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A Wilderness Bill of Rights

By
WILLIAM O. DOUGLAS

Boston: Little, Brown & Co. 1965.
Pp. 192, $5.95

The march of men and machines continues apace into what little is left of America's once great and vast wilderness.[1] With it comes cut trees, power lines, drained swamps, roads, dams, and a variety of refuse resulting in an almost totally irrevocable change in the land and wildlife. The machines may leave, but the men and scars do not. The net result is less and less wilderness each year. Justice Douglas's redwoods illustration tells the story. From an original 1.9 million acres, we now have 250,000 acres left. At the current pace of 10,000 to 20,000 acres cut per year, all virgin redwood except the 50,000 acres in parks and preserves will be gone within fifteen years. Secretary of the Interior Udall recently put the broader issue very well when he wrote: "Let us not delude ourselves, or be content with sentimentality or mere words. The time has come when men must choose what kind of permanent relationship they want to have with their land and her creatures."[2]

Certainly, if we are to preserve and conserve the remaining wilderness, the decision to do so must be made soon or the opportunity will be irrevocably lost. Lawyers have in recent years become particularly active in land use planning; more and more law schools have recognized this involvement as they have added courses entitled variously, "Land Use Controls," "Land Use Regulation," or "Land Use Planning." Most of these courses, however,

1. Wilderness is "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." 78 Stat. 891 (1964), 16 U.S.C. § 1131(c) (1964). Justice Douglas describes it this way:

> Wilderness is a roadless area where only a trail marks passage through a forest or over a range. Wilderness is prairie and foothills untouched by plows or pesticides. Wilderness is the rolling tundra of Alaska and the seashore not marred by man-made passages nor invaded by structures or other marks of civilization. Wilderness is the unpolluted river and lake and the unbroken bowl. Wilderness is the vista that faced those who first topped the Appalachia going west. It is nature's labyrinth of down logs, primeval stands, meadows, and swamps whose creation preceded man. Wilderness is the earth before any of its wildness has been reduced or subtracted.

P. 29.

2. Udall, Foreword to Bureau of Sport Fisheries & Wildlife and Fish & Wildlife Service, U.S. Dep't of the Interior, Waterfowl Tomorrow, at vi (1964).

focus on urban land regulation, some perhaps without even recognizing non-urban land use as a complement to urban land use. In this book Justice Douglas deals directly with planning for a part of the non-urban land—the wilderness; he argues the case for preserving and conserving the wilderness, assays what wilderness we have left and the threats to it, suggests that there must be a "Wilderness Bill of Rights" to accomplsh the preservation, and sets forth some of the basics that it should contain or deal with. But all of this he does with a clear recognition of the interrelationship of urban and non-urban land use. For example, he considers the extent of general recreational resources, recognizing that certain "wild" lands may provide some wilderness values, but more important, that nonwilderness, recreational lands help keep pressure off the wilderness lands. Thus, he urges that "conservationists should . . . be in the forefront in promoting city, county, and state parks of all kinds and varieties."[3]

And the majority of recreation seekers is one of two primary enemies that Justice Douglas sees imperiling the wilderness. Their views are set forth with eloquence in the following lines related to the building of a dam on the Colorado River:

> Dear God, did you cast down
> Two hundred miles of canyon
> And mark: "For poets only"?
> Multitudes hunger
> For a lake in the sun.[4]

The other is the commercial interest—the lumber company, the mining company, the power company, the resort developer—who sees so many dollars worth of board feet in a tree or so many kilowatts in a stream. Both have values inconsistent with wilderness values.[5] Central to gratifying the interests of each is the access road. And

3. P. 60.

4. Michelle, in Bureau of Reclamation, U.S. Dep't of the Interior, Lake Powell Jewel of the Colorado, at iii (1965).

5. A wilderness has numerous values. (1) It preserves for users a better understanding of our heritage; this is how it was when Lewis and Clark explored; this is what grandfather contended with when he homesteaded, and so on. (2) It gives man a refuge, a place to which to escape, a therapy, a place where he can be "alone in the midst of the earth." *Isaiah* 5:8. [The full text is: "Woe unto them that join house to house, that lay field to field, till there be no place, that they may be placed alone in the midst of the earth."] (3) It contains innumerable aesthetic values, not only for the human senses directly, but for the photographers' lens and the artists' brush. (4) It teaches the interdependence of life, bares the biotic community and shows the evolu-

the road, as seen by Justice Douglas, points "like a dagger at the heart of any wilderness that lies ahead,"[6] hastening its death.

While admitting that wilderness users as such may be a minority of the American recreation seekers, Justice Douglas shows that they are more than a small minority, one that includes old as well as young, average income Americans as well as rich Americans. But primarily his line of argument seems to be that even a small minority ought to be able to have "rights," protected as against the majority. True, there is no constitutional guarantee to a wilderness; that is not in issue! The issue is whether or not there should be such a guarantee, or at least a legislatively declared wilderness bill of rights. Certainly there should be enough resources available in this vast country to serve the values of both conservationists and "developers," and his wilderness bill of rights would contain the basics to achieve an equitable allocation. At the same time, he insists that it is not enough to have laws passed. There must be wide public approval of the laws; and rules, regulations and orders through all levels of government must implement them. So much seems reasonable. But he appears to go one step further by insisting that there must be general acceptance of the "conservation ethic." In other words, he wants others to not only recognize his view as a legitimate view entitled to realization, but to adopt it as their view as well. This of course is the ideal; but it may be too much to ask. Clearly, general acceptance of the ethic should not be considered a prerequisite to the enactment of preservation programs.

Illustrative of the lopsided balancing process now in operation is a story from Maine; there it took commitment to the loss of one wilderness area to open the way for preservation of another. For some time many people in Maine had insisted that additional electri-

tionary process. (5) More than this, it is a research laboratory for the ecologist, the botanist, the biologist, and the ornithologist. (6) Maintenance of wilderness areas is necessary to preserve some forms of wildlife. Perhaps in it exists a plant or an animal that will provide a cure for cancer or for heart disease.

> What good is an opossum? The March, 1963, issue of the Texas Game and Fish magazine carried the story of a special research program in the study of leukemia being carried out at the University of Colorado Medical Center. It seems that the lowly, useless opossum may prove the basis of a successful vaccine against this dread form of cancer. If such proves to be the case, it will be no unusual circumstance. From wild plants and animals have come many of our most valued products and medicines.

Boardman, *What Good Is an Opossum?*, National Parks Magazine, June 1964, p. 19. (7) And even for those who cannot go to and there enjoy the wilderness, it may provide an uplifting feeling of mystery and awe.

6. P. 23.

cal power had to be provided, with two likely sites for a dam, each involving wilderness area. Before any steps would be taken by the state to preserve either area, a commitment had to be made as to which would be used for the dam site. The first session of the eighty-ninth Congress enacted the Dickey-Lincoln School hydroelectric power project with a principal dam on the St. John River in northern Maine. More than 88,000 acres will be flooded in the United States, with some additional 36,000 acres to be flooded in Canada. Much of this land would qualify as wilderness, and once flooded it probably will never return to its original condition. The approval of the project did spur activity to preserve at least a portion of the Allagash River, the other dam site prospect, as a free-flowing stream. Newspaper editorials called for action; interim state legislative committee hearings were held; and protective legislation was passed at a special session of the state legislature. But it appears that the maximum acreage that could be affected would be under 10,000 acres. So even then, a great deal more wilderness was committed to being lost than was committed to being preserved!

Illustrative of the present vacillation, too, is another story which unfortunately Justice Douglas does not tell,[7] about the hair-raising events concerning Rainbow Bridge National Monument in Colorado. In 1956 when Congress authorized the Glen Canyon Dam unit as a part of the Upper Colorado River Basin project, it declared: "that as a part of the Glen Canyon Unit the Secretary of the Interior shall take adequate protective measures to preclude impairment of the Rainbow Bridge National Monument."[8] But Congress consistently, through three sessions, refused to appropriate money for specific projects that would protect the monument. As Secretary Udall prepared to go ahead with flooding, even though protective measures had not been taken, an action was brought in federal court to enjoin him from closing the water passage. Predictably, this suit was dismissed for lack of standing on the part of the complainants. The Secretary's counsel advised him that the subsequent failures to appropriate money showed a change in Congressional policy and that the Secretary had no choice but to flood the land. Apparently some Congressmen thought that a policy change had not been clearly reflected because they introduced a bill

7. For a graphic history of the struggle, see National Parks Magazine, Dec. 1963, p. 15; *Id.* May 1963, p. 2, 19; *Id.* March 1963, p. 2; *Id.* Jan. 1963, p. 16; *Id.* Sept. 1962, pp. 18-19; *Id.* July 1962, p. 18; *Id.* Feb. 1962, p. 2; *Id.* Nov. 1961, p. 2.

8. 70 Stat. 106 (1956), 43 U.S.C. § 620 (1964).

seeking to repeal the protective language. In the end, not all of the monument was flooded; Rainbow Bridge itself, probably the key part of the monument, was spared. Now a current government brochure says:

> Before Lake Powell, Rainbow Bridge National Monument could be visited only by the rugged few who 'packed' in. Now all of you can see it—easily. Your boat will moor to floating docks at the entrance to Rainbow Bridge Canyon. Then you take a walk on a trail along the canyon's side. You'll find *the bridge undamaged* by Lake Powell's waters—for even when the lake is at maximum elevation its waters can never reach the ledge upon which the bridge rests. And you can marvel at its arched and graceful setting.[9]

Of course the area now has recreational value for more people than it ever did before, but many of the wilderness values are gone. Was the price too high?

Although the continual decrease in wilderness acreage has not halted, some recent conservation gains, direct and indirect, from both government and private action, are noted by Justice Douglas. In 1964 Congress passed the Wilderness Act, giving legislative wilderness status to fifty-four areas,[10] and the Land and Water Conservation Fund Act of 1965 to assist state and local acquisition of land for outdoor recreation.[11] Earlier federal legislation had been enacted to assist privately owned recreational development.[12] The National Park Service apparently has instituted a policy of "developing" only the perimeter areas of national parks, preserving the cores as wilderness. The Bureau of Land Management, which is given no conservation guideline in its enabling legislation for the management of 500 million acres, has set up such a guideline on its own. The Agriculture Department's program of soil conservation, which frequently resulted in the draining of waterfowl breeding and feeding habitat, has to a large extent now been coordinated with the Interior Department's program of waterfowl preservation. Numerous private organzations are acquiring and preserving wilderness sanctuaries, such as the National Audubon Society's 26,000 acre

9. Bureau of Reclamation, U.S. Dep't of the Interior, Lake Powell Jewel of the Colorado 15 (1965). (Emphasis added.)

10. 78 Stat. 891 (1964), 16 U.S.C. §§ 1131-36 (1964).

11. 78 Stat. 897 (1964), 16 U.S.C. §§ 460 (*l*) (1)—(11) (1964).

12. See the Food and Agriculture Act of 1962, 76 Stat. 605, 7 U.S.C. § 1010 (1964), and the legislation amended thereby.

Rainey Wildlife Refuge in Louisiana. Many large private landowners, such as lumber companies, now regularly open their lands for various recreational uses. A considerable amount of reforestation is taking place; in Connecticut, for example, about sixty-three per cent of the total land area is forested, twice as much as a century ago. Perhaps these actions indicate a movement toward the conservation ethic; however, Justice Douglas considers them insubstantial.

Further, the Justice goes on to point out tht there is still substantial federal legislation and practice working against wilderness preservation. And since most of the wilderness is owned by the federal government, its laws and practices are of prime importance. By operating its own mines in Appalachia, T.V.A. contributes to one of the most abusive practices today, coal strip mining. Federal legislation returns twenty-five per cent of the receipts from a national forest within a state's boundaries to that state for education. Thus, local school boards are encouraged to put revenue-bearing timber cutting above nonrevenue-bearing wilderness usage and lobby accordingly. In the administrative hierarchy itself, a budget showing revenue is easier to defend than one showing none; many administrators may take such a course of least resistance. Far too many decisions regarding public land use, whether involving permits to build fences or roads or to cut timber, can be made without a hearing at which the conservationists' views can be presented, or for that matter any public vew. Many such decisions are not required to be made by a disinterested panel of experts. And conservation groups may hesitate to speak out because of tax exemption laws under which they could lose their exemption for "attempting to influence legislation."[13] Mineral claims are still permitted in wilderness areas. Public agencies are given preference distribution rights only for hydroelectric-produced power and are thus a vocal lobby for the building of dams. Justice Douglas' Wilderness Bill of Rights would limit these practices.

Other practices that his Wildernesss Bill of Rights would limit include use of motorized equipment, sewage disposal, use of detergents, and use of pesticides. Finally, he would create an office of conservation wth "White House stature," for "only the most powerful of all voices can stop the Bureau of Public Roads, the

13. See N.Y. Times, June 12, 1966, p. L50, col. 3 (final ed.), regarding the recent Internal Revenue Service investigation of the Sierra Club in connection with the club's opposition to dams in the Grand Canyon area.

Corps of Engineers, or Tennessee Valley Authority from their programs for despoiling America's natural wonders."[14] Obviously, Justice Douglas appears as an advocate in this book; not all will agree with his interpretation of the facts, nor with the policy that he suggests. Much of what he says has been said before. Rachel Carson, for example, warned of the dangers from chemicals and called for action.[15] Justice Douglas's unique contribution comes in developing the Wilderness Bill of Rights as an overall conceptual approach to wilderness preservation. Although Congress had previously used a similar concept in designating some areas as wilderness, what it developed thereby was not nearly as all-encompassing as what Justice Douglas proposes. But much still remains to be done with the concept, including the specification of a lot of detail. Further, the Justice has not given the Bill of Rights any specific form. Thus, the reader should not expect to find a piece of legislation drafted and ready to be presented to Congress or a state legislature.

There are some structural defects within the book too, the primary one being faulty organization, evidenced by such things as repetition and headings that do not relate to the discussions following them. Perhaps some of these defects came about in an effort to avoid an overbearing similarity to a well-organized article on the same subject which the Justice wrote for the 1965 Encyclopedia Brittanica Book of the Year.[16] Despite these shortcomings, the book is easy reading and well worth the time.

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14. P. 171.
15. Carson, Silent Spring (1962).
16. Britannica Book of the Year 1965, at 15, 49-80.

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