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Introduction to the Symposium: Species Protection and Development: Implications of United States Law and Policy on National and International Land Use

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SYMPOSIUM

SPECIES PROTECTION AND DEVELOPMENT: IMPLICATIONS OF UNITED STATES LAW AND POLICY ON NATIONAL AND INTERNATIONAL LAND USE

Private property rights and endangered species laws: can the two concepts ever truly peacefully exist? Who, in America, hasn't heard stories of protected wolves attacking a farmer's cattle? How many hunters, on private property, have taken aim and fired at bird, only to discover they had violated federal species protection laws? How many private landowners have had their hopes and dreams of future development restricted or halted altogether in order to protect the habitat of a little-known fish or small woodland animal? On a global scale, how do these issues play out in developing countries, where rainforest destruction and human development place the lives of many endangered species of plants and animals at risk?

We were aware, in choosing this year's symposium topic, that organizations supporting private landowner rights are currently lobbying a Congress more sympathetic to their complaints than at any other time since the passage of Endangered Species Act. It is an American tradition that one works hard to gain property over which one has absolute dominion and control—many might even call it the "American way." On the other hand, many world-renowned biologists and ecologists warn that thousands of species become extinct daily due to human encroachment around the globe, leading to a decline in biodiversity. Declining biodiversity raises pollution control concerns, results in restricted medical research opportunities, and causes irreversible damage to the earth's fragile biosphere. No self-respecting government could ignore this grim reality. It is easy to vilify either side of endangered species/private property disputes, but the fact is that most disputes have no simple solution. We therefore determined that the topic, *Species Protection and Development*, would make for a fascinating, worthwhile symposium.

On February 20, 1998, *The William and Mary Environmental Law and Policy Review* sponsored two panels that explored the issues surrounding property rights and endangered species laws. One of these panels dealt with local, domestic arguments and debates surrounding the topic. The other panel broadened the discussion to the international arena—surveying the current problems and possible solutions of

international development and international species protection laws. This issue of the *Review* is a compilation of the works of three professionals who spoke that day and two others who contributed works to this academic discussion at a later date.

Professor Patrick Parenteau leads the discussion by noting the importance of species protection efforts from both an economic and practical perspective. He argues for a shift in current paradigms toward a “biocentric view” of the world, and suggests that current market policy fails to place necessary value on biodiversity. Professor Parenteau laments that current endangered species laws are insufficient to meet realistically with current ecological problems in the United States and argues for “Real Reform” of both social and political means of dealing with species extinction.

Professor Federico Cheever addresses in his article the proper relationship between the value of economic activity and property and the enforcement of the Endangered Species Act. He notes that federal courts have started to include economic value of land in determining whether or not to enforce the Endangered Species Act. He illustrates through a listing of “thirteen species on the brink,” why judges should be prohibited from weighing the value of species protection against the economic dislocation that the law may create. He argues that conducting a traditional balancing test would be outcome determinative and lead to the extinction of most endangered species—one at a time.

The next two contributions shift from a domestic focus to a more global perception. Professor David Wirth spoke at the symposium on the global effects of environmental destruction, noting that international species protection laws are effective only with strong enforcement measures and a decline in the market for such animal goods as ivory and furs. In his article, he paints a much more detailed picture of the social and political harms caused by irresponsible environmental practices around the world, and argues that current domestic environmental laws can have little effect as long as other members of the international community fail to recognize or aid America in enforcing environmental laws, like the Endangered Species Act, globally. This discussion is further supported by Professor Kevin Kennedy in his rejection of unilateral approaches to resolving international environmental disputes. Through an extremely detailed analysis of the WTO, GATT, NAFTA, NAAEC, and other trade bodies and agreements, Professor Kennedy demonstrates the illegality of unilateral trade measures to resolve environmental disputes, and examines the potential of multilateral environmental agreements.

The Honorable Loren A. Smith, Chief Judge of the U.S. Court of Federal Claims, contributes a comment on the morality of federal regulation and the judicial oversight in the case of regulation disputes. Judge Smith argues that property rights are fundamentally moral rights, and that laws that intrude on the individual property interests of landowners leave open to debate the moral imperative of laws that are intended to protect America's fragile wildlife. The crux of his argument is that the strong, underlying morality that supports claims to property and wealth demands that freedoms of landowners not be ignored.

Although Richard J. Tobin, of the Institute for International Research, was unable to write for this journal, his participation on a panel and his presentation on the realities of species protection development projects overseas was invaluable to the symposium discussion. We would like to thank Mr. Tobin for his participation, as well as Professor Lynda L. Butler, of William & Mary School of Law, for moderating the event, and Professors Linda A. Malone and Ronald H. Rosenberg, also of William & Mary School of Law, for each leading a panel discussion. Finally, we would like to thank Dean Paul Marcus and Dean Connie Galloway for their help in finding the necessary financial support to make this symposium a reality.

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