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A Brief Strategy for Wildlife

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A BRIEF STRATEGY FOR WILDLIFE

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Overall wildlife populations are in a free fall pretty much everywhere in the United States and have been for decades.[1] What unites the many causes of their declines is the fact that human behavior lies at the root. Habitat degradation, contamination, climate change, and the spread of invasive species: all are linked to things people have done and are doing, which is why we humans need to change our ways if wildlife is to thrive. Needed perhaps above all—putting greenhouse gas emissions to the side—are radical shifts in land and water uses, particularly on private lands. To be sure, many species require protected preserves, well managed. But preserves alone will not suffice, which means (given their ubiquity) big changes in the uses of farms, forests, ranchlands, and urban fringes. Large-scale planning of landscapes, coasts, and river corridors will be essential, particularly to help wildlife accommodate changing climates. All of these facts are well known or should be: they've stared us in the face for years.[2]

What is less clear to many are the various forces and factors that lead people to alter nature as they do; the forces and factors that lie behind or beneath harm-causing enterprises and that greatly influence how people behave. These forces and factors, we might say, are the true root causes of our ecological ills, indeed our true environmental problems. Many of these root causes are cultural rather than narrowly economic or technological. We alter and consume nature, insensitive to harms, because we fail to see and value nature as an ecologically integrated whole that can be more or less healthy. We fragment nature into pieces and parts, overlooking interconnections and ecological functioning, mentally casting aside the parts we cannot use, and then valuing the desired parts through market processes that respond narrowly to the short-term desires of monied people today. Disdainful of the limits on our knowledge and powers, often blind to the consequences of our moves, we charge ahead altering nature at will, confident that we are clever enough to handle problems as they arise. We care little about the long term and are often insensitive to the biological havoc we cause.[3]

The cultural roots of our uses of nature (for good as well as ill) need highlighting here because they are too often overlooked, even by conservation professionals and scholars. We spot the particular actions that bring harm to nature—fragmenting and contaminating habitat, for instance—but we fail to dig much into the reasons why we behave as we do. Culture has a lot to do with our ills, and cultural change is overdue. Without heavy-handed government of a type

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1. *See* Bruce A. Stein et al., *Reversing America's Wildlife Crisis: Securing the Future of Our Fish and Wildlife*, NAT'L WILDLIFE FED'N, MAR 29, 2018.

2. *See generally* NORTH AMERICAN WILDLIFE POLICY AND LAW (Bruce D. Leopold et al. eds., 1st ed. 2018). Among the useful overviews, this one putting policy and governance in the forefront.

3. I elaborate upon the ideas in this paragraph and the next two in ERIC T. FREYFOGLE, A GOOD THAT TRANSCENDS: HOW U.S. CULTURE UNDERMINES ENVIRONMENTAL REFORM (2017).

Americans are disinclined to support, wildlife will not improve unless we reform the cultural frames and other factors that lead us to behave as we do, that blind us to the harmful consequences, and that incline us to resist on-the-ground reforms. Effective conservation, in short, would give primacy to cultural change—to change in the ways people see and value nature and understand their place in it—as leading lights such as Aldo Leopold and, more recently, Pope Francis have asserted as clearly and forcefully as they could.[4]

A central obstacle to wildlife conservation, rooted in our culture and thus taken for granted, is our tendency to understand wild creatures as collections of individual organisms that largely reside apart from people; organisms that, while nice to have around sometimes, are mostly irrelevant to core human needs.[5] Their ecological roles are little noted, including the countless indirect ways they make landscapes better suited for us. From this too-common cultural perspective, wildlife conservation is challenging to justify except when it yields clear benefits for identifiable people (for hunters and fishers, for instance). As many wildlife advocates see things, the answer is to arouse within people a greater feeling for animals, a love for wildlife, something that moves the heart and soul. The problem with this approach—its problems, for there are several—is that it doesn't really get at and reform the root cultural ills. We might care about individual animals without gaining anything like the needed sense of their embeddedness in holistic systems. We can love animals as separate beings without valuing their functional roles in sustaining interconnected natural processes. Indeed, to love wild creatures as beautiful creatures is to buy into a version of the fragmentation and commodification of nature that drives so much abusive behavior. Imperiled polar bears can pull at the heart strings, as green-group fundraisers know. But how many other species can do the same? How many can effectively adorn calendars and billboard? And what about the interconnections among them?

A further concern: to dwell on the plight of specific animals (and even species) too often is to portray them as hapless victims of industrial life. Their defenders might arise to wage battle on their behalf against the forces that assault them, as they have, sometimes with good results. But the interpretive frame being deployed implicitly opposes humans and wildlife. Wildlife conservation then clashes with human needs and desires; it becomes a kind of special interest for those with the time and money to attend to it. Yes, audiences could well admit, wild animals are good to have around, and we care about them. But we care about much else as well, which means wildlife advocates need to take a ticket and get in line; they need to settle for their small piece. When people and nature appear to clash, the people side is going to win nearly all the fights.

To see this is to get to the beginning point of a strategy for wildlife conservation. People need to care about wildlife more than they do. This is

4. *See* NORTH AMERICAN WILDLIFE POLICY AND LAW, *supra* note 2.

5. The longstanding American tendency to fragment and commodify nature, as an explanation of our land-use patterns and their consequences, is developed in such key works of environmental history as TED STEINBERG, DOWN TO EARTH: NATURE'S ROLE IN AMERICAN HISTORY (2d ed. 2009); WILLIAM CRONON, CHANGES IN THE LAND: INDIANS, COLONISTS, AD THE ECOLOGY OF NEW ENGLAND (1983); and DONALD WORSTER, DUST BOWL: THE SOUTHERN PLAINS IN THE 1930S (1979).

particularly true if they are going to accept the many changes that need to take place in their ways of dwelling on land; if they are going to agree, for instance, to relocate homes and business to new settings to make room for wildlife corridors and to protect coastal and riparian zones. This heightened caring for wildlife, though, will need to have an ecological grounding to it. It should focus popular attention, not on particular animals or species as such, but rather on the web of life generally, understood as a community of life that includes people. It should portray people and animals as sharing a long-term fate, dependent for their ultimate flourishing, all of them, on the healthy functioning and biological richness of this community. From this perspective, to conserve wildlife is not to favor animals over people. Rather, it is to nourish and enliven the natural elements, the interdependent processes and functions, upon which all life depends. At the same time, it serves as an antidote to the kind of fragmentation and commodification of nature that explains so much of our altered landscapes. It is an antidote, too, for the kind of short-term thinking that has yielded such bitter fruit.

What is required, in short, is some way of comprehending wildlife and wildlife conservation that unites people and wildlife and links the present with the future. What needs to dangle in front of us, as an attractive lure and long-term hope, is a vision of healthy, vibrant lands and waters, good for both people and wildlife; a vision that we might then use not just as a goal for conservation work but as a standard for evaluating where things stand today. A successful vision or overall conservation goal would, when employed as a tool of evaluation, call into question a good many of our land- and resource-use practices, as well as other elements of our polluting, throw-away society. People need to do more than simply care about wildlife. We need to work our way to the place where, looking at the world around us, at the practices that have left wildlife in a freefall, we will be dismayed by what we see. We need, also, to start asking questions about the dominant institutions in our lives—things like the capitalist market and private property—that embody, implement, and perpetuate the various cultural elements (how we see and value nature; our short-term frames; our overconfidence; and so on) that help account for wildlife's downward slide.[6]

The bottom line here—or again, the starting point for an effective wildlife strategy—is to see that a conservation strategy should aim, not directly at wildlife conservation, but instead at reforming the elements of modern culture, and the social institutions based on them, that have guided our wildlife-unfriendly ways of life. Such a strategy would set out to reform land and water uses, that is, by going underneath them to identify and recast the cultural and institutional factors that give rise to them and that have, for generations, made our ways of living seem sensible.

A wildlife strategy crafted with these considerations in mind might take something like the following six-point form:

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6. My fullest effort to step back from our time and to think broadly about our place in nature, dominant culture, and our culture-laden social institutions in ERIC T. FREYFOGLE, OUR OLDEST TASK: MAKING SENSE OF OUR PLACE IN NATURE (2017).

Land health as vision and goal. Ardent wildlife advocates are out to promote all wild species, in places and in populations sufficient to form vibrant, well-functioning communities of life, typically communities that include people. The goal of a sound strategy should thus be one that puts the community of life front and center and that links the varied work of conservation to the long-term functioning and composition of this biotic community. As Aldo Leopold put it crisply in his late-in-life conservation talks, the land is a community of life that can be more or less healthy, a community that includes people who in the long run depend on community health for their own flourishing. Such a goal—land health, Leopold termed it, but other names are possible—is not simply a term of scientific description.[7] Rather, it is a normative standard for good land use that draws upon the best science and mixes that science with normative factors related to human flourishing and the ways people enjoy wildlife.

An overall vision and goal of this type, one ought to recognize, is really quite different from the typical wildlife goal, phrased in terms of recovering wildlife populations. The different goals may sound similar; they may, when implemented, call for the same kinds of changes in land- and resource-use changes. But a community-centered goal such as land health mixes people and wildlife together; it does not favor wildlife over people. It is a goal, too, that focuses on the organic whole, not on its parts, and that unsettles the common mind by framing the issue, and depicting nature generally, in an unfamiliar, disorienting way. The goal immediately calls into question ways of thinking that treat nature chiefly as a warehouse or stockpile of resources (some valuable, most not). It similarly challenges the division of lands and waters into discrete, privately owned parts that users can manage and consume as they see fit with little regard for ripple effects in space and time. A conservation goal phrased only in terms of wildlife and declining animal populations simply does not challenge existing frames of understanding that are themselves root causes of today's ills.

It should hardly need saying (but does) that the much-used goal of sustainability in its various forms (including sustainable development) is nowhere near adequate for the task of cultural reform. Few people remember that sustainability as a goal was immediately challenged by conservation writers when it first came out on a variety of grounds, including its vagueness, its lack of any clear connection to ecology, and its overall blandness.[8] We should have heeded their concerns. Without a clear sense of what we are out to sustain (a stunning gap that some have filled in sensibly) the goal proclaims a yearning to keep the ship going. For production farmers, for instance, this means continuing the degrading economy of industrial farming. Sustainability does imply a need to embrace a long-term perspective; good as far as it goes, which is not very far.

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7. The fullest single-work inquiry into Leopold's central concept of land health is JULIANNE LUTZ NEWTON, ALDO LEOPOLD'S ODYSSEY: REDISCOVERING THE AUTHOR OF *A SAND COUNTY ALMANAC* (2006).

8. See, e.g., DONALD WORSTER, THE SHAKY GROUND OF SUSTAINABLE DEVELOPMENT, reprinted in DONALD WORSTER, THE WEALTH OF NATURE: ENVIRONMENTAL HISTORY AND THE ECOLOGICAL IMAGINATION (1993). I take up the issue in ERIC T. FREYFOGLE, WHY CONSERVATION IS FAILING AND HOW IT CAN REGAIN GROUND 113–43(2006).

Supplementing a community-focused goal such as land health would be various layers of ecological explanation, normatively laced, that would promote the goal by reviving ecological processes and restoring wildlife populations.

Fostering a sense of ownership. Not nearly enough people realize that wild animals are the common inheritance and property of all people, wherever the animals dwell. This is sometimes termed the state ownership doctrine, but states own wildlife, or have trustee-like duties over them, only for the benefit of residents of the state: the true owners.[9] Land uses that diminish animal populations cut into and destroy this shared patrimony. People thus have a legitimate stake not just in the plight of animals and in their conservation but in the all activities unfolding around them that are bringing wildlife down. This is our property, and it's being destroyed: that message ought to carry loudly. A sound conservation strategy would awaken people to these valuable rights, would get them agitated about their violation, and would get them to see that animals everywhere, on private land as well as public, are very much their business.

Holding accountable the entire state apparatus. In the typical state, wildlife conservation is turned over to one or a few, poorly funded state agencies while the rest of the state government—agriculture, transportation, and the like—charges along, oblivious and uncaring.[10] Even among wildlife agencies the idea that the state has trust-type duties to conserve and enhance wildlife does little to shape day-to-day work. Nor does it bring, as it should, a sense of alarm if not failure in light of our rapidly falling wildlife numbers. What is called for here is for wildlife advocates to endorse the stances taken by the National Wildlife Federation in a conservation resolution that Federation members approved in 2019, a resolution stressing that "state trust duties rest upon states as a whole, not simply on state wildlife agencies" and calling on states to "provide adequate funding and science-based guidance to all agencies of state government—including agriculture and transportation departments—so that they employ their powers and manage their programs in ways that promote, and do not frustrate, fulfillment of the state's wildlife trust duties."[11]

The state wildlife trust doctrine—related to but emphatically not the same as the waterway-related public trust doctrine[12]—is famously vague and lacks teeth. But it need not be that way, and a sound wildlife conservation strategy should put the doctrine's invigoration front and center. The first step is to give content to the state's trust duties and to translate them into guidance for the many state agencies and operations that affect the uses of lands and waters. The doctrine can gain force step by step, beginning, for instance, with an executive order signed by the state governor that acknowledges the state's full duties and pledges to perform them.

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9. ERIC T. FREYFOGLE, DALE D. GOBLE, AND TODD A. WILDERMUTH, WILDLIFE LAW: A PRIMER 19–36 (2d ed. 2019).

10. A solid, critical overview is offered in STATE WILDLIFE MANAGEMENT AND CONSERVATION (Thomas J. Ryder ed., 2018).

11. *The Full Duties of States as Trustee-Owners of Wildlife*, National Wildlife Federation Resolution 2019—Adopted June 7, 2019, available at www.nwf.org.

12. *See* WILDLIFE LAW: A PRIMER, *supra* note 9, at 33.

Too often wildlife conservation efforts dwell on game species and perhaps endangered species. The vast majority of all life forms are left behind. Conservation methods focused on game and imperiled species are, of course, good and vital, but they do not go far enough, and they are, to boot, too focused on particular parts of the community of life to the exclusion of all others. Many game populations are plenty high; to focus on them is to cover up the larger reality. As for endangered species, their protection seems to pit, not humans against wildlife, but humans against some tiny number of a species about which most people may care nothing. The talk should instead be about wildlife overall, in every corner and square meter of the state, with wildlife understood not chiefly as distinct parts of nature but (as noted) as members and key components of a community of life that includes people.

Taking property seriously. Wildlife may not be thriving today on many public lands, but it is doing far better there than on most private lands, particularly lands in row crops and intensive grazing. For pragmatic reasons, advocates too quickly turn attention to public lands, which means to the parts of the country (the Rockies and further west mostly) where public lands are ample. They push aside the far greater needs of wildlife in places such as the Midwest corn belt, where public lands are scarce and land alteration near total. The conservative right for decades has put forward a vision of private property rights that gives owners nearly free rein to use lands as they see fit. As for the conservation cause, it has never risen up to offer an alternative understanding of private ownership, one that roundly embraces private property but that respects only responsible land uses.[13] Private property is a highly flexible legal arrangement. It can define private property rights (and has, and still does in places) in widely differing ways, in terms of what a person can be own and what ownership means. To probe the little-known history of land ownership in America is to see that rights of landowners have shifted significantly over the decades, ending up now in a place (alas) where ownership norms largely ignore wildlife and land health.[14] It need not be so.

What's particularly timely here is an appealing way to talk about private property that respects the institution and deeply rooted political values embedded in it while at the same time reminding people that communities can properly require landowners to avoid harms to their neighbors, their communities, and the future land users. Landowners ought to act as responsible stewards, as good citizens of the land community, treating the public's wildlife with reasonable respect. Why not define private property so that owners are expected to use what they own in ways that are ecologically sound? Why not give content to the idea that owners should each bear a fair-share duty to make room for wildlife? It is simply not the case that wildlife on private land is a matter of concern only to the landowner. A sound wildlife conservation strategy would say so, loud and clear, and would talk sensibly yet forcefully about the communal expectations for landowner behavior. Private property is best understood, not primarily as an individual right of

13. A GOOD THAT TRANSCENDS, *supra* note 3, at 112–34 (see "Taking Property Seriously").

14. I explore the points in two works: ERIC T. FREYFOGLE, THE LAND WE SHARE: PRIVATE PROPERTY AND THE COMMON GOOD 37–99 (2003); ERIC T. FREYFOGLE, ON PRIVATE PROPERTY: FINDING COMMON GROUND ON THE OWNERSHIP OF LAND 29–60 (2007).

any sort, but instead as a social institution that draws its legitimacy from its contribution to the common good. Landowners should possess a particular legal power only to the extent that the exercise of the power in fact fosters the common good. To frame the institution in that light, as a tool to promote the common good, is to head down a different, more promising path.

Agriculture and irrigation. No wildlife strategy has any real hope of reversing or even halting dismal wildlife trends unless it directly confronts industrial agriculture and calls into question, in particular and forcefully, wasteful, polluting uses of water by irrigators.[15] For today's industrial farmer, the definition of a weed is breathtaking: a weed in a farm field is any plant or animal other than the one plant (corn, soybeans, wheat) that the farmer wants to grow. Farm chemicals and other measures keep nearly all creatures at bay. With the demise of fencerows and hedges, farming is now done road to road, with roadsides often mowed by local government. Parking lots are hardly less wildlife friendly. As for irrigation, it saps rivers dry and pollutes waterways, mostly to grow overabundant crops of low value that are not remotely worth their ecological costs.[16]

Again, it need not be so, and the nation's best farmers know it. Conservation-farming practices are well-honed and far friendlier to wildlife.[17] Better farming would employ greater crop diversity featuring more perennials and crop mixtures in single fields. Chemical usage would decline drastically—both pesticides and fertilizers—with a reduction too in artificial drainage. The promotion of such practices would play a key role in a sound wildlife conservation strategy, as would a call to bring to and end, on a large-scale basis, the most low-valued crop irrigation. To leave standing business-as-usual in the industrial farm lands is to give into the sacrifice, as wildlife habitat, of huge swaths of the country and the further decline of major waterways.

Popular support for rural land-use controls. For too long, we have largely left it to private landowners to use rural lands as they see fit, particularly landowners involved in farming, ranching, forestry, and mining. People endorse land-planning and -regulation in urban and suburban areas. The same kind of control is needed for rural lands; not detailed, parcel by parcel decision-making, but widely applicable rules to guide wildlife-harming enterprises. Citizens need to become engaged in this work, even as they issue calls for government to do a better job promoting wildlife and land health. As they do get involved, they are more likely to take greater interest in their home landscapes, paying attention to private land-use practices viewed for too long as the prerogative of landowners. If such land planning takes place, with wildlife as a focus, citizens may awaken to the ways private actions are degrading landscapes and to possibilities for change.

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15. The ills are described and displayed in, e.g., THE FATAL HARVEST READER: THE TRAGEDY OF INDUSTRIAL AGRICULTURE (Andrew Kimbrell ed., 2002).

16. Statistics are available in *Irrigation and Water Use*, ECONOMIC RESEARCH SERVICE, U.S. DEPT. OF AGRICULTURE (last updated Sept. 23, 2019), available at https://www.ers.usda.gov/topics/farm-practices-management/irrigation-water-use.aspx.

17. *See, e.g.*, DAVID MONTGOMERY, GROWING A REVOLUTION: BRINGING OUR SOIL BACK TO LIFE (2018).

These six elements of a wildlife conservation strategy, vigorous pursued, could shift prevailing culture in good ways. It could foster new ways of thinking about nature and create new interpretive frames that would make wildlife conservation more sensible and appropriate. These six elements would not displace those proposals commonly put forth on behalf of wildlife, such things as better funding and training for wildlife agencies and their staff and better coordination among federal agencies involved in large-scale land management. Rather, they would come before these points, as steps to take to prepare the way for habitat-improvement plans and the like. Prospects for wildlife would improve greatly if people grasped their ownership rights; if they understood state trustee duties and demanded their fulfillment; and if they were not so willing to defer to the harmful acts of private landowners. It would improve if people realized the longstanding truth the we humans, too, are animals, as dependent as any other animal on nature's functioning systems. We are all in it together, and a sound wildlife strategy would say so.