ENVIRONMENTAL LAW
Lewis & Clark Law School

VOLUME 55 SPRING 2025 NUMBER 2

ARTICLES

Federal administrative agencies frequently undertake regulatory impact analyses to provide the basis for promulgating new regula-tions and justify the reasonableness of regulations upon judicial review. Using analytical methods, agencies quantify and compare the relative costs and benefits of regulatory alternatives, seeking policies that maximize net societal benefits, subject to statutory constraints. Loper Bright Enterprises v. Raimondo threatens to upend this methodological check on the rationality of agency action in two dis-tinct ways: first by limiting the permissibility of regulatory impact analysis as a basis for regulation, and second by replacing technical and scientific-informed components of the analysis with judicial interpretations of ambiguous statutory provisions. This threat is most unsettling in the context of environmental regulations, which com-prise the greatest share of new federal regulations. The monetization of environmental harms is essential to demonstrate that the benefits of remedial regulations outweigh their costs, and the promulgation of new regulations to confront emerging climatic issues frequently relies on ambiguous statutory provisions. This Article explores the far-reaching effects of Loper Bright that go to the analytical foundations of policy analysis and evaluation. It argues that assessing the impact of Loper Bright requires consideration not only of the consistency between regulatory policies and the agency's enabling statute but also of the harmony between the underlying justification for regulations and the statutory prescriptions regarding the factors that should be considered in regulatory policy design. The Article concludes that, while judicial review will become more scrutinizing of the compatibility between agencies' statutory mandate and the substantive policies underlying regulatory impact analysis, the regulatory state can—and indeed must—evolve or else risk ossification.

This Essay calls for a critical transformation in humanity's relationship with water, shifting away from the dominant western paradigm of sustainable integrated water resources management (IWRM) to water justice ethics, a life-affirming ethical relationship with water. The sustainable IWRM paradigm is superior to earlier twentieth century versions of water resources management because it acknowledges water and aquatic ecosystems are intimately connected to human welfare and utilizes a participatory process for water decisions. Nonetheless, the roots of the paradigm are a fundamentally flawed anthropocentric utilitarian ethical perspective, an even more fatally flawed neoliberal economic model, and an unrealistic sense of human abilities to predict and control nature. Further, that paradigm depends on pluralistic consultation processes to provide sustainable outcomes, which is unrealistic in a world of severe wealth inequality and continuing marginalization of Indigenous peoples and other minorities. Most significantly, the paradigm has failed miserably; it simply does not provide all life with sufficient, high-quality water. Instead, we argue that humanity must transform its relationship with water and adopt a life-affirming ethical relationship with water, which we term water justice ethics. We must collectively learn from secular and faith-based formulations of water justice ethics. We must also learn from the Indigenous values and practices of reverence, respect, and protection of water. At the core, water justice ethics seeks to assure that people, fish, wildlife, and plants have the quintessential requirement of life: water to support their populations, communities, and ecosystems. To embed water justice ethics in our societies, we must make transformative changes in several spheres: individual awareness and conscience; social norms and political expectations; economic incentives; and institutional structure. This Essay suggests strategies in these diverse spheres to accomplish the mission of transforming water. The Essay ends on a note of hope, suggesting that the ascendance of environmental justice in our society is creating conditions that may allow water justice ethics to emerge as the new paradigm for human relationships with water.

Historically, the concerns of environmentalism and the concerns of human rights advocates in the immigration sphere have conflicted significantly. Environmentalism has bolstered and promoted harmful "overpopulation" theories which demonize immigrants and incorrectly blame them for environmental degradation. Environmental interests have, in this same vein, advocated for tighter border security, and a more robust crimmigration infrastructure, which has caused harm to asylum seekers and fed the privatized immigration detention system with more bodies to profit upon. Environmental laws were built up-on these theories and have been used both in the past and today to further "eco-nativist" agendas. This need not be the legacy of the National

Environmental Policy Act (NEPA), which has the potential to protect immigrants under its broad-sweeping language of environ-mental protection, so long as humans can be understood to be mem-bers, and not just creators of the environment, in alignment with environmental justice principles. NEPA's mandate to preserve the "hu-man environment" can and should be used to shine a light on the federal government's obligation to consider the harms that our na-tion's crimmigration infrastructure inflicts on vulnerable populations of immigrants and asylum seekers in major federal actions. NEPA requires consideration of environmental justice concerns when the government undertakes immigration detention and infrastructure projects.