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THE LAND ETHIC AND AMERICAN AGRICULTURE

N. William Hines*

The "key-log" which must be moved to release the evolutionary process for [a land] ethic is simply this: quit thinking about decent land-use as solely an economic problem. Examine each question in terms of what is ethically and aesthetically right, as well as what is economically expedient. A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.¹

When I was growing up on my grandparents' farm in eastern Kansas fifty years ago, my elders would never have thought that there could be a serious conflict between sound agricultural practices and responsible stewardship of the natural environment in which those agricultural activities took place. They were the survivors of the midwestern "Dust Bowl" of the 1930s. Our rural community may not have farmed in perfect harmony with nature—and I doubt if any of our neighbors were familiar with Aldo Leopold's formulation of "the land ethic"²—but the same conservation values permeated our lives.

Perhaps that is why I was surprised to read the recent warnings by American Farm Bureau Federation President Dean Kleckner that federal environmental regulations threaten to take control of privately owned farm and ranch land. In his keynote speech to the Farm Bureau's annual convention on January 10, 1994, Kleckner said, "Toads, owls, chubs, suckers, rats and bats, bugs and weeds, they're claiming title to our lands."³ He cited "overzealous enforcement" of the Endangered Species Act, the National Biological Survey, proposals to strengthen the Clean Water Act, increased wetlands protections, and limits on pesticide use as examples of "attempts by elitists and their bureaucratic accomplices to dictate how [farm] land will be used."⁴ Kleckner went on to

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1. ALDO LEOPOLD, *A SAND COUNTY ALMANAC* 224-25 (1949).

2. *Id.* at 201.

3. Jerry Perkins, *Farm Bureau President Blasts Environmental Laws*, *DES MOINES REG.*, Jan. 11, 1994, at 1A.

4. *Id.*

report, "[W]e continue to uncover federal land-use schemes hidden beneath the veil of environmental improvement."⁵ He asserted that America's farmers and ranchers are weary of "environmental elitists—those people who've already bought their getaway cabin."⁶ In addition, he argues that they are also "tired of animal rights terrorists, the anti-science, anti-chemical kooks and the rest who seek to force-feed their peculiar philosophies on a [farm] population born to freedom."⁷ Kleckner concluded by pledging that the Farm Bureau will lead the fight to defend farmers' and ranchers' property rights against assaults by "Do-Nothing Do-gooders"⁸ and "envirocrats,"⁹ who, "with the arrogance of ignorance," plot to use environmental regulations to wrest land-use control away from rural landowners.¹⁰

My plan in this Essay is to interpose and contrast Kleckner's harsh criticisms of the ways in which environmental regulations interfere with the property rights of today's rural landowners, with Aldo Leopold's fifty-year-old musings about the need for American society to embrace a set of moral principles which he denominated "the land ethic." Leopold was, without question, one of the most important voices of the conservation-environmental movement earlier in the century, and one who had more to say about the communitarian responsibilities of private landowners than many others in the movement.

Claims of private landowner "sovereignty" over land-use decisions are neither new in American life nor unique to the agricultural sector. Except for the marginal limitations imposed by nuisance law, such claims have centuries of historical legitimacy to support them. Aldo Leopold's mid-twentieth century proposal to landowners to embrace a land ethic was clearly premised on the existence of a legal regime which conceded almost total authority for rural land-use decisions to landowners. Leopold's message was an appeal to landowners' consciences, not a proposal to change their legal rights. In Leopold's view the twentieth century conservation movement was the harbinger of a new moral climate in western civilization, one in which there would be general recognition of the ecological necessity that mankind regard the natural world as a

5. *Id.*

6. Lisa Shuchman, *Farm Bureau President Assails U.S. "Envirocrats"*, PALM BEACH POST, Jan. 11, 1994, at 6B.

7. *Id.*

8. *U.S. Farm Leader Tars "Envirocrats," Meddling Laws*, Reuters, Ltd., Jan. 10, 1994, available in LEXIS, News Library, Fin. File.

9. *Id.*

10. Shuchman, *supra* note 6, at 6B.

shared community to which ethical obligations attached.¹¹ He summarized his credo as follows: "In short, a land ethic changes the role of *Homo sapiens* from conqueror of the land-community to plain members and citizens of it. It implies respect for his fellow-members, and also respect for the community as such."¹²

Much has happened in the environmental movement since Leopold first posited his land ethic as a normative value for landowners, yet the basic tension between individual property rights and communitarian responsibilities remains in the forefront. Although it has attracted many adherents among today's farm families, as Kleckner's rhetoric suggests, Leopold's land ethic is still far from gaining the universal acceptance of the agricultural sector. The norms it embodies, however, have been highly influential in the off-farm community. The common thread that united the United States environmental movement of the 1960s, and ties together the panoply of environmental laws it spawned during the past twenty-five years, is a clear recognition of the existence of the vital ecological interdependencies that Leopold identified so eloquently in his writings. A brief examination of the environmental regulations and conservation programs that Kleckner cites as endangering the private property rights of today's farmers and ranchers will demonstrate the strong connection between Leopold's land ethic and contemporary public policy.

The Endangered Species Act of 1973¹³ was enacted to protect species of fish, wildlife, and plants threatened with extinction, and to conserve the ecosystems upon which these species depend. The Act makes repeated references to the United States's obligations under various international agreements respecting the protection of wild flora and fauna.¹⁴ Currently, the Act has designated 1245 species of plants and animals as endangered or threatened, and another 450 species will be added to the list over the next four years.¹⁵

Although most complaints about the Endangered Species Act's antidevelopment effects have arisen in the context of proposed impoundments of free-flowing waterways and timber harvests of public lands, conflicts with commercial agriculture have also occurred from time to time. Protests by farmers prohibited from killing marauding grizzly

11. LEOPOLD, *supra* note 1, at 201-26.

12. *Id.* at 204.

13. 16 U.S.C. §§ 1531-1544 (1988 & Supp. IV 1992).

14. *See id.*

15. Catalina Camia, *Survey Would Inventory Every Plant, Animal*, 51 CONG. Q. 1868, 1868 (1993).

bears in Montana and timberwolves in Minnesota come to mind, as does the claim that last fall's devastating fires in California were fueled by wild underbrush that could not be trimmed because it provided the habitat for an endangered species of rats. Presumably, it is cases like these to which Kleckner alludes when he complains about "overzealous enforcement" of the Act.

The problem with this complaint, as Leopold pointed out in his writings years ago, is that for one who views natural resources through the narrow lens of economic productivity, the protection of any endangered species with no demonstrable economic value will always appear to be overzealous enforcement. Leopold's land ethic would suggest that these inconveniences to individual farmers should be borne stoically with the realization that society will be benefitted in the long run by the retention of maximum biodiversity. He wrote, "[W]hat of the vanishing species, the preservation of which we now regard as an esthetic luxury? They helped build the soil; in what unsuspected ways may they be essential to its maintenance?"¹⁶ This question forms the thesis of the Global Biodiversity Treaty signed at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992 by most of the world's nations.¹⁷ The United States's refusal to sign the accord was one of the most notable disappointments of the Rio Conference.

One initiative already is underway that should help achieve the habitat-protection goals of the Endangered Species Act—the National Biological Survey (Survey). Under an internal reorganization plan created by Department of Interior (Department) Secretary Bruce Babbitt and blessed by President Bill Clinton, relevant scientific personnel from seven agencies within the Department were reassigned to the Survey project. The order creating the project became effective when President Clinton signed the Appropriations Act for the Department on November 11, 1993. Eventually as many as 1400 federal scientists will be assigned to the Survey.¹⁸ Much of the Survey's work will be to marshal information about the nation's biological diversity already existing in various data bases. Survey scientists also will undertake new studies in areas of the public lands where reliable information on indigenous biological communities is lacking. Except as these latter studies may involve federal lands under lease to private lessees for grazing or mineral development, it is difficult to understand why Kleckner included the Survey as

16. LEOPOLD, *supra* note 1, at 220.

17. United Nations Conference on Environment and Development: Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818.

18. Camia, *supra* note 15, at 1868.

one of his examples of potential federal invasions of private property rights.¹⁹ There presently appear to be no plans to extend the Survey's data gathering to privately owned lands.

If Leopold were still on the scene, he would argue that a Natural Biological Survey is long overdue. In a companion essay to "The Land Ethic" entitled "Wilderness," he wrote:

The practices we now call conservation are, to a large extent, local alleviations of biotic pain. They are necessary, but they must not be confused with cures. The art of land doctoring is being practiced with vigor, but the science of land health is yet to be born. A science of land health needs, first of all, a base datum of normality, a picture of how healthy land maintains itself as an organism.²⁰

It is completely understandable for Kleckner to express concerns about how proposed changes in the Federal Water Pollution Control Act²¹ affecting the control of nonpoint pollution sources might affect farmers and ranchers economically. The Clean Water Act²² has remained virtually unchanged since massive amendments adopted in 1972 focused national attention on eliminating pollutants entering water from municipal and industrial discharge points. The more complex problem of halting the flow of pollutants from reaching the nation's waterways via open land runoff was placed on the back burner, where it has remained ever since.

In an article published almost twenty-five years ago entitled "Agriculture: The Unseen Foe in the War on Pollution," I identified the millions of tons of soil annually eroding into surface waters from farms and ranches as a major contributor to the national water pollution problem.²³ Eroding soil not only clogs and darkens the nation's waterways, sediment particles serve as the primary vehicles for carrying farm chemicals—particularly pesticides and fertilizers—that contaminate our water supplies and overnutrify our recreational waters. After more than twenty years of studies and planning activities under the 1972 Act, very little progress has been made in reducing this major cause of water quality degradation

19. Shuchman, *supra* note 6, at 6B ("[W]ith [information from the survey] bureaucrats, not property owners, will be in control of the land.").

20. LEOPOLD, *supra* note 1, at 188-201, 201-226 ("Wilderness" and "The Land Ethic" chapters).

21. 33 U.S.C.A. §§ 1251-1387 (West 1986 & Supp. 1993).

22. *Id.*

23. N. William Hines, 55 CORNELL L. REV. 740 (1970); *see also* N. William Hines, *Farmers, Feedlots and Federalism: The Impact of the 1972 Federal Water Pollution and Control Amendments on Agriculture*, 19 S.D. L. REV. 540 (1974).

in the countryside. What has emerged after two decades of planning studies, however, is much more compelling evidence of the central role in water pollution played by runoffs from agricultural lands. Even today, however, it is doubtful that forthcoming changes in federal law will do more than mandate increased state efforts to correct problems in a handful of watersheds with the most egregious soil erosion situations.

The permanent solution to water pollution problems created by the erosion of agricultural land has been known since well before the time Leopold propounded his "land ethic." Stopping the flood of polluting agricultural runoff is accomplished by the same means as stopping the loss of our irreplaceable top soil. Both require the adoption of effective soil conservation practices in all watersheds subject to significant erosion. Describing the early results of the soil conservation movement, Leopold wrote in 1949:

Despite nearly a century of propaganda, conservation still proceeds at a snail's pace; progress still consists largely of letter-head pieties and convention oratory. On the back forty we still slip two steps backward for each forward stride. . . .

. . . .

. . . The farmers, in short, have selected remedial practices which were profitable anyhow, and ignored those which were profitable to the community, but not clearly profitable to themselves. . . .

. . . .

. . . [W]e asked the farmer to do what he conveniently could to save his soil, and he has done just that, and only that.²⁴

Leopold's assessment still holds true fifty years after it was written.

Adherence to a land ethic obviously requires much more positive action to prevent soil erosion. In recent years state governments have become more aggressive in attacking excessive erosion as a public nuisance. An Iowa statute creates soil loss limits and authorizes court action against landowners who exceed them.²⁵ Although a number of states have adopted strict controls on erosion from shorelines and lake shores, the main efforts to control the erosion from agricultural land still rely primarily on voluntary compliance with the government's conservation recommendations. Responsible farmers—who have conscientiously invested in effective soil conservation improvements and who employ agricultural practices consistent with sustaining the land's productivity for

24. LEOPOLD, *supra* note 1, at 207-09.

25. IOWA CODE ANN. §§ 161A.42-.66 (West Supp. 1993).

future generations—would applaud the news that the government is finally bringing pressure to bear on neighbors whose behaviors are influenced only by their perceptions of short-term economic advantage. Mandatory enforcement of solid conservation measures is not yet on the horizon in most states, but there are a lot more adherents to Leopold's "land ethic" among today's family farmers and ranchers than the negative tone of Kleckner's speech to his Farm Bureau audience would suggest.

Kleckner mentioned wetlands preservation as a possible threat to agricultural production. However, this position is particularly difficult to square with current public sentiment on this topic, even in the agricultural community. It is hard to imagine a chapter in America's historic development of its land resources where the land ethic was more needed and less observed than in the destruction of its once bountiful wetlands. Given the sheer magnitude of the drainage and tilling work performed across the countryside between the mid-nineteenth and mid-twentieth centuries, it is probably foolish to hope for a full restoration of the nation's natural wetlands. It would be expecting too much of present landowners, even those who strongly embrace the land ethic, to undo the massive destruction of wetlands wreaked by their distant predecessors in title. Protecting the few remaining wetlands and reclaiming a small fraction of the previously drained areas that are marginally used as farmland, however, has been a high priority among conservationists for several decades. Significant strides have been made on this front. The combination of the Federal Conservation Reserve Program²⁶ with active programs by state conservation departments and private preservationist groups for acquiring environmentally fragile farm lands and wildlife habitats has worked a sea of change in attracting public support and reversing the destruction of the nation's wetlands.

The role of wetlands in supporting wildlife populations, purifying water, and preserving biodiversity is much better understood today than it was fifty years ago when Leopold poetically lamented the losing battle to save a Wisconsin wetland in an essay entitled "Marshland Elegy."²⁷ "For [wild cranes] the song of the power shovel came near being an elegy,"²⁸ he wrote.

The high priests of progress knew nothing of cranes, and cared less. What is a species more or less among engineers? What good is an undrained marsh anyhow? . . . Some day . . . the last

26. 16 U.S.C. §§ 3831-3836 (1988 & Supp. IV 1992).

27. LEOPOLD, *supra* note 1, at 95.

28. *Id.* at 100.

crane will trumpet his farewell and spiral skyward from the great marsh. High out of the clouds will fall the sound of hunting horns, the baying of the phantom pack, the tinkle of little bells, and then a silence never to be broken, unless perchance in some far pasture of the Milky Way.²⁹

Finally, with respect to direct federal regulation of pesticides, Kleckner correctly reports that proposed changes in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)³⁰ and the Food, Drug and Cosmetic Act³¹ (administered by the FDA) have drawn heavy fire from agricultural interests. At issue again are tensions between economic expediency, as Leopold would describe it, and the proper locus of responsibility for consumer health and environmental safety. To the extent that less technologically sophisticated pesticides are cheaper to buy and apply than newer, more carefully targeted, shorter-acting, environmentally friendly, but more expensive chemicals, farmers and ranchers who consider only their bottom-line cost prefer these cheaper chemicals. The same result holds true when cheap, but environmentally harsh chemicals are compared to alternative pest management strategies employing natural predators, crop rotation, or pest-resistant species. Changes proposed in FIFRA would not outlaw this preference for economic gain over environmental protection, but might lead to the most dangerous chemicals eventually being removed from the market if it can be shown that an environmentally safer product is readily available at a reasonable price.

Leopold's "land ethic" would leave little doubt about what the proper management choice would be in this sphere of land stewardship. Chemicals that endanger the health of the biotic community associated with the land to which they are applied should be replaced with pest-management techniques that do not cause such damage. In some states, high concentrations of nitrates and persistent pesticide residues in wells and waterways have led to regulatory prohibition of or limitation on the offending chemicals. It is also heartening to see what is happening on this front among the proponents of sustainable agriculture across the country who use innovative combinations of minimum tillage, safer chemicals, and progressive land-management techniques to produce competitive crop yields, while maintaining and enhancing the natural fertility of the soil resource.

To see most of these "conflicts" between environmental protection and agronomy solved by resorting to the type of enlightened self-interest

29. *Id.* at 100-01.

30. 7 U.S.C. §§ 136-136y (1988 & Supp. IV 1992).

31. 21 U.S.C. §§ 301-392 (1988 & Supp. IV 1992).

envisioned in Leopold's "land ethic" may be too much to hope for in this lifetime, but there are signs that the new generation of American farmers and ranchers are increasingly accepting greater responsibility for protecting the health of the land resource they steward. The day after reporting Kleckner's speech, the leading newspaper in his home state of Iowa, the *Des Moines Register*, editorially chided Kleckner for engaging in counterproductive "environmental name-calling" that defeats progress toward the goal of responsible land stewardship that most environmentalists and most farmers share.³² The *Register* editorial asserted that there is "widespread acceptance of the conservation ethic both among farmers and the public at large."³³ It went on to observe:

Conservation-minded farmers, who constitute the majority and who more than any other group serve as the nation's front-line environmentalists, carefully preserve their land for their future and that of their children. They watch in dismay as the few exploiters drain the wetlands, level the woodlots, poison the aquifers and rip erosive furrows into the sod on land that responsible farmers know is too steep to cultivate.³⁴

It would be hard to identify a better statement of the moral imperative justifying this sense of responsibility, attributed by the *Register* to the majority of America's farmers and ranchers, than the land ethic advocated by Aldo Leopold some fifty years ago. For those who truly love farm and ranch life, it still speaks a deep wisdom the years have not dulled or eroded.

32. Kleckner vs. "Envirocrats", DES MOINES REG., Jan. 12, 1994, at 8A.

33. *Id.*

34. *Id.*

