Does Public Policy Reflect Environmental Ethics? If So, How Does it Happen?

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TABLE OF CONTENTS

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INTRODUCTION

This paper addresses two questions central to the focus of this panel: Do environmental ethics and environmental ethical precepts enter or guide policy and consequently influence the future? And if they do, how is that accomplished? Some definitions are in order. By "environmental ethical precepts" I include such ethical goals as sustainability, ecological integrity, avoiding extinctions, assuring intergenerational equity, maintaining wilderness, conserving biodiversity, and maintaining intact ecosystems with their component biota and ecological services. These precepts, in turn, are based on a complex of ethical beliefs about the rights and values of the objects or goals involved. Such precepts are often interrelated. For example, maintaining wilderness, avoiding extinctions, and conserving biodiversity also seek to assure that options remain for future generations.

"Policy" in this context refers to federal public policy. Many public policies affect the environment, frequently in negative ways, but this discussion focuses on "environmental policies," i.e., policies intended to protect the environment in some way. Such policies may be expressed in the form of legislation passed by Congress, executive orders issued by the President, regulations and other actions of the agencies of the Executive Branch, and international agreements to which the United States is party. Of course, there are environmental policies at other governmental (e.g., state) and non-governmental levels. While the principles discussed below may apply to non-federal policies, they are not the focus of this paper. As a further caveat, the environmental policy-making discussed below is relatively recent, dating from the 1960s, although the principles involved probably apply equally to earlier policy-making.

This paper concludes that ethical environmental precepts have played a major role, indeed a dominant one, in the development of United States environmental policy. But the process by which this role has been played is not a formalized, textbook procedure. Instead, the procedure has varied from case to case depending on the circumstances. Normally environmental precepts come to the fore when ethically motivated individuals meet under favorable conditions. The favorable conditions involve public and/or political attention and concern often stimulated by some "trigger event."

There is almost always conflict between those who would benefit from exploiting the environmental resource involved, and those who wish to establish ethics-based policy to conserve it. Those who benefit from exploitation or "mining" the resource include government agencies,

industries, members of Congress, and other individuals. The benefits may be economic, political, or personal. Consequently, the opposition to environmental policies may be quite potent. Achieving such policies in the face of strong opposition may require strategies and tactics which do not necessarily match the textbook descriptions of policy-making. The one constant in these environmental policy-making procedures is that ethics are a powerful motivation for the key individual or individuals who initiate and drive the process. Thereafter, ethics are not necessarily a visible part of the policy process. This fact impedes academic analysis of the role of environmental ethics in environmental policy-making.

There are many examples of environmental ethics-based policies involving such issues as endangered species, wilderness, clean air and water, whale conservation, protection of public lands, non-game wildlife, and biodiversity. In view of the limited time available, I shall only use three such examples to illustrate the range of pathways by which environmental ethics enter public policy. These examples illustrate the range of ways federal policy is expressed — legislation, executive order, agency regulations, and international agreements — as well as a variety of environmental ethical precepts. In addition, they are matters with which I have been directly and personally involved.

I. MARINE MAMMAL PROTECTION ACT OF 1972

The first example involves an ethical position raised by the public who was pitted against entrenched bureaucratic agency positions, economically and politically potent industries, and parts of the scientific and academic community long associated with the status quo in fisheries. It also involves a strategically placed individual who, with colleagues, was able to turn a situation triggered by events into landmark environmental policy.

By the early 1970s it was becoming clear that many marine living resources — including fish, marine mammals, and invertebrates — were seriously depleted, primarily by overfishing. This coincided with an era of heightened public environmental awareness. Public concern over marine mammal conservation heightened with dramatic television coverage of harp seal harvests on the ice in Canada and the massive mortality of dolphins in the Eastern Tropical Pacific tuna purse seine fishery. Several non-governmental environmental organizations (NGOs) widely publicized these predations, emphasizing the ethical issues they raised. This situation constituted a powerful trigger event. Members of

both the House and Senate at the time received more letters on marine mammal protection than on any subject other than the Vietnam War.[1]

By early 1971, about ten pieces of marine mammal legislation were proposed to committees of Congress. About half were inspired by the public's ethical concern for humane treatment and called for a moratorium on all killing of marine mammals. The others, proposed by industry and government agencies, called for maintenance of the status quo. The result was a stand-off between the environmental community and the proponents of the status quo. None of the bills passed.

During the events I was Chief Scientist of the President's Council on Environmental Quality (CEQ). The situation with marine mammals appeared to me to present an opportunity to improve their protection and, more importantly, to change the traditional paradigm of living resource management by instituting several long overdue ethically-based policy changes. I thought that these changes could be accomplished through new legislation that included the following:

- Establishing that the primary objective of management is maintenance of the health and productivity of the ecosystem and that only when consistent with this objective could the target species be managed for other purposes. Previous legislation had focused on the managed species in isolation from the environment that it inhabited and on which it depended. This would be the first-ever legislation establishing an ecosystem basis for management.

- Establishing the principle that marine mammals (and, by inference, other wild living resources) have aesthetic, scientific, and recreational value, as well as economic value.

- Shifting the burden of proof from those who wish to conserve species to those who wish to exploit them. This would have reversed the established policies under which the National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) had always operated. It would have initiated a proactive principle: that where there was potential for significant harm to the living resources, a precautionary approach must be taken in advance to avoid damage, rather than belatedly addressing the damage after

[1] National Oceanic and Atmospheric Agency, *Passage of the Marine Mammal Protection Act of 1972*, MMPA BULLETIN 1, 1-2, 14-15 (2002).

it has occurred. This precautionary approach is now established both in national and international law.

- Providing more effective protection to the species involved by listing the specific actions that are detrimental to those species.

- Establishing the principle that management must be based on best scientific information and, to this end, providing for an independent scientific advisory committee.

- Establishing an independent government body (the Marine Mammal Commission), i.e., a watchdog, with oversight of the agencies involved. If agencies were to fail to follow the Commission's recommendations, they would have to issue a public report explaining why. This procedure was intended to break the long-established links between the resource exploiting industries and the agencies with responsibilities for the resources involved.

To translate these objectives into policy I first consulted the relevant Assistant to the President. President Nixon's staff was looking for environmental issues that would provide benefits to the nation and to the Nixon Administration. I proposed that we develop marine mammal legislation that would be a compromise between the extreme bills that had failed and that would satisfy public concern over marine mammal conservation based on sound, scientific management. The proposal was approved, and I subsequently had a CEQ lawyer draft legislation incorporating all my objectives.

The draft was then passed through the normal legislative review by the agencies and the Office of Management and Budget (OMB). The resulting proposal was submitted to the House Committee on Merchant Marine and Fisheries as an administration bill. That bill, however, did not include most of the key principles from my draft, for they had been edited out by the NMFS and FWS. I knew that the OMB version would be greatly watered down by the agencies. It was also clear that bipartisan support was needed to obtain passage of the legislation, because the administration was Republican and the Congress had a Democratic majority. Consequently, I discussed the objectives of the original draft with a colleague on resource issues who was Administrative Aid to the House Committee on Merchant Marine and Fisheries. Later, the Chair of that Committee introduced his own bill,

which included all the important principles of the original draft. With bipartisan support the bill was passed by the House, and a similar one was passed by the Senate. The result, the Marine Mammal Protection Act of 1972 (Public Law 92-522), was signed by President Nixon on December 21, 1972.

II. PREDATOR CONTROL AND POISONS ON PUBLIC LANDS

Predator control on public lands was another matter in which the public's ethical concerns were pitted against long-established federal bureaucracies and politically potent industries, and in which ethically-motivated individuals were able to take advantage of trigger events to establish environmental policy. This example also involves appointing scientific experts to establish the facts upon which policy should develop. The successful policy in this case was expressed by a presidential executive order and by agency regulations.

By the early 1970s, animal damage control was one of the oldest, most firmly entrenched bureaucracies in the federal government, yet it probably was one of the least known to the general public. Predators, long considered a threat to livestock, have been targeted for suppression since the earliest days of this country. One of the earliest laws of the original colonies provided bounties for killing predators. By the early 1900s, control of predators and other animals considered harmful to agriculture (e.g., rodents and birds) was well established in federal policy. This policy was further formalized by the Act of March 2, 1931, (7 U.S.C. §§ 426-426(b)), which directs the federal government to "conduct campaigns for the destruction or control of (predatory) animals."

Traps, poisons, and shooting from the ground and from aircraft were employed against predators with the result that wolves and grizzly bears were exterminated from most of the United States; mountain lions and black bears were locally exterminated; and all larger predators were greatly depleted, leaving coyotes as the main surviving target of the army of predator control agents. Predator control was believed essential even by wildlife biologists in the early years of the wildlife profession, but by the 1940s Aldo Leopold and a few other scientists realized that predator control programs were ecologically unsound, having the potential to cause very substantial damage to the nation's wildlife.[2]

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[2] SUSAN L. FLADER, THINKING LIKE A MOUNTAIN: ALDO LEOPOLD AND THE EVOLUTION OF AN ECOLOGICAL ATTITUDE TOWARD DEER, WOLVES, AND FORESTS 209 (1974).

These scientific views had no influence on the federal predator bureaucracy. With the increasing public concern over ecology and the environment, public attitudes toward control of predators had changed by the late 1960s. The area of most concern was the growing use of non-selective poisons and their effect both on predators and on non-targeted, and even beneficial, animals and birds.

In late 1970 and 1971, several dramatic incidents brought the predator control problem to public attention. One such trigger event was the revelation that western ranchers, aided by a federal predator control employee, were shooting eagles from aircraft. Eagles, of course, were an endangered species, supposedly protected by two federal laws. In another case, an eleven year old boy had poison shot in his face by a device called a "coyote getter." This device, inserted in the ground, would shoot poison into the mouths of predators who bite its scented lure. The boy, on an outing with his parents, found the coyote getter and tried to pick it up, thereby setting it off. As with other trigger events, some of the NGOs widely publicized the incidents and the underlying environmental ethical issues involved, effectively focusing public attention on predator control.

Again, this convergence of events provided an opportunity to effect policy change. As a field biologist in 1948, I had done research on predator and rodent poisons, especially on compound 1080, which remained the predator poison of choice into the 1970s. I had been very concerned with the non-selective toxicity of the substance and its persistence in the environment. Over the subsequent years my concerns with the predator control methods and programs had grown. Not the least of my ethical concerns was the effect of removing predators and other animals and birds from public lands. These lands are now recognized as part of the nation's heritage, not the private grazing lands of a handful of western livestock ranchers. The larger predators were keystone species of many of the western ecosystems, and beyond their role in the system, there was growing appreciation by the public of the chance to see and hear them, or at least to experience the intact ecosystems. Further, as far as I could find out, there were no data to show that the predator control efforts of the well-funded predator control bureaucracy actually resulted in solid benefits to the ranchers. Consequently, I considered animal damage control to be an area urgently in need of policy change. Yet until late 1970, the animal damage control units of the FWS, United States Department of Agriculture (USDA) extension agents, livestock associations and ranchers in the west, and the congressional committees that represented

them, presented a solid phalanx of predator control supporters who effectively resisted any change.

The first step in seeking change was to enlist Nathaniel Reed, Assistant Secretary of Interior for Fish, Wildlife and Parks, who had strong ethical and practical concerns about the predator control program. To counter the strong opposition, we decided that we needed to obtain the best available scientific information. Accordingly, we appointed an Advisory Committee on Predator Control composed of nationally known scientists with impeccable credentials. To assure that the Committee's results would have credibility, we insisted that it operate as a totally independent advisory body. The Committee spent some months conducting research and holding hearings, and in late 1971, it produced its report.[3] It found that persistent poisons had been applied, often in very large amounts, to range and forest lands without adequate knowledge of their ecological effects, nor of their utility in preventing losses to livestock. The large-scale use of poisons for control of predators and field rodents had resulted in unintended losses of other animals and in other harmful effects on natural ecosystems. The Committee concluded that necessary control of coyotes and other predators could be accomplished by methods other than poisons.

Armed with these findings, we prepared draft legislation to change the program and end the use of poisons. The legislation was submitted as an administration bill.[4] Although the bill subsequently passed the House, we recognized that the strong opposition to changing the predator control bureaucracy would probably preclude achieving rapid results through Congressional legislation. Therefore we also prepared an executive order to accomplish the same results without recourse to Congress. This approach was successful. On February 8, 1972, President Nixon signed the order, entitled Environmental Safeguards on Activities for Animal Damage Control on Federal Lands.[5] The order and the rules and regulations issued by the Environmental Protection Agency, United States Department of Interior (USDI) and USDA, which implemented the order, accomplished three main objectives. First, they essentially stopped use of chemical toxins for killing predatory mammals or birds on federal lands. Second, they did the same for use of any chemicals which cause secondary poisoning effects (i.e., in other birds, mammals or reptiles). Third, they did the same for any federal programs — i.e., the

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[3] Advisory Committee on Predator Control, PREDATOR CONTROL–1971 (1972).

[4] S. 3334, 92d Cong. (2d Sess. 1972); H.R. 13081, 92d Cong. (2d Sess. 1972).

[5] Exec. Order No. 11643, 37 § C.F.R. 2875 (1972).

USDI Animal Damage Control program and the USDA extension service, etc. — regardless of where they occur. The executive order also established the policy that "All such mammal or bird damage control programs shall be conducted in a manner which contributes to the maintenance of environmental quality and to the conservation and protection, to the greatest degree possible, of the Nation's wildlife resources, including predatory animals." In his 1972 State of the Union Message, the President said: "Americans today set high value on the preservation of wildlife. The old notion that the only good predator is a dead one is no longer acceptable as we understand that even the animals and birds which sometimes prey on domesticated animals have their own value in maintaining the balance of nature."[6]

In the predator control policy shift, the initiative again came from ethically motivated individuals who were able to take advantage of public ethical concerns stimulated by NGOs. Yet the proximate rationale for the policy change was an objective scientific analysis of the benefits and costs of the change. Underlying the acceptance of the new policy was the environmental ethic that protection of wildlife and intact ecosystems is a desirable objective. Further, the President, in his State of the Union Message, emphasized the value of preserving wildlife. He also dismissed the frontier ethic that "the only good predator is a dead one," and replaced it with the principle that even predators "have their own value. . . ."[7]

III. WORLD HERITAGE TRUST CONVENTION

My third example involves international environmental policy. The modern concept of national parks dates from the creation of Yellowstone National Park in 1872. Parks are recognized as part of the natural and cultural heritage of our nation, and they are clearly an expression of environmental ethical precepts. This area of environmental policy is not new. At least as early as the third century B.C., the need for complete protection of certain areas and animals was recognized in India. India's ruler, Emperor Asoka, declared certain species of birds and other animals totally protected in approximately 250 B.C.[8] "Abbayaranya"

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[6] COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY: THE THIRD ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 375 (1972).

[7] *Id.*

[8] Lee M. Talbot, *The International Role of Parks in Preserving Endangered Species, in* FIRST WORLD CONFERENCE ON NATIONAL PARKS 295-304 (Alexander B. Adams ed., Nat'l Park Service, 1962).

areas "where beasts could roam about without any fear of man, had been established 50 years before."[9]

Part of the modern concept of national parks is that, because parks are of value to the nation as a whole, the responsibility and cost for protecting them should be borne by the nation rather than the states in which they are located. The international extension of this principle is that certain areas are of such global importance that they are part of the natural and cultural heritage of mankind as a whole, not just the country in which they are located; consequently, the international community should assist in their protection.

This concept was proposed at the 1965 White House Conference on Natural Beauty by two prominent environmentalists, Dr. Joseph Fisher, President of Resources for the Future, and Dr. Russell Train, President of the World Wildlife Fund. The following year the idea was adopted by the International Union for Conservation of Nature and Natural Resources (IUCN) (now known as the World Conservation Union). During the following five years, the IUCN developed the concept into a draft international convention for a World Heritage Trust. Subsequently the United Nations Educational, Scientific and Cultural Organization (UNESCO) developed a similar draft international convention focused on cultural heritage. By 1970 neither initiative had gotten to the stage of negotiation.

In 1970 the President's Council on Environmental Quality (CEQ) was established with Russell Train as Chairman. The CEQ was the United States' lead agency for the preparations for the 1972 Stockholm United Nations Conference on the Human Environment. I was the CEQ official with key responsibilities for conservation initiatives. I had previously been involved in developing the IUCN draft and, with Chairman Train's strong support, worked to have the World Heritage Trust accepted on the conference's agenda. This was consistent with United States policy because, on the CEQ's advice, the proposal for the World Heritage Trust had been part of President Nixon's 1971 Environmental Program.[10] The IUCN and UNESCO drafts were merged and the result was endorsed by the Stockholm Conference. Later that year, it was negotiated as an international convention. This agreement is now in force as the Convention on the Protection of the World Cultural and Natural Heritage, and it remains one of the most successful examples of

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[9] *Id.*

[10] COUNCIL ON ENVIRONMENTAL QUALITY, THE SECOND ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY ix (1971).

international environmental policy.

The Convention contains explicit declarations of environmental ethics, recognizing that the cultural and natural heritage of all nations has irreplaceable and outstanding universal value for aesthetics, science, history, art, conservation, and natural beauty. The ethical precept is that this heritage must be protected, and the convention provides measures to accomplish this.[11]

This example illustrates the creation of environmental policy where the environmental ethics and precepts were explicit from the start. Yet, it is significant that this environmental policy success again stemmed from individuals who were motivated by their own strong environmental ethics, who initiated the process, worked to develop the IUCN Convention, promoted acceptance of the Trust concept as United States policy and adoption of the Trust concept by the UN Conference agenda, and who helped to negotiate the Convention itself.

CONCLUSION

United States environmental policy, motivated and informed by environmental ethics, usually strives to satisfy environmental ethical precepts. However, while environmental ethics have played a major role in the development of environmental policies, the expressed or official form of such policies may or may not explicitly refer to these ethics as such. The processes or pathways by which environmental ethics play their roles in developing environmental policies vary from case to case. They do not represent a neat, consistent, formalized, textbook procedure. Differing strategies and tactics are required to deal with the often strong, organized opposition to proposed environmental policies.

The one constant in all these environmental policy-making procedures is that ethics are a powerful motivation for the key individual or individuals who initiate and drive the process.

Yet, ethics are not necessarily a visible part of the subsequent policy process. NGOs often bring ethics into the process both through their own motivation and through their role in making the public and Congress aware of environmental problems and the ethical dimensions of those problems. The NGOs' efforts, which focus public and political attention on environmental issues, can help to create a "trigger event" that facilitates development of environmental policy. The final

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[11] Convention for the Protection of the World Cultural and Natural Heritage, Nov. 23, 1972, 27 U.S.T. 37.

conclusion is that public environmental policy does reflect environmental ethics and that those ethics do play a major, although sometimes hidden, role in environmental policy development.