

Finding Common Ground

Governance and Natural Resources in the American West

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Preface

This book focuses on the growing problems of governance in the United States and on potential means of alleviating them. The problems are familiar: more single-issue politics and gridlock in Congress, more breakdowns in administrative control and accountability within the executive branch, and more litigation over public policy in the courts—as well as persistently low levels of public trust in the federal government since the 1960s. Relatively few Americans, however, have appreciated the potential of community-based initiatives to help resolve some problems of governance. Such initiatives have arisen during recent decades in response to specific, unresolved issues of local scope in different policy areas nationwide. Some initiatives already have demonstrated their potential by finding common ground on policies that advance the common interest. Nowhere are the problems of governance and the potential of community-based initiatives more apparent than in natural resources policy in the American West, where the federal government has jurisdiction over vast public lands.

The purpose of this book is to help those involved understand and realize the potential of community-based initiatives—both to advance the common interest through innovative policies on particular issues and to contribute toward reforms that adapt governance in the United States to twenty-first-century social conditions. We take the common interest as the appropriate aim of governance in a democracy. From this standpoint, the first chapter documents general problems of governance in natural resources policy and in the contemporary United States, introduces community-based initiatives as responses to those

problems, and clarifies the potential of such initiatives as possible solutions. The next four chapters present case studies detailed enough for readers to make their own assessments of these claims and a strategy for proceeding. The case studies are:

- Water management and the Upper Clark Fork Steering Committee in Montana
- Wolf recovery in the northern Rockies
- Bison management in greater Yellowstone
- Forest policy and the Quincy Library Group in northern California

The concluding chapter develops and illustrates the strategy of harvesting experience from these and other cases to make the most of community-based initiatives. For this purpose, we suggest changes in the policies of those most directly involved: participants in community-based initiatives and their supporters, including foundations; interest groups established in and around the federal government; and researchers and educators who advise practitioners on natural resources policy and train the practitioners of the future.

For those concerned about governance in the United States, we clarify how community-based initiatives, along with campaign finance and other options, can bring about reform. We frame contemporary reform in historical perspective, emphasizing the period from 1877 to 1920, when American bureaucracies expanded in response to problems of policy and governance arising from industrialization, urbanization, and concurrent changes in social conditions. In effect, Americans created a new system of governance under the constitutional framework—and may be doing so again, a century later, in response to continuing changes in our society.

For practitioners in natural resources policy, we suggest how community-based initiatives might be utilized. New or emerging initiatives can adapt the experience of “model” initiatives—those that have succeeded in advancing the common interest in circumstances similar to their own. Government officials can rely on successful community-based initiatives to compensate for bureaucratic constraints on their involvement in politics and policy innovation. Environmentalists can encourage community-based initiatives to do what government cannot—propagate the land ethic, as Aldo Leopold urged a half-century ago.

For researchers and educators, we suggest a bridge beyond the remnants of scientific management from the Progressive era to adaptive management, which will require contextual, problem-oriented, and

multi-method inquiry. The requisite intellectual tools are not widely known among specialists in natural resources policy, but they are available in the policy sciences—a distinctive tradition that was initiated by Harold D. Lasswell, Myres S. McDougal, and their collaborators in response to the coming of World War II. Since then the tools of the policy sciences have been applied to a vast array of problems in policy and governance. We continue the tradition.

This book culminates a project funded by the Henry P. Kendall Foundation. The project began in June 1998 and sponsored a workshop conducted by the Northern Rockies Conservation Cooperative in Jackson, Wyoming, in September of that year. The workshop included the five coauthors, practitioners involved in the four cases, and other policy scientists and practitioners. The project also supported a policy seminar entitled Governance and Natural Resources at the University of Colorado in the fall semesters of 1999 and 2000. The seminar provided a forum to discuss drafts of chapters and other literature with graduate students from a number of disciplines and with visiting practitioners and scholars. Several working papers were presented at the Policy Sciences Annual Institutes in 1998, 1999, and 2000 at the Yale Law School.

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1 Problems of Governance

Ronald D. Brunner

On the morning of March 6, 1997, just north of Yellowstone National Park near Gardiner, Montana, Rosalie Little-Thunder heard gunfire while participating in a prayer service for the spirits of slain buffalo. It was “a crackling sound, like dead branches snapping,” she said. About a mile away she and several others found officials of the Montana Department of Livestock in the snow dressing out the bodies of eight Yellowstone bison they had just shot and killed. Little-Thunder later recalled: “It was like murder in the church parking lot during the service. . . . It was shocking, the disrespect they showed the buffalo.” When Little-Thunder asked if she and another Lakota Sioux could pray for the spirits of these bison, she was told to get off the private land where the carnage had occurred and get back onto the road. When she refused, she was arrested for criminal trespass. For the Lakota Sioux and other tribes organized in the Intertribal Bison Cooperative, saving Yellowstone bison—the last free-roaming bison herds in the country—means saving the spirit of the bison. “The buffalo took care of our ancestors for thousands of years, and now it’s time to return the favor,” said Mike Fox, president of the Cooperative.¹

At least several hundred and perhaps a thousand bison died inside Yellowstone National Park from snow and ice conditions during that winter of 1996–97, the most severe since 1943—and by one account the most severe since 1902, the year in which Congress ordered the bison rescued from extinction.² Another 1,084 bison roaming in search of forage crossed the boundaries of the Park into Montana, where they were shot and killed by officials from the Montana Department of

Livestock and the National Park Service. The officials acted under authority of an Interim Bison Management Plan designed to prevent the transmission of a disease, brucellosis, from bison to the cattle that graze on public and private lands around the Park.³ Cattle not certified brucellosis-free by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture are subject to costly restrictions in interstate and international commerce. Mike Gilsdorf, an APHIS veterinarian, argued: "We have our own mandate just like the park has theirs, and ours is to eliminate brucellosis. . . . If we drop our guard and let the diseased bison roam freely out in the countryside, we're inviting trouble."⁴

But shooting free-roaming bison had already brought trouble. "When people describe what's happening here as 'a national tragedy,' I don't disagree with them," said Park Superintendent Mike Finley. "The National Park Service is very uncomfortable with the position it finds itself in. We are participating in something that is totally unpalatable to the American people, and it's something we are not convinced that science justifies." Marc Racicot, governor of Montana, insisted, "We have never wanted this responsibility thrust upon the state of Montana. Our preferred alternative is not to harvest bison, but it is virtually the only option we are left with. . . . Yellowstone has an obligation to take care of its wildlife and it has been remiss." Some stockgrowers were disgusted at the toll of bison, even though they were supposed to benefit directly from this means of protecting cattle from brucellosis. Among them was Delas Munns, whose family has grazed cattle on public land just north of Yellowstone's west entrance for decades. "So many different federal and state bureaucrats are trying to decide what should be done with those park bison [that] it's become a pretty ugly, aggravating situation as far as I am concerned. I'm tired of it."⁵ An organized interest group, the Fund for Animals, urged tourists to boycott Montana. "The state of Montana has zero tolerance for buffalo, so we need you to have zero tolerance for Montana," read the Fund's full-page ad in *USA Today*.⁶ Two weeks after Rosalie Little-Thunder was arrested, Delyla Wilson was also arrested in Gardiner after splashing rotting bison entrails on Governor Racicot, who was participating in a public meeting on bison management with Agriculture Secretary Dan Glickman and Montana's two senators.⁷

Behind these events are three changes in policy, expressing the different mandates and interests of the Park Service, APHIS, and the state of Montana. This background serves to introduce problems of governance in natural resources policy and other policy areas—it also serves to introduce a potential solution. As we will see, bison management in

greater Yellowstone is a microcosm of larger problems of governance in the United States.⁸

A Microcosm

In 1967, the National Park Service acknowledged that management of Yellowstone bison as if they were livestock, that is, intensive management, was no longer appropriate.⁹ Instead, they had begun to implement a policy of natural regulation in the expectation that disease and starvation would control the size of Yellowstone's bison herds. But the herds increased, and with the increase more bison crossed the north and west boundaries of the Park into Montana in search of forage, especially during severe winters. In 1985, APHIS declared cattle herds in Montana and Wyoming brucellosis-free. But to protect those herds, APHIS pressured the Park Service to keep bison inside Park boundaries and sought to eradicate brucellosis from all wildlife in Yellowstone eventually. This was an extension to wildlife of its policy of zero-tolerance for brucellosis in cattle. Also in 1985, the state of Montana authorized hunting to help control the bison and to protect cattle. But there was vehement public opposition, especially during the winter of 1988–89, when licensed hunters and state officials killed 579 bison, animal rights activists waged a national campaign against the hunt, and the news media covered these events. In response to public opposition, in 1991 the state legislature revoked authority for the hunt.

Meanwhile, in September 1989, the National Park Service, under pressure, agreed to produce a long-term Interagency Bison Management Plan for greater Yellowstone, together with an Environmental Impact Statement (EIS), as mandated by the National Environmental Policy Act of 1969 (NEPA).¹⁰ A stated purpose of NEPA is “to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” The rules for achieving this purpose are primarily procedural. NEPA directs “all agencies of the Federal Government” to prepare an EIS when any “major federal actions significantly affecting the quality of the human environment” are proposed.¹¹ Publication of the draft EIS provides opportunities for public participation prior to decision on the proposed actions. But assessments of NEPA have been mixed. For example, according to one observer, “Exposed to the glare of unforgiving public scrutiny, many short-sighted, uneconomic, and unwise decisions have been derailed [by NEPA]; others have been revised to reflect public concerns and to mitigate foreseeable environmental consequences.”¹²

But the same observer also raised concerns that procedural compliance with NEPA has detracted from its larger purposes. Those purposes are not always served by procedural compliance alone. Bison management in greater Yellowstone is a case in point.

When the NEPA process was initiated in September 1989, it was expected to culminate in a long-term Interagency Bison Management Plan in 1991. Instead, state and federal agencies repeatedly postponed the draft EIS and managed Yellowstone bison under a series of interim management plans. Criticism increased from many directions. In 1997, for example, Mike Clark, executive director of the Greater Yellowstone Coalition, concluded, "Our appointed and elected officials have been unable and unwilling to even sit down together and talk meaningfully about the conflict, much less reach agreement."¹³ Early in 1998, Governor Jim Geringer of Wyoming stated, "We are no closer to resolution of the brucellosis problem with the different agencies of the federal government than we were ten years ago."¹⁴ The *Bozeman Daily Chronicle* later that year drew attention to the costs: "All that blood in the snow has attracted national media attention and pitted neighbor against neighbor in this area. It has fattened the wedge that divides the ranching industry and environmentalists, groups that in a more rational world would become natural allies. It has cost money, sweat and anguish." The *Chronicle* concluded, "The ten-year shouting match has gone on far too long. It's time to make a decision."¹⁵

In June 1998, the state of Montana, the National Park Service, and the U.S. Forest Service as lead agencies, together with APHIS as a cooperating agency, released the draft EIS.¹⁶ It listed seven alternatives, all of which called for more research and development of a safe, effective brucellosis vaccine for bison. The agencies' preferred alternative authorized capture and testing of bison north and west of the Park, slaughter of brucellosis-positive animals, quarantine of brucellosis-negative animals, and limited public hunting to keep the number of Yellowstone bison between 1,700 and 2,500 animals. The situation was summed up in a workshop in September 1998: "Where does this leave us? With options from separation of wildlife and livestock for risk management to eradication of brucellosis, and intermediate options like control of the Park boundary and control through hunting. We are caught in a litigation loop—each official plan generates lawsuits. We need extremely high-level politics to intervene to break out of the litigation loop."¹⁷ Why "extremely high-level politics" had not intervened was an important but unanswered question. Litigation is indeed a major alternative to the NEPA process when officials or citizens are frustrated within the NEPA process or are excluded from it. There have been at

least a dozen lawsuits on bison management and brucellosis in greater Yellowstone since 1985.¹⁸

The one-hundred-twenty-day public comment period on the draft EIS closed early in November 1998. Of the 67,520 comment documents received, about 70 percent endorsed a Citizens' Plan to Save Yellowstone Bison that had been formulated and promoted by a coalition of conservation groups. The groups took the initiative because they believed that they had been excluded from the formulation of the alternatives in the draft EIS. Following analysis of public comments received, the federal agencies proposed a "modified preferred alternative" for the final EIS. Discussions of that alternative led to an impasse between federal and state agencies and to the federal agencies' withdrawal from a Memorandum of Understanding that had been signed with the state of Montana in 1992 and incorporated into the settlement of Montana's lawsuit against the federal agencies in 1995. The federal and state agencies nevertheless agreed to attempt to resolve their differences through a court-appointed mediator. Mediation in the spring, summer, and fall of 2000 led to a slightly altered version of the modified preferred alternative that is called the Joint Management Plan in the record of decision on the final EIS.¹⁹ The record of decision, dated December 20, 2000, culminated the NEPA process begun more than a decade earlier.

Despite the stated purpose of NEPA and the considerable resources invested over that time, there has been little progress in finding common ground. The Joint Management Plan is less a resolution of the different interests represented by the state and federal agencies than another truce among them—prompted perhaps by exhaustion as much as anything else. Moreover, among the 3,888 who submitted public comments on the final EIS, nearly half objected to the deference given to cattle over Yellowstone's bison. According to the record of decision, "The majority of commentators expressing opinions on this subject (1,800 v. 2) indicated that it should be cattle rather than bison that are moved or managed to prevent contact and possible transmission of brucellosis. Part of the value of the herd to commentators was in its wild and free-ranging nature. Management practices such as capture, testing, slaughter, quarantine, corralling, radio collars, vaginal transmitters, etc. were considered antithetical to the concept of a wild herd by many commentators. Many (1,458) felt that all slaughter should be stopped."²⁰ Thus the central issue between the agencies' Joint Implementation Plan and a large part of the active public also remains unresolved.

Was there a better alternative, substantively and procedurally? A case can be made that a plan proposed in 1991 by the Bison Manage-

ment Citizen's Working Group in Bozeman might have avoided much of the divisiveness and expense and made some progress toward a resolution—if federal and state officials had taken the plan seriously.²¹ This proposal came closer in several ways to finding the common ground. Procedurally, the plan was the result of more inclusive deliberations by representatives of conservation, environmental, ranching, landowner, wildlife, sporting, and other interests in the greater Yellowstone area. The deliberations, which took place in weekly meetings over several months, were informed by the local knowledge of the representatives and by Native American and technical advisers. Substantively, the members of the Working Group signed off on the plan when they recommended it to the Superintendent of Yellowstone National Park in a letter dated May 15, 1991.²² They expected the plan to secure the common interest—which included, significantly, preventing brucellosis in cattle *and* maintaining free-roaming bison herds as much as possible. Practically, however, we do not know whether these expectations were valid, because the plan was not implemented, or even seriously considered, by the public officials who were nevertheless in procedural compliance with NEPA. But management techniques like those proposed by the Working Group had already worked around Yellowstone and Grand Teton National Parks in Wyoming. According to ranchers and conservationists living there, Wyoming's brucellosis-free status "is secure now because there is no recent history of brucellosis transmission from wildlife to cattle in [their] counties and because the ranchers in this area protect their cattle through vaccinations."²³

The bison management problem is a microcosm of larger problems of governance in the United States: the failure to clarify and secure the common interest through specific policies in natural resources as well as in other policy areas. In the American political tradition, it is difficult both logically and politically to justify policies that serve the special interests of the few over the common interest of the many. Contemporary Americans still accept Lincoln's commitment to "government of the people, by the people, and for the people" as a reference to all the people, not the select few. Similarly, Americans still pledge "liberty and justice for all," not for the select few. Under the doctrine of equal rights for all, Americans who demand fair consideration of their own interests cannot legitimately deny fair consideration to other, often competing, interests.²⁴ This is compatible with a commitment to human dignity for all, as expressed in the Declaration of Independence of the thirteen states of America in 1776 and in the Universal Declaration of Human Rights of the United Nations in 1948. In short: "The ideal of human dignity takes the entire body politic into consideration. It is not a matter

of giving a privileged few their freedom of choice but of striking a balance among the claims of all.”²⁵ But the common interest is now increasingly difficult to find within the complex division of authority and control among numerous parts of the federal government with distinctive mandates and jurisdictions, their counterparts in state and local governments, and the nongovernmental groups that lobby and litigate for particular economic, environmental, and other interests. This state of affairs motivates various kinds of initiatives aimed at improving governance and provides a comparative baseline for evaluating them.

The purpose of this book is to assist policy makers in improving natural resources policy and governance from a common-interest standpoint, through inquiry into the practical experience and potential of community-based initiatives like the Bison Management Citizen’s Working Group in Bozeman. A community-based initiative is composed of participants representing quite different interests who interact directly with one another over a period of time, in an effort to resolve an issue in the place where they live.²⁶ Within the broader context of established structures of governance—including interest groups, political parties, government agencies, legislatures, and the courts—the small scale and issue focus of a community-based initiative open up new opportunities for participants to balance or integrate their separate interests into policy that advances their common interest. For example, participants can engage one another face-to-face more easily and creatively, with a minimum of a priori constraints on procedures and outcomes. They can draw more upon local frustrations, knowledge, and leadership, among other resources at their disposal. And they can rely more upon collaborative strategies instead of adversarial ones. But no specific characteristic is clearly necessary or sufficient for the success of any particular initiative, and there is no fixed formula for the success of every initiative. Participants may or may not find a policy that advances their common interest, but the small scale and issue focus mean that they are more likely to accept responsibility for outcomes and to be held accountable by others within and outside the community. Avoiding the consequences of those outcomes, or hiding from others, are not realistic options short of moving out of the community.

If participants in a community-based initiative do succeed in finding a policy that advances their common interest, the initiative can mobilize support as the voice of the people on behalf of that policy within the broader context of governance in the United States. This support is often necessary to acquire formal authority and other resources to implement the policy. In this broader context, a community-

based initiative functions as an interest group, but it is one that represents an integration or balance among the multiple interests of a relatively small, place-based community. Thus it is a “multiple-interest group,” as distinguished from the conventional “single-interest group.”²⁷ An increased focus on community-based initiatives is justified by their significant potential to provide working solutions to problems of governance in our time. It should be emphasized at the outset, however, that some community-based initiatives will fail to advance the common interest of their own communities or larger communities; that alternatives to community-based initiatives sometimes may be preferred under the common-interest criterion; and that there can be no complete or permanent solution to problems of governance, especially amid changing social conditions that undermine old formulas for governance and generate new problems.

This chapter provides a rationale for the focus on community-based initiatives. The next section develops the concept of the common interest as the appropriate aim of governance in a democracy. Subsequent sections introduce conventional structures of governance in the American experience, review current problems of governance in America, and consider community-based initiatives among other reforms to ameliorate those problems. The chapters that follow elaborate problems of governance and the potential of community-based initiatives as working solutions through four case studies, including the case of bison management in greater Yellowstone. Harvesting experience from these cases and others, the concluding chapter suggests how the potential of community-based initiatives might be realized through changes in various policies—in particular, policies of participants in community-based initiatives and their supporters, interest groups organized in and around government agencies, and the researchers and educators who advise and train the others. These are the principal policy makers we hope to assist in improving natural resources policy and governance on behalf of the common interest.²⁸

The Common Interest

In the simplest terms, the common interest is composed of interests widely shared by members of a community. It would benefit the community as a whole and be supported by most community members, if they can find it. By definition, a special interest is incompatible with the common interest. It is pursued by some part of the community for its own benefit, at net cost to the community as a whole.²⁹ The continuing task of governance—in any community that respects equal rights

for all—is finding common ground on policies that advance the common interest. Of course, not all interests are equally valid or appropriate in clarifying the common interest; claims regarding the common interest depend on the specific context; and disputed claims are typically resolved by political means—not by the partial tests of the common interest like those reviewed below. But despite such complications, at least a tentative commitment to the common interest—or some alternative—is logically necessary to provide direction for natural resources policies and governance and to evaluate improvements in them relative to historical baselines. Any alternative commitment ought to be made explicit for consideration by other members of a democratic community.

To develop this notion of the common interest, let us begin with a basic question: What are “interests”? If the interests of community members are misconstrued as carved in stone—indivisible and immutable, like a monolith—the flexibility needed for finding the common interest is not apparent, and the whole notion seems absurd. To illustrate flexibility, reconsider the statement of Mike Gilsdorf, the APHIS spokesman, as an expression of an interest: “We have our own mandate just like the park has theirs, and ours is to eliminate brucellosis. . . . If we drop our guard and let the diseased bison roam freely out in the countryside, we’re inviting trouble.” This statement demands something of value from Gilsdorf’s perspective—that is, the elimination of brucellosis, or zero tolerance of the disease. The value demand is supported by matter-of-fact expectations: Gilsdorf does not expect the elimination of brucellosis to be realized if diseased bison roam freely; presumably he does expect it to be realized through “an integrated strategy of vaccination, testing, and the removal of test-positive animals” as proposed earlier by APHIS officials.³⁰ Gilsdorf claims that this is an interest shared with others who are identified with APHIS—the “we” in the statement—and not Gilsdorf’s alone. Similarly, any other interest may be shared to some extent or not, and it can be broken down into value demands and supporting expectations for evaluation: Is the value demand appropriate in terms of the larger goal values of the community? Are the supporting expectations valid in terms of the evidence available? To what extent is the interest shared? Raising these questions underscores the importance of flexibility in the reconsideration of interests.

Changing circumstances may also lead to the reconsideration of interests. APHIS’s core interest in the elimination of brucellosis is no exception. After the bison killings in the winter of 1996–97, the Council on Environmental Quality (CEQ) in the White House began to coordi-

nate the policies of “the federal family” of relevant agencies on behalf of the Clinton administration. Under these circumstances, APHIS accepted a low-risk definition of brucellosis transmission—in effect, the expectation that *some* diseased bison are *unlikely* “to invite trouble” by transmitting brucellosis to cattle. These are bulls, calves, and cows with yearlings roaming on public land after cattle leave their grazing allotments in the fall and before cattle return in the spring. (Brucellosis may be transmitted only through the birthing materials of cows.) Evidently, APHIS officials accepted demands that its policies come into closer compliance with policies of the administration, a demand supported perhaps by expectations that noncompliance could result in budget cuts, loss of jurisdiction, or other costs to APHIS. Like other agencies, APHIS has multiple interests associated with its mandate, including interests in protecting its resource base. When the multiple interests of agencies come into conflict as circumstances change, they provide another basis for flexibility.

Action on an interest may have significant consequences for others, even if the consequences are unintended or indirect. Hence the persons and groups involved tend to take one another into account in formulating their own policies. In other words, they interact—and if they do so with sufficient frequency and intensity, they form a community. APHIS could not easily ignore certain political consequences of its zero-tolerance policy after the CEQ began to coordinate and enforce administration policy. The Park Service could not easily ignore certain unintended consequences of its natural regulation policy after livestock groups and the state of Montana objected, and especially after the state filed a lawsuit. Various citizens also joined the community as bison border crossings, shootings, and other consequences of interim bison management policies in greater Yellowstone became significant for whatever those citizens valued. The formation of a community around an issue does not mean that its members feel good about one another or identify with the community. It means that they are interdependent enough that they find it expedient, if not necessary, to take others into account.³¹ When a community forms around an issue, there is a common interest at stake—whether or not members of the community can clarify and secure it through community policy.³²

At the core of the bison management community are state and federal officials and private citizens in greater Yellowstone who persist in investing more of their time, attention, and other resources in the issue than other people, because they perceive themselves to have more at stake. A job may be at stake for officials and lobbyists paid to represent their employers’ positions, for example, and basic moral responsibili-

ties may be at stake for people like Rosalie Little Thunder or members of the Fund for Animals. But there is nothing fixed about the boundaries of the community. Events may activate peripheral interests that are distributed more broadly, inducing other people to interact enough with the core participants to become part of the community, at least temporarily. In this way, the killings of Yellowstone bison by officials in the winter of 1996–97 had the unintended consequence of expanding the community well beyond greater Yellowstone when the news media reported them: people across the United States as well as abroad protested, and the CEQ in Washington intervened and began to coordinate the federal family of agencies through periodic meetings. Similarly, the Citizens' Plan crafted and promoted by the coalition of conservation groups in greater Yellowstone had the intended consequence of expanding the community involved in the issue: the Plan catalyzed the support of about 47,000 people who commented on the draft EIS in 1998.

Expansion of the community around such an issue raises the possibility that the common interest expressed in a policy proposed by the local community may differ from the common interest perceived by larger national or even international communities. Under these circumstances, which of "the people" should prevail? It is often assumed that the larger community should prevail on democratic grounds: if the policy in question affects interests outside the local community—especially the public lands in which all Americans have an ownership interest—then they ought to participate in making the policy decision.³³ But this is clearly an ideal that cannot be realized in practice. Everyone is affected by so many policy decisions, public and private, that no one can possibly participate in more than a small fraction of them. Moreover, not everyone's interests are equally affected by a given policy decision, and not everyone is equally competent to participate in it. So each of us economizes by participating only selectively in those accessible decisions where we have the most at stake and perhaps where we have some minimal competence as well.³⁴ In short, no democratic association can include all affected interests in its decision process, or even come close; any attempt to do so would lead to coerced participation and gridlock.

Which of "the people" should prevail? No theoretical answer is satisfactory in all cases. "The Principle of Affected Interests is very likely the best general principle of inclusion that you are likely to find," according to the noted political scientist Robert A. Dahl. "Yet it turns out to be a good deal less compelling than it looks." For reasons outlined above, "it seems obvious that the Principle of Affected Interests must

be curbed by the criteria of Competence and Economy.”³⁵ There are only pragmatic answers involving multiple forms of democratic association at different scales appropriate to the context. In the first of four pragmatic principles, however, Dahl concludes that “if a matter is best dealt with by a democratic association, seek always to have that matter dealt with by the smallest association that can deal with it satisfactorily.”³⁶ That tends to maximize competence and economy in the making of policy decisions—both important considerations amid the growing number and complexity of issues—if the smallest association does, in fact, deal with the issue satisfactorily. If the smallest association does not, dissidents have the incentive and opportunity to expand the issue by seeking additional support from a larger community. Conversely, if a larger association does not deal with an issue satisfactorily, dissidents in the smaller community also have the incentive and opportunity to expand the issue. This is what the coalition of conservation groups did in 1998, when it promoted the Citizens’ Plan to Save Yellowstone Bison in opposition to alternative plans negotiated by representatives of state and federal governments. Issue expansion is an informal supplement to formal mechanisms of democratic accountability, such as elections and bureaucratic controls.³⁷

In summary, there is a common interest at stake whenever people who act on their perceived interests also interact enough to form a community around an issue. But their perceived interests may be inappropriate or invalid in some instances, and their interests are subject to reconsideration through evaluation and confrontation with other interests as circumstances change. Hence, there is some flexibility to reconsider their separate individual interests and to find their common interest. The common interest, however, comprises interests shared by members of a community and cannot be taken as fixed or given or assumed. The common interest can only be clarified in the particular context through community decision processes, secured insofar as is practical through community policies, and taken as provisional pending changes in the interests and circumstances of community members. There is no objective or infallible formula for assessing the common interest in the particular context, just as there are no objective or infallible formulas for assessing justice, or the general welfare, or democracy.³⁸ But there are various partial tests, requiring judgment in applications, that may be used to discipline subjective assessments in particular contexts. Sufficient for present purposes are three tests of the common interest—procedural, substantive, and practical—that are imprudent to ignore and easy to apply.³⁹

The procedural test recognizes that inclusive and responsible par-

ticipation in the decision process serves the common interest. To apply it, consider whether the effective participants (officials and non-officials alike) are representative of the community as a whole. If not, community policy is less likely to reflect the interests of those excluded and is less likely to realize the potential for creative reconsideration inherent in the diversity of interests. Consider also whether the effective participants are responsible, in the sense that they are willing and able to serve the community as a whole, and can be held accountable for the consequences of their decisions. If not, these participants may serve various parts of the community at the expense of the community as a whole—contrary to the common interest. In bison management, the effective decision makers have been federal and state officials who formulate and approve bison management plans under the NEPA process. The litigation loop is evidence that some persons and groups in the civic sector considered themselves underrepresented in the NEPA process, and perhaps excluded from it, even though they also perceived themselves to have a lot at stake—enough to pay the opportunity costs of time, attention, and other resources diverted from interests other than bison management. They have been unable to hold the officials accountable for more than a decade.

The substantive test recognizes that the common interest depends on the valid and appropriate interests of community members. To apply it, consider whether a person's or a group's expectations are warranted by the evidence available. If not, discount the interest as assumed or invalid. An interest in eradicating brucellosis from wildlife in the greater Yellowstone area appears to be invalid if a conclusion of the National Research Council is correct: "It might prove impossible for various reasons to eliminate brucellosis from bison and elk" in greater Yellowstone.⁴⁰ An interest in preventing transmission of brucellosis from wildlife to cattle is valid if the experience reported by ranchers and conservationists in northwestern Wyoming is correct. Consider also whether the value demand is compatible with more comprehensive goals. If not, discount the interest as an inappropriate special interest. Zero-tolerance demands are inappropriate—whether for brucellosis in wildlife or for grazing allotments on public lands—if taken literally as demands to be sought without regard to costs in terms of other community values. It is not rational to ignore costs. Advocates of zero-tolerance demands also presume the power necessary to impose those costs on the community as a whole. It is not democratic to do so. Finally, consider whether participants representative of the community as a whole have signed off on a policy, indicating their expectation that the policy serves the common interest. If not, the

reasons for rejections may signal a need for improvement from a common-interest standpoint. But the common interest does not require unanimity. “Unanimity is a euphemism for minority veto power, in which the negative decision of one community member enforces policies on all.”⁴¹

The practical test recognizes that the common interest depends upon experience that corroborates the expectations of community members who approved the policy. Even a policy formulated through an inclusive process and accepted by an inclusive range of responsible participants may fail to corroborate expectations that it serves the common interest: like any person or group, the community as a whole may be mistaken about the expected consequences or the value demands integrated into a policy, and the mistakes may become apparent only through the experience that follows implementation of the policy. To apply the practical test, consider the experience that follows implementation in order to identify opportunities for improvements: Where are the remaining opportunities to make participation in the decision process more representative and more responsible to the community as a whole? What interests should be discounted as no longer valid or appropriate? What emerging or otherwise neglected interests should be integrated into the next community policy? As these questions suggest, specific opportunities to advance the common interest are assessed at the margin relative to a concrete baseline in the particular context—and not according to abstract ideals like the principle of affected interests that cannot be realized in any context. It is a matter of improvement, not perfection. Whatever the answers in the particular context, it is clear that the common interest is part of a continuous process of “balancing, accommodating and integrating the rich diversity of culture, class, interest and personality that characterizes the earth-space arena” as a whole, and many smaller arenas as well, including bison management.⁴²

These tests are not to be applied mechanically, as if they were necessary or sufficient to assess the common interest.⁴³ Competent and responsible people can arrive at different judgments about the common interest in a particular context like bison management in greater Yellowstone, even if they apply the same tests to the information available. The most fundamental reason is that each of us is boundedly rational at best: no one has the reasoning capacity and all the information necessary to understand the context completely, completely objectively, or once and for all. Each of us can only make a simplified judgment based on limited perspectives and information.⁴⁴ The implication is not to give up the search for the common interest on the fallacious assump-

tion that anything goes if *nobody* knows for sure.⁴⁵ “Anything goes” is hardly acceptable policy to those who have much at stake. Furthermore, the implication is not to accept zero-tolerance policy on the fallacious assumption that *somebody* knows for sure. Such policy is hardly acceptable to those who pay the exorbitant costs. Moreover, policy can be improved through inquiry and deliberation, in which differences among various informed judgments are integrated if possible and balanced if necessary in shaping community policy. This is “politics” in the best sense.

The notion of the common interest reviewed above is not merely academic. Something much like it emerged spontaneously from a discussion of the common interest by practitioners in a workshop on governance and natural resources in Jackson, Wyoming, in September 1998. The practitioners represented various professional perspectives, including forestry, environmental studies, law, mediation, psychiatry, and wildlife management. Workshop organizers, including the author, deliberately left the common interest open to interpretation in the letter of invitation: “The purpose of the Workshop is to develop better models for the governance of natural resources, based upon recent experience in selected cases. A better model is one that helps clarify and secure the common interest (not the special interests) of all those who are significantly involved in a specific issue.”⁴⁶ The discussion occurred just after the summary conclusion, “We are caught in a litigation loop in bison management.” This discussion is reconstructed in Figure 1.1 with comments numbered sequentially in brackets and identities disguised in accord with Workshop rules.⁴⁷

At the beginning of the discussion, APHIS’s demand for zero risk of brucellosis through eradication of brucellosis from wildlife is described in effect as a special interest: “So long as APHIS imposes their idea of the problem on everyone, no one else can realize their interest” [1]. After some clarification of APHIS’s interest, the common interest is defined in the abstract: “It’s the intersection of all the individual interests you are talking about” [4]. Moreover, it’s “not a thing; it’s a journey. It’s a discovery process, achieving things communally, not individually. The intersection might be the common interest at one point in time” [5]. Then a procedural test is applied in response to the claim that “the NEPA process is divisive” [5]: “Some interests are excluded. They are assumed to be untrustworthy” [6]. A substantive test is recognized in the comment that “some interests are not valid” [7] and that the validity of interests depends on “what problem needs to be solved” [8]. Unanimity is not required: “There will always be some special interests that cannot be satisfied. You don’t need everyone . . . but you

Figure 1.1. Practitioners Discuss the Common Interest in Bison Management

[1] A: Brucellosis is not the problem. The problem is the brucellosis-free stamp. The stamp is controlled by APHIS. APHIS says zero-risk of brucellosis is required for the stamp. . . . So long as APHIS imposes their idea of the problem on everyone, no one else can realize their interest. It's okay for people to disagree on the problem definition and have their own problems.

[2] B: There is some creeping incrementalism here. The administration is cracking down on APHIS. The presence of bison or elk is no longer enough to threaten [removal of brucellosis-free status]. What's behind APHIS's position? They have a successful mechanism [test and slaughter] for eradication of brucellosis from livestock, and they want to be part of completing the job. It was supposed to be completed in 1998. Test and slaughter is technically feasible for wildlife, but you would have to get every infected animal, and it could take 12 years even in a smaller park. Custer State Park went from 3,000 to 600 bison. Will the public accept it? It might cost \$30 million a year in Yellowstone National Park.

[3] C: What is the common interest—as opposed to the set of interests that comprise the public interest? Not an eternal truth, but a social construct that evolves over time.

[4] A: It's the intersection of all the individual interests you are talking about.

[5] D: The common interest is not a thing; it's a journey. It's a discovery process, achieving things communally, not individually. The intersection might be the common interest at one point in time. A linear process [like NEPA] doesn't work. When the government opens up an EIS, it's like a jack-in-the-box—people pop up. The draft EIS is a pretense. The NEPA process is divisive.

[6] E: Some interests are excluded. They are assumed to be untrustworthy.

[7] C: The common interest is not the sum of all interests. Some interests are not valid. Who gets to decide which interests are valid and which are not?

[8] A: The common interest doesn't have much meaning outside specific managerial issues. Which interests are valid? Ask what problem needs to be solved. [Then consider which interests can blow up the deal to solve the problem.] If they can blow up the deal, they should be at the table.

[9] F: There will always be some special interests that cannot be satisfied. You don't need everyone from every special interest, but you do need a critical mass or you can't claim that what you are doing is in the common interest. You don't have it if someone can block it.

[10] G: The difficulties come in applying the common-interest concept. For example, who specifically is in a position to block implementation?

[11] H: A's idea of "the common interest" excludes the powerless, voiceless, disenfranchised. [A agrees.]

[12] I: The bison issue will go on and on until the power structure changes. Then it might be solved. [He calls into question NEPA.]

[13] J: People will accept a decision if they feel they have been heard.

[14] K: Power is giving support.

[15] B: The stockgrowers stand hard and fast—theirs is the only way they will accept. The interests involved are unbounded. They include the futures market, and so forth, but global economic interests are largely irrelevant—only a few hundred thousand [dollars per year]. This issue will be decided at the local level. But arguments don't matter, so long as APHIS won't budge.

[16] A: The facts of the case are understood. The problem is that they don't matter. Ranchers have latched on to the bison issue because it's something they can do something about, keeping bison from leaving the Park. They can't control cattle being shipped from Canada or decreasing demand for beef. But the industry thinks it can keep the bison in the Park.

[17] B: APHIS has accepted all of the alternatives in the draft EIS. Montana is no longer afflicted by the conflicting policies of two federal agencies [the Park Service and APHIS]. Now Montana is victimized by veterinarians in other states [who put restriction on imports of Montana beef].

[18] J: The real problem is that Montana stockgrowers feel powerless. [A agrees.]

[19] F: Get the feds out of the room. Give the stockgrowers total control, but don't let them focus exclusively on brucellosis. What if four meetings were scheduled for the Montana stockgrowers to talk about their four biggest problems without feds in the room? They could be required not to talk about bison except in one meeting. Let brucellosis be first. Demonstrate to them that others are concerned about them. Set up a parallel structure outside the existing structure. Don't use the existing one. The existing one may not be working.

[20] A: I agree with F's proposal. But it needs a convenor, and leadership. The problem with this idea is that we need a convenor—someone who can get everyone to come.

Source: See Chap. 1, n. 17.

do need a critical mass or you can't claim that what you are doing is in the common interest" [9]. A practical test comes up in the subsequent effort to identify opportunities for improvement with respect to the common interest, based on assessments of experience to date. "The real problem is that Montana stockgrowers feel powerless" [18]. The proposed solution is: "Get the feds out of the room. Give the stockgrowers total control, but don't let them focus exclusively on brucellosis" [19]. The proposed solution depends on stockgrowers' other interests [15, 16] and on leadership [20].

A significant issue is left unresolved. The first practitioner asserted that participation should be inclusive of all those who can thwart an agreement: "If they can blow up the deal, they should be at the table" [8; see also 9, 10]. But another practitioner noted that this "idea of the common interest excludes the powerless, voiceless, disenfranchised," and the first practitioner agreed [11]. There are expedient as well as principled reasons why the weak and neglected should be included or

represented within practical constraints. “The ultimate consequence of tacit nonrepresentation in promotional activities is to create a revolutionary crisis of explosive protest.”⁴⁸ The short-term consequence may be lawsuits, civil disobedience, and other forms of protest. In bison management, as in other areas, leaders of interest groups organized in and around the agencies often prefer to deal with one another rather than with their constituents. The publication of a draft EIS does little to ameliorate the potential for protest or advance the stated purpose of NEPA if public comments are consistently ignored.

Structures of Governance

Clarifying and securing the common interest through policy decisions is the legitimate function and the criterion of governance in a democracy. Otherwise some interests of the people are arbitrarily excluded as a matter of principle.⁴⁹ In any case, communities tend to stabilize structures of governance for making policy decisions in order to provide a degree of efficiency and predictability if nothing else. It is inefficient, and an unnecessary roll of the dice, to decide anew how policy decisions should be made each time another policy problem arises. Structures of governance include such formal and informal institutions as legislatures and political parties, as well as any relatively stable arrangements for making policy decisions in civic (or nongovernmental) groups of any kind. Structures of governance should be evaluated according to their function, and reformed or replaced when they consistently fail to perform that function. At least in the Declaration of Independence it is presented as a self-evident truth that “governments are instituted among Men [to secure certain rights], deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government.”

This self-evident truth is still applied by Americans, including practitioners in the Jackson Workshop. Recall what was proposed toward the end of the discussion in Figure 1.1: “Get the feds out of the room. . . . Set up a parallel structure outside the existing structure. Don’t use the existing one. The existing one may not be working” [19]. It is clear that the common interest in this context is used as the criterion for assessing the existing structure of governance established under NEPA and modified through the settlement of Montana’s lawsuit in 1995. It was noted earlier that NEPA’s linear process does not work: “When the government opens up an EIS, it’s like a jack in the box—people pop up. The draft EIS is a pretense. The NEPA process is divisive” [5]. The

common interest is also used here as the justification for an alternative structure in which stockgrowers' multiple interests might be represented more effectively and responsibly along with the interests of others. The existing and alternative structures provide different answers to the constitutive question raised earlier in the discussion: "Who gets to decide which interests are valid and which are not?" [7]. This question is answered by constitutive decisions—in other words, decisions about making policy decisions.

Constitutive decisions are most familiar to Americans through the U.S. Constitution, which merits brief review as background for understanding current problems of governance. The Preamble identifies the most basic and enduring common interest of the people: "We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Thus the founders expected to provide for union, justice, and other basic demands of the people through the constitutive decisions that followed in the main body of the Constitution. Articles I, II, and III allocated power to make legislative, executive, and judiciary decisions, respectively, to a Congress that consists of a Senate and a House of Representatives, to a president, and to "one supreme Court" and inferior courts. This separation of powers allows for a system of checks and balances among the three branches of government: for example, the president may veto a bill passed by both houses of Congress, preventing it from becoming a law; but the veto may be overridden by a two-thirds majority vote of both houses. The system was extended in *Marbury v. Madison* in 1803, when the Supreme Court successfully asserted the power to determine the constitutionality of acts of the other two branches. As Madison explained in *The Federalist*, the system relied on the balancing of power to prevent abuses of power, including tyranny of the majority: if a faction pursuing its own interests impinged upon others, the other factions as a matter of self-interest would rise to block it. Thus the common interest is supposed to be served indirectly through the "invisible hand" of competition among factions pursuing their own narrow interests.

Dahl identified an important missing piece in this constitutive formula after summarizing its implications: "What constitutional separation of powers builds into the very center of government are pluralism, rivalry, competition, the representation in the executive and legislative branches of differing and possibly divergent interests, and as a consequence the strong likelihood that president and Congress will press

for conflicting policies. What is missing, because the framers did not provide for it, is a constitutional process for readily resolving these conflicts.”⁵⁰ The missing piece becomes more important as modernization proliferates interest groups and multiplies the number and complexity of issues over which they come into conflict. These issues need to be resolved on behalf of the common interest, which is not limited to preventing abuses of power. The common interest in general also includes various means for establishing justice, insuring domestic tranquility, promoting the general welfare, and the like.

The Constitution also divided powers between the federal government and the states, and made federalism more explicit in the Tenth Amendment: powers not delegated to the federal government are reserved to the states or to the people. The Constitution allocated to the people the power to elect their representatives, who in turn were empowered to make decisions on behalf of the people and to delegate power to officials duly appointed for that purpose. Thus the Constitution established institutions of representative democracy, but it did not entirely restrain the forces of direct democracy. “The government created by the Constitutional Convention had barely begun in 1789 before it began to be reshaped by democratic forces. As George Woods remarks, ‘No constitution, no institutional arrangements, no judicial prohibitions could have restrained the popular forces unleashed by the Revolution.’”⁵¹ The electoral college was only the first institution of representative democracy to be transformed to register the popular will more directly. Community-based initiatives are among the more recent manifestations of popular forces, as well as informal means for resolving conflicts. Eventually they might provide the missing piece in the constitutive formula, or some part of it.

The Constitution is the supreme law of the land: in principle all the countless public policy decisions made by Americans since 1789 fall within its jurisdiction. But in practice the Constitution must be elaborated and supplemented through additional constitutive decisions for countless specific policy contexts. For example, as noted above, since 1969 NEPA elaborates how the National Park Service and all other federal agencies must make policy decisions that significantly affect the environment. The Memorandum of Understanding incorporated into the settlement of Montana’s 1995 lawsuit against federal agencies further elaborated how bison management decisions in the greater Yellowstone area were to be made, unless the parties withdrew or until they had a long-term plan in place. The Bison Management Citizen’s Working Group in Bozeman and its successors established informal structures of governance to formulate their own bison management

plans. Such informal and often uncoded constitutive decisions in the civic sector are part of the structure of governance, but not of the government.

Structures of governance help shape but do not determine specific policy decisions. Among other factors, competent and responsible people may overcome some of the limitations inherent in any formal structure of governance. Conversely, any formal structure in the hands of incompetent or irresponsible people can easily fail to clarify and secure the common interest. Certainly many of the countless policy decisions made within the constitutional framework over more than two hundred years have failed by this criterion, but enough have succeeded to sustain public faith in the Constitution as it evolves. Any structure of governance, however, may contribute to a crisis in governance and possible breakdown if it consistently fails to accommodate, through specific policy decisions, the emerging interests created by continuing modernization and other social changes. In general, "Breakdown is not the result of special interests dividing the community, but rather of the particular maladjustments which prevent compromise between these interests."⁵² Similarly, crisis is not the result of conflict but of the failure of means for resolving conflicts.

These dynamics are familiar from American history. The Revolutionary War marked the breakdown of the British colonial structure, which had failed to accommodate the distinctive demands and expectations that emerged as the king's subjects increasingly identified themselves with a new American community over the middle decades of the eighteenth century.⁵³ According to the Declaration of Independence itself, the break arose from a "history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States" by the king of England. First of all, "He has refused his Assent to Laws, the most wholesome and necessary for the public good." The Civil War marked the breakdown of a constitutional structure that could not resolve slavery and related issues. It unleashed democratic forces that abolished slavery through the Thirteenth Amendment (1865), extended citizenship to all persons born or naturalized in the United States through the Fourteenth Amendment (1868), and prohibited denial or abridgement of the right to vote on account of race, color, or previous condition of servitude through the Fifteenth Amendment (1870). Following Reconstruction, structures of governance that had served Americans for most of the nineteenth century were undermined further by industrialization, urbanization, and concurrent changes in social conditions and replaced over several decades by the federal bureaucracy so prominent today. A brief review

provides further background for understanding current problems of governance.

During most of the nineteenth century, communications and transportation technologies severely restricted interactions among isolated local communities and effectively dispersed the power to make public policy decisions. According to the historian Robert Wiebe, “The heart of American democracy was local autonomy. . . . Americans could not even conceive of a managerial government. Almost all of a community’s affairs were still arranged informally.”⁵⁴ Political parties and the courts were adapted to the structure of local autonomy and provided for the minimal needs of governance at the national level. Strikingly, even the mobilization of resources for the Civil War depended on the Republican Party: “The great northern war machine was first and foremost a new party machine.”⁵⁵ But by 1877, the autonomy of local communities had already eroded through the extension of telegraphs, railroads, and other modernizing technologies. These technologies supported organization and operations on larger scales and intensified conflicts between labor and capital, competing capitalists, and populists and progressives, among others. Established elites struggled in the 1880s and 1890s to defend their power positions in the obsolescing structure. Contending elites exploited specific emergent problems to create new institutions, but they “could not sustain support for any effort that threatened to undermine long-established political and institutional relationships.”⁵⁶

A new structure emerged rather quickly after the turn of the century. Congress, the presidency, courts, political parties, and local governments were not abolished, of course, but their roles and relationships were transformed as the unmet needs of a changing society supported expansion of the federal bureaucracy. Wiebe summarized “America’s initial experiment in bureaucratic order”: “By contrast to the personal, informal ways of the community, the new scheme was derived from the regulative, hierarchical needs of urban-industrial life. Through rules with impersonal sanctions, it sought continuity and predictability in a world of endless change. It assigned far greater power to government—in particular, to a variety of flexible administrative devices—and it encouraged the centralization of authority. Men were now separated more by skill and occupation than by community; they identified themselves more by their tasks in an urban-industrial society than by their reputations in a town or a city or a neighborhood.”⁵⁷ Pressures for reform were expressed in the withering of party machinery and judicial restrictions on action by government, as well as in the Sixteenth Amendment (1913), authorizing Congress “to lay and collect

taxes on incomes,” and the Eighteenth Amendment (1919), prohibiting the “manufacture, sale, or transportation of intoxicating liquors.” Democratic forces were manifest once again in the Seventeenth Amendment (1913), which provided for direct popular election of the Senate, and in the Nineteenth Amendment (1920), which provided suffrage for women.

There was no grand design in this experiment: the new bureaucratic order emerged from a patchwork of specific institutional reforms. The result was “a hapless confusion of institutional purposes, authoritative controls, and governmental boundaries.”⁵⁸ The experiment was still under way as the nation passed through World War I and into the 1920s. Expansion of the federal bureaucracy accelerated in the 1930s and 1940s to cope with the problems of the Great Depression and World War II, and again in the 1960s in pursuit of the Great Society. “Yet,” according to Stephen Skowronek, “the course of institutional development during these more recent decades and the governmental problems encountered in these developments are rooted in this turn-of-the-century departure.” These developments “established a new institutional politics at the national level that has proven remarkably resistant to fundamental change.”⁵⁹

A structure resistant to fundamental change becomes vulnerable eventually to its own excesses and to changing social conditions. Modernizing technologies are the major factors behind changing social conditions in our time. Through modernizing technologies, “thousands of technical operations have sprung into existence where a few hundred were found before. To complicate the material environment in this way is to multiply the foci of attention of those who live in our society. Diversified foci of attention breed differences in outlook, preference, and loyalty. The labyrinth of specialized ‘material’ environments generates profound ideological divergences that cannot be abolished, though they can be mitigated, by the methods now available to leaders in our society.”⁶⁰ For more Americans over successive generations, the material environment common to the nineteenth-century farm has given way to many more specialized environments associated with specialized skills and occupations in cities here and abroad. At the same time, farm environments have become much more differentiated by the deployment of new agricultural technologies.

The effect is to multiply divisions among interests in society and to organize those interests to compete in a more complex society. “Concerted action under such conditions depends upon skillfully guiding the minds of men [and women]; hence the enormous importance of symbolic manipulation in modern society.”⁶¹ But effective symbolic

politics depend on trust, and trust in central authorities tends to erode as society becomes more complex.⁶² Among other things, central authorities find it more difficult to meet public expectations as more agencies and interest groups are organized and able to block each other more often. Citizens find it more difficult to identify the remote officials and non-officials most responsible for policies that affect their interests and to hold them accountable amid the growing number and complexity of issues. Twentieth-century technologies—including airplanes, radio, television, satellites, fiber optics, computers, and the internet—continue to support the proliferation of agencies, interest groups, and complex issues, to interconnect them on a global scale, and concurrently to erode bureaucratic structures and control.⁶³ As in the nineteenth century, one important effect is to undermine structures of governance adapted to an earlier era.

Current Problems

President Ronald Reagan brought current problems of governance to national attention in his first inaugural address in January 1981. After noting that “the economic ills we suffer have come upon us over several decades,” the president delivered a memorable line honed in numerous speeches over nearly two decades: “In this present crisis, government is not the solution to our problem; government is the problem.” Moments later he added some reassurance that “it is not my intention to do away with government. It is rather to make it work—with us, not over us; to stand by our side, not ride on our back.” He went on to affirm that governance in the common interest is not a matter of government alone. “All of us together—in and out of government—must bear the burden. The solutions we seek must be equitable with no one group singled out to pay a higher price.”⁶⁴

President Bill Clinton largely accepted this assessment of current problems in his state of the union address in January 1996: “We know big government does not have all the answers. We know there’s not a program for every problem. . . . The era of big government is over.”⁶⁵ No doubt the president expected his memorable line to resonate with public opinion and therefore to help in his campaign for reelection that year. Public opinion polls show that the proportion of Americans who “think you can trust the government in Washington to do what is right” either “always” or “most of the time” was less than one-quarter throughout the 1990s—down from about three-quarters in the early 1960s. The unprecedented period of prosperity during the Clinton administration dulled the emotional edge of public distrust of the govern-

ment in Washington, but it did not eliminate it. At the beginning of a new century, it still seems obvious to casual and close observers alike that “Americans have lost faith in the capacity of government to solve the problems that worry them most.”⁶⁶

Close observers have described current problems of American government in a variety of overlapping ways. Perhaps the most common is “gridlock,” a term that was well established by 1992.⁶⁷ It refers to government’s inability to act on major national issues, such as health care reform. Gridlock is often but not always a problem in a changing society that undermines old policy solutions and generates new policy problems. Perhaps the most vivid description is “demosclerosis,” a term introduced by the journalist Jonathan Rauch to refer to the hardening of the arteries of democratic government: “Government loses its capacity to experiment and so becomes more and more prone to failure. That is demosclerosis: postwar government’s progressive loss of the ability to adapt.”⁶⁸ Underlying gridlock and demosclerosis is the “single-issue politics” cited by Dale Bumpers on retiring from the U.S. Senate after twenty-four years. In his view, single-issue politics emerged in the 1970s from rules that opened committee votes to public scrutiny and from the proliferation of national associations, “right down to the beekeepers and mohair producers.” “These groups developed very harsh methods of dealing with those who have crossed them,” Bumpers argued. “Suddenly, every vote [now taken in public] began to have political consequences. Congress began to finesse the tough issues and tended to straddle every fence it couldn’t burrow under. Consequently, Congress is failing to get its work done. . . . I don’t know which was worse: the way the Government was shut down in 1995 or the way we kept it open in 1998.” In 1998, Congress kept the government open by folding eight of thirteen appropriations bills “into a \$550 billion omnibus bill that was drafted and agreed to not by Congress itself, but by six or eight senior members and a few White House staffers.”⁶⁹

Robert Samuelson refers to the growing separation of the Washington political community from the rest of the country as a “disconnect,” which he characterized as one of the defining trends of his three decades as a journalist in Washington. This disconnect is partly a consequence and partly a cause of the other problems described above: “Except in token ways, Democrats can’t create new programs and Republicans can’t cut taxes. Barred from genuine action, politicians become more strident in their debates and more vicious in their personal attacks. They consort mostly with their own ‘core constituencies’ and sympathetic ideologues, deepening their isolation and illusions.”⁷⁰

Similarly, President Gerald Ford characterized modern elections as “candidates without ideas, hiring consultants without convictions to run campaigns without content”—a characterization that drew applause from members of the National Press Club.⁷¹ Thomas Mann of the Brookings Institution summarizes the “Pathologies of the public sector” as “parochialism, special interest influence, [and] bureaucratic layering.”⁷² More precisely, these are pathologies of governance insofar as interest groups in the civic sector as well as agencies in the public sector are involved.

The structural roots of these problems can be found in the separation of powers in the constitutional formula and in the proliferation of interests organized in and around federal bureaucracies over the past century or more. The data suggest that “agencies come into existence in response to demands for service from politically mobilized segments of society, both inside and outside government.”⁷³ The demands in turn are responses to modernizing technologies that continue to complicate material environments, multiply the foci of attention, and breed differences in interests. The creation of agencies is “spontaneous in the sense that it is governed by the internal dynamics of organizational life rather than by calculations and overall plan. The incessant, uncontrived division and subdivision of work gives many units their start.”⁷⁴ The subdivision of work also led to exponential growth in the number of agencies of the federal government through at least 1973. In almost every presidential term since 1923, the number of federal agencies created was greater than the number terminated.⁷⁵

The proliferation of organized interest groups in the civic sector also matters. The capacity of government agencies to meet the demands of politically mobilized segments of society depends on the agencies’ ability to reassign resources of various kinds. But those resources energize persons and groups to pursue their interests by lobbying government agencies. “In time, a whole industry—large, sophisticated, and to a considerable extent self-serving—emerges and then assumes a life of its own. . . . As it grows, the steady accumulation of subsidies and benefits, each defended in perpetuity by a professional interest group, calcifies government.”⁷⁶ The number of national associations, most of which lobby government sooner or later, doubled to about 23,000 from 1970 to 1990. Membership in the American Society of Association Executives, founded in 1920, increased sixfold to more than 20,000 during the same years.⁷⁷ What the associations do is more important than what they claim or believe, even if they are self-described “public interest” groups rather than for-profit groups. According to Rauch, “All groups, without exception, claim to be serving

some larger good, and almost all believe it. And all groups, without exception, are lobbying for more of whatever it is that their members want, generally at the expense of non-members.”⁷⁸ Whatever their members want is likely to be much narrower than the common interest.

The unintended effect is an increasingly fragmented and dysfunctional structure of governance at the national level. The proliferation of organized groups in the public and civic sectors makes it more difficult to integrate their interests into policies that advance the common interest, even where there is a will to do so. Among other things, the proliferation multiplies the number of contacts and complicates the mutual understanding necessary for cooperation. These difficulties are compounded by substantive and procedural constraints, like NEPA, that cumulate each time an interest group succeeds in protecting or advancing its interests through public law or policy. What is a success for that group may be more bureaucratic red tape for others. On the whole, this complex structure of groups and rules does more to frustrate than to satisfy those involved. A typical response is to adapt their strategies to the structure. Each frustrated group tends to focus on narrower if not zero-tolerance demands in order to maximize the political effectiveness of its limited resources. It tries to compete more effectively for resources from its constituencies with more unequivocal and irrevocable commitments to those narrower demands. And it tends to seek allies among other groups likewise burdened by stronger commitments to narrower demands. If they succeed in constructing a coalition, despite the difficulties, opposing groups are likely to respond to the threat in kind—reestablishing to some extent previous power ratios in the power-balancing process. Thus small changes in policy may be achieved at greater expense, resulting in more frustration all around. The “winners” may not be winners at all in a frank accounting of costs and gains. In any case, under these circumstances, it is not surprising to find more gridlock, demosclerosis, single-issue politics, disconnects, and related pathologies of governance.

Fragmented and dysfunctional structures tend to be replicated in specific policy areas. The major organizations involved in bison management in greater Yellowstone—with their different mandates and jurisdictions and their involvement concurrently in many other issues as well—provide a good example. The U.S. Department of the Interior was established in 1849 with the consolidation of four older offices. “Over the years . . . functions have been added and removed, so that its role has changed from that of general housekeeper for the Federal Government to that of custodian of the Nation’s natural resources.”⁷⁹

The National Park Service was established within the Interior Department in 1916 with the purpose of “conserving unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations.”⁸⁰ Yellowstone is only one of more than 370 national parks, monuments, and other units in that system. In 1939 the Bureau of Fisheries (1871) and the Bureau of Biological Survey (1885) were transferred to Interior to become the U.S. Fish and Wildlife Service, which now manages more than 94 million acres of land and water. In 1946 the General Land Office (1812) and the Grazing Service (1934) were consolidated to establish the Bureau of Land Management, which manages about 270 million acres of public land. Interior’s National Biological Survey is also involved in bison management.

The U.S. Department of Agriculture became the eighth department of the federal government in 1889, when the powers and duties of its predecessor were significantly enlarged. The U.S. Forest Service was created in 1905, when the management of federal forest reserves (created in 1891) was transferred to Agriculture. Currently, “As set forth in law, its mission is to achieve quality land management under the sustainable, multiple-use concept to meet the diverse needs of people.”⁸¹ It manages 155 national forests, 20 national grasslands, and 8 land utilization projects on more than 191 million acres. Concerns about brucellosis were organized in the Cooperative States–Federal Brucellosis Eradication Program in 1934.⁸² APHIS was reestablished by the secretary of agriculture in 1977 “to conduct regulatory and control programs to protect and improve animal and plant health for the benefit of man and the environment.”⁸³ The Agricultural Research Service is also represented in bison management. The federal division of labor is replicated to some extent at the state level, in six agencies in Idaho, Montana, and Wyoming.⁸⁴ Bison management in greater Yellowstone is not in itself a major national issue, but at least thirteen federal and state agencies are significantly involved in it.

Problems of coordinating the principal federal and state agencies were acknowledged in the establishment of the Greater Yellowstone Interagency Brucellosis Committee (GYIBC) in 1995, by a Memorandum of Understanding among the governors of Idaho, Montana, and Wyoming and the secretaries of agriculture and the interior. They recognized that “responsible and socially acceptable management of brucellosis-affected wildlife requires effective cooperation, coordination, and sharing of resources among the member agencies and the citizens of the United States.”⁸⁵ However, as its name implies, GYIBC focuses on brucellosis rather than on free-roaming bison, and effective participation

is limited to member agencies. Similarly, the Council on Environmental Quality sought to coordinate the federal family of agencies involved in bison management after the bison killings in the winter of 1996–97. The Council was established within the executive office of the president by NEPA in 1969. “The Council develops policies which bring into productive harmony the Nation’s social, economic, and environmental priorities, with the goal of improving the quality of Federal decision making.”⁸⁶ There is still room for improving decision making on bison management, as indicated by the exorbitant time and other resources invested in reaching a truce among the agencies and by substantial opposition to the Joint Implementation Plan in public comments.

As previously noted, nineteen interest groups formed a coalition to support the Citizens’ Plan to Save Yellowstone Bison as an alternative to the interagency plans in the draft EIS in 1998.⁸⁷ These groups had been organized over various decades but were activated by their opposition to interagency plans implemented or proposed in the 1990s. Among national organizations, the coalition includes the American Buffalo Foundation and the Intertribal Bison Cooperative, both focused on bison, as well as less specialized groups: Defenders of Wildlife, the National Parks and Conservation Association, the Natural Resources Defense Council, The Wilderness Society, and the National Wildlife Federation. Among regional groups, the coalition includes the Idaho, Montana, and Wyoming Wildlife Federations; the Gallatin Wildlife Association, Montana Audubon, Montana River Action Network, and Montana Wilderness Association; the Jackson Hole Conservation Alliance and Wyoming Water; the Bench Ranch and the Yellowstone Raft Company; and the Greater Yellowstone Coalition, which itself is a regional coalition “formed in 1983 by people concerned about the increasing fragmentation of Greater Yellowstone.” It “includes over 7,500 individual and family members, and about 125 local, regional and national member organizations, as well as about 125 business and corporate members.”⁸⁸ Despite the efforts of these coalitions in the civic sector, the Citizens’ Plan remains only an unofficial alternative to the Joint Implementation Plan. An effort to integrate the Citizens’ Plan into the official plan might require initiation of another EIS under NEPA or might violate the Federal Advisory Committee Act (FACA), which regulates participation by non-officials in federal policy decisions.⁸⁹

In bison management, in short, participants of all kinds are trapped to a considerable extent in a complex structure of governance that institutionalizes conflict more than it facilitates the integration or balancing of different interests into consensus on policies that advance the common interest. In general, “Federal land management agencies

are frequently caught in the middle. . . . Historical missions and practices have been severely eroded by new statutes, and new missions have been charted, but congressional directives often have held out little concrete guidance in concrete situations, and procedural requisites have proliferated. Interests over a wide spectrum forcibly argue that their conception of the public interest should prevail in the circumstances, and all sides are willing to resort to higher forums if dissatisfied with decisional results.”⁹⁰ Voluminous and often vague congressional directives that respond to a wide spectrum of interests over time force the agencies to make policy in concrete circumstances. The volume of substantive and procedural requisites is manifest in 1,348 pages of closely packed type in Title 16 of the United States Code (1982 edition), virtually all of which is pertinent to the management of public natural resources.⁹¹ It should not be assumed that these voluminous directives are consistent. In natural resources as in other policy areas, “technical rules of law are commonly created in sets of complementary opposites, of highly ambiguous and incomplete reference, to express all pluralistic interests.”⁹² And the number of pluralistic interests grows with modernization.

The cumulative complexity of this structure undermines one of its principal functions, accountability to “We, the people”—or realistically, those who have enough at stake and enough competence to participate in specific issues. Since the Progressive era at least, all major applications of the administrative management paradigm “emphasized the need for democratic accountability of departmental and agency officers to the President and central management agencies and through these institutions to the Congress,” according to Ronald Moe of the Congressional Research Service. “The administrative management paradigm accepted as its fundamental premise that the government of the United States is a government of laws passed by the representatives of the people assembled in Congress. It is the constitutional responsibility of the President and his duly appointed and approved subordinates to see that these laws, wise and unwise, are implemented.”⁹³ But which laws should subordinate officials implement in which contexts when the laws individually or collectively are voluminous, ambiguous, and come in complementary opposites? A case in point is the Forest Service’s mandate to manage each of 183 national forests, grasslands, or land utilization projects for multiple uses—outdoor recreation, range, timber, watershed, and wildlife and fish uses. Another case is the complex of directives that applies specifically to bison management in greater Yellowstone and the agencies involved—at least fourteen acts of Congress and eleven Montana laws, in addition

to numerous regulations and management policies.⁹⁴ And of the many conflicting demands made by interest groups, which ones should officials accommodate, in efforts to avoid litigation if nothing else?

Some officials in the field are immobilized by the expectation that compliance with any particular laws or interest-group demands would leave them vulnerable to many other laws or demands. But other officials who are less risk-averse act on their own best judgment in the particular context, in the expectation that eventual success might justify the actions taken; and that meanwhile oversight by superiors up the line will be sporadic at best, especially if superiors are overloaded with other responsibilities. But in either of these cases, *field officials make the important policy decisions* in concrete circumstances, amid pressures from all sides and above. Thus, as structures of governance become more complex, democratic accountability through the administrative management paradigm becomes more tenuous, and the historical justification for bureaucracy tends to be undermined. That justification included efficiency and equity through the impersonal application of unambiguous rules and goals that minimize discretion by officials and challenges by others. As Mark Sagoff put it, "A bureaucracy may implement clear political goals, but it is hopeless when it tries to resolve what are essentially political disputes."⁹⁵ Today, administrative problems tend to be political disputes in that effective solutions depend on the integration or balancing of pressures from all sides and above. The Bureau of Reclamation explained these political realities to its employees: "Today, anyone can delay or even stop your process by lobbying Congress, initiating court action, or rallying grass roots effort to oppose your action. You cannot take away their right to fight. Thus you need to pay attention to their issues and actively seek their participation and consent."⁹⁶ But such politicking lies beyond the formal authority of officials who are supposed to implement law and policy, not make them—and often beyond their training and skills in scientific management.⁹⁷

Under these conditions, "The land manager's role is increasingly difficult."⁹⁸ That is an understatement. Forest Service chief Dombeck reportedly learned from his predecessor that "the chief of the Forest Service will be in trouble regardless of what he does, so he may as well be in trouble for things of his own choosing." His predecessor's three years in office were "marked by attacks from environmentalists and by hopeless efforts to win the confidence of the agency's old guard, which had openly protested his appointment and sabotaged his initiatives."⁹⁹ The chief's job has become vastly more complex with the proliferation of organized interests in and around the Forest Service over the de-

cares. Today's Forest Service is less integrated internally, and more constrained externally, than yesterday's Forest Service.¹⁰⁰ The same can be said about the jobs of other top officials and other agencies, and about the Congress and the White House. Meanwhile, each appointed or elected official, like each citizen, still has only twenty-four hours of time and attention to invest each day and limited competence to cope with the issues of the day. Improvements in managing limited time and attention and voluminous knowledge and information can help. But they cannot fully compensate for problems of governance rooted in complex structures fostered by modernizing technologies.

Constitutive Reform

Problems of governance stimulate demands for constitutive reform in our time, just as they did a century ago. And just as they did a century ago, specific proposals for reform tend to be resisted by those who believe (mistakenly or not) that they have more to lose by risking reform than by defending established structures.¹⁰¹ No single proposal for constitutive reform appears to be sufficient, given the nature and extent of current problems of governance, although many proposals do merit further consideration if not experimentation. A brief review of major proposals provides some background for considering the history and potential of community-based initiatives, which may be as promising as any other alternative for constitutive reform.¹⁰²

Some proposals for reform attempt to make members of Congress and the president more accountable to the people and less accountable to special-interest groups that buy influence. Specific proposals include tightening disclosure rules and other restrictions on interest groups that lobby, closing loopholes in campaign-finance laws, and imposing term limits on members of Congress. But such reforms address the symptoms rather than the structural roots of governance problems. "If the main problem is in the political structure," as Dahl contends, then "term limits will do no more than change officials while leaving [the structure] still in place."¹⁰³ Similarly, within the structure, closing campaign-finance loopholes or tightening lobbying restrictions would not reduce candidates' demand for campaign contributions to win elections or the supply of contributions from special interests to lobby candidates and elected officials.¹⁰⁴ It would merely restrict these activities until they learned once again how to avoid or evade the restrictions. Moreover, there are concerns about the political feasibility of such reforms. For example, in campaign finance there is a "long record of both parties' claiming to support reform only when they can be confident

the other side will kill it.”¹⁰⁵ In 1997 the House decisively defeated a constitutional amendment to impose term limits on members of Congress.¹⁰⁶ Some congressional candidates who voluntarily made commitments to limit their own terms in office if elected in 1992 or 1994 have abandoned those commitments as the term limits approached. Finally, such reforms raise constitutional issues. First Amendment rights were the basis for a Supreme Court decision that has doomed many proposals to reform campaign finances since 1976.¹⁰⁷ “The ultimate problem with all process reforms is that lobbies are us, and you can’t isolate a democratic government from its own society.”¹⁰⁸

Some reforms attempt to make federal officials and agencies more accountable to the Congress and president. Perhaps the most prominent involve performance measures. In 1993, both the Government Performance and Results Act and the National Performance Review led by Vice President Al Gore were based on “the reasonable notion,” as the Congressional Budget Office (CBO) described it, that “federal agencies should be able to develop measures of program success, and that these measurements would be useful to managers and other policymakers.”¹⁰⁹ In particular, they might be useful in enforcing compliance with law and policy through the federal budget process. However, CBO’s review of a broad range of experience concluded that it was not such a reasonable notion after all: “Even if the legislative and executive branches were committed to improving performance measurement and tying those measures to the budget process, two chief obstacles would remain. First, developing measurements that accurately reflect the performance of federal agencies is difficult. . . . Second, there is not enough demand by policymakers to change the way policies are made so that they are more responsive to the measurement of outcomes.”¹¹⁰ A subsequent appraisal concluded that “the biggest difficulty in thinking through the problems of performance management is that reformers and managers alike far too often consider it simply as a problem of measurement.”¹¹¹ It is also a problem of governance. “The project to revive and modernize government rather than simply shrink it will not be a sterile technocratic exercise.”¹¹²

Faith in government performance measures tends to be sustained by expectations about their use in business. But even in business, management primarily by the numbers is one of the deadly diseases: “The important figures are unknown and unknowable—the multiplier effect of a happy customer, for example.”¹¹³ Another deadly disease is the annual performance review for personnel as a basis for resource allocation: “It nourishes short-term performance, annihilates long-term planning, builds fear, demolishes teamwork, nourishes rivalry and pol-

itics. It leaves people bitter, crushed. . . . It is unfair, as it ascribes to the people in a group differences that may be caused totally by the system that they work in.”¹¹⁴ Many of the best companies, the visionary companies built to last, do not gauge their performance by the proverbial bottom line. Instead, say James Collins and Jerry Porras, “Profitability is a necessary condition for existence and a means to more important ends, but it is not the end in itself for many of the visionary companies.”¹¹⁵ The dysfunctional consequences of exclusive and automatic reliance on quantitative performance measures were recognized as early as 1956.¹¹⁶ But they have done little to erode faith in performance measures carried over from scientific management in the Progressive era. In 1922, one advocate referred to the use of performance measures by experts as “The Entering Wedge” to expose “the trading politician and the partisan who has much to conceal.”¹¹⁷

Demands for constitutive reform are also expressed in attempts to bypass institutions of representative democracy through direct democracy in various forms. Ballot initiatives and referenda are reforms from the Progressive era designed to express the will of the people more directly. Their use is rising, but they are being used more often by single-interest groups and public officials as alternatives to the give-and-take of legislative processes to realize their interests.¹¹⁸ Citizen-based militias are also rising.¹¹⁹ In the aftermath of the bombing of a federal office building in Oklahoma City in April 1995, a historian warned: “Not since the era of Southern secession have so many Americans found so little to respect in their political system—to the point where a small but militant minority has vowed to resist that system by any means possible.”¹²⁰ But violent means are less solutions than symptoms of the many problems of Americans disaffected from their government.

The disaffected Americans who supported Ross Perot in the 1992 presidential election reportedly believed that “America is in deep trouble and knows it, but the system can’t do anything about it because of politicians’ corrupt and self-serving behavior. Perot’s message: The only way to solve such problems is to set aside politics.”¹²¹ “Perot seemed to think he could fix it by ordering the special interests to shut up and go away.”¹²² The possibility of a “strong man” popular solution was not overlooked in Washington at the beginning of the Clinton administration. A former presidential aide projected that if the administration did not make the system work better, “we will have some really angry people out there. . . . We could be looking at Ross Perot as the moderate responsible guy who will be our only hope for stopping some certifiable lunatic who is running ten points ahead of the pack.”¹²³ Not all expressions of direct democracy are constructive.

The rising direct influence of the public is one of the two principal features of the new American political disorder, according to Dahl. It is a problem in the absence of new institutions: "Although public opinion more often directly influences the policies, strategies, tactics, and speech of political leaders, institutions for ensuring that the opinions serving as the views of 'the public' are either representative or well considered have not been created. The *plebiscitary* aspect of American political life has grown, one might say, without a corresponding improvement in its *representative* and *deliberative* aspects."¹²⁴ The other principal feature of the new political disorder is the proliferation of conflicting interest groups already emphasized here. It is a problem amid the weakening of political institutions for negotiations "in search of mutually beneficial policies" for the conflicting interest groups and for the general public. Thus one might also say that there is "more *fragmentation* and less *integration*" in the new political order.¹²⁵ Problems of governance are likely to grow without more representative and deliberative institutions for resolving conflicts in the common interest.

Such institutions already exist in community-based initiatives. At least the Bison Management Citizen's Working Group in Bozeman, among many others, demonstrated some capacity for the integration of fragmented interests into mutually beneficial (or common-interest) policies through representative and deliberative means. Such small-scale initiatives tend to be discounted as insignificant if they are noticed at all from the center, within the Washington Beltway, or at the periphery of federal agency field offices scattered around the country. Nevertheless, with enlightened innovation, diffusion, and adaptation, community-based initiatives might succeed and multiply enough over time to supply the missing piece in the constitutive formula and to make a difference in resolving current problems of governance. The planning and promotion of many more policies would move down from the federal government and out into the civic sector, leaving established structures of governmental authority and accountability in place but cultivating new ones in local communities where the initiatives succeed. There can be little confidence about the future of community-based initiatives, or established structures of governance for that matter. But in view of growing problems of governance and concerns about the more prominent alternatives for constitutive reform, it is worthwhile to consider the history of community-based initiatives, their potential, and how that potential might be realized.

A comprehensive history of community-based initiatives has yet to be written. But the incomplete history of place-based collaborative groups is relevant to the extent that they overlap with community-

based initiatives, a larger category not restricted to collaborative strategies. The history suggests a familiar pattern of political change.¹²⁶ Beginning in the 1980s, according to Donald Snow, “numerous groups, far from one another and working in relative isolation, began meeting at about the same time, often with nothing more in mind than the need ‘to try something new.’”¹²⁷ They were motivated by perceived failures of multiple government agencies to act as stewards of the nation’s public lands in the West. The aggrieved parties were narrow-interest organizations and coalitions, such as trade associations, environmental groups, and economic growth councils. Initially they turned to Washington, seeking “relief in the form of new marching orders from Congress or the Administration.” What they found more often was gridlock in the struggle for power among factions in federal agencies and in state and sometimes local governments as well: “The war of all against all is fought on every front” in the federal system.¹²⁸ “But in nearly every case, collaboration started with an urge somehow to break gridlock, to move beyond a paralyzing stalemate.”¹²⁹

But why collaboration, rather than other new things to try? According to Snow, attention was drawn to the potential of collaborative groups. Beginning in the mid-1970s, alternative dispute resolution as applied to environmental issues raised awareness that “in some instances, more effective solutions may grow from the examination of mutual interests among competing parties.” In 1982, Daniel Kemmis wrote three influential papers that were intensively discussed and eventually integrated into *Community and the Politics of Place*, published in 1990. The book argued that gridlock “is virtually built into the federal system of government as it was envisioned by James Madison.” It also suggested that “breaking gridlock probably must involve a reawakening of the sense of a *res publica*, the ‘table’ around which we all sit in a democracy.”¹³⁰ Whatever the sources of collaborative aspirations and techniques, some collaborative groups have failed while others have succeeded. The successes tend to be brought to the attention of other community groups, for possible adaptation elsewhere, through a variety of networks. One network is organized around *Chronicle of Community*, a journal established by the Northern Lights Institute in Missoula, Montana, in 1996. Snow is the executive editor of the *Chronicle* and executive director of the Institute.

The attention drawn to successful collaboratives may have begun to encourage initiatives in hundreds of place-based communities facing similar problems and frustrations in natural resources policy. According to a specialist in Western water policy, for example: “The 1990s have seen a proliferation of ‘watershed initiatives,’ in which stakehold-

ers from a variety of governmental levels and jurisdictions have joined with nongovernmental stakeholders to seek innovative and pragmatic solutions to the problems associated with resource degradation and overuse. . . . Each watershed initiative is an ad hoc effort tailored to the unique institutional and physical qualities of a particular region.”¹³¹ If the early initiatives had no alternative to proceeding alone, in relative isolation, the later ones have access in principle to a growing body of experience through various networks. In any case, there is a new spirit of cooperation in the West in the 1990s, according to Kemmis.¹³² The new spirit is based on growing recognition that the old formulas for governance no longer work satisfactorily.

The pattern is not limited to collaborative groups working on natural resources in the American West in the 1990s. Community-based initiatives of various kinds have succeeded in integrating the different interests of small communities into consensus on policies that advance the common interest in other policy areas and time periods as well. For example:

- Amid the energy crises of the 1970s, Davis, California, implemented an innovative passive solar heating and cooling ordinance to reduce energy consumption and costs in new residential buildings. A collaborative strategy was inapplicable: local building contractors vigorously opposed passage of the ordinance. But consensus was reestablished through first-hand experience when contractors learned how to implement the ordinance without adding to construction costs and saw that it worked. This successful community-based initiative attracted national and international attention, including a featured place in congressional hearings.¹³³
- Amid controversies over the management of Carson National Forest in New Mexico in 1991, District Ranger Crockett Dumas undertook “horseback diplomacy” to talk one-on-one with traditional Hispanic users of the forest and with organized environmentalists in the area. No group was organized to work out initial differences. But Dumas gained enough trust and insight from community members to end a long history of explosive protests and litigation in his district by 1993 and to develop and implement an innovative plan that served multiple local interests rather than a few large interests. In 1998 this successful community-based initiative won an Innovations in American Government Award.¹³⁴
- Frustrated by a lack of qualified high school graduates for his

expanding high-tech printing business, John Torinus worked with state and local officials and a printers' association to devise a new work-study program for high school students in West Bend, Wisconsin. "The results were astounding. Mediocre students started making the dean's list. After they graduated, Mr. Torinus hired every young apprentice he could. . . . The Wisconsin experiment has spread to other fields: insurance, banking, health, auto technology, electronics, biotechnology, engineering technology, tourism and manufacturing. First, two communities tried this approach; now it's in thirty."¹³⁵

Thus consensus on place-based policies has been achieved without collaboration in a group, in initiatives led by officials and entrepreneurs as well as by other citizens, in other policy areas in addition to natural resources, and in other decades. In view of experiences like these, an exclusive emphasis on collaborative groups tends to divert attention from other kinds of community-based initiatives that may succeed in some circumstances, and to underestimate the potential of community-based initiatives in the aggregate to contribute toward constitutive reform.¹³⁶ The search for additional cases is better guided by the common interest and left open to any kind of community-based initiative that succeeds by that criterion.

The general pattern underlying the events described above begins when local people recognize that a pressing policy problem they experience directly might be solved locally. Such recognition may come when they reconceive a national problem as many local ones, or when they perceive the federal government as responsible for the problem or indifferent or incompetent to solve it. In any case, they tend to engage more or less spontaneously in processes of innovation, diffusion, and adaptation in open networks.¹³⁷

- **Innovation:** As the problem becomes more pressing and more difficult to ignore, people in some communities are likely to reject "do nothing" or other established alternatives in order to try something new. Some communities are more successful in practice than others in alleviating the problem through innovations.
- **Diffusion:** Through various networks, the successful innovations come to the attention of other communities facing other versions of the same or a similar problem—and do so with sufficient frequency to clarify de facto standards of good practice and to provide field-tested models for meeting those standards.

- **Adaptation:** Under pressure from leaders or followers to meet those standards, communities that lag behind the innovators tend to select from the more successful models—and to delete and modify selected elements of the models—according to their own unique needs and circumstances.

The gist might be summarized in simpler terms: Necessity is the mother of invention. No one knowingly copies a loser. Nothing succeeds like success. Success in the adaptation process may stimulate a new wave of innovations, so long as the local problems remain important to communities in the network, higher standards and better models are demonstrated and diffused, and other resources necessary for adaptation remain available. Thus successful local innovations may provide the foundation for solving some nationwide problems with little central direction, motivated in large part by persistent local problems left unresolved within established structures of governance.¹³⁸

These processes can malfunction, of course. In the innovation process, for example, claims of success by a community may be hyped or otherwise unfounded, thereby misleading other communities in a network and contributing perhaps to their subsequent failure. In the diffusion process, the dissemination of higher standards or better models may be unorganized, censored, or otherwise restricted, leaving communities in need without reliable information on experience elsewhere to guide them. In the adaptation process, communities may need more than reliable information on *de facto* standards and models in accessible form. They may need leadership, funds, or authority that are unavailable in some communities. Moreover, enthusiasm for community-based initiatives in general may unwittingly raise expectations so high that disappointments in specific cases become inevitable. Conversely, skepticism about community-based initiatives in general may obscure successes in specific cases that merit diffusion and adaptation.¹³⁹ Finally, some agencies and interest groups will perceive successes in advancing the common interest through these processes as threats to their own special interest in maintaining power in established structures of governance. One response may be to co-opt community-based initiatives; another may be to resist initiatives indiscriminately, successes and failures alike. With such possibilities in mind, it is not difficult to imagine how community-based initiatives individually or collectively might fail. If they fail, the pressures that gave rise to the initiatives in the first place will not disappear. They will be expressed in other ways.

No one can know reliably or with confidence what community-

based initiatives will contribute over time toward reform of governance. The outcomes of any reform effort become increasingly unpredictable as the time horizon extends into the future, because the outcomes depend on thousands of choices and decisions, each of which is open to new insight and experience as events unfold.¹⁴⁰ In particular, individuals and groups may reconceive their interests and redirect their activities accordingly at any time. Thus the task is less to predict the course of history than to help shape it toward preferred outcomes. For the authors of this book, the preferred outcome is to realize the potential of community-based initiatives, both to advance the common interest through policies in particular communities and to contribute toward constitutive reform in America. The preferred strategy is harvesting experience from community-based initiatives as events unfold, to provide additional insights and information for the consideration of those private citizens and public officials who will make policy and constitutive decisions.

The Potential

It is important to be clear about the potential of community-based initiatives, because it has been obscured by various flawed criticisms addressed below. The potential stems from additional opportunities opened up by the initiatives for resolving place-based issues that are unique. The bison management issue in greater Yellowstone is not equivalent to the bison management issue in Custer State Park in South Dakota, or in commercial bison operations, even though they share some similarities. Likewise, “watershed management,” “endangered species recovery,” or “forest management” realistically does not refer to a uniform issue across contexts but to different issues depending upon the context. Increasingly, such differences must be taken into account for policy purposes. As Gifford Pinchot and Elizabeth Pinchot put it, “A system that manages work from any distance by setting uniform procedures and issuing simple orders cannot deal with the fact that we no longer face a uniform or simple world.”¹⁴¹ The uniqueness of issues in context is inconvenient for scientific management, insofar as its scientific components presume uniformity, or its bureaucratic components aspire to standardization.

The additional opportunities opened up by community-based initiatives can be contrasted with those available through agencies and interest groups. Participants in a community-based initiative are relatively free to seek creative, integrative solutions to a unique issue close to home; to proceed informally in face-to-face situations with a minimum

of a priori constraints on procedures or substantive outcomes; and to draw upon local resources, including leaders and followers with first-hand knowledge of the issue and significant stakes in resolving it. With those stakes and the small scale comes some degree of responsibility and accountability to the community. In contrast, participants in each government agency or interest group are relatively constrained to advocate solutions that conform to the organization's established procedures and mandate, often in conflict with those of other organizations; to proceed within the formal administrative hierarchy of the organization and the balancing of power among organizations; and to depend on constituencies remote from the issue to sustain the effort—for example, officials in the White House, representatives in Congress, or dues-paying members, as the case may be. Such remote constituencies typically have less information about the particular issue, less time and attention available for it, and less stake in solving it. Responsibility and accountability to the community are much easier to avoid under these circumstances. These disadvantages in finding common ground have been exacerbated by the growing number and complexity of unique policy issues over the past century. Meanwhile, the advantages of community-based initiatives have increased with changes in social conditions.

Nevertheless, the power of a community-based initiative depends on its merits. If it succeeds in integrating or balancing the diverse interests of participants into a policy that advances their common interest, it can legitimately claim to be the voice of the people with respect to the issue at hand, and build upon that success. The voice of the people is difficult to discount or ignore within established structures of governance and within the American political tradition. If it fails in finding common ground, the claims of a community-based initiative are easily dismissed, and the initiative itself is likely to disband voluntarily or to become an advocate of a single interest—and to be recognized as just another conventional interest group. Similarly, the collective power of community-based initiatives in constitutive reform depends on their ability to improve upon successful innovations in policy and governance by diffusing and adapting them to other communities facing similar issues. Furthermore, all of this depends to some extent on the failure of agencies and interest groups in established structures of governance to resolve the growing number of issues faced by Americans close to home, in the places where they live. Such problems are often necessary to motivate participation in community-based initiatives in the first place and to sustain that participation. Significant constitutive reform is not likely to occur among those who perceive existing policies and structures of governance to be working well.

Community-based initiatives also depend, in the end, on the support of agencies and interest groups in established structures of governance. For example, the government agencies that retained fragmented authority and control over bison management in greater Yellowstone effectively rejected the 1991 proposal of the Bison Management Citizen's Working Group in Bozeman simply by ignoring it. More enlightened agencies might recognize the political costs of rejecting proposals that advance the common interest of communities with the most at stake in an issue. More enlightened agencies might recognize the benefits of encouraging such proposals, which can often help agencies economize on the limited time, attention, and other resources available to invest in the decision process. Finally, more enlightened agencies might recognize a principled role in evaluating specific proposals from community-based initiatives—rejecting those that fail to advance the common interest, or fail to conform with duly established laws and policies. Some laws and policies should be called into question, however, when they consistently block proposals that advance the common interest. In any case, community-based initiatives have been selectively incorporated into established structures of governance to compensate for the limitations of those structures, not to replace them. Given the opportunity, community-based initiatives could adapt those structures to the increasing complexity of modern society, by economizing on time and attention and by integrating local competence into policy.

Certain criticisms of community-based initiatives can be addressed from this summary of their potential. First, it is alleged that community-based initiatives are unconstitutional or illegal. According to a professor of law, for example, "The Constitution entrusts the disposition, and regulation, and care of federally owned assets to the national government, not local self-appointed mediators."¹⁴² Moreover, "The statutes . . . nowhere . . . delegate decision-making power to unelected, unappointed citizens at large or interested economic entities."¹⁴³ But the First Amendment to the Constitution protects "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"; and statutes like NEPA specify how citizens and groups are supposed to be empowered to participate in various federal policy decisions affecting the environment. If groups representing environmental, economic, or other single interests are authorized to participate in the management of federally owned natural resources, then community-based initiatives are authorized to participate in all the same ways. In the balancing of power, community-based initiatives are essentially interest groups comprising diverse multiple interests located in a small place.

Second, it is alleged that community-based initiatives are unrepresentative or undemocratic. For example, “Voluntary enlistment in a collaboration cannot assure representation of all who have a legitimate voice (including eastern tourists) nor consideration of all legitimate interests (including future generations).”¹⁴⁴ Neither can voluntary enlistment in single-interest groups individually or collectively assure the representation of all legitimate voices and interests. The principle of affected interests, as argued earlier, is an ideal that cannot be realized in practice. Community-based initiatives, however, are opportunities for some communities, neglected in the balancing of power among national interest groups, to represent their own common interest in policy decisions where they have a lot at stake. That is important from the standpoint of democratic inclusion. “Who elected these people (i.e., the collaborative body)?” asks the chairman of the Sierra Club.¹⁴⁵ It is equally appropriate to ask, “Who elected the leaders of the Sierra Club, or any other conventional interest group?” For both questions, the answer is “their constituents”—defined by shared place in the first case and by shared interest in the second. To the extent that they are informed, both constituencies tend to withhold authority and other support from irresponsible representatives of their interests. Finally, “How do you reconcile the idea that the will of the majority ought to prevail if you set up rules to allow a willful minority (through a consensus rule) to block the will of the majority?”¹⁴⁶ Quite simply, you rely on practical prudence as expressed in the Jackson Workshop: “You don’t need everyone from every special interest, but you do need a critical mass or you can’t claim that what you’re doing is in the common interest” (Figure 1.1 [10]).

Third, it is alleged that community-based initiatives represent an unwarranted redistribution of power. For example: “This redistribution of power is designed to disempower our [Sierra Club] constituency, which is heavily urban. Few urbanites are recognized as stakeholders in communities surrounding national forests. Few of the proposals for stakeholder collaboration provide any way for distant stakeholders to be effectively represented.”¹⁴⁷ Conversely, few communities surrounding national forests are recognized as stakeholders in forest management policy by the Sierra Club. The Sierra Club’s proposal for zero logging in national forests does not provide any way for local stakeholders to be effectively represented, even though local stakeholders tend to have the most at stake. More important, people can participate only very selectively in the policy decisions that affect their interests. They are empowered to choose whether their own priority interests are best pursued through a conventional interest group

or a community-based initiative—but only if they are aware of both alternatives. The criticism of community-based initiatives continues: “Even in places where local environmentalists exist, they are not always equipped to play competitively with industry professionals. There may be no parity in experience, training, skills or financial resources.”¹⁴⁸ A distribution or redistribution of political resources is warranted when it consistently serves the common interest of the community, whether the community is local, national, or global in scope. It is unwarranted when it consistently serves special interests, which are not always or exclusively those interests opposed by environmental organizations. A reliable judgment about common and special interests can be made only through inquiry into the particular context.

Finally, some criticisms imply that established and emerging structures of governance are mutually exclusive alternatives for making policy decisions.¹⁴⁹ One professor of law concluded that “the law and its processes, imperfect as they are, are still far preferable to local negotiations as means for resolving resource issues.”¹⁵⁰ But there is no need to select one constitutive alternative over the other, once and for all. The beginning of wisdom is to evaluate particular proposals from community-based initiatives through the political process, to support those that are sound, and to reject those that are unconstitutional or illegal, undemocratic or unrepresentative, or otherwise not in the common interest. Machiavelli said it well, on behalf of the people: “The quickest way of opening the eyes of the people is to find the means of making them descend to particulars, seeing that to look at things only in a general way deceives them.”¹⁵¹ If we Americans get down to particulars, open our eyes, and act in good faith, we just might be able to significantly

- reduce the burden on overloaded policy makers in national structures of governance;
- resolve more place-based issues economically, competently, and in the common interest;
- restore some responsibility and accountability to the communities most directly affected;
- accumulate social capital that can be invested in other, larger political arenas;
- and gradually adapt established structures of governance to the realities of our time.¹⁵²

We need not proceed blindly through the process of constitutive reform as we did a century ago. We need not presume that anyone knows

enough now to rewrite the Constitution from the top down to solve current problems of governance.¹⁵³ We can begin to adapt it to the realities of our time from the bottom up, through the diffusion and adaptation of successful innovations in policy and governance by community-based initiatives.

A Look Ahead

As a step in that direction, the following four chapters present case studies in sufficient detail for the reader to assess problems of governance, the potential of community-based initiatives, and a strategy for realizing that potential. The strategy is harvesting experience, based on the processes of innovation, diffusion, and adaptation, and is presented in the concluding chapter. Each case study focuses on structures of governance and their policy outcomes in a specific area of natural resources policy.¹⁵⁴ The policy outcomes are assessed from the standpoint of advancing the common interest in each context. To the extent that the structures helped advance the common interest, they are considered “models” of governance to underscore the expectation that they worked well enough to be considered for diffusion and adaptation by other community-based initiatives.¹⁵⁵ Finally, each case study addresses the broader significance of the structures and their policy outcomes. Apart from these similarities in focus and scope, the case studies are more or less independent of each other and may be read in any order.

Chapter 2 clarifies by example the potential of community-based initiatives to advance the common interest. Elizabeth A. Olson considers water management and the Upper Clark Fork Steering Committee, a watershed initiative in western Montana led by an expert facilitator from the Northern Lights Institute. The committee worked under a mandate its predecessor sought from the state of Montana to balance beneficial uses of water in the Upper Clark Fork basin through management at the local level. The committee produced a plan that avoided the expense and delay of impending litigation over reservation of water rights, protected existing water rights, and made some progress toward preserving in-stream flow, a neglected but increasingly important interest. The plan was approved by the state of Montana in 1995. The facilitator identified the structural innovation behind this successful effort to advance the common interest: “The emphasis on the local level is the new ground broken by this plan and its goals. Instead of relying on a government agency with limited input from the public, this plan calls for a partnership between local water users and state and fed-

eral water managers to strike and maintain a balanced management of the waters of the upper Clark Fork River.”¹⁵⁶ This model also demonstrates the possibility of mutually advantageous cooperation between community-based initiatives and established structures of governance. Other cases shed more light on conflict between the two. Conflict can be expected until the advantages of cooperation with community-based initiatives are more widely appreciated.

Chapter 3 clarifies the potential of several different structures of governance in another context. Roberta A. Klein considers wolf recovery in the northern Rockies, a decision made for the most part in Congress under the mandate of the Endangered Species Act and over the opposition of Western livestock producers and their representatives in Washington. Within that national structure, three other structures helped advance the common interest in complementary ways: an advisory committee that failed to resolve the issue for Congress but did generate some useful proposals; an EIS team led by field officials of the U.S. Fish and Wildlife Service that built upon earlier proposals, proceeded rather independently of higher officials, and worked intensively with local communities to mitigate burdens on livestock producers and others; and a program led by a private organization, Defenders of Wildlife, to compensate producers for livestock killed by wolves. The EIS team and the compensation program are community-based initiatives of different kinds that helped accommodate the national decision to valid and appropriate local interests. Local opposition, however, persists—suggesting some room for policy improvements.

Chapter 4 clarifies the potential of community-based initiatives by contrast with established structures of governance that assert exclusive authority and control. Christina M. Cromley presents a comprehensive account of bison management in greater Yellowstone. The details are instructive, especially regarding the protracted and largely futile struggle of federal and state officials among themselves and the unrealized potential of the Bozeman Citizen’s Working Group and other community-based initiatives to advance the common interest. Those who were effectively excluded eventually chose to organize against the various interagency bison management plans but still had little influence. Conflict between community-based initiatives and established structures in this case was mutually disadvantageous—at least in hindsight that might have been foresight.

Chapter 5 clarifies by example the potential of community-based initiatives that choose to persist despite opposition by established structures. Christine H. Colburn considers forest policy and the Quincy Library Group, an initiative in northern California led by citizens who

vigorously disagreed with one another but nevertheless met in a neutral place, the town library. In 1993, members of the group developed their interdependent interests in the health of the local forests and economy into a Community Stability Proposal for the management of nearby national forests. Rebuffed by the local Forest Service, members of the Quincy Library Group went to Washington to lobby on behalf of their proposal. In 1998, despite the opposition of most national environmental interest groups, President Clinton signed an act of Congress directing the Forest Service to implement an amended version of the original proposal as a pilot project. The interim policy outcomes are mixed so far, but the structure has demonstrated more potential to serve the common interests of both the local and national communities. Taken together, all four cases illuminate the potential for cooperation and conflict between community-based initiatives and established structures of governance.

In conclusion, Chapter 6 on harvesting experience considers how these and other cases might be used to realize the potential of community-based initiatives. For this purpose, it suggests that participants in community-based initiatives and their supporters rely on the diffusion and adaptation of successful models of policy and governance, and beware of certain external threats to further progress. Similarly, the chapter suggests that interest groups organized in and around natural resources agencies support community-based initiatives and their proposals selectively, in those cases where support is warranted from a common-interest standpoint. Selective support may be warranted as a matter of expediency in sustaining the organizations amid changing social conditions or as a matter of principle in accord with the common interest. Finally, the chapter suggests that researchers and educators address the needs of policy makers engaged in adaptive management. Adaptive management goes beyond the remnants of scientific management from the Progressive era, including the contemporary search for scientific generalizations. The primary task is harvesting experience systematically and continuously to improve natural resources policy and governance in particular contexts around the American West on behalf of the common interest.