

CIRCULATING COPY
Sea Grant Depository

The Search for Dialogue in the Administrative State:
 The Politics, Policy, and Law of Offshore Oil Development

By

LOAN COPY ONLY

Charles Frederick Lester

B.A. (Columbia University, New York) 1984
 J.D. (University of California) 1989

DISSERTATION

Submitted in partial satisfaction of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

JURISPRUDENCE AND SOCIAL POLICY

in the

GRADUATE DIVISION

of the

UNIVERSITY OF CALIFORNIA at BERKELEY

Approved:

Chair:

<i>Robert A. Kagan</i>	Nov. 26, 1991
<i>Terry H. Schieter</i>	Date Nov. 27, 1991
<i>William L. ...</i>	Nov. 22, 1991
<i>William L. ...</i>	Nov. 20, 1991
<i>Biliana Cain-Sain</i>	Nov. 18, 1991

The Search for Dialogue in the Administrative State:
The Politics, Policy, and Law of Offshore Oil Development.

by

Charles Frederick Lester

Abstract

The 1978 Outer Continental Shelf Lands Act Amendments (OCSLA) established a comprehensive decision-making framework to promote the "expeditious yet environmentally-sound" development of offshore oil. Congress thought that open political dialogue between development and conservation interests, and thorough scientific analysis, would end the legal and political conflict that had been delaying development since the 1973 oil crisis. This conflict, however, became only more intractable. By 1990, the offshore development program was in a persistent state of policy irresolution and costly deadlock. Why?

First, the aggressive and ideologically-rigid politics of the newly-elected Reagan administration upset the consensus that had forged the OCSLA, undermining efforts to balance development and environmental concerns. Coastal state Congressional representatives, meanwhile, responded to their outraged state, local, and environmental constituents with piecemeal, annual prohibitions of offshore development. These prohibitions undermined both the statutory goal of development and expert assessment of complex economic and geologic issues.

Second, deeply ingrained agency practices obscured the rationales of federal administrative policies, promoting public distrust of the development program. Formal environmental analysis and public participation also prevented the public resolution of the complex scientific issues of offshore development. Information disputes escalated, compounding environmental uncertainty and the fear of offshore development.

Finally, the availability of judicial review, in conjunction with many applicable but ambiguous laws, meant that political dialogues were increasingly structured by legal

arguments, enhancing differences and the propensity to litigate. Constant legal challenge, moreover, undermined certainty in the development decision-making process, discouraging industry investment. Further, the administrative law doctrines applied by reviewing courts prevented meaningful policy exchanges because of their focus on legal procedures.

Overall, the separation of political, executive, and legal institutional discourses in the U.S. Constitutional system provided incentives for non-cooperation and distorted social problem-solving. In short, institutional fragmentation precluded coherent, democratic dialogue. Moreover, institutional fragmentation seems to practically assure policy deadlock when a conflict is defined by extreme scientific, economic, legal, political, and jurisdictional uncertainty. New, "pragmatic" institutions are needed that both consolidate political and administrative policy-making and integrate the norms of expert factual inquiry, political representation, and judicial fairness.

Approved, Nov. 26, 1991
Robert A. Kagan
PROFESSOR

ACKNOWLEDGEMENTS

First and foremost, I would like to thank my committee -- Robert Kagan, Harry Scheiber, Martin Shapiro, David Kirp, and Bilianna Cicin-Sain -- for their efforts on my behalf. I would especially like to thank Bob Kagan for his extremely helpful edits and unflagging support. Of course, any errors in form or substance are mine. I would also like to thank Rod Watanabe and Margo Rodriguez, who helped me navigate through the various bureaucratic jungles attendant to the experience of being a graduate student. I would like to express my general appreciation to those remaining members of the Jurisprudence and Social Policy Program community who supported my efforts in various ways over the past six years, especially Malcolm Feeley, Shelly Messinger, David Lieberman, Charles McClain, Dan Rubinfeld, Bob Cooter, and Philippe Nonet.

Concerning my field research, I would like to thank all the persons who took time out from their busy schedules to talk with me about the offshore oil conflict, especially those with the Minerals Management Service and the Department of the Interior: Maureen Bornholdt, Paul Stang, Bob Samuels, Thomas Readinger, David Bornholdt, John Goll, Don Aurand, Michael Hunt, Marshall Rose, Michele Tetley, J. Rogers Percy, Alan Powers, Gay Leslie, Mary Ann Turner, Poe Leggette, Greta Hummer, John Mirabella, Archie Melancon, Dan Henry, Terry Holman, Barry Clark, Ralph Ainger, Gary Lore, Bill Johnstone, Rick Defanbault and Chris Oynes, Roger Klepinger, Bob Brock, Judy Gottlieb, Phyllis Casey, Peter Tweedt, Dick Wilhemson, John Lane, Bob Paul, Tom Dunaway, Bob Moore. Other helpful souls in Washington, D.C. include: Ed Bruce, Joan Bondareff, John Peschki, Suzanne Iudicello, Tom Kitsos, Jim Burgess, Tim Keeney, Laurie McGilvrey, Margo Jackson, Kathy Pease, and Stephanie Campbell; in Louisiana: Rachel Wilson, Diane Lindstedt, John Desmond, Robert Gramling, Bill Berry, Darryl Clark, John Winston, Glen Breux, and Bill Whitmore; in Massachusetts: Jane Alford, Richard Delaney, Jack Archer, Pat Hughes, and especially Emily Bateson; in Alaska: Bob Grogan, Jan Caufield, Liz Benson, Carry Howard, Lance Tratski, Bill Van Dyke, William Hopkins, John Zuck, Maureen McCray, Wayne Simpson, Mike Wheeler, Steve Jacoby, Gretchen Kaiser, Esther Wennicke, Thomas Cook, and Sue Flensburg; in California: Mark Delaplaine, Susan Hansch, Carrie Small, Suzanne Rogalin, Johann Wald, Ann Nottoff, and many others. I inevitably missed many who were helpful; my apologies.

As for financing, I would like to thank California Sea Grant College of the University of California, without whose support my field research would not have been possible. Also, the Institute for Governmental Studies, the Institute for Business and Economic Research, and the Southern California Education Initiative, all affiliated with the University of California, supported components of my research. I am also greatly indebted to Wells Fargo Bank for supporting me to the utmost.

Finally, I would like to express my deepest gratitude to my friends and family for moral (and financial) support, especially my parents and Joan, without whom I would have never finished.

(Holmes/Kerstetter/Sullivan; E/G-10)
Graduate Research Fellowship