular reasons to look at the U.S. and the EEC. Both communities have been especially active in the field for some years now, implementing a number of state and central government control programs; these provide a rich body of material to study and policy to harmonize. The U.S. is especially relevant for comparative purposes: in coordinating environmental controls, this mature federal system has confronted and attempted to resolve a variety of problems, an experience that contains valuable lessons. Coordination on the Continent presents additional intriguing political and legal problems. The EEC was founded upon

4. I would guess that *EPP* has ambitions beyond the three mentioned above—the description and critical evaluation of U.S. and EEC environmental policy, the modeling of integration's logic, and the comparative study of policy. I think, for example, that the authors have attempted to enlighten us on the operations of federal systems generally, and perhaps they have succeeded. But I leave that and other possible contributions aside.

5. Other studies in the series concern such substantive areas as consumer protection, corporation law, and energy policy. *See, e.g.*, VOL. ONE, *supra* note 2.

economic premises concerned foremost if not exclusively with trade;[6] hence Community efforts to harmonize environmental policy test both the legal competence of its central institutions and the communal ambitions of its member states.

EPP's effort to model the logic of coordinated environmental policy proceeds in two segments. Chapter 1 sets out the elements and operations of the model, which are used to generate a series of "working hypotheses" (p. 1) about how the incentives for and against coordination interact with a variety of coordination mechanisms. The interaction produces final policies of various kinds, ranging from centrally imposed uniform ambient or emission standards all the way down to central programs that merely encourage states to cooperate. The working hypotheses, or some of them in any event, are revisited in Chapter 10, the final chapter of the book. By this time the authors have developed a full picture of environmental policy in the EEC and the U.S.; they can draw upon it to test and, if necessary, reformulate their model.

From the standpoint of an American specialist in domestic environmental law, familiar with the U.S. federal setting but more or less ignorant, albeit curious, about the developing shape of the EEC's environmental policy, I consider *EPP* an impressive achievement. Eckard Rehbinder and Richard Stewart are in many respects well suited for their ambitious project. The former is a member of the law faculty of the University of Frankfurt and an authority on European environmental law. The latter[7] teaches administrative and environmental law at the Harvard Law School. His work in these fields, which encompasses law and economics and law and politics, both pertinent to the present study, as well as research directly concerned with problems of environmental policy in a federal system, is well-known and widely respected in the United States. But neither Rehbinder nor Stewart is a comparative lawyer, yet *EPP* is among other things a work in comparative law.[8] If the book has shortcomings, I am inclined to believe that some of them lie here.[9] But the inclination is a modest one. I am not a comparative lawyer either, and hence not the best

6. *See, e.g.*, p. 15.

7. Stewart, I should disclose, has been a co-author of mine.

8. The essay introducing the entire series stresses the comparative nature of the undertaking. VOL. ONE, *supra* note 2, at 5 (one of the "principal guidelines" of the series is "a full utilization of the comparative method.")

9. Other shortcomings lie in the modeling exercise. *See infra* parts II and III.

judge of quality scholarship in the area. In any event, the shortcomings I shall mention are understandable enough. Considering the richness and variegation of the institutional, cultural, and political terrains explored by Rehbinder and Stewart, the discipline of comparative law could probably expect little more than what *EPP* achieves.

I.

The bulk of *EPP* consists of eight middle chapters describing and evaluating EEC and U.S. environmental law and policy. The descriptive and analytic material is the least novel but most satisfying part of the book, and will prove for many readers to be the most useful. One gets a sense of *EPP*'s scope from the two chapters on substantive environmental law (Chapters 4 and 5); they cover water pollution, air pollution, noise pollution, waste disposal, hazardous substances, radioactivity, land use, and environmental impact assessment. Obviously, given its length and objectives, *EPP* cannot provide the final detailed word on each of these subjects, but it is difficult to imagine a concise introductory source providing greater breadth of description and depth of analysis.

The eight middle chapters are organized in alternating discussions on EEC and U.S. law, policy, and practice on particular topics. The discussions tend to be exhaustive rather than selective, somewhat in the manner of a conventional but first-rate legal treatise on a subject of intimidating breadth—essentially all the relevant environmental law and policy in the two systems. Beginning with a discussion of elementary background material—institutional jurisdiction, powers granted and constraints imposed by the Constitution and by EEC treaties, the judicial role in the two systems, and the like—this part of the book moves through an analysis of substantive environmental law, considers next matters of implementation and enforcement, and closes with two excellent interpretive essays on the environmental policy process here and in the Community.

The authors label the eight middle chapters "empirical" (p. 13), which could be taken to mean free of theory, or based on close study of the factual details of everyday operations, but neither meaning fits exactly. The facts the chapters deal with are not

the data that a social scientist would gather, tabulate, digest, and evaluate as part of a typical empirical study. Instead, the facts are more akin to descriptions from a distinctly legal, or lawyer's, point of view. The chapters are informative narratives that trace the development of particular institutions and doctrines, outline and discuss pertinent treaty and constitutional provisions, and describe and evaluate particular methods of intervention that have been or could be used to achieve harmonization—all the while drawing upon and sometimes criticizing a large body of secondary literature. There is some theory, much (but not all) of it lawyer's theory about how to reconcile a line of cases or justify some piece of legislation in the face of a contrary constitutional or treaty provision.[10]

These remarks are meant to characterize, not criticize, the middle portion of *EPP*. Readers versed in the environmental policy of only one of the two systems under study will likely find the alternating chapters on the other legal culture the most interesting and illuminating.[11] For example, the U.S. environmental lawyer reading the chapter on substantive U.S. environmental law will probably find little that is remarkably new; and so too, I would guess, of the Community environmental lawyer reading the equivalent EEC chapter. What might be new is the emphasis of the discussions, the focus (not always adhered to) on problems of coordination in federal systems.

Perhaps the two chapters on the policy process in the EEC and the U.S., Chapters 8 and 9, are exceptions to the foregoing observations on the "empirical" nature of the middle eight chapters. These two chapters aim to provide an interpretive overview of environmental policymaking in the respective systems, with particular attention—again—to the central governments' success in achieving sensibly coordinated policy. Part of the effort is explanatory. The authors consider the combination of political influences, legal means and constraints, and institutional factors that

10. Even the chapters on implementation and enforcement, Chapters 6 and 7, proceed largely in this manner, though a more emphatically empirical or theoretical treatment, or both, might have been especially apt and revealing.

11. Some of the chapters are less than perfect primers, however. Chapter 2's introduction to the general legal picture in the Community, for example, left me puzzled about a few basics, and I found myself looking to other sources to pin down some fundamental matters. Given this experience, I can imagine that European readers of Chapter 3's overview of the federal system in the U.S. will find themselves similarly confused at times.

have contributed to the shape of policy in the EEC and the U.S. Another part involves policy critique, again largely from the perspective of successful integration. U.S. readers will find the chapter on the EEC policy process to be remarkably informative, providing in one relatively short span an extraordinarily thorough and discriminating analysis. (Pp. 203–83.) But U.S. readers should also profit, as foreign readers undoubtedly will, from Chapter 9's discussion of the policy process in the United States. Little of this material is new; the chapter succeeds instead by pulling together and in some cases artfully rearranging so much of the familiar. I particularly appreciated, to mention just a few examples, the chapter's account of the tripartite nature of federal environmental regulation (pp. 288–91), which distinguishes among national product markets (*e.g.*, new motor vehicles), energy resources, and industrial processes, and the discussion of implementation and enforcement patterns. (Pp. 301–04.) And I benefited from the chapter's sustained attention to federal policy in terms of the different degrees of harmonization it has achieved, why, and with what implications.

Chapter 9 is not flawless, of course.[12] For example, the authors imply (at p. 288) that fear of trade barriers arising from multiple state controls was an insignificant factor in federal regulation of new motor vehicles; they also seem to suggest, at least to the uninformed reader, that the states sought federal regulation. In my view both points are incorrect: the auto companies themselves sought federal intervention, and precisely because they feared multiple state standards—a kind of barrier to trade.[13] And the authors say, in an excellent account of industrial process regulation (p. 289), that state fear of industrial flight from strict controls, likely more fanciful than real, has nevertheless led states in the past to enact lax pollution standards in order to successfully compete for industry. I think it is correct that unfounded fears induced the states to act as they did; however, the discussion then goes on to suggest, again at least to the uninformed reader, that uniform federal process regulations eliminate the "competitive distortions" of state-set, non-uniform standards—a suggestion that is

12. I suppose Chapter 8 on the policy process in the EEC, as to which I have less knowledge and therefore less of a critical vantage point, contains flaws as well.

13. *See* J. KRIER & E. URSIN, POLLUTION AND POLICY 173–75, 181–84 (1977) [hereinafter KRIER & URSIN]. *EPP* acknowledges the point, but only in a later chapter. P. 316.

correct but misleading. If states cannot compete for industry through lax pollution controls, they will do so on another basis such as property tax relief, or promotion or exploitation of an inexpensive labor market, and new distortions may result.[14] Indeed, there is considerable evidence that some states have promoted uniform federal process regulations precisely in order to distort competition by achieving cartels.[15] Another flaw in Chapter 9 lies in the authors' suggestion (p. 297) that specification standards, which require polluters to use a particular technology, have lower administrative costs than performance standards, which leave the choice of means to polluters so long as the means achieve the end, and that the cost difference properly influences legislative design. I think that in most cases the difference in administrative costs between the two systems is only apparent[16] and should not affect legislative choice, or at least not much; the choice should turn more on the capacity of the regulated sector to engage in or employ the fruits of research and development programs.[17] Finally,

14. Some of the discussion in Chapter 8, on the Community policy process, suggests that the authors appreciate the problem. *See* p. 218 (critically addressing the "distortions of competition" argument).

15. *See, e.g.*, p. 298 n.17 (discussing B. ACKERMAN & W. HASSLER, CLEAN COAL/DIRTY AIR (1981)). At least with regard to pollutants the effects of which do not spill over into other states, uniform ambient standards can be viewed as the result of states—environmental states in particular—using the federal government to help them build a nationwide cartel. State A, for example, might wish to have demanding standards but fear industrial flight. If it and others like it can get the government to impose strict standards everywhere, part of the problem is solved. States like A can achieve their internal environmental objectives without compromising their competitive position vis-a-vis other (polluter) states in the process; they can avoid having to make the trade-offs between quality and growth that competition among the states would otherwise require. This observation does not apply, of course, where there are interstate spillovers. In the latter case there are technological (distorting) externalities; in the former the externalities are pecuniary only, and entirely consistent with a healthy competitive environment.

16. Specification standards might easily have administrative costs as high as, or higher than, performance standards because *both* approaches require monitoring. Operation and maintenance costs of pollution control equipment commonly amount to half or more of total annual costs, so even when the specified technology is installed, polluters have powerful incentives to unplug it or let it deteriorate. Hence, careful monitoring is required, just as with performance standards. It probably *is* the case that violations of specification standards are usually easier—cheaper—to prove than violations of performance standards; however, specification programs generally require employment of a relatively large flock of government engineers and other expensive technicians compared to the sort of staff needed for a program based on performance standards. On balance, then, specification standard programs could have higher total administrative costs than performance standard programs.

17. Performance standards create stronger incentives for research and development. Accordingly, they should probably be most favored when the regulated industry has the capacity to act on the incentive. Contrast the situation of, say, smoke controls on backyard incinerators, where it is silly to think about the ability of the regulated class to develop

the authors suggest that federal intervention has commonly employed geographically uniform standards of one sort or another (uniform ambient quality standards are the best example) because non-uniform standards that impose different requirements on different states would meet formidable political obstacles. (P. 298.) But since states do not possess equal ability to meet a uniform standard, the uniform standard quite clearly discriminates among them—de facto if not de jure—and so, as with non-uniform standards, significant political obstacles should arise.[18] Hence the authors' theory can, at best, only partially explain the federal government's affection for uniformity.

II.

In addition to considering the development and present condition of environmental law and policy in the EEC and the U.S., *EPP* aims to model the logic of policy integration in a federal system. The book attempts to do this primarily in its first and final chapters. The model in question is not easy to describe, and this may be part of its problem. Social models are supposed to self-consciously simplify reality in order to generate crisp hypotheses about behavior, which can in turn be tested against observed evidence.[19] If a model is validated—if the evidence supports its hypotheses—then we might gain insight into cause and effect relationships. The simplicity of the model helps us locate those underlying conditions we should alter in order to alter behavior in some desired way. If the model and the evidence diverge, or if alterations in underlying conditions produce bizarre results, a new—and always simple—model is necessary. It would be counterproductive to keep "complicating" the model instead, for in the end the model and reality would converge and the whole point of modeling would be lost.

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better devices (and probably equally silly to suppose that members of the class could make discriminating choices among devices developed by independent manufacturers).

18. As they have, and as the authors recognize. *See, e.g.*, p. 298 (discussion of problems of implementation of uniform ambient standards).

19. "Busy" models are suspect, especially if they generate only soft hypotheses so general in character that a whole range of evidence endorses or fails to support them, depending on one's pre-existing point of view.

That said, consider *EPP*'s model, which the authors describe early on as "simple" (p. 1) and which they later, in Chapter 10, revise in the light of the "empirical" work set out in Chapters 2 through 9. Essentially, the model assumes an abstract community of states, each with specified characteristics: each is assumed to be a monolith, that is, there are not within it a variety of actors with their own different agendas; each is assumed to want both environmental quality and economic growth; and each is assumed to make trade-offs between these two goals, environmental states opting for more quality and less growth, polluter states opting for the opposite. Now obviously these *are* simple assumptions, and in more ways than one.[20]

The model's apparatus, on the other hand, is very complicated. Part of the apparatus deals with the incentives and disincentives any state might have to integrate policy.[21] If different states in a system, for example, adopt different product regulations and if this interferes with the easy flow of commerce across state boundaries, then the costs of production will rise; firms will lose economies of scale as they differentiate their products to conform with the myriad of divergent regulations. Alternatively, some products will simply stay out of interstate commerce. In either event, any state can suffer, whether from losing revenues, from losing the benefits of consumption, or both. In consequence, all states have *some* incentive to achieve harmonized product regulations that are mutually satisfying given their respective wants regarding the quality/economy trade-off. For another example, consider regulation of industrial processes within a state. Here the strict regulations of an environmental state might not unacceptably impede interstate commerce; however, they will hinder the efforts of the environmental state's industries to compete with firms in polluter states. So the environmental state, fearing loss of revenues or the flight of firms to polluter havens, has *some* incentive to favor harmonization by way of roughly equal, and relatively demanding, process controls in all states in the system.

The authors give other examples of incentives to integration as well (pp. 3–4): the need for a central authority or uniform

20. This is a point of which the authors prove to be aware, and to which we shall return. *See infra* part III.

21. *See* pp. 3–6. There is an earlier discussion of "tools for environmental control," pp. 2–3, but the list of methods plays only a weak role in the model.

understanding to deal with transboundary pollution spillovers; the benefits of economies of scale afforded by centralized research on matters of scientific, technological, or analytic value to all states; the advantages of a common front as the states of one system engage in international negotiations with the states of another system.

Disincentives to integration are also discussed (pp. 5–6), most of them obvious enough. Variations in preferences among the states make it difficult to achieve harmonized—which often must mean homogeneous—policy because any one state is likely to find that the uniform policy requires too much of it, or too little of some other state.[22] Differences in geographic, demographic, industrial, and economic considerations among the states also frustrate easy integration; so do differences in legal systems that can hinder consistent administration of an otherwise coordinated policy. Resentment of central control can impede some types of harmonization, and central control can result in diseconomies. These are not the only disincentives to coordination, but they are illustrative of the factors built into the simple model.

Another piece of the model's apparatus, and one that adds considerably to the model's complexity, has to do with various "mechanisms" of achieving "complete" and "partial" integration. (Pp. 6–9.) Complete integration, for example, can be realized by a central authority through enactment of regulations or encouragement of roughly uniform measures among the states; it can also be achieved through judicial invalidation of state product standards that are more demanding than the norm, by such means as the negative commerce clause doctrine. The result predicted here is uniformity at the level of the lowest common denominator. Partial integration, rather than achieving the same measures everywhere, mediates conflict in other ways—say by allowing environmental states to adopt standards more demanding than the federal standard or the prevailing practice, while foreclosing polluter states from doing less. This technique the authors call "minimum harmonization," but they have a rich menu of alternative approaches to partial integration—"optional harmonization," "alternative har-

22. An ideally tailored policy that varies in such a way as to satisfy all the states might be possible in principle, but ideally tailored policies are costly to develop, and cost is a disincentive to integration—especially where each state has an interest in pushing the cost on to the other states, and all the states on to the central government.

monization," and even "partial harmonization," poorly labeled because it is a subset of a set given the same name—each of which is characterized by the particular degree of coordination that it achieves.

We are now back to the simple model and ready to put it to work. The original assumptions of the model in mind, and mindful too of the incentives for and against integration, will there be integration and through what mechanism? The tentative answers to these questions, sketched at the end of the first chapter of *EPP* (pp. 9–13), are the book's "working hypotheses." There is no point in going through all the hypotheses here, but it is worth seeing how the model works.

What a state does about pollution and its control is almost sure to affect other states as well. This interdependency creates (or so the authors say) two incentives for harmonization—one to remove trade barriers and the other to increase environmental controls. These incentives work differently in the case of product regulation on the one hand and process regulation on the other. To examine how, the authors construct a matrix (p. 10) with two vertical elements—regulation of products and of processes—and two horizontal ones—elimination of trade barriers and promotion of environmental quality. So there are four boxes, each containing a different mix of incentives.

Take the box representing product regulation/elimination of trade barriers. If environmental states can exclude dirty products made in polluter states, polluter states will lose a market; hence the latter have an interest in integration. More specifically, from the standpoint of complete integration, and assuming a system requiring unanimous agreement by all member states,[23] polluter states will happily agree to a central (federal) program imposing uniform control requirements at the lowest level at which the marginal costs (of meeting standards) and benefits (in the form of a larger market) of increased control are equal for any polluter state.[24] But if environmental states are not allowed to exclude

23. For most purposes there is at least a nominal requirement of unanimity in the Community, but in practice the constraint has not been so formidable as one might suppose it would be. *See, e.g.*, pp. 315–16.

24. Or so say the authors. P. 10. Notice the ambiguity of "lowest." I prefer saying that polluter states will unanimously agree to that level of control where the marginal costs and benefits of increased control are equal for the worst-off polluter state. Other polluter states might want more control here, but the worst-off would veto such a proposal. The

polluter state products because, for example, negative commerce clause doctrine forbids this,[25] then the polluter states' incentive disappears.

What about environmental states' incentives to integrate? We move now to another box in the matrix, having to do with product regulation/promotion of environmental quality. Environmental states have to worry, in setting product standards for themselves, about competition with other states—and this is true even if they are allowed to exclude products moving in interstate commerce. Environmental states could require domestic firms to manufacture a clean product for local consumption but permit a cheaper dirty one for export, but the apparent savings allowed by this approach might be more than spent through loss of economies of scale. So in order to avoid competitive disadvantages, environmental states too will want harmonized policy, ideally (and unsurprisingly) at a level close to what they would adopt in the absence of competition.

There results a hypothesis: polluter and environmental states alike will support uniform product regulations. If environmental states are denied the right to exclude products moving in interstate commerce, then they will be more—and polluter states less—interested in harmonization, with the likely result being coordination at an undemanding level.[26]

The example sketched is probably the least adorned of all that the authors work through. What it shares with the other hypotheses is, in my view, a certain softness: it identifies general tendencies, perhaps usually unsurprising tendencies, but little more. Some of the other hypotheses in Chapter 1, having to do with the mechanisms of integration likely to be used in varying situations, are more detailed but, again, the authors' predictions are rather general given the busyness of the model. For example, regarding product regulation in the EEC before development of a negative commerce clause doctrine, the model "would predict considerable uniform harmonization (at an intermediate level) or op-

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other polluter states can be expected to go along because they realize gains by doing so—though not all the gains they otherwise might.

25. The Community appears to have a fairly strong negative commerce clause doctrine. *See* p. 10 n.7.

26. This assumes a rule of unanimity. The authors claim that a system with majority rule, the U.S., for example, will achieve uniform product regulation but at a more stringent level. I am not sure I understand the assertion. Would not the result depend on the number of environmental as compared to polluter states?

tional or partial harmonization." (P. 12.) Somehow the effort involved seems to call for more precision.

III.

The foregoing discussion suggests the complexity of *EPP*'s simple model and indicates the sorts of insights it yields. The hypotheses generated by the model are developed with extraordinary terseness, using little more print than was consumed here outlining just a few of them. And then, for all the reader's effort, the material is essentially abandoned for exactly three hundred pages, until Chapter 10 and its re-examination, in light of the intervening "empirical chapters," of Chapter 1's initial predictions.[27]

Re-examination of the *EPP* model of the logic of integration is not the only objective of Chapter 10; another is to engage in explicit "comparative analysis of the empirical material" presented at length in *EPP*'s eight middle chapters. (P. 13.) Each is a promising enterprise; in neither case, however, is the promise fully redeemed.

A problematic model emerges from Chapter 10's re-examination. We know even as we read through the simple model developed in Chapter 1 that some of its hypotheses are off the mark; the authors tell us so. Some of the predictions about the EEC in particular are said to depart from the actual picture—a result the authors attribute to log-rolling, or reciprocal concessions over time; to the possibility of disproportionate political influence on the part of some countries, despite the nominal rule of unanimity; to the preferences of multinational firms; and to several other factors. (Pp. 12–13.) In other words, the simple model, already complex, is clearly not complex enough. Other factors, like those mentioned above, have to be added, yet the more we build them in the further we move away from a model and toward a general description of reality. The end product is a device that, at best, rationalizes evidence much as an interpretive history would. Interpretive history is a wonderful enterprise. What it is not is a modeling enterprise that yields testable hypotheses.

27. There are occasional brief references to the working hypotheses in the middle chapters.

A reading of the discussion in Chapter 10 compels this conclusion. In two important respects the chapter alters what clearly were simplistic assumptions in the original model. (Pp. 315–16.) The original model assumed that the states in a system were monolithic actors; that is, it assumed that each state acts with a single mind. But the reality, of course, is that within each state there is a diverse collection of influential actors—politicians of different parties, interest groups of various persuasions, mass media, and so on. The original model also assumed that each state is either of the environmental or the polluter sort. But the reality, of course, is that a given state might be an environmental type regarding air pollution, a polluter type regarding water pollution, indifferent as to noise pollution, and so on. When these factors, plus log-rolling, plus extraneous political factors (say where a few states in the system become temporarily strong or weak by virtue of some happenstance), plus the activities of entrepreneurial politicians, plus the occurrence of episodic environmental crises that can foment action for a brief period, plus a variety of other considerations are all worked into the calculus, we end up with something that, whatever its virtues, simply cannot be called a model of anything. The final product can give us insights into the incredible number of things that can influence some other thing; it can put some order on what seemed a confused picture. But it cannot generate reliable predictions and, hence, it cannot tell us much about how to alter reality in the future.

Still, it is true that when we turn to Chapter 10 we find that the evidence supports some of the simple model's hypotheses. This, however, is hardly surprising—partly because the model at its simplest does have some virtues; partly because there is little in the model that is counter-intuitive, so that common sense would lead one just where the model does;[28] partly because the softness of the model's predictions virtually guarantees the existence of some supporting evidence. As the authors recognize, the original model was too simple in its assumptions:

> In short, while the model and its hypotheses are helpful in understanding the process of regulatory integration in the US and the EC, modifications in the model's assumptions are

28. Which usually means that common sense was built into some of the model's assumptions in the first place.

> needed to approximate the actual complexity of the decisional processes and their results. At this point, however, it does not seem feasible to develop a more complex model that would generate empirically testable hypotheses. (P. 317.)

Thus, one objective we were led to expect Chapter 10 would attain, a thoroughgoing reworking of *EPP*'s original model of the logic of integration, was never met; what is delivered, instead, is little more than the scanty material summarized in the preceding few paragraphs. The second thing we were led to expect was an essay putting the EEC and U.S. experiences into comparative perspective. Here, too, Chapter 10 misses the mark.

Much of the book is implicitly comparative; the eight chapters in the middle of the book alternate between how the two legal regimes in question deal with various aspects of policy. But only the most obsessive reader would come away from those chapters with a handy picture of how the U.S. and the EEC compare, how they contrast, and why. An overview at the end, then, would be of great value. Instead, however, most of Chapter 10 contains only another assessment of the Community picture. There are a few pointed references to what the EEC and the U.S. have in common, and a few to how they differ. But the incredible richness of the eight middle chapters is never systematically attacked. By and large, readers are left to make their own inferences.

IV.

EPP's failure to engage in a more thorough comparison of the EEC and U.S. experiences might account for a theme that runs throughout *EPP*—that Community environmental policy suffers from *ad hoc* pragmatism. It has developed in a patchwork way, not rationally and comprehensively but, instead, incrementally, partially, on an *ad hoc* basis. The point is mentioned in Chapter 10 (p. 323); Chapter 8's discussion of the policy process in the Community puts it more strongly:

> Perhaps the most striking feature of Community environmental law is its lack of focus, depth, and comprehensiveness. Critical problems covered by federal legislation in all developed federal systems are not addressed while less important problems are often minutely regulated. . . .

> This is primarily due to the pragmatic, *ad hoc* approach taken by the Commission in identifying and developing subjects for harmonization. Community environmental policy does not function by identifying priority areas of environmental protection for Community harmonization and leaving less important areas to member state legislation. (P. 203, footnote omitted.)

Implicit in *EPP*'s criticism is the idea that the Community, a mere fledgling, should stand today on ground achieved by "developed federal systems." Yet developed systems, I would guess, got to where they are today only by following their own tortured brand of pragmatic policymaking. At least in the case of federal environmental policy in the U.S.—and this is particularly true of the federal government's efforts to achieve integration—comprehensiveness and rationality, to the degree they exist, have been achieved mostly through a long process of trial and error propelled as much by incident, happenstance, and political self-interest as by principled systematic policymaking.[29] We can expect more progress of the Community than we once could of ourselves only because it has the fruits of our experience to draw upon. But one lesson of our experience is that policymaking largely defies idealized approaches. A point the EEC might take away from comparative study of the U.S.—and which *EPP* would have done well to recognize—is that, for all the difference in cultures, this reality remains in common.

29. *See, e.g.*, KRIER & URSIN, *supra* note 13, at 287–95.