
An Endangered Species Called Respect (*Rara avis civilitatis*): *The Descent from Responsible Environmental Policymaking*

By **Steven P. Quarles**

You know the old saw: If you want a friend in Washington, buy a dog.

This phrase colorfully captures the by now endemic complaint that the atmosphere inside the Beltway worsens year-by-year. D.C. denizens of all political persuasions have voiced this complaint as both reason and excuse for a broad failure in effective governance. Distrust and disrespect are pandemic. Where folks once tried to transcend their ideological differences in pursuit of the ineffable “common good,” now they congregate in “interests” that feud like the Hatfields and McCoys.

As a Washington, D.C. lawyer for over thirty years, my professional concern is environmental and natural resources policy – an area that, if the American people are to be decently served, acutely needs concerted good-faith efforts to bridge opposing viewpoints and seek productive compromise. Unfortunately, I have joined the chorus of lamentation: In the environmental area, the atmosphere has indeed never been so toxic, nor the discourse among myriad “interests” so discourteous. And this affliction of incivility is truly untimely now when environmental and natural resource issues are reaching the forefront of the American public consciousness.

With presidential candidates of both parties talking about “cap and trade” policies, nanotechnology, biofuels, and other matters that were once arcana, the opportunities for crafting sensible and workable policies should be bountiful.

The point is not just that people are treating each other shabbily. Most important, the actual process of environmental and natural resources legislation and regulation has been seriously damaged as sorties left and right continue to undermine the vital policymaking center. The damage is particularly evident to me, as I’ve been here long enough to have participated in a number of great successes achievable only because they were addressed in a bipartisan manner, in a search for politic solutions, not political advantage. The contrast to the current impasse is unmistakable.

It might be useful to offer a few past and present examples if only to underscore how much we stand to gain if we could somehow recapture the comity once nurtured by great legislators and administrators in pursuit of workable and reasonable compromise.

In the 1970s, I was fortunate to serve as special counsel to the Senate Committee on Energy and Natural Resources under Chairman Henry M. “Scoop” Jackson (D-WA). During my seven-year tenure, under Scoop’s leadership we wrote or rewrote virtually every law governing natural resources in the country. We – Republicans and Democrats alike – who worked

for the committee took pride in being called “professional staff.” We would negotiate into the wee hours and then reconvene for a few beers at an out-of-the-way watering hole steps from the Capitol. If the issue was not resolved, we would be back at it the next day trying to reach common ground. Partisan differences were rarely personal. This amicable and highly productive working relationship was fostered and sustained by our bosses who appreciated that they were sworn in as Senators but were elected to be “legislators.”

The result, I believe, was the enactment of the most progressive body of environmental and natural resources law in the world, protective of our resources but fair to affected business interests. I had the privilege to be the principal Senate staff drafter, and to assist in the enactment, of the National Forest Management Act, Federal Land Policy and Management Act, Deep Seabed Hard Mineral Resources Act, Alaska National Interests Land Conservation Act, Eastern Wilderness Areas Act, Montana Wilderness Areas Act, Omnibus Wild and Scenic Rivers Act Amendments, and over two dozen other wilderness and wild scenic river bills.

Other committee staff worked on laws governing disposition of federal coal and onshore and offshore oil and gas, and regulation of surface coal mining and reclamation. Our contemporaries on the Senate Environment and Public Works Committee staff, working together under Senators Ed Muskie (D-ME) and Howard Baker (R-TN), shepherded to enactment

The author, who worked for Scoop Jackson in the '70s, laments today's "toxic atmosphere" and says there is much to be gained "if we could somehow recapture the comity once nurtured by great legislators and administrators in pursuit of workable and reasonable compromise."

bedrock environmental laws that today govern air and water quality protection and hazardous and solid waste management.

Not all environmental and natural resources legislation passed in the years following the first Earth Day in 1970. But one that did not illustrates vividly the difference between then and now. This legislation was the national land use policy bill which I drafted and redrafted and which passed the Senate twice in the mid-1970s. The proudest moment for me in my service on the Hill came when the esteemed columnist David Broder of the *Washington Post* wrote a column that identified me by name – a lowly Senate staffer – as the author of a “dramatic” Committee report on the bill that “provides a short-course education on the law of the American land, the pressures of population and economic growth on the land, and the prudent steps we need to take to husband that resource into the next century.” That self-serving quote aside, the most important Broder statement was that the bill had “drawn the support of major industry, labor,

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environmental, and farm groups” and was “backed by governors and mayors, by such liberal senators as Jackson, Frank Church (D-Idaho), and Mark Hatfield (R-Ore), but also by such conservatives as James McClure (R-Idaho) and James Buckley (Con. R-NY),” and by President Nixon. The legislation came close to enactment before it fell to impeachment politics. But can you imagine how politicians now would treat a bill with such an “ominous” national-land-use title? Invidious infliction of federal zoning! Instead of enjoying bipartisan acclaim, it would be shredded by partisan clamor.

Now flash forward to two bills I worked on while in the private sector. First stop, two decades later.

In 1997, Senator Dirk Kempthorne (R-ID), together with the entire Republican and Democratic leadership of the relevant committee and subcommittee, introduced S. 1180 to revamp the 1973 Endangered Species Act. The bill enjoyed widespread bipartisan support, including the endorsement of the Clinton Administration. The legislation contained a judicious blend of enforceable requirements and voluntary incentives for landowners to protect wildlife and plants facing the risk of extinction.

Adamant environmentalists didn't like it; it wasn't protective enough of endangered species. Strong-minded property rights advocates didn't like it; it was too protective of those species and threatened those rights. The environmentalists lobbied the Senate and kept the legislation from the floor. When it appeared to gain a second wind in the House, the landowners mobilized and were likewise successful there.

What sticks in my mind is how the bill was characterized at the time as “boldly moderate.” When it failed, I realized just how bold any such reasonable compromise was fated to be. I wondered how legislation so palpably fair to all sides could ever succeed. I'm still wondering.

Now, onward another decade.

In 2005, conservatives introduced H.R. 3824, another bill with multiple amendments to the ESA. In keeping with the new political imperative to “play to your base,” a section was inserted to compensate landowners for regulation that adversely affects property value. No question that this and several other provisions were controversial. What was missed, however, by inattentive politicians and the media alike was how close the remainder of the bill – save those prominent provisions – was to a truly bipartisan, centrist proposal. A number of influential Democrats and moderate Republicans with sterling environmental records offered a substitute measure (which lost by a scant 10 votes on the House floor) that, as they emphasized during the floor debate, contained “few real differences” from, and “80 to 90 percent . . . identical” language to, H.R. 3824. No less a liberal champion of environmental causes than Representative George Miller (D-CA) joined the original bill's sponsors in speaking and voting for repeal of a seemingly vital but unworkable Endangered Species Act provision to protect “critical habitat” of endangered species. Yet, in the end, despite the impressive broad support for the two bills in the House, too few leaders

could be found in the Senate to extract, perfect, and champion to enactment the provisions common to both proposals.

The message to me was clear: Substantive issues are irrelevant. What prevailed were the more simplistic questions of who was “behind” the measure, and what message could be shaped to discredit the effort. On the merits, we were all so near to success, and yet so far. I thought about Scoop and how he would have seized and buttressed the common ground on which we stood. If not Scoop, then the Senators I have already mentioned, and others like Alan Simpson (R-WY), Warren Rudman (R-NH), or Sam Nunn (D-GA) might have done likewise. What is now trumpeted as the rare and extraordinary act of political courage was once regarded as routine responsible lawmaking.

In Jackson's day, elections interrupted the normal course of business on Capitol Hill and Pennsylvania Avenue. Now they *are* the normal course of business, and an endless obsession. When elections are permanent processes, there is no time of political peace, or at least armistice. Where there is no peacetime, stepping in the open on virtually any issue risks political ambush. In this political war zone, environmental law is one of the nastier battlegrounds. The casualties are legislation and regulation. How many fingers do you need to count any significant new environmental laws or regulations enacted or promulgated in the decade on either side of the millennium? Forget new laws, virtually every major environmental law is long overdue for reauthorization ... and, amazingly, no one even perceives this as an embarrassment.

A few months ago, I got a taste of the new battleground firsthand in tragic-comic events involving my representation of the State of Idaho on a proposed federal-state agreement with the Department of the Interior. In return for voluntarily adopting strict conditions to protect endangered steelhead and salmon species in the Clearwater and Salmon River basins, irrigators, private timberland owners and others would be immunized from Endangered Species Act Section 9 liability. We all hoped the cooperative agreement would serve as a model for other states and landowners to participate in, and add their resources to, implementation of the ESA.

One of the officials with whom I communicated on this draft agreement was former Deputy Assistant Secretary Julie MacDonald. An environmental group did its best through blogging to contort lighthearted emails I sent to her in early 2005.

Having been sick at home, Ms. MacDonald sent me a single email on returning to her office to apologize for not answering my pending email request on behalf of the State of Idaho to circulate the draft agreement. I then responded with a quip, joking that if she were still on medication the meeting might go much better for me. When her assistant told me that Ms. MacDonald's mailbox was backed up with a heavy volume of unopened emails, I sent an email to the assistant joking that, if I were her, I might have told Ms. MacDonald to just erase those unread emails, but on second thought some of them might be mine. While my emails are proof positive that I will never write for Jon Stewart's *Daily*

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Show, I was (naively) content to offer a bit of (attempted) wit in the middle of the workday.

For years, friends and “foes” have been subjected to my light-hearted emails and notes. In a town filled with people handling critically important issues, I have always believed we should not attribute the importance of our work to ourselves. Humor and humility are among the best ways I know how to achieve the civility and safeguard the idealism that give all of us, sitting in the public or private sector, the opportunity ultimately to serve the public interest.

But the bloggers went to work on my emails. They depicted those communications as further evidence that lobbyists and officials are cozying up in some grand campaign to savage the environment. The irony is that I was emailing Ms. MacDonald to advance what many would consider a pro-environment initiative. Yet, by the time the emails suffered their final online repurposing, with frequent ellipses and without context, both my intent to move the Idaho agreement forward and the attempted jesting were conveniently obscured.

After so many years in Washington, I know no one is immune from even the most frivolous attack. I am grateful friends on both sides of the aisle, along with a number of environmental activists who have worked with and know me, expressed dismay over the bloggers’ tactics and message and reassured me of their confidence and support. Indeed, all of us should engage in lively debates of the issues, and we certainly should call each other to task for our behavior in and out of the limelight when that behavior is clearly inappropriate. For me, however, this incident of innocent behavior met with repugnant innuendos is emblematic of our woefully degraded public dialogue.

Every such incident forces us to circle the wagons and we all become a little less human as a result. Rest assured, I’ll

CBD issued press releases on emails

The Center for Biological Diversity publicized Quarles’ emails twice — in November 2006 and again on May 22.

In one of Quarles’ Jan. 27, 2005, emails, he asks MacDonald, who had been out sick, “depending on the drugs you’re on, any chance I can see you today (and secure easy ‘yesses’ to outrageous requests?).”

He told *ESWR* last year (www.eswr.com/latest) that, at the time, he had been trying without success to contact MacDonald about a Section 6 agreement in Idaho. When she returned to the office and a full inbox, Quarles also joked in an email to MacDonald’s assistant, “Here’s the message I couldn’t deliver to Julie. I’d tell her to just go in and erase all those back emails but I must admit I suspect some of them are mine....and, of course, THEY are critically important.”

Quarles said he was simply exaggerating in an attempt at humor — first so when he did make his requests, they wouldn’t seem outrageous, and second by making fun of himself.

“Quarles is a powerful lobbyist and litigator for the logging, pesticides, meat and development industries,” CBD said in November.

never send an unguarded email again. And, that’s too bad (at least for me) because I am highly allergic to the stilted, dull language of unnecessarily formal communications.

As an undergraduate at Princeton in the early 1960s, I idolized John Kennedy and was captured by the sense of public mission he articulated. His vision struck the perfect balance between individual and collective enterprise. I had always thought Kennedy’s indelibly American “can do” vision ennobled the challenging, cooperative search for common ground. Compromise to achieve meaningful progress is a worthy and rewarding goal, not a dishonorable or politically foolish act.

As a “Kennedy generation” public servant, I thought of myself as a problem-solver, seeking sensible compromise at every critical juncture. I believed strongly that this pragmatic spirit was embraced in the ethos of the New Frontier, and I sought to infuse my actions accordingly, first on the Hill and then in the Carter Administration as Deputy Under Secretary of the Interior (where, among other things, I was responsible for developing regulations that, much to my chagrin, occasionally struggled to make sense of problematic statutory provisions which a Hill staffer – named Quarles – had a hand in writing and thought was a good idea at the time) and Director of the Office of Coal Leasing (where we developed a federal coal leasing program fair enough to all that no one sought to overturn it by litigation and that remains fully operative more than a quarter century later).

I have long regarded John Buchan’s description in *Pilgrim’s Progress* of Lord Alfred Milner to be particularly instructive for me in my career, drawing as it does on a natural resources metaphor: “He could do what the lumberman does in a log jam, pick out the key log which, once moved, sets the rest going.” That my favorite professor Alpheus Thomas Mason applied this characterization to an intellectual hero – Louis Brandeis, in *Brandeis: A Free Man’s Life* – makes it all the more resonant for me. Paraphrasing, never have I seen a greater need to seek the key issues which, once resolved, will allow us again to set in motion progressive and balanced environmental and natural resources law and policy.

As I look forward, with environmental issues becoming increasingly complex and significant to America’s electorate, I am hopeful that we can find our way back to the high road that brought so many of us to Washington in the first place. I am hopeful that we can dispense with aspersions on both character and purpose, and reengage in a healthy, constructive discussion of the issues that matter — a continual dialogue to advance solutions, not periodic pronouncements to secure political advantage.

Respect, after all, has become an endangered species that we’re obliged to protect.

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