

PROPERTY RIGHTS V. ENDANGERED SPECIES
THE AMERICAN DREAM AND THE COMMON GOOD

A graduate project submitted in partial fulfillment of the requirements for the degree of
Master of Public Administration

By

Charles Timothy Shates

California State University, Northridge
June, 2005

For Sue, my wife, Julia and Tessa, my daughters, and for future generations

TABLE OF CONTENTS

Dedication	ii
List of Illustrations	iv
Abstract	v
Introduction	1
Chapter One Wild Life: The Endangered Species Act	5
Chapter Two Ground to Stand On: Property Rights	14
Chapter Three Powers That Be: The Corporation	27
Chapter Four Trees and Water: The Pacific Lumber Case	46
Chapter Five Rivers and Highways: The Newhall Ranch Case	53
Conclusion	75
References	87

LIST OF ILLUSTRATIONS

Table 1. Projected Forest Seral Type by [Selected] Decades.	48
Figure 1. Newhall Ranch sign on Highway 126.	55
Figure 2. The eventual fate of the orange trees.	56
Figure 3. A cross-section of the Santa Clara River Valley.	57
Figure 4. Industrial park development in the town of Castaic.	58
Table 2. Newhall Ranch project permits and approvals required.	59
Figure 5. On one side of the river, housing in Santa Clarita.	60
Figure 6. On the other side of the river from the housing.	61
Figure 7. Traffic makes its way over a bridge.	63
Figure 8. Shopping center along one side of the river.	64
Figure 9. Southern California's last wild river.	71
Figure 10. The Santa Clara River.	72
Figure 11. In the same general vicinity, the Santa Clara River.	72
Figure 12. The relatively lightly traveled Highway 126.	73
Figure 13. Zoning began with the best of intentions.	75

ABSTRACT

PROPERTY RIGHTS V. ENDANGERED SPECIES

THE AMERICAN DREAM AND THE COMMON GOOD

By

Charles Timothy Shates

Master of Public Administration

This study examines how notions about dominion, self-interest, private property, and economic growth and how the development of environmental protections, property rights, and corporations have influenced the shaping of the country. Two illustrative cases are examined: Pacific Lumber, a large timber-owning concern in Northern California redwood country, and Newhall Ranch, a large planned community in suburban Northern Los Angeles County. The study concludes that a sudden, radical paradigm shift is unlikely, but that accelerated incremental change may result from a convergence of the ideas of stewardship, traditional liberal democratic problem-solving processes or direct regulation, and green consumerism—representing fundamental shifts in the definitions of self-interest and the common good, or public interest.

INTRODUCTION

The Skeptical Environmentalist, Bjorn Lomborg's popular book, began with the assertion "things are getting better" and then the book questioned

the Litany of our ever deteriorating environment...the view of the environment that is shaped by the images and messages that confront us each day on television, in the newspapers, in political statements and in conversations at work and at the kitchen table (2001, p. 1).

Lomborg's point, ultimately, was not that problems don't exist. Rather, his point was that, while things were not necessarily good, they were better than they used to be. To prove his position, he cited such factors as improved sanitation, improved nutrition, and longer life spans. Indeed, modern science has brought a flood of achievements in its wake. It is just this success that has added credence to the mythology of progress which is one of the hallmarks of modernism.

It should be noted that findings of fact made by the modern-day United States Congress are supposed to be based upon the best scientific evidence available at the time. In public administration, "Any final rule [issued by an administrative agency] must be based on *substantial evidence* on the record before the agency at the time of the decision" (Cooper, 2000, p. 152) [emphasis added]. In the Rules of the House of Representatives, clauses 2(1)(3)(A) of rule XI, and 2(b)(1) of rule X, require that oversight findings and recommendations be reflected in all Committee reports (U.S. House, 1998). The Congress ultimately may make compromises or even disregard findings in the interest of political expediency; unlike administrative agencies, the Congress is directly accountable to the electorate.

Notwithstanding environmental skeptics, such as Lomborg, who decline to acknowledge the darker side of material progress, Section 2(a) of the Endangered Species Act of 1973 begins with a brief enumeration of the following *findings* of Congress:

- (1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;
- (2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;
- (3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people...

The quality of life issues that the human race confronts at the beginning of the 21st century are caused, in part, by unbridled freedom in the use and development of private property, and in part by market failures. Such problems as traffic congestion, poor air quality, and loss of habitat are often the direct result of man's economic activities. Many problems are caused by the way we build; many by the way we extract and use natural resources.

Efforts to alleviate environmental problems through policy have met with only mixed success. This is for two reasons. First, symbolic actions give a sense of having addressed the problem, when they are really only what Smith (1998) called "a suture, an attempt to hide the wound that contemporary environmentalists are making to the smooth fabric of productivist discourse" (p. 7). According to Cahn (1995, p. 24), policymakers create and sell policy outputs to political consumers, addressing the problem symbolically but failing to address the substantive issues. Second, some of the most successful pieces of legislation have also been the most contentious. This is to be expected, given that, as Cahn wrote, "Environmental policy is predicated on regulating the use and development of private property," (Ibid., p. 8) while at the same time private property underpins the

liberal democratic tradition. To the extent that legislation such as the Endangered Species Act has been successful in giving environmentalists a tool with which to fight development interests, there has been also a significant amount of grassroots mobilization in opposition to environmental regulation and generally in favor of liberal property rights.

This recent mobilization against environmental regulations has been very successful because it taps into an emotional response to a very powerful American Dream archetype. Individuals may have different versions of the dream, which has evolved over the course of American history. (The dream of “a house in the suburbs,” for example, is a far cry from the dream of “freedom to worship as one pleases.”) In a recent development on this theme, Rifken’s book, *The European Dream* (2004), was based on his observation that the American Dream was in decline and would eventually be eclipsed by the new European Dream, which stresses personal development and cooperation within community over competitive accumulation of wealth.

This paper explores the conflict between public policy and individual freedom in the context of land use and development. Property rights rank among the most important individual freedoms, but what happens when the exercise of those rights by property owners interested in developing their land, for example, infringes on a neighbor’s quiet enjoyment? Before the administrative state came into being, there existed a long history of common law, the remnant of which is today known as nuisance law, which governed such infringements.

There exists a strong tension between two fundamentally opposing environmental philosophies that have shaped the development of the United States. These philosophies can be summed up as falling under one of two categories of belief about humanity’s place

in and relationship to nature. The first category can be called dominion, that which has guided the expansive aspect of American history. It informs extraction and development of natural resources, what Smith (1998, p. 5) called “the discourse of productivism.” The second category can be called stewardship, and it informs the conservation of natural resources. Freyfogle (2003, pp. 37-38) distinguished these two differing types of energy, as represented by the terms ‘boomers’ and ‘stickers.’ The latter were noted for their desire for ‘quiet enjoyment.’

The birth of the modern corporate form of business, not surprisingly on the dominion side of the equation, has enabled more rapid growth and development of resources because of its ability to generate greater amounts of capital. Growth and development is good—to a point. Cells must grow and divide if an organism is to live, but when cells grow too much, or divide too fast, the result may be harmful to the organism as a whole. There is a name for this condition and—when malignant—it is called cancer.

CHAPTER ONE WILD LIFE: THE ENDANGERED SPECIES ACT

Public policy can be defined as a public response to a perceived public problem. In the late 1960s and early 1970s, Congress passed, and the Republican president, Richard Nixon, signed into law, a number of Acts, among them the National Environmental Policy Act, the Clean Air Act, and the Clean Water Act, designed to protect the environment and reverse perceived environmental degradation. The Endangered Species Act of 1973 (ESA) is a public attempt to address the narrow problem of species extinction—the loss of biodiversity. Is this a legitimate problem? Species become extinct as a normal result of the evolutionary process, but scientific evidence has indicated that man’s activities have accelerated the rates of extinction far beyond the background levels that existed previously, suggesting that the environmental impact of these activities is significant. Detractors literally tend to miss the forest for the trees, asking would we rather save an owl or our economic livelihoods. But the bigger picture is far more insidious—for if all these other species are dying maybe man’s environment is becoming unsuitable for man as well. It is particularly distressing to some scientists that the world’s amphibians are rapidly disappearing. These creatures are considered “indicator species,” like the miner’s canary that indicates when it is no longer safe in the mine. The reason that animals such as frogs are so susceptible to environmental degradation is in the nature of their biology. Frogs have numerous capillaries near the surface of their skin and obtain a large portion of their oxygen directly from the air and water to which they are exposed. The fact that they have been disappearing has scientists alarmed. The U.S. Geological Survey has instituted a “frog watch,” asking volunteer

Thank You for previewing this eBook

You can read the full version of this eBook in different formats:

- HTML (Free /Available to everyone)
- PDF / TXT (Available to V.I.P. members. Free Standard members can access up to 5 PDF/TXT eBooks per month each month)
- Epub & Mobipocket (Exclusive to V.I.P. members)

To download this full book, simply select the format you desire below

