

# Bureaucrats and Indians in a Contemporary Colonial Encounter

Wendy Nelson Espeland

. . . to become conscious of the relativity (hence of the arbitrariness) of any feature of culture is already to shift it a little. . . . [History] is nothing other than a series of such imperceptible shifts.

—Tzvetan Todorov 1982, 254

When we discover that there are several cultures instead of just one . . . and when we acknowledge the end of a sort of cultural monopoly, be it illusory or real, we are threatened with the destruction of our own discovery. Suddenly it becomes possible that there are just *others*, that we ourselves are an “other” among others.

—Paul Ricoeur 1965

*This article investigates the effects of the National Environmental Policy Act of 1969 in structuring an encounter over a decision about building a dam in central Arizona. From the vantage point of three groups with deep*

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*investments in the outcome of this decision, it analyzes how the interests and identities of these parties were transformed as a result of this encounter. In defining standing and the terms of relevance, in providing a political forum, and in requiring these groups to explain themselves to others, this law powerfully mediated the politics surrounding this controversial decision.*

Nearly 20 years later, recalling the meeting in 1976 still evoked a physical response from Bill, a high-ranking engineer in the Bureau of Reclamation (BR), a water development agency in the Department of the Interior. Suddenly his jovial manner shifted, his jaw tightened, and for a few moments the only sound in his office was from the pencil he distractedly tapped against his desk. It was clear this was not something Bill enjoyed talking about. Quietly, he began to describe what happened in the public meeting that he had helped organize almost 20 years ago.<sup>1</sup>

They had expected several hundred people. When thousands arrived at the Phoenix Civic Center, most had to be turned away. They had organized the meeting to present the results of their investigation of the new dam, best known as Orme Dam, that the agency wanted to build. Located at the confluence of two rivers about 30 miles from downtown Phoenix, Orme Dam was to be part of the Central Arizona Project (CAP), an elaborate system of dams, pumping stations, and canals designed by the BR to bring water from the Colorado River to the deserts of central Arizona. The BR was deeply invested in CAP, the biggest and most costly water project ever proposed by the agency, and Orme Dam was a critical component of CAP.

The impetus for this meeting was an innovative law passed in 1969. The National Environmental Policy Act (NEPA) is best known for requiring federal agencies to prepare environmental impact statements (EISs) before they enact policy that will affect the environment. NEPA (and the guidelines issued by the Council on Environmental Quality, the agency charged with coordinating its implementation) required these bureaucrats to analyze the social and environmental consequences attending Orme Dam, to present the results of their analysis to the public, and to solicit their views. Preparing an EIS was still a novel process for these engineers. Although Bill had helped write an EIS on the entire Central Arizona Project a few years earlier, this was the first EIS devoted exclusively to Orme Dam.<sup>2</sup> They had expected the usual, reliable project supporters, the politicians, business leaders, and farmers who would express their infatuation with big water projects. But they had not expected busloads of opponents.

The reason why thousands, not hundreds, of people attended the meeting that day and why the sedate public meeting that Bill and his colleagues had anticipated turned into a "public relations nightmare" was that Orme

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1. Interview conducted November 1994. All names given are pseudonyms.

2. USBR 1972 is the original CAP EIS. The draft Orme EIS presented at this meeting is USBR 1976a.

Dam was far more controversial than its supporters understood or its EIS indicated. Some people came to the meeting because they were concerned about the ecological impacts of the dam on unique desert riparian habitat. Some worried about the valuable archeological sites the dam would inundate. Others were skeptical taxpayers loath to pay for yet another giant water project. But the greatest source of dissent that day revolved around the Fort McDowell Indian Reservation. Located just north of the proposed dam site, the reservoir created by the dam would flood about two-thirds of the reservation. Orme Dam would force the Yavapai residents from what remained of their ancestral land.

As Bill believed and the EIS concluded, Orme Dam was crucial to Arizona's economy. As one of the fastest-growing regions in the country, Orme supporters were convinced that Phoenix desperately needed the water, hydropower, and the flood protection that the dam would provide to support its booming economy. The Yavapai may not want to move, but since they have survived more brutal resettlements in the past, what was left of their culture would endure (USBR 1976b). The \$33 million dollars that BR was prepared to pay the Yavapai in exchange for their land was a good bargain. In granting them rights to the recreation concessions that could be developed on the lake that would flood their land, the government was offering the tribe a unique opportunity to create good, steady jobs for residents. The EIS concluded that given the high unemployment on the reservation, Orme Dam would be an economic windfall for this small, poor tribe.<sup>3</sup>

But the Yavapai saw things differently. To them, the EIS was just another biased government study that justified its projects and minimized its harm to Indians. Outraged by the conclusions of the EIS, the Yavapai responded with testimony. We will never sell our land, they told the bureaucrats, no matter the price. Speakers described how much they loved their land, how connected they were to it, how excruciating it would be to be removed from it. With tears streaming down their faces, Yavapai elders pleaded on behalf of their land, their culture, and their collective future. They explained that losing their land would mean betraying their ancestors. Their questions that day were not about the dimensions of the dams, the nature of their compensation, or even about the viability of alternative to Orme Dam. Instead they asked, "How can we sell what is sacred? Why should we suffer so that others can build homes in the flood plain, grow cotton in the desert, and continue the unplanned urban sprawl that was

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3. Estimates of how much money the tribe would be offered for their land increased over time. Based on tribal figures compiled several years later, unemployment on the reservation was over 40%, and two-thirds of those with jobs made less than \$5,000 annually (Fort McDowell Indian Community 1978-79, 1980-81).

devouring the desert? Why doesn't the government keep its promises to Indians? When will you leave us alone?"

These were not questions that agency engineers were prepared to answer. Bill bitterly recounted how the audience cheered and the cameras captured the speeches made by the Yavapai that day. In his words, "It was great television. . . . In terms of sheer numbers it was 50-50, pro and con. . . . No one cared about that. . . . What the cameras cared about was the 70-year-old toothless Indian who cried on cue . . . the grandmother who didn't want her ancestral land flooded. Cameras always focused on the emotional." The Yavapai may have been grateful for the coverage and for the audience support, but they knew not to get their hopes up. After all, how many how many Indian communities have done battle with the federal government and the powerful water lobbies and won?

This meeting between BR engineers and the Indians, and the misunderstandings and conflict that it generated, is just one incident in the long struggle over Orme Dam. Although not as dramatic as Captain Cook's arrival in Hawaii, as mutually baffling as missionary efforts to Christianize Africans, or as publicized as the first McDonald's in Moscow, this contemporary colonial encounter between bureaucrats and Yavapai residents offers the opportunity to understand how meaning and power are negotiated in bureaucratic practice.<sup>4</sup> From the vantage point of three groups with deep but different investments in the outcome, this article investigates how a decision about building a dam in Arizona became a fateful encounter in which the identities and interests of these parties were renegotiated in relation to one another. The Old Guard, my name for a group of older, powerful BR employees, like Bill, were ardent supporters of Orme Dam. The unconventional employees that the agency gradually hired to help implement NEPA, I label the New Guard. The third group was the approximately 400, mostly Yavapai, residents of the Fort McDowell Reservation who mobilized to defend their land and culture.<sup>5</sup> This article examines the fundamental role that one law—the National Environmental Policy Act—played in precipitating this encounter, structuring its terms, and mediating its effects.<sup>6</sup>

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4. See Sahlins 1981, Comaroff and Comaroff 1991, and Clines 1990, respectively, for more detail on these other examples of colonial encounters.

5. My data for this analysis are drawn from fieldwork and interviews conducted on the Fort McDowell Reservation and at the Bureau of Reclamation (both during and after the Orme controversy), from government documents and media accounts, and from personal records that some participants shared with me. During some of this, I was a paid consultant to the BR. My methods and my various roles are described more fully in Espeland (1998, 17–20).

6. My emphasis on NEPA does not imply that other laws were not salient in this decision. Law creates the infrastructure of federal bureaucracies; western water rights have been vigorously contested in courts since the arrival of white settlers; and the rights of Indian communities have been the subjects of crucial court decisions and laws since contact. The BR lists 88 federal laws (excluding those authorizing its projects) as pertinent to its activities prior to the Orme decision in 1981 (<http://www.usbr.gov/laws/chronol.html>). My exclusive focus on NEPA reflects my judgment that (1) this is most important law for influencing the

## ANALYZING DECISIONS AS ENCOUNTERS

The complex and protracted relationships that emerged among the Old Guard, the New Guard, and the Yavapai suggest some useful lessons for how to think about the way that law structures modern politics. One lesson is that interests and identities cannot be easily or automatically read off material conditions. Rather, they are mutual and dynamic social accomplishments that must be explained empirically. To conceive of interests (or, implicitly, of identities) as stable preferences that exist prior to choice and endure over time, as do some versions of rational choice theory, assumes what requires explanation and neglects interesting politics. Politics, understood this way, leaves unanswered such fundamental questions as where preferences come from and how they change, how groups define their interests, and how are these linked to conceptions of self and other.

What this analysis also suggests is that, at least for Native Americans, the move to “postcolonial” studies may be premature. Our most vivid images of colonial encounters might include soldiers seizing land, missionaries saving souls, or investors cultivating new markets; nevertheless, bureaucrats have often been the mainstay in constructing and mediating relations between indigenous groups and those others who wish to impose their authority on them.<sup>7</sup> The motives and methods for imposing control over Indians may have changed over time, but the decisions of bureaucrats remain extremely fateful for many communities. For the Fort McDowell residents, the stakes of this decision could not have been higher.

I conceptualize this decision as an *encounter*, a term borrowed from the anthropological literature on colonization. Where anthropologists generally analyze as encounters the initial contact of peoples, I use it here to describe a protracted set of interactions by three groups who were forced to confront one another, make sense each other’s motives and differences, and were transformed in the process of doing so. Encounters are methodologically useful because, in requiring people to state the obvious and define and defend themselves in relation to others, they offer venues for investigating processes that are often tacit. Encounters between groups with different worldviews, interests, and power, encapsulated in the frustrating public meeting between bureaucrats and Indians, provide an opportunity to see

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structure of this decision and roles that these parties played; (2) the timing of NEPA offers the distinct advantage in assessing its influence, since it created clear changes in the organization and in the actions of participants; and (3) and my argument is best advanced by a more detailed analysis of one law that can better specify the mechanisms of its influence. Had the Yavapai lost in the political arena, they would have sued the agency. In addition to NEPA regulations, they surely would have invoked the Indian Self-Determination and Education Assistance Act of 1975 and the American Indian Religious Freedom Act of 1978. I know from my fieldwork that agency leaders expected such a lawsuit and were relatively unconcerned about the prospect.

7. For a good example of this, see Neumann 1998.

how bureaucracies process the world, both from the point of view of its agents who must adapt its practice to new constituents and new contingencies and from those who confront, appropriate, and resist its power. The extraordinary, sometimes banal, and often invisible power of bureaucracies is often most accessible in situations where normal bureaucratic practice is politicized, when routines break down.

Framing this decision as an encounter is useful for the importance of what this emphasizes. Encounters are contingent. Colonization, even contemporary versions like this decision involving agencies trying to re-appropriate the land and resources of indigenous peoples, is not some monolithic, universalizing force. It matters who the actors are, their systems of reference, and the forums for action. Appreciating the contingency of this encounter helps us understand colonization, even its most brutal forms, as more dialogue than monologue, as power that is negotiated and redefined, as well as imposed (Comaroff and Comaroff 1991). Even in situations with great disparities of power, encounters demand interpretation and negotiation, and these can have far-reaching effects.

Encounters are structured in ways that define their terms and shape their outcomes. Groups' mutual and persisting interpretations are shaped by the way they come together, by the histories, cultures, and motives that they bring to the encounter, by the source of their power and the content of past encounters. Marshall Sahlins's (1981, 7) analysis of the "structure of the conjuncture" focuses on the confrontation of cultures understood as intricate symbolic systems, where events "enter culture as instances of received categories." In the encounter surrounding Orme Dam, the mediating structure included law, bureaucratic routines, and the systems of classification that were associated with various conceptions of rationality.

The effects of encounters endure. Long after the initial encounter is over, in this case, after this decision was "decided," its consequences are still unfolding in ways that continue to reflect its earlier structure.<sup>8</sup> For example, members of the New Guard have seen their once discredited expertise become celebrated and emulated. As Todorov (1982) has argued, understanding the relativity of what was once considered universal or permanent is a powerful form of knowledge that inevitably shifts one's understanding of self and other. To be conscious and articulate about something that was once automatic and assumed is already to shift one's perspective, although as Jean and John Comaroff have suggested, the responses of most colonized peoples have often lay in between "the tacit and the articulate, the direct and the indirect" (1991, 31). In this example, it was members of the Old Guard who were forced to confront the relativity of views that they had formerly assumed were shared. One of the most striking features of the Orme Dam

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8. See Walton 1991 for a superb analysis of how historical memory and evolving community traditions sustained one community's struggle over the Owens River for 130 years.

conflict was just how explicit participants were eventually forced to become about their differences and how the legal structure of this encounter evoked this explicitness. Those who participated in this decision now think of themselves and their actions differently, and these differences have become institutionalized: in ritual, in organizational routines and ideology, in decision frameworks, in new career tracks.

In offering a venue for investigating the taken-for-granted, and in offering a conceptual framework that highlights the contingent, structured, and enduring characteristics of confrontations, understanding the struggle over Orme Dam as an encounter helps account for its dynamism of power and the constitutive effects of law. Before analyzing the effects of this encounter on these three groups, it is important to better understand its context.

## WESTERN WATER POLITICS

The conflict over Orme Dam, which began in the 1940s and was not fully resolved until 1981, was embedded in the vast, politicized terrain of western water politics. The ties between water and power in the arid west are dense and deep, such that water and its distribution arouse passions that are hard to apprehend for those who take their rainfall for granted. For much of the West, water is the material equivalent to a first principle: the premise from which other relationships devolve. Its significance is incorporated into key political symbols: the state seal of Arizona includes a picture of Roosevelt Dam, one of the BR's first great dams, and carved in the Colorado State Capitol are the words, "The West is a land where life is written in water." During the first hearings on CAP in 1947, Jesse Udall, a farmer, told Congress, "In Arizona it isn't acres, but acre feet that spell prosperity and success" (U.S. Congress 1951:171). (Acre-feet are the standard measure of water volume: the amount of water required to cover one acre of land to a depth of one foot.)

Since all development in arid climates depends on water supply, its distribution buttresses economies and motivates much politics.<sup>9</sup> Peterson Zah, chairman of the Navajo Nation, captures the central dynamic of water politics this way: "When I was a kid in geography class, I was taught that water always flows downhill. What I've learned since is that water flows to money and power, wherever they may be" (as quoted in Burton 1991, iv). As Donald Worster argues (1985, 7), water projects helped create a water elite who control a vast hydraulic empire that has for years dictated the

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9. The scholarly literature documenting the nexus between water and power in the West is both vast and growing. Important contributions include Worster 1985, McCool 1987, Reisner 1986, and Walton 1991. For influential analyses of water politics in Arizona, see Mann 1963, Ingram 1990, Fradkin 1981, and Johnson 1977.

terms of western development. John Walton (1991) characterizes this as “dependent development,” where regions (like countries) are treated as resources to be manipulated for the benefit of powerful interests. Westerners’ response to aridity has been to view it as mistake that required big, federally funded water projects to remedy. Without big water projects, cities like Los Angeles, Phoenix, Denver, Las Vegas, and Albuquerque would not exist in deserts, and farmers would not be growing apples in eastern Washington, cotton and oranges in Arizona, or artichokes and almonds in California. Agency engineers, in deciding how and where to develop and distribute water, are largely responsible for subsequent patterns of development in the West.

Western water politics features a broad array of institutions dedicated to developing water supplies, monitoring its use, and jockeying for influence over its distribution. With their combination of visible local benefits and dispersed cost to taxpayers, politicians love water projects (Ferejohn 1974, 235–52; Ingram 1990); this enthusiasm has encouraged the development of what McCool (1987) and others term *iron triangles*. Iron triangles are policy domains controlled by powerful coalitions composed of federal agencies (like the BR), interest groups (such as the Central Arizona Project Association, which lobbied for CAP for 20 years—see Johnson 1977), and congressional committees. For decades, the most desirable committee assignments for western legislators were those that concerned the development and distribution of water supplies: Interior and Insular Affairs Committees, the Senate Subcommittee on Irrigation and Reclamation, the House Subcommittee on Public Works, and, of course, the powerful Appropriations Committees.

Dams are also potent symbols. They serve as monuments to the political clout of those who authorized them, the technical sophistication of those who designed and built them, and the capabilities and beneficence of the state that provided for them. In simultaneously generating symbolic power and hydropower, dams offer both a rationale and a place for ordinary citizens to go to objectify the state and scrutinize its handiwork.<sup>10</sup> Water projects well-deserved reputation as exemplars of political pork also derives from the extent to which water projects have served as what Marc Reisner calls “congressional currency” (1986, 319–20). Votes for water projects have long been used to commensurate bargaining on unrelated domestic policy,

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10. With 1.1 million tourists last year, Hoover Dam is certainly one of the nation’s most visited “monuments,” and many parties, ranging from grandfathers to presidents, have recognized its public relations potential (USBR 2000). As one retired BR engineer told me, “Some people think you should take your kids to Washington to see their government at work. But me, I think if you want them to really see their government working, you take them to Hoover, or Glen Canyon or Coulee. That’s where you can see what the government is capable of doing for people that they can’t do for themselves. That’s where you can see good government—helping people help themselves.”

so that such disparate political goals as election endorsements, highways, or even civil rights legislation get negotiated in terms of support for water projects.<sup>11</sup> As engines of development, vehicles for redistributing resources, potent political symbols, and as a medium for integrating interests, the political appeal of water projects is enormous. Little wonder that as the agency that virtually monopolized the design of dams, the BR was, for years, an extremely powerful agency backed by influential and devoted constituents.

## “THE GLORY DAYS” OF THE BUREAU OF RECLAMATION

Created in 1902 by the Reclamation Act, the bureau’s mandate was to “reclaim the West” by helping to develop the irrigation that was needed to sustain family farms in the West.<sup>12</sup> The goal of reclamation, however, soon became synonymous with building dams, where the needs of family farmers quickly became subordinate to the “economic and technical ambitions” of its engineers who came to see their projects as “ends in themselves” (Worster 1985, 170; Robinson 1979, 37). The Bureau of Reclamation has been a prolific dam builder, with more than 600 dams and reservoirs in 17 western states to its credit.<sup>13</sup> From the beginning, the bureau attracted the nation’s best civil engineers, many of whom envisioned themselves as progressive social reformers. By mobilizing their technical abilities to mitigate the scarcity of water, they would also redress urgent social problems by redistributing people and wealth (Layton 1971). Over time, a powerful organizational ideology emerged within the agency. Drawing from varied sources, including myths about western settlement, Christian theology, and an engineering ethos that emphasized technological excellence and innovation, this organizational ideology transformed dams into a collective good, technology into God’s tool, and irrigation into a symbol of good government.

Central to this ideology was an aesthetic in which the utility and beauty of dams were merged and admired, an ethos that underscored man’s obligation to transform nature, and a robust confidence in his ability to control and manage nature rationally. Transforming nature was a way to complete God’s work; it was testimony to one’s faith, creativity, and skill.

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11. Lyndon Johnson was noted for using dams as bargaining chips to get his “Good Society” legislation passed. See *Carter Asks Senate 1977*, A13.

12. For useful histories of the federal irrigation movement that gave rise to the BR, see Wharton 1917, Pisani 1984, and Worster 1985.

13. Originally called the Reclamation Service, the agency was a branch of the U.S. Geological Services. It was made an independent agency within the Department of the Interior in 1907, and its name was changed in 1923 to the Bureau of Reclamation. The BR has built 17 dams in Arizona, to date. All BR dams and their locations are described at [www.usbr.gov/main/what/who.html](http://www.usbr.gov/main/what/who.html).

Transforming nature also possessed a redemptive quality that improved man as well, making him wiser, more social, and stronger. Nature was conceived as an unfinished product; as raw materials provided by God, nature required man's intervention. As Walter Young, the engineer who supervised the building of Hoover Dam, the agency's most famous structure, put it: "Observing the beautiful symmetry of Hoover Dam, one can hardly help thinking that, knowing future requirements, the Lord provided the dam site" (Warne 1973, 107). A bureau pamphlet in 1965 summarized the prevailing philosophy that "Man serves God. But Nature serves Man."

While more secular views eventually prevailed, the ethos of the agency that shaped the Old Guard's views retained its deep faith in technology to solve problems and its view of nature as a resource to tame, improve, and exploit. This ideology was reinforced by the structure of the agency, which was organized around project offices and dominated by engineers. It was expressed in career tracks, where reputations and mobility (both organizational and geographic) were linked to projects, and in budgets for which there were strong disincentives for changing or aborting a project. This ideology helped to create a powerful worldview that celebrated dams and the people who built them. But it was also effective in producing loyal employees and constituents, dedicated to the agency and its goals, and devoted to particular projects—like Orme Dam.

### THE OLD GUARD: THE INSULARITY OF POWER

Phil worked for the BR for more than 30 years, but his interest in dams was piqued much earlier. He remembers feeling inspired by the photographs of the construction of Hoover Dam when he was a boy. He recounts how, in high school, all his papers were about that dam. "I guess I was meant to be an engineer," he chuckles.<sup>14</sup> After graduating with a degree in civil engineering, Phil eventually found his way to the agency, working his way up the organization until he was helping to manage some of its biggest projects, including the Central Arizona Project.

Like other members of the Old Guard, Phil was deeply loyal to the agency. He was proud of his career spent designing water projects, proud of his agency, and proud of its reputation for engineering excellence. He reminds me that, "The bureau built all the big dams in the West. Hoover, Coulee, Shasta, Glen Canyon, Roosevelt. Take Hoover Dam—you can't find a crack in that dam even today. It's surface looks like marble. And that's because of the bureau's discovery of cooling the concrete using pipes." Such seniority, organizational loyalty, and commitment to high professional

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14. Interview conducted July 1989. Phil retired from the BR in the late 1970s and has since died.

standards were characteristics shared by members of the Old Guard. They hold (or held) powerful positions as heads of project offices or even as directors or assistant directors of regional offices. But for my purposes, the most distinguishing trait of men like Phil was their long, passionate support of Orme Dam. Some had literally spent the bulk of their entire career designing, revising, and promoting Orme Dam. As Phil put it, "I lived CAP. I knew every nut and bolt of that project. . . . I attended every hearing on that project. I had great faith in [it]" (as quoted in Espeland 1998, 67, 130). The Old Guard's investment in Orme reflected the potency of the agency's engineering culture, its long history of success in building the dams that they wanted to build. This success, that left few empty dam sites, only added to Orme's appeal. But the Old Guard's investment in Orme also stems from their long political battle to secure CAP.

Few issues were as divisive in the West as state entitlements to the Colorado River water. First introduced in Congress in 1947, CAP had initiated a bitter 12-year legal battle between California and Arizona, endured repeated failures in the House, and eventually culminated in the extraordinary Colorado River Basin Project Act of 1968 (Pub. L. No. 90-537, 82 Stat. 885). Encompassing 45 years of regional water battles, the bill is a testament to congressional logrolling (Ingram 1990). It authorizes, in addition to CAP, eight other water projects that are dispersed among the other Colorado Basin states whose votes were crucial for its authorization. While western states have fought bitterly over the distribution of water, before NEPA they had never questioned the value of water projects. And that is one reason why men like Bill and Phil misjudged the public's response to the Orme EIS.

## NEPA CHANGES THE RULES

The National Environmental Policy Act should have signaled to the BR that times were changing, but it took some time for insiders to appreciate its import. For a bill that senior officials would later claim "changed everything," NEPA attracted little attention, either from resource development agencies like the BR or from environmentalists. With its close relations to key congressional leaders and its long experience in policing its interests there, the bureau's disregard suggests how benign NEPA first appeared to agency leaders.

NEPA was intended to help create a national environmental policy that would make federal agencies more sensitive to the ecological

consequences of their policies.<sup>15</sup> Appreciating the formidable inertia of bureaucracies, NEPA supporters knew that simply declaring that the missions of all agencies henceforth include a commitment to protecting the environment was unlikely to generate significant change. To force agencies to consider new kinds of information when making their decisions, NEPA's drafters inserted its famous "action-forcing" mechanism, section 102, which requires them to prepare what became known as environmental impact statements. NEPA guidelines approximate the framework associated with rational decision theory. It requires agencies, in their EISs, to develop a set of alternatives, predict their expected outcomes or consequences, and specify the causal connections implicit in these predictions, including the environmental and social costs and benefits associated with each alternative. NEPA guidelines also require that the views of the public be incorporated into the EIS process.<sup>16</sup>

Although the goal behind NEPA was to promote policy to improve the environment, the law does not force agencies to select environmentally superior alternatives.<sup>17</sup> NEPA only requires that they document compliance with its explicit and elaborate procedures for producing an EIS. Implicit in NEPA are assumptions about the relationship between knowing and doing. NEPA's framers assumed that the right kind of facts organized clearly and logically, would generate particular kinds of substantive outcomes. But as any savvy bureaucrat knows, rules can obscure as well as inform, offer protection as well as enlightenment. The gap between the substantive goals of NEPA and its indirect procedural devices for implementing them could preserve the discretion of bureaucrats, something that has frustrated environmentalists.

Since Orme was authorized before NEPA was passed, members of the Old Guard first thought the dam would be exempted from compliance. When courts began ruling otherwise on other projects, these engineers eventually prepared their EIS. Given that the document so clearly demonstrates their biases, in retrospect what seems most puzzling is the Old Guard's own surprise at the outrage it provoked. This response is worth disentangling. Certainly their inexperience was partly to blame for the fiasco that ensued. As they kept emphasizing in their interviews years later,

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15. National Environmental Policy Act of 1969, 102 U.S.C. 43322 (1970). For good accounts of NEPA's legislative history, see Finn 1973, Liroff 1976, Andrews 1976, and Caldwell 1982.

16. Preparing an EIS can be a long, difficult process. EISs are first published in draft form, and comments on it are solicited from many parties: federal and state agencies, interest groups, politicians, and concerned citizens are all invited to provide written responses to draft impact statements. These, along with the agency's formal response, are published as part of the final EIS. The designation as the "final" EIS need not imply resolution, as this case reveals.

17. Early drafts of the legislation stated this goal more forcefully, asserting citizens' "right" to a clean, healthy environment. This language was weakened during committee negotiations.

NEPA guidelines were still evolving and organizational routines for implementing the law had yet to be created. As one senior engineer recounted, "We were just bootstrapping" (interview Nov. 1994). But their reactions to the meeting where they presented the results of their investigation also implicate their organizational ethos. Members of the Old Guard could not imagine that their comfortable assumptions about the world would generate such dissent. Opposition to Orme was both baffling and deeply threatening to members of the Old Guard, who found it hard to acknowledge that what they had understood as an enduring consensus over water development had evaporated.

The Old Guard's insularity was itself a complex response. It reflected the organizational ideology that defined as irrelevant issues unrelated to engineering expertise and people who were not project beneficiaries. Reinforced by their dense ties to the prodevelopment water elite they had helped to create, it allowed them to attend to only a small part of the relevant political interests. But this insularity was punctured when NEPA forced members of the Old Guard to display their biases encapsulated in their EIS to a heterogeneous audience that was broader than their friends. And here was where they finally realized there was no longer a consensus over Orme. They now knew that they faced serious, organized opposition to their dam, and this was deeply unsettling.

Although their faith in Orme was not swayed, their meeting to discuss their botched EIS had convinced them that they had a "PR problem"; to protect them from lawsuits, it would now be necessary to be scrupulous in complying with NEPA and BR regulations. As Bill described their response:

After that Orme hearing we regathered the troops . . . and said: "Where do we go from here? We now have significant public opposition. How do we proceed?" We had to design a process from draft through final EIS that leaves us in the position of being legally sufficient. After those public hearings we still believed that we had the correct plan; that we were socially and environmentally correct on Orme from an agency perspective and that the agency preferred alternative is still going to be Orme dam. This was the consensus within Reclamation. We just had to be legally tight which means doing things by the book—no short cuts. We had to comply with NEPA and with agency rules and regs available at that time which controlled planning. The key was, no suits from the opposition on procedural matters. That was the modus operandi of environmental groups at that time. . . . We just did not want to have some court say "you can't do your project because your agency regs say 40 days and you took 41." That was happening on a lot of projects at the time. The environmental community was finding friends in the courts who were holding up major federal projects on environmental technicalities. (As quoted in Espeland 1998, 120–21)

This public meeting was a turning point in the Orme controversy, and unbeknownst to them, in the position of the Old Guard within the agency. This crisis demonstrated to the Old Guard, in dramatic, irrefutable terms, that the world was changing. It also prompted a reappraisal of how to write a better EIS on Orme, one that would be "legally sufficient" and immune to lawsuits. Members of the Old Guard, along with their superiors, agreed to rescind this controversial EIS and start over to create a document that meticulously complied with the law.

This new emphasis on procedural scrupulousness, reinforced by recent court rulings, created an organizational niche. Worrying that the BR's reputation had been damaged as a result of the 1976 EIS, restoring Orme's legitimacy depended, it seemed, on its capacity to conduct a more credible investigation. Now that organized opposition to Orme had become an organizational "fact," the commissioner conceded that, however expensive, becoming scrupulous was worth the investment. It was time to bring in new people, to launch a new study, and to be meticulous in complying with NEPA. At this point, members of the Old Guard lost control of the EIS process and of the underlying decision framework. This proved to be a turning point in the balance of power within the agency, but the Old Guard did not understand this for some time.<sup>18</sup>

Members of the Old Guard were untroubled at the prospect of relinquishing the Orme investigation to others. They remained confident of their ability to get what they wanted, regardless of the framework used. A new investigation using new decision technologies seemed more inconvenient than threatening since they neither understood nor believed in the decision procedures that were being proposed. NEPA proved to be more bothersome than they first imagined, but some came to see that the law could provide a useful defense against the intrusion of outsiders. If they complied with NEPA, what recourse would environmentalists have when Orme Dam was vindicated?

The Old Guard's faith was vested in their dam and in the engineering expertise it embodied and not in the procedures, laws, or science that would inform this new investigation. Their tenure had taught them that the new laws or new procedures that emerged would not constrain them, since these had always yielded the same results. Where others might accuse them of excluding important information, inflating benefits and ignoring costs, in their view, they were making careful decisions based on the type of information that they routinely collected. Making sound decisions involved deciding where and what kind of dam to build. The agency's engineering ethos

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18. A year later, when Jimmy Carter placed CAP on the list of water projects he wanted deleted from his budget pending more rigorous review, he cited the Yavapai's forced relocation as one reason for that decision. This new threat precipitated a political crisis in Arizona and the BR, increasing pressure on the agency to conduct a thorough, credible investigation of Orme. Office of the White House Press Secretary 1977.

informed their understanding of their work so deeply, it naturalized what others would see as bias. Orme Dam was an engineering solution to an engineering problem, a technically superior structure located at an ideal site. The Old Guard could not imagine that politics would triumph over good engineering or that the esoteric ideas of some insignificant employees might curtail their power.

## THE NEW GUARD: RATIONALITY AS AN ORGANIZATIONAL NICHE

After the EIS fiasco, the importance of creating "legally sufficient" documents, of repairing the BR's sullied reputation, and of somehow resolving the conflict over Orme Dam meant that its leaders were willing to invest heavily, both in time and money, in a new investigation. Launched in 1978, the study known formally as the Central Arizona Water Control Study (CAWCS), would evaluate a series of plans, including Orme Dam, as ways of improving Arizona's water supply. Hoping to buy time and create a vehicle that would encourage political consensus, the study was also intended to be a test case for the agency's new procedures for complying with NEPA. The study would culminate with the requisite EIS and planning documents and with what most were still convinced would be a decision to build Orme. The question was, who would manage this investigation?

Since the early years of NEPA, the BR had unenthusiastically begun hiring people called "environmental" and "social analysts." If EISs had to be written, and if new kinds of information had to be incorporated into them, courts eventually insisted that those who wrote them be qualified to do so; gradually, people with backgrounds in planning, biology, geology, geography, social psychology, sociology began arriving at various agency branches. One engineer referred to them as "all the 'ologists' I had to hire after NEPA." These marginal employees confronted what they understood as a hostile "engineering culture." Allan describes his initial impression as one of "culture shock." "They couldn't figure out what the hell I was about or what I was doing there in the first place," he told me. "[I] had to learn the values of the culture . . . which seemed odd to me since these were engineering values. To solve engineering problems . . . with a high level of excellence. That's what they cared about." Another analyst described the experience as akin to being an "anthropologist plopped down in the middle of some exotic tribe." BR engineers are "guys [who] just love to build dams" who have "managed to create a whole little world, a culture devoted to that."<sup>19</sup> This "engineering culture" defined them, the New Guard, as

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19. Interviews conducted in April 1990 and October 1990, respectively. See Espeland 1998, 142-43.

irrelevant or, even less charitably, as impediments. As one man explained to me, it's hard to create alliances when your job entails documenting the harmful effects of everyone else's job.

The early work of the New Guard literally involved creating the positions they already filled. As Peter recounts, "It was clear they didn't know what to do with us. Heck, we didn't know what we were supposed to be doing either. All of a sudden we were in charge of promoting something called 'environmental quality' in an agency that had been building dams for seventy years. How the heck do you even measure 'environmental quality?'"<sup>20</sup> Amid the uncertainty and ambivalence surrounding their roles, members of the New Guard groped for an organizational identity. Not wishing to be relegated to the powerless position of EIS writers who documented decisions already made or shills who provided procedural compliance for the status quo, members emphasized and cultivated their skill at planning and decision making. Gradually, they began casting themselves as planners, as decision analysts, as mediators. As expert decision makers, their value to the organization was not relegated to some operation but could literally be incorporated within any project or any division.<sup>21</sup> They could also help the agency solve some of its pressing political problems. In translating EIS compliance into rational decision making, members could assure that environmental issues were incorporated into the devising of plans, rather than just something thrown in as an afterthought. Rigorous methods, backed by the authority of science, would distance CAWCS from the Old Guard's discredited EIS. It could help restore the agency's damaged credibility, ensure that the views of the public were incorporated in meaningful ways, and help resolve the conflict surrounding Orme by precisely identifying which issues were most divisive and which alternatives could best satisfy different group's concerns. This was a message BR leaders were eager to hear.

The New Guard's emphasis on decision making was not simply a shrewd organizational strategy. From the beginning, they were more sympathetic to the goals of NEPA and so were far less cynical than the Old Guard about implementing the law. As new employees they were not as invested in the traditional mission of the agency and in the status quo. They believed that the kinds of information required by NEPA ought to inform the BR's decisions. But how to assure this was a complicated problem since this entailed reconciling radically different kinds of information. How best to make comparisons between qualitatively different kinds of information and impacts? How to compare, for example, the impacts associated with the destruction of a river with flood protection for a metropolitan area? In the past, information that was hard to integrate or quantify, or that was

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20. Interview conducted October 1990, quoted in Espeland 1998, 140.

21. In time, the New Guard included unconventional engineers as well as consultants associated with CAWCS.

detrimental to dam building, was often simply excluded from decisions, a response now prohibited by NEPA. Rational decision models adopted from economics and cognitive psychology could provide the mechanisms for integrating diverse information and varied impacts.<sup>22</sup> Members of the New Guard also believed in NEPA's implicit premise: that it was possible for science to help resolve conflict. Their decision procedures could also offer as a way to meaningfully incorporate public preferences into their planning.<sup>23</sup>

Two of the characteristics of the New Guard's rational framework were especially pertinent in structuring relations among the Old and New Guard and the Yavapai: the commensuration that it required and the consequentialist causal logic on which it was based. Commensuration is a process in which properties normally represented by different units are expressed according to a single, shared metric. While in everyday life we value things in multiple forms, rational choice decision making requires that different dimensions of value be integrated, through a series of trade-offs, into a common metric such as price or utility. In public policy, cost-benefit analyses are the most common method for integrating disparate values. Commensuration organizes information so that it is easy to grasp and compare. It transforms qualitative differences into quantitative ones, where differences are expressed as magnitude on some scale. The commensuration of values assumes that value is relative: value can only be measured or expressed in terms of its relation to something else. As a prerequisite to rationality, commensuration excludes the possibility of things whose value is derived from or best expressed as incommensurable.<sup>24</sup>

Members of the New Guard believed that the commensuration of disparate impacts and people's judgments about the relative significance of these impacts would improve decisions in several ways. It would simplify by eliminating extraneous information that could easily overwhelm people. In integrating the relevant information, it would make it easier to make comparisons across alternative plans. This would allow for more precise judgments. Commensuration would also force people to confront the hard trade-offs that complex decisions like this one inevitably involve. Different strategies for commensuration were used in different parts of the investigation. In the economic analysis, impacts were expressed as prices. In the social analysis, a "Social Well Being Account" was created that quantified the cumulative social impacts associated with each plan, including the forced

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22. For more detail on why the New Guard was drawn to rational decision making as a way to resolve the Orme crisis and establish themselves inside the agency, see Espeland 1998, 135–76.

23. Espeland 2000 gives more detail on the relations between democratic practice and the New Guard's rational decision procedures.

24. The significance of commensuration is described more fully in Espeland and Stevens 1998. Insightful critiques of commensuration as a mode of valuing are found in Raz 1986, Anderson 1993, Radin 1996, and O'Neil 1993.

resettlement of the Yavapai. Public values were commensurated in an analysis that measured people's preferences and constructed utility functions that were used to determine which plans best maximized people's values.<sup>25</sup>

Implicit in NEPA guidelines for preparing EISs, and explicit in the New Guard's interpretation of NEPA, was the type of causal logic that philosophers call consequentialism.<sup>26</sup> The impacts of federal policy are measured or expressed based on the consequences associated with alternative plans. In CAWCS, an impact was expressed as the difference in some "decision factor" that could be attributed to changes resulting from the implementation of a given alternative. So, for example, "Indian Relocation" was one of 14 decision factors that was "measured" for each of the eight alternatives evaluated. Consequentialist logic makes it difficult to express relationships that cannot be easily converted into causal connections. While the New Guard understood their models as objective, scientific techniques for improving decisions, the Yavapai were less sanguine. The New Guard's methods did not seem neutral to them.

## THE YAVAPAI RESPOND: RESISTANCE AND REAPPRAISAL

Land figures prominently into Yavapai's understanding of themselves. Residents believe that being Yavapai involves having a relationship to this particular land, land that their ancestors also had a relationship with, land that their ancestors had fought to retain. Residents describe this relationship as a mutual, dialectical one that transforms the individual and the land. As one man expressed it,

. . . from the land, that's where life comes from. The Indian knows that his land and life are interlinked, that they are one unit. Without the land, the Indian cannot survive and without the Indian, the land cannot be land, because land needs to be taken care of in order to survive life. (Interview July 1981, as quoted in USBR 1982b, 2–41)

Another man explain his commitment to land this way:

[White people] don't know how much we love this land, how we understand this land. They don't know that we have put all our life

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25. The alternative plans being evaluated included three versions of a confluence (Orme) dam, as well as plans that combined development at multiple sites: building new dams at different sites, rebuilding dams at current sites, or raising existing dams. One alternative involved doing nothing. For more detail on the alternatives analyzed in CAWCS, see USBR 1982b. These analyses are described in USBR 1982b, USBR 1982a, USBR 1982c, and USBR 1981a, 1981b, and 1982d. See Espeland 2000 for more detail.

26. See Bernard Williams's (1985) illuminating discussion of consequentialism.

into this land. They don't know this and they don't try to understand what we're trying to explain to them, why we don't want to move, why we can't move . . . this is our homeland and we love this land. (Interview July 1981, as quoted in USBR 1982b, 2–41)

Yavapai residents believed that since land was unique and distinctive, it was wrong to treat land as a commodity or to make it commensurable with other valuable things, just as it would be wrong to attach a price to a child or a spouse. In threatening their relation to their land, residents believed that Orme Dam threatened their collective identity, their cultural legacy, and their future. Pricing their land was akin to creating a market for their culture, for their “selves.” One young man put it this way: “If we took the money we could not be ourselves . . . and we could not live with ourselves” (as quoted in Espeland 1998, 205). Understanding what it meant to “be Yavapai” was premised on their understanding and appreciating land as unique, as distinctive, or in the terms of the New Guard, as *incommensurable*. To accept money or new land as compensation, or even as an appropriate expression of the value of land, contradicted their perception of themselves. Believing in the incommensurability of the land is an essential component of knowing how to relate to land, and this, in turn, is critical for knowing how to be and act like Yavapai.

Land, for the Yavapai, is what the philosopher Joseph Raz (1986, 345–57) would call a “constitutive incommensurable”: a special category that groups together things that are intrinsically valued and that are therefore incommensurable with other types of values. It is “constitutive” because the significance of its incommensurability stems not simply from defining a particular social or cultural boundary but in helping others to know how to act or treat that which is defined by that boundary. But the New Guard’s decision procedures could not incorporate incommensurable values, and so the New Guard’s mode of valuing contradicted the Yavapai’s understanding of themselves.

Neither could the New Guard’s models accommodate history in a meaningful way. The meaning of their land and their ties to it are defined historically for the Yavapai. The threat of removal has been the central theme of their history since white encroachment 150 years earlier.<sup>27</sup> The Yavapai had endured a brutal resettlement in 1875 that killed and maimed many. Yavapai residents believed that knowing this history was crucial for understanding their commitment to this land, for appreciating the stakes of the Orme decision for them. But history does not lend itself to the causal logic of consequentialism that captures its “impact” on the future as expressions of change in discrete decision factors. Historical significance could be

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27. For a more detailed account of Yavapai history and how it shaped present conditions, see Mariella 1983, Khera 1978, and Espeland 1998, 185–205.

invoked to justify a higher price for the Yavapai's land than it would receive on the open market or the greater weights attached to the decision factors selected to convey the impacts of forced relocation. Nevertheless, this is an abstract, inaccessible use of history that does not express what residents thought was crucial to know about their past.

Another way that Yavapai leaders believed that the framework distorted the stakes of decision was its exclusion of its moral dimensions. Just as it hard to transform history into the logic of consequentialism, it is difficult to pose ethical questions within a framework rooted in causal predictions about future states of affairs. Yavapai leaders argued that this decision was, fundamentally, a moral decision. The federal government's legacy of broken promises and genocidal policies and of forcing indigenous groups, once again, to bear the costs associated with others' gain were moral issues that they thought crucial for understanding both the context for, and the effects of, their proposed forced resettlement. The consequences attending the government's breaking yet another promise to the Indians is hard to capture as measured differences in future states attached to alternative water policy. As a result, the moral implications of this decision were excluded from the formal decision framework, and moral language was not used in the decision documents. This neglect reinforced the Yavapai's determination to represent themselves in their own terms.

## TRANSFORMATIONS

Culture that is taken for granted is lived. It does not require a label or demand an articulate defense of itself. The Yavapai's understanding of themselves as a distinctive and endangered cultural entity already reflects past encounters, prior accounting, and earlier mediating structures that shaped their relations with settlers, soldiers, missionaries, and Indian agents. Their distrust of the government's capacity to treat them fairly or to represent them accurately was rooted in their experience and recounted in their history. One consequence of this distrust was their insistence on using means other than the formal investigation to represent themselves and make their positions known.

In the struggle over Orme Dam, residents understood how politicized were the terms of their distinctiveness; they knew that controlling these terms was part of the contest. Better than the Old Guard, they understood that frameworks mattered. Their defense of their difference responded to the Old Guard's assumptions that assimilation had erased their distinctiveness or that they should be happy to take the money. In speeches and interviews and public meetings, their leaders insisted that they could not sell what was sacred. As one man explained: "We cannot compromise our

principles, our birthright, our integrity. How do you negotiate honor? We will never negotiate" (Casserly 1981, A-5).

They also responded to what they saw as the biases of the New Guard's investigation. The Yavapai's strategies involved trying to put back into the politics that which the New Guard's rationality had excluded. The Yavapai may not have convinced the bureaucrats of the narrowness of their framework's categories or the limitations of their logic, but a practical understanding of these failings informed Indian resistance. Residents re-enacted, as protest, their excluded history. In their meetings with officials, they reiterated the moral implications of the decision. As one man asked, "Where in all these studies do they say 'You shouldn't break a promise?'"<sup>28</sup> And in their speeches, they recounted the incommensurability of their culture. In explaining why their land could not be expressed as price, why their removal from it was different than relocation of white people, and why the moral and historical dimensions of the decision should not be stripped away, Yavapai participants reasserted the political nature of what the New Guard had tried to make technical. And this was both empowering to them and persuasive to others.

In reacting against other's representations of them, Yavapai people reappraised the nature and terms of their difference. Years of being forced to publicly defend their uniqueness has inevitably shifted residents understanding of themselves. One woman asked me during the middle of the controversy, "Why can't we be left alone? Do they want us to go away, to make *us* extinct?" (Field notes, 18 Aug. 1981). Her sense of her community as an endangered cultural entity, analogous to other endangered species threatened by Orme Dam or by development elsewhere, suggests how environmental issues have influenced her thinking. While disentangling this influence is difficult, the public controversy over Orme's devastating ecological impacts (which NEPA shaped directly), as well as the Yavapai's close ties with their environmental allies, no doubt left their mark. Many Yavapai residents gained a new articulateness about their differences, a greater self-consciousness about what their culture entails, and a wariness of letting others represent their culture. And now Yavapai identity includes a strong sense of being political and being effective since, in the end, the Indians won. Orme Dam was defeated in November of 1981 when James Watt, Ronald Reagan's controversial secretary of interior, announced his support for a water development plan that did not include a confluence dam.

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28. Espeland 1998, 208–209. The issue of what was fair came up often at public meetings. As one supporter said, "The real issues is taking other people's land. . . . We must consider fairness and equity in making this decision. The problem is that equity is not considered on a par with the profit motive" (USBR 1981a, A-6).

The Yavapai remain at Fort McDowell. The anniversary of Watt's decision is an official tribal holiday, commemorated annually in a week full of festivities that culminate in a joyous powwow. Community members, their friends and supporters, along with representatives of tribes from across the West, sing, dance, run, feast, and offer prayers of thanksgiving for what is known as the Orme Dam victory. As part of the festivities, the tribe provides a sumptuous dinner to all who attend the powwow. During one of these dinners, one mother told me as she gestured around the reservation, "I don't want my kids to ever take this for granted."

Leaders in the struggle are heroes of the reservation and have been honored accordingly; buildings are named for them, and they serve as grand marshals during the annual celebratory parade. Those who were born long after the conflict ended are regularly reminded of its historical significance when they wear the commemorative T-shirts, march in the parade, dance at the powwow, and are regaled with stories by their parents, aunts and uncles, and grandparents. At the annual pageant in which the Fort McDowell princess was crowned, young girls, in the brief biographies they had written to introduce themselves, emphasized their ties to family members who fought the dam. And young people on the reservation know that the casino that has brought the tribe so much prosperity is located on land that Orme Dam would have condemned.

Residents are relieved that the intense publicity surrounding the controversy is over, yet the political profile of the reservation is greater than it once was. Activities that once would have gone unnoticed are more likely to be reported as regional news, a mixed blessing. Having met regularly with local and state leaders, the political networks of Yavapai leaders have expanded. The political education that residents received have also left its mark. Many residents became adept at giving speeches or interviews or organizing rallies. When local politicians threatened the reservation's gaming enterprises in 1992, residents were able to mount an extremely effective protest on short notice (Laughlin and Lieberman 1992, 3; *Mesa Tribune* 1992, 14 May, A-1). The Yavapai's success in the Orme conflict is well known among other western tribes, and they offer inspiration and support to other native groups involved in similar struggles<sup>29</sup>

The decision to build Plan 6 instead of Orme Dam was a victory for the New Guard, as well as for the Yavapai community.<sup>30</sup> Their success in having restoring the agency's sullied reputation, in resolving the bitter conflict over

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29. As one Indian activist said, "what these people have done is an example to other tribes who can now say, 'By God, if we get together and don't give up, we can win too'" (Blundell 1981).

30. Plan 6 called for raising an existing dam, Roosevelt Dam, tearing down an existing and building a new dam near the old site, and building one new dam, Cliff Dam, on the Verde River. The latter was eventually eliminated in response to threats of lawsuits from environmental groups.

Orme Dam, and in helping orchestrate a decision that would stay decided, something that 40 years of politics could not accomplish, made them organizational heroes. The New Guard's investigation had produced an outcome that satisfied nearly everyone. For about the same amount of money, Plan 6 provided the flood control, power, and regulatory storage that Phoenix wanted; it allowed the agency to build and re-construct several dams and helped to complete CAP; and it avoided the most destructive ecological effects and spared the Yavapai. CAWCS was a professional triumph that propelled the New Guard's careers. Decisions are now made differently with the bureau, and their success helped shape this change. The decision procedures they devised for CAWCS are now well institutionalized within the agency. Some members are widely recognized as expert planners and as mediators and have been called upon to broker other important decisions, both internally and outside the agency. Public participation is a routine part of agency project budgets, and expertise in it is a valued resource.

But CAWCS was a personal triumph for the New Guard, as well. It was a vindication of their values. Where initially the New Guard's models were good ways of organizing information or useful tools for solving practical problems, their investment in them deepened over time and they came to embody much more. They became symbols of the potential of good government, the capacity of science to inform our decisions and resolve our conflicts, the virtues of democracy. CAWCS became a powerful symbol of the New Guard's value. As Allan explained to me:

When we started [CAWCS] I wouldn't have bet a quarter on the chances of pulling this off. It was such an incredibly improbably set of things. . . . When people say, "The hours you put in, is it really worth it?" Every once in a while, you better believe it. That's what public service is all about. It's about every once in a while being on the right side with the right tools when it really counts. (As quoted in Espeland 1998, 168)

If the Yavapai were empowered and the New Guard vindicated by the decision not to build Orme Dam, for the Old Guard it felt like betrayal. Nearly 20 years later, several have died and most others are retired, but those still left still mourn Orme Dam. Their bitterness reveals the depths of their commitment. The product of their tenure in the BR and the potency of its ethos, their investment in their dam made it singular and personal for them. No longer a means for accomplishing some desired end, Orme was transformed into a substantive value, something intrinsically desirable. Symbolic of their work and their agency, the demise of Orme was for them a private loss as well as a public humiliation. But members could not express or defend it as such. Unlike the Yavapai whose defense against Orme was based on their claiming their land as a substantive value, a claim they

supported by invoking their authority as cultural beings, the Old Guard could not muster such claims. Their authority as engineers and bureaucrats was impersonal. Steeped in the language of efficiency and formal rationality, identity politics was a discourse unavailable to them. They could not claim, even in private, to love a dam. The New Guard, in having appropriated the language of rationality and upped its ante, left the Old Guard no language with which to defend their dam. They might privately challenge the other experts who had discredited their dam—the sociologists, the biologists, and the planners—but since their own authority depended on their specialized technical expertise, these charges left them vulnerable and would have been easily rebutted in public.

The end of Orme reinforced for the Old Guard the sharp line dividing between what they now see as the “real” bureau that they worked for and the impoverished agency it had become. As one sad old man told me, “When I went to work for the agency, it was considered the finest engineering organization in the world. Now it is in shambles. Its glory days are over.” The “old” bureau built proud structures that endured; the “new” bureau, gutted by reorganizations, reductions, and retirements, was sold out by leaders who no longer believed in its mission. Members of the Old Guard feel sorry for young engineers who will never know the thrill of seeing their projects built, of creating something powerful and permanent, of changing the world.

### NEPA AS A STRUCTURE THAT MEDIATED THIS ENCOUNTER

For the Old Guard, the defeat of Orme signaled the end of their era in the agency. NEPA, as the New Guard interpreted and implemented the law, rationalized the agency and enlarged its constituencies, processes that eroded the Old Guard’s autonomy. In forcing the BR to publicly confront their opponents and to incorporate their views into their planning, NEPA also provided members of the Old Guard with a new perspective on themselves. No longer could they take for granted the premises of their agency’s organizational culture. In providing a forum for challenging these premises and in providing techniques for separating their preferences from the person, NEPA demonstrated the relativity of their worldview and provided a more sensitive barometer of their support or opposition. For members of the Old Guard, the encounter forced them to acknowledge, for the first time, that what they had imagined as shared and obvious was, ultimately, contingent, contested, even fragile. They had faced opponents before, but this opposition could be explained away as politics, bargaining, the necessary sacrifice of the few for the many, or as the irrational wishes of zealots. What was different this time was that explanations based on outliers and

exceptions no longer held sway in face of widespread, organized opposition. Members of the Old Guard were now forced to confront a generalized sense that the consensus over their work had somehow eroded. Their power, their organization, their profession, and the dense, exclusive networks among their loyal supporters had kept them from noticing that the world had changed in ways that challenged their authority and their comfortable assumptions. In the face of such dismaying changes, the Old Guard's only recourse is nostalgia.

For the New Guard, the relativity of worldviews was given. As marginal participants in what they experienced as a hegemonic organizational culture, they did not presume universal goals or values. They accepted diversity and democracy as legitimate goals, ones that made conflict inevitable. Their challenge was to offer access, representation, and mediation in their efforts to construct a new consensus from divergent interests and values. Their crisis was to do this in a polarized, public context. Relativity was also fundamental to the New Guard in their strategies for negotiating diverse information and values. Commensuration is premised on a radical relativity that reduced all value to a dimension of magnitude, leaving no conceptual room for incommensurable categories. What had been universal for the New Guard was the applicability of their version of rationality. Their commitments to this form of rationality became a substantive value. Their zeal in promoting it makes sense only if one understands how their investments in rationality became personal, as well as intellectual and material. Their confidence in its capacity to process diversity fairly and uniformly did not permit them to see, at first, the unequal effects of its formal, procedural equality.

NEPA created the New Guard's positions and the crisis that gave rise to their power. A loose coalition of outsiders, they were united by their irrelevance. As they sought each other out for support in a hostile organization, NEPA offered a reason to affiliate and a niche. NEPA provided the general framework that they would make more rigorous, embellishing the authority of law with that of science, rationality, and quantification. They had staked their careers on creating rational procedures and on making them work, and they had succeeded.

Nostalgia was not exclusively the province of the Old Guard. On a cool November weekend in 1991, some members of the New Guard gathered at the Fort McDowell Reservation to attend the annual Orme powwow. They were there to mark the tenth anniversary of Watt's decision, to commemorate CAWCS. CAWCS had been their chance to fuse their intellectual and political commitments, to open up the agency to new constituents, to enlist rationality to expand democracy. The Orme controversy had given them a venue for making government service seem noble to bureaucrats who often felt belittled by the label. It was only long after the event

when many finally realized how much it had meant to them, how singular it had been. As one woman explained: "It was the best thing I'll ever do. Too bad I was so young" (field notes Nov. 1991).

Over time, some members of the New Guard have become more circumspect about their techniques. Some began to question the universal applicability of their version of rationality. Some expressed their reservations about the costs and consequences of commensuration by suggesting that some things should not be subjected to the trade-offs their procedures required. For one man, the rights of indigenous peoples should be exempt from such calculations. For at least some members of the New Guard, their encounter with the Yavapai prompted their recognition of the limitations and bias of rational procedures in representing some parts of the world. Some came to appreciate the power attending these forms for reasoning and the incommensurability of culture. For members of the Yavapai community, the relativity of worldviews was a lesson learned long ago from earlier, painful encounters. These experiences had required an accounting of themselves in their efforts to appeal to powerful, incomprehensible others who coveted their land and wished for their dispersal or, in some cases, their elimination. In terms they could hardly comprehend, much less control, they were forced to defend themselves as civilized and peaceful to violent and often corrupt others. They were required to demonstrate their willingness to erase their difference. These efforts had required an accounting of the white man, whose treatment of them, at times, was hard to reconcile with humanity. In retelling their history of genocide, forced resettlement, and broken promises, community members still speculate about what sort of persons could act this way.

As time passed, the Yavapai explanations of themselves, and of those who still wished to take their land, changed in ways that reflected their experience with new forms of threat. During the Orme struggle, residents described white men as "loving to count things that aren't there," as unable to "tolerate freedom," the freedom of undammed rivers, of soaring eagles, or of people who insist on thinking differently (Espeland 1998, 216). Their accounts of themselves now emphasized their distinctiveness, in terms that contradicted others' bureaucratic representations of them. The Yavapai came to see that state power could be resisted by mobilizing culture and identity as political categories. NEPA had created for the Yavapai, not just standing in the Orme decision, but standing of a particular sort: they became bearers of social and cultural impacts. In reacting against the way the New Guard represented this standing, against the imposition of an instrumental rationality that they believed repudiated their culture, they saw themselves from a new vantage point. Understanding that the investigations of the state are never neutral, in response they constructed a portrait of themselves and of their culture that was durable enough to withstand the

scrutiny, the attacks, and the quantification of bureaucrats. Their irony is, of course, that once the mobilization of their difference, of their cultural identity, is understood as strategic, its logic approaches the instrumental rationality they were reacting against.

In comparing these three groups, an interesting relationship emerges among the procedures of the New Guard, the decision outcome, and its legitimacy. For the New Guard, their faith in the legitimacy and autonomy of their procedures was such that when their procedures told them which plan maximized their preferences, they endorsed that plan. In some cases, this meant changing their minds about what they wanted. The procedures determined the legitimacy of the outcome, as rational choice theory might predict. Although the Yavapai obtained the outcome they desperately wanted, they never accepted the legitimacy of the "white man's" procedures. For them, the outcome did not determine the legitimacy of the procedures. The obverse was true for the Old Guard. When the New Guard's procedures suggested that an alternative to Orme could accomplish as well the BR's formal goals of providing flood control and water storage, without the cost and conflict of the forced relocation of the Yavapai, rather than diminishing their dam, this discredited the procedures. Their faith in Orme Dam was impervious to the New Guard's rationality. As one man said:

The reasons why Orme Dam got defeated were emotional, not factual. I hold that very dear. Orme Dam was still the best answer when all the factors were weighted. . . . From an economic, social and efficiency point of view, Orme's the best. The social evaluation said the Indians would be devastated by Orme. I don't believe it. . . . The Fort McDowells would have been very happy to have that lakefront property. (Interview Nov. 1989)

The influence of NEPA was fundamental in this dispute, structuring relations among the Old Guard, the New Guard, and the Yavapai in both obvious and indirect ways. The decision became an "encounter" when NEPA forced federal agencies to expand who could participate in their decisions. For the first time in nearly 40 years, the Yavapai were recognized as relevant participants in the decision over the future of their land. NEPA penetrated the insularity of the Old Guard's engineering ethos, revealing as bias a worldview they had taken for granted. In requiring the analysis of alternative plans, a compromise emerged that would spare the Yavapai. Had the decision been between building a confluence dam or doing nothing, the Yavapai would have lost. Instead of understanding themselves as effective political actors, as they do now, their failure to protect their land and culture could easily have been translated into an overwhelming sense of their political impotency. The inclusion of variable alternative policies also demonstrated that, for the Old Guard, the goals of water development had

become an abiding interest in Orme Dam. For bureaucrats, this was a hard position to sustain publicly.

NEPA also explains the origins of the New Guard. Their collective identity as planners and analysts emerged only gradually and in tandem with their "interest" in rationality. Neither the New Guard's identity or their interest in rational decision models could have been predicted at the onset of this encounter. NEPA, as the New Guard interpreted it, may have proven objectionable to the Yavapai, but the law created a political forum for their participation. In reacting against the way that NEPA and the New Guard represented them, they mounted an effective defense of themselves. The temptation to make interests a premise of politics allows scholars to avoid the often difficult challenge of disentangling how groups come to see themselves as having an interest and defining what that interest is. The risk of this for sociolegal scholars is missing some important effects of law.

In thinking more generally about how law structures encounters among groups, it is useful to unpack just what sort of "standing" laws can confer. NEPA vastly expanded which groups would be party to decisions. It offered standing in the conventional sense that aggrieved parties had recourse to the courts, and this created a crucial, public audience for administrative decisions. The main effect of this in the Orme decision was to inspire the agency to strict procedural compliance with NEPA. NEPA also created a distinctive form of standing for groups: that of the bearers of social impacts and the holders of relevant preferences and values that must be accounted for. While this form of standing does not always translate into influence, as other court cases have attested, being defined as relevant is a crucial first step to power.

Law also offers less formal forms of standing, for forms of knowledge as well as for people. NEPA defined new disciplines and new experts as pertinent to administrative policies. In the Orme decision, NEPA created groups and required that these groups confront, make sense of, and even represent one another. Such confrontations were needed in order to establish and measure impacts, implement public participation requirements, and vet draft documents. In initiating and ordering contact between groups, law set in motion chains of influence that have endured: in the powwows 20 years later that celebrate Yavapai efficacy, in a revitalized bureaucracy that makes decisions differently, or in the Old Guard's memories of better times.

Encounters render the tacit, explicit. They force actors to construct discursively what formally and tacitly had simply been "the case." In doing so, actors become more self-conscious, more articulate, and their consciousness becomes accessible for interpretation. Our efforts to mobilize our history in politics or to preserve it in memory as nostalgia alters our ties to the past, since meanings cannot be fixed and identities cannot be frozen. Encounters are occasions for scholars and participants alike to confront and

make sense of the relativity of worldviews. In this encounter, it evoked the unsettling experience of apprehending either explicitly or in a less conscious, more tacit mode, the tenuousness of one's assumptions, the complexity of interpretation, and an appreciation of the hazards of translation for different participants.

To conclude, I want to emphasize the usefulness of conceptualizing law as a mediating structure that can potentially transform the identities and interests of the groups it brings together. Certainly this is not the only way one should think about law, and not all encounters are as structured by law and as amenable to this approach. Yet, understanding how assumptions about law, and assumptions implicit in law or in its interpretation, shape who and how actors negotiate in complex political and economic arenas is important for appreciating the varied forms and effects of law's power. As this case demonstrates, the influence of law took many forms with varied consequences. Law was a powerful stimulus of instrumental rationality, which transformed not just what to value but how to value it. In prompting commensuration, law reconstructed cultural and organizational boundaries. In doing so, it precluded certain kinds of identity and certain kinds of bureaucratic and legal subjects, while constituting others. In violating conceptions of identity, it prompted their reappraisal and renewal. How a law structures encounters, of course, depends on what sort of law it is and on the other kinds of structure people bring to encounters. As my analysis demonstrates, responses to law vary and this variation is mediated by power, position within an agency, ideology, history, and past experiences with law. Patterns induced by law become part of the repertoire for interpreting, implementing, and reacting to law. It is important to emphasize that the effects of encounters are ongoing dialogues. In this sense, the boundaries of encounters, like those of most significant events, are hard to define and impossible to hold still. In apprehending law's power in these terms, we can appreciate its possibilities, its constraints, both its ephemeral and enduring effects, and perhaps most importantly, its subtlety.

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