

REMARKS

BETWEEN THE FLOOD AND THE RAINBOW: OUR COVENANT TO PROTECT THE WHOLE OF CREATION

By
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As Congress weighs the interests of landowners against the environment, the future of the Endangered Species Act may be in peril. Secretary Babbitt discusses the success of our environmental laws and urges recognition of the moral, ethical, and religious values underlying the Endangered Species Act. These values manifest themselves in a wolf's green eyes, a sacred blue mountain, the words from Genesis, and the answers of children. These considerations should lead us to the conclusion that we are responsible for the whole of creation.

I began 1995 with one of the more memorable events of my lifetime. It took place in the heart of Yellowstone National Park during the first week of January, a time when a layer of deep, pure snow blanketed the first protected landscape in America. But for all its beauty, the last sixty years had rendered this landscape an incomplete ecosystem. By the 1930s, government-paid hunters had systematically eradicated the predator at the top of the food chain: the American grey wolf.¹ I was there on that day, knee deep in the snow, because I had been given the honor of carrying the first wolves back into that landscape. Through the work of conservation laws, I was there to restore the natural cycle—to make Yellowstone complete.

The first wolf was an Alpha female. After I set her down in the transition area, where she would later mate and bear wild pups, I looked through the grate into the green eyes of this magnificent creature within a

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¹ John A. Zucotti, Note, *A Native Returns: The ESA and Wolf Reintroduction to the Northern Rocky Mountains*, 20 COLUM. J. ENVTL. L. 329, 330 n.7 (1995).

spectacular landscape. I was profoundly moved by the elevating nature of America's conservation laws—laws with the power to make creation whole.² Upon returning to Washington, I witnessed a new Congress wielding a power of a different kind.

Attack on Water, Land, and Creatures

First, I witnessed an attack on our national lands, an all-out attempt to abolish our American tradition of public places—national parks, forests, historic sites, wildlife refuges, and recreation areas.³ Name your favorite place: a beach in New York harbor; the Appomattox Courthouse; the great western ski areas; the caribou refuge in the Arctic; or the pristine waters off the Florida Keys. Each of these places is at risk. For example, the Chairman of the House Subcommittee on Public Lands estimated that his committee may have to close 150 of the National Park Service's 368 units.⁴ In these times, it seems that no part of our history or our natural heritage is sufficiently important to protect and preserve for the benefit of all Americans.

Next, I witnessed an attack targeting the Clean Water Act (CWA), the most successful of all our environmental laws.⁵ Until the CWA passed, slaughterhouses, pulp mills, and factories across the country spewed raw waste into our waterfronts. Twenty-three years later, the CWA has restored those rivers, breathing new life into once-dead waters. I saw people gather on clean banks to fish, sail, swim, eat, and live. I saw that as the CWA helps cities restore our waters, those waters restore our cities in return. I then saw Congress rushing to tear that act apart.⁶

Finally, more than any of our environmental laws, the act they have most aggressively singled out for elimination—one that made Yellowstone complete—is the Endangered Species Act (ESA).⁷ Never mind that this Act is working, having saved ninety-nine percent of all listed species.⁸ Never mind that it effectively protects hundreds of plants and animals, from grizzly bears to whooping cranes to greenback cutthroat trout.⁹ Never mind that it is doing so while costing each American sixteen cents per year.¹⁰ Although the new Congress may list some species as endangered, they can find absolutely no reason to protect all species in general.

² See generally *id.*; see also Endangered Species Act, 16 U.S.C. §§ 1531-44 (1994).

³ Molly Ivans, *Republicans Attacking Environment on Four Fronts*, OREGONIAN, Aug. 10, 1995, at C7.

⁴ Don Bowman, *ESA Rewrite Dominated Western States Summit*, ELKO DAILY FREE PRESS, July 31, 1995.

⁵ 33 U.S.C. §§ 1251-1387 (1994).

⁶ See, e.g., 141 CONG. REC. H14144-01 (daily ed. Dec. 6, 1995) (discussing attacks on the Clean Water Act).

⁷ 16 U.S.C. §§ 1531-44 (1994).

⁸ Fish and Wildlife Service, *Report Outlines Success in Saving Endangered Species: Recovery Efforts Are Working*, DEPARTMENT OF THE INTERIOR NEWS RELEASE, Oct. 30, 1995, at 1 [hereinafter DOI NEWS RELEASE].

⁹ See 50 C.F.R. § 17.11 (1994) (listing threatened and endangered species).

¹⁰ Douglas Chadwick, *Endangered Species Act is in Peril Itself*, L.A. TIMES, Apr. 30, 1995, at 2.

Who cares, they ask, if the spotted owl goes extinct?¹¹ We won't miss it or, for that matter, the Texas blind salamander¹² or the kangaroo rat.¹³ That goes double for the fairy shrimp,¹⁴ the burying beetle,¹⁵ the Delphi sands flower-loving fly,¹⁶ and the virgin spine dace.¹⁷ If they get in our way, and humans drive some creatures to extinction, that is just too bad. This is a fairly accurate summary of how the new majority in Congress has expressed its opinion of the ESA.¹⁸

The Values of Children

Fortunately, there are other Americans who have expressed their opinion on this issue. I recently read an account of a Los Angeles "Eco-Expo," where children were invited to write down their answers to a basic question: "Why save endangered species?"¹⁹ One child, Gabriel, answered, "Because God gave us the animals."²⁰ Travis and Gina wrote, "Because we love them."²¹ A third answered, "Because we'll be lonely without them."²² Still another wrote, "Because they're a part of our life. If we didn't have them, it would not be a complete world. The Lord put them on the earth to be enjoyed, not destroyed."²³

In my lifetime I have heard many political, agricultural, scientific, medical, and ecological reasons for saving endangered species. In fact, I have hired biologists and ecologists for just that purpose. All their reasons have to do with providing humans with potential cures for disease, yielding humans new strains of drought-resistant crops, offering humans bioremediation of oil spills, or thousands of other justifications for why species are useful to humans. However, none of their reasons moved me like those of the children. These children are using plain words to express a complex notion that has either been lost, forgotten, or never learned by some members of Congress and, indeed, by many of us. The children expressed the moral and spiritual imperative that there may be a higher purpose inherent in creation, one demanding our respect and our stewardship quite apart from whether a particular species is or ever will be of material use to mankind. They see in creation what our adult political leaders refuse to acknowledge. They express an answer that can be reduced to one word: values.

¹¹ 50 C.F.R. §§ 10.13, 17.11, 17.95 (listing the spotted owl as a threatened species).

¹² *Id.* §§ 17.11, 17.95.

¹³ *Id.* §§ 10.13, 17.11, 23.23.

¹⁴ *Id.* § 17.11.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Paul L. Angermeier, *Reinstate the Endangered Species Act*, ROANOKE TIMES EDITORIAL (VIRGINIA), Feb. 25, 1996, at F3.

¹⁹ Abigail Van Buren, *Dear Abby*, NEWSDAY, July 5, 1995 at B19.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

A Sacred Blue Mountain

I remember when I was their age as a child growing up in a small town in northern Arizona. I learned my religious values through a church that kept silent on our moral obligation to nature. By its silence, the church implicitly sanctioned the prevailing view of the earth as something to be used and disposed of however we saw fit, without any higher obligation. In all the years that I attended services, there was never any reference nor any link to our natural heritage or to the spiritual meaning of the land surrounding us. However, outside that church, I always had a nagging instinct that the vast landscape *was* somehow sacred and holy. It was connected to me in a sense that my religious training ignored.

At the edge of my home town, a great blue mountain called the San Francisco Peaks soars up out of the desert to a snowy summit, snagging clouds on its crest, changing color with the seasons. It was always a mystical, evocative presence in our daily lives. To me, that mountain, named by Spanish missionaries for Saint Francis, remains a manifestation of the presence of our Creator. That I was not alone in this view was something I had to discover through a very different religion, because the Hopi Indians lived on the opposite side of the blue mountain in small pueblos on the high mesas that stretch away toward the north. It was a young Hopi friend who taught me that the blue mountain was truly a sacred place.

One Sunday morning in June, my friend led me out to the mesa top villages where I watched as the Kachina filed into the plaza, arriving from the snowy heights of the mountain and bringing blessings from another world. Another time, he took me to the ceremonies where the priests of the snake clan chanted for rain and then released live rattlesnakes to carry their prayers to the spirits deep within the earth. Later, I went with my friend to a bubbling spring, deep in the Grand Canyon, lined with pahoos—the prayer feathers—where his ancestors had emerged from another world to populate this earth. By the end of that summer, I came to deeply and irrevocably believe that the land, the blue mountain, and all the plants and animals in the natural world together are a direct reflection of divinity.

Genesis and the Deluge

That awakening made me acutely aware of a poverty amidst my own rich religious tradition. I felt I had to either embrace a borrowed culture, or turn back and have a second look at my own. While priests then, as now, were not too fond of people rummaging about in the Bible to draw their own meanings, I chose to do so, asking, "Is there nothing in our Western, Judeo-Christian tradition that speaks to our natural heritage and the sacredness of that blue mountain? Is there nothing that can connect me to the surrounding Creation?" There are those who argue that there is not. There are those industrial apologists who, when asked about Judeo-Christian values relating to the environment, reply that the material world, including the environment, is just an incidental fact of no significance in the

relation between us and our Creator. They cite the first verses of Genesis, concluding that God gave Adam and his descendants the absolute, unqualified right to "subdue" the earth and gave man "dominion over the fish of the sea, over the fowl of the air, and over every living thing that moveth upon the earth."²⁴ God, they assert, put the earth here for the disposal of man in whatever manner he sees fit. However, if they read a few verses further, they would discover in the account of the Deluge that the Bible conveys a far different message about our relation to God and to the earth. In Genesis, God commanded Noah to take into the ark two by two and seven by seven of every living thing in creation, the clean and the unclean.²⁵ God did not specify that Noah should limit the ark to two charismatic species, two good for hunting, two species that might provide some cure down the road, and two that draw crowds to the city zoo.²⁶ He specified *the whole of creation*.²⁷ When the waters receded and the dove flew off to dry land, God set all of the creatures free, commanding them to multiply upon the earth.²⁸ Then, in the words of the covenant with Noah, "when the rainbow appears in the clouds, I will see it and remember the everlasting covenant between me and all living things on earth."²⁹ We are thus instructed that this everlasting covenant was made to protect the whole of creation, not for the exclusive use and disposition of mankind, but for the purposes of the Creator.

Now, we all know that the commandment to protect creation in all its diversity does not come to us with detailed operating instructions. It is left to us to translate a moral imperative into a way of life and into public policy. Compelled by this ancient command, modern America turned to the national legislature which forged our collective moral imperative into one landmark law—the Endangered Species Act of 1973.³⁰

Lost Values, Fragmented Creation

The trouble is that during the first twenty years of the Endangered Species Act, scientists, administrators, and other well-intentioned people somehow lost sight of that value—to protect the *whole* of creation—and instead took a fragmented, mechanistic approach to preserve individual species. Isolated specialists working in secluded regions waited until the eleventh hour to act and then heroically rescued species one at a time.³¹ Sometimes the result was dramatic recovery, but often the result was chaos, conflict, and continuing long-term decline. In the Pacific Northwest, for example, the spotted owl was listed even as federal agencies

²⁴ Genesis 1:24.

²⁵ Genesis 6:20, 7:02-03.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Genesis 8:17.

²⁹ Genesis 9:12-16.

³⁰ 16 U.S.C. §§ 1531-44 (1994).

³¹ See DOI NEWS RELEASE, *supra* note 8, at 1.

went forward with clear cutting.³² Efforts to save the alligator proceeded even as the Everglades shriveled from lack of water.³³ California salmon runs were listed even as water users continued to deplete the spawning streams.³⁴

It is only in the last few years that we have recovered, like a lost lens, our ancient religious values. This lens prevents us from seeing human-drawn distinctions, and allows us to view the interwoven wholeness of creation. Not surprisingly, when we can see past these man-made divisions, the work of protecting God's creation grows both easier and clearer.

Reconnecting Ecosystems

Looking past man-made divisions unites all state, county, and federal workers under a common moral goal. It erases artificial borders so we can see the full range of a natural habitat, whether wetland, forest, stream, or desert expanse. It makes us see all the creatures that are collectively rooted to one habitat, and how, by keeping that habitat whole and intact, we ensure the survival of the species. For example, in the Cascades, the spotted owl's decline was only part of the collapsing habitat of the ancient forests.³⁵ When seen as a whole, that habitat stretched from Canada to San Francisco. Not one but thousands of species, from waterfowl of the air to the salmon in their streams, depended for their survival on the unique rain forest amidst Douglas fir, hemlock, and red cedar. Our response was the President's Forest Plan, a holistic regional agreement forged with state and local officials and the private sector.³⁶ Across three state borders it keeps critical habitat intact, provides buffer zones along salmon streams and coastal areas, and elsewhere provides a sustainable timber harvest for generations to come.

That is also the lesson of Everglades National Park, where great flocks of wading birds were declining because their shallow feeding waters were drying up and dying off.³⁷ Only by erasing park boundaries could we trace the problem to its source, hundreds of miles upstream, where agriculture and cities were diverting the shallow water for their own needs. Only by looking at the whole South Florida watershed could

³² Jack Tuholske & Beth Brennan, *The National Forest Management Act: Judicial Interpretation of a Substantive Environmental Statute*, 15 PUB. LAND L. REV. 53, 132 n. 595 (1994).

³³ Jon Welner, Note, *Natural Communities Conservation Planning: An Ecosystem Approach to Protecting Endangered Species*, 47 STAN. L. REV. 319, 326 (1995).

³⁴ Larry Bradfish, *Recent Developments in Listing Decisions Under the Endangered Species Act and Their Impact on Salmonide in the Northwest*, 3 HASTINGS W.N.W. J. ENVTL. L. & POL'Y 77, 88 (1995).

³⁵ Mark Bonnett & Kurt Zimmerman, Comment, *Politics and Preservation: The ESA and the Northern Spotted Owl*, 18 ECOLOGY L.Q. 105, 170 (1991).

³⁶ Editorial, *Legal Refuge for Species*, THE OREGONIAN, Jan. 12, 1996, at D6.

³⁷ John L. Giesser, *The National Forest Service and External Developments: Addressing Park Boundary-Area Threats Through Public Nuisance*, 20 B.C. ENVTL. AFF. L. REV. 761, 766 & n.47 (1993).

state and federal agencies unite to put the parts back together by restoring the severed estuaries, reviving the Park, and satisfying the needs of farmers, fishermen, ecologists, and water users from Miami to Orlando.

This holistic approach is working to protect creation in the most fragmented habitats of America, from salmon runs in California's Central Valley to the red-cockaded woodpecker across Southeastern hardwood forests; from the Sand Hill Cranes on the headwaters of the Platte River in Central Nebraska to the desert tortoise of the Mojave Reserve.³⁸ The possibilities are limited only by our imagination and our commitment to honor the instructions in Genesis.

Let Us Answer

Increasingly, the possibilities are also limited by some members of Congress. Whenever I confront some of these bills that are routinely introduced—bills sometimes openly written by industrial lobbyists; bills that systematically attempt to eviscerate the Endangered Species Act³⁹—I take refuge and inspiration from the simple written answers of those children at the Los Angeles expo.⁴⁰ However, I sometimes wonder if children are the only ones who express religious values when talking about endangered species. I wonder if anyone else in America is trying to restore an ounce of humility to mankind, reminding our political leaders that the earth is a sacred precinct designed by and for the purpose of the Creator.

I recently got my answer. I read letter after letter from five different religious orders, representing tens of millions of churchgoers, all opposing a House bill to weaken the Endangered Species Act.⁴¹ They opposed it not for technical or scientific or agricultural or medicinal reasons, but for spiritual reasons. I was moved not only by how such diverse faiths could reach so pure an agreement against this bill, but by the common language and terms with which they opposed it—language that echoed the voices of the children.⁴² Suddenly, I understood exactly why some members of Congress react with such unrestrained fear and loathing towards the Endangered Species Act. I understood why they tried to ban all those letters from the Congressional Record. I understand why they are so deeply disturbed by the prospect of religious values entering the national debate, because if they heard that command of our Creator—if they truly listened to His instructions to be responsible stewards—then their entire framework of human rationalizations for tearing apart the Act would unravel.

³⁸ Robert Keiter, Symposium, *A New Era for the Western Public Lands Beyond the Boundary Line: Constructing a Law of Ecosystem Management*, 65 U. COLO. L. REV. 293, 308 (1993-1994).

³⁹ See, e.g., S. 503, 104th Cong., 1st Sess. (1995).

⁴⁰ Van Buren, *supra* note 19, at B19.

⁴¹ H.R. 2275, 104th Cong., 1st Sess. (1995).

⁴² One letter from the Presbyterian Church read, "Contemporary moral issues are related to our understanding of nature and humanity's place in them." The Reform Hebrew Congregation wrote, "Our tradition teaches us that the earth and all of its creatures are the work and the possessions of the Creator." The Mennonite Church wrote, "We need to hear and obey the command of our Creator who instructed us to be stewards of God's creation."

Those religious values remain at the heart of the Endangered Species Act. They make themselves manifest through the green eyes of the grey wolf, through the call of the whooping crane, through the splash of the Pacific salmon, and through the voices of America's children. We are living between the flood and the rainbow—between the threats to creation on the one side and God's covenant to protect life on the other. Why should we save endangered species? Let us answer this question with one voice, the voice of the child at that expo, who scrawled her answer at the very bottom of the sheet: "Because we can."⁴³

⁴³ Van Buren, *supra* note 19, at B19.