

THE  
HAL CLOUGH  
LECTURE  
FOR 1999

Michael De Alessi

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# PRIVATE CONSERVATION

Markets, Politics  
and Voluntary Action

INSTITUTE OF PUBLIC AFFAIRS

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## Introduction

Despite what one tends to read or hear, the gains in environmental quality around the world in the last few decades have been astounding. People are living longer, the air is getting cleaner, and agriculture is getting more productive, freeing up more land for wildlife and forest growth.<sup>1</sup> Yet, strangely enough, the general view of the environment seems to be a dim one, and the issues of environmental protection and conservation seem to be growing in importance all the time. Why?

For exactly the reason that people *are* getting healthier and wealthier, they now have the luxury of being able to worry about these problems (no-one who is starving or just trying to feed their family cares about carcinogens that might cause cancer in octogenarians). We also have a system of governmental grantmaking and environmental fundraising that rewards the doomsayers and alarmists (imagine a grant proposal or fundraising campaign based on the slogan ‘There is nothing to worry about’).

Of course, there are some very real environmental problems—fisheries have collapsed, conservation estates have been mismanaged, pollution is common and some species are in real danger of extinction. But this lecture is not about which environmental problems are perceived and which are real, it is about the cause of both kinds of problems—political institutions which create more conflicts than they resolve—and one solution—private conservation.

When Garret Hardin coined the phrase ‘the tragedy of the commons’ he used it to describe a situation where resources were depleted because they were free for the taking.<sup>2</sup> In Hardin’s words, when the individual captures the rewards but the costs are borne by the group, ‘ruin is the destination toward which all men rush’. Hardin used the examples of a pasture and an ocean fishery, but the tragedy also applies perfectly well to the political distribution of environmental ameni-

ties, whether they are timber, wilderness areas or hiking trails.

Unlike the marketplace, where by definition voluntary trade makes everyone involved better off, politics is a zero sum game, where gains to one group are made at the expense of another. Turning public lands into wilderness areas, for example, can only be done by taking land away from those who might want to use it as pasture or timber land, and vice versa. In Western Australia, the acrimony and bitterness that accompanied the adoption of the Regional Forestry Agreement (RFA) in 1999 is a case in point.

The RFA in Western Australia was a painstaking effort that tried desperately to accommodate everyone. And everyone seemed to be interested—the process garnered 30,000 public submissions. Even though years were spent sorting out the agreement, not surprisingly, it pleased no-one, except possibly for some politicians. Prime Minister John Howard called the agreement ‘fair and balanced’. The Wilderness Society, however, described the RFA as having ‘everything to do with forest clear felling and woodchipping, and nothing to do with science or community aspirations’. The Australian Workers’ Union, on the other hand, called the agreement a ‘significant victory for the greenies’. And for those who worry about where their taxes go, the agreement included a \$41.5 million industry development package and \$38.5 million for ‘structural adjustment’ in the timber industry.

And after all that, it seems, the RFA may not even last more than a year or two before it has to be renegotiated. It is a process that goes on around the world, wherever environmental protection and resource use get tangled up in politics. Solutions tend to be short-term and fair game for renegotiation whenever there are political gains to doing so. Small wonder that most people take a dim view of finding solutions to environmental problems.

## Private versus Public Conservation

There is, however, an alternative—private conservation. Private ownership radically changes the incentives that people face—it encourages them to produce results rather than rhetoric, to look at tradeoffs, and to figure out ways to make the provision of environmental amenities a positive

1 See Ronald Bailey (ed.), *Earth Report 2000*, New York: MacGraw-Hill, 1999.

2 Garret Hardin, ‘The Tragedy of the Commons’, *Science*, Volume 162, 1968, pages 1,243–48. Unfortunately, Hardin’s choice of terminology was not ideal. The word ‘commons’ is also frequently used to describe resources governed by private, communal ownership, which may be well-defined and managed.

sum game. It includes everyone from profit-seekers to those motivated simply by a love of nature.

When the Eoin Cameron radio show in Perth recently turned to the topic of private conservation, one caller remarked that it must be ‘a relatively new thing’. In the United States at least, it predates Independence. Thomas Jefferson understood that private ownership was the best way to protect something, and to ensure that it would remain protected for future generations. And so when Jefferson saw the Natural Bridge of Virginia, a remarkable natural limestone formation, it so inspired him that he bought it from King George of England in 1774. It is still privately owned today and open to the public, yet its natural setting remains unspoiled.

Some of the best examples of private conservation arose in direct opposition to government programmes of their day. Hawk Mountain in Pennsylvania has been a privately owned sanctuary since it was purchased in 1934 by the early suffragette Rosalie Edge. Hawk Mountain was so named because of the vast numbers of raptors that would glide by on their south-bound autumn migrations, where an army of shooters would fell them and collect the government bounty on raptors. Ms Edge and other early conservationists lobbied to stop the slaughter, but their pleas fell on deaf ears. So Ms Edge turned to private action, raised some money and simply bought the mountaintop in 1934. Then she created the world’s first hawk sanctuary, posted it, and hired a warden to patrol and protect both the property and the birds. Today, over 80,000 people visit the site annually, and it is one of the premier hawk-watching sites in the world.

Of course, the United States no longer puts bounties on raptors. Instead it has swung to the other extreme. In 1972, the US passed the Endangered Species Act (ESA), which not only forbids harm to any species listed as endangered but also restricts activity in the vicinity of those species. This means that, at least on private land, having a rare or endangered species can mean the loss of property rights.

While the history of private conservation around the world has been long and varied, it has also typically been all but forgotten in the face of larger, governmental environmental programmes. One of the great, early private conservation success stories was the recovery of the wood duck in the United States. Due to hunting and government incentives to fill in wetland habitat

around the end of the nineteenth century, the wood duck population was dwindling. But conservationists found that it was easy to create artificial nesting habitat for this species, and soon these duck boxes were being placed all around the country. Everyone from boy scouts to wildlife biologists helped put up the boxes, often on private land. Today, the wood duck is one of the most common species of waterfowl in the United States.

Fast forward to the recent controversy that surrounded the spotted owl in the Pacific Northwest of the United States. The spotted owl was listed under the ESA, and so it could potentially shut down any logging in the area. Thus, anyone who owned forestland was scared to death of finding one of these owls on their property. Not surprisingly, no-one tried to figure out ways to attract and propagate the owls on their land. Helping rare and endangered species had gone from being an attractive proposition to a liability.

Forests themselves offer another stark contrast between public and private management. Especially in Northern California, if you can tell the difference between a brown tree and a green tree, then it’s easy to pick out where the property lines are between private and public forestlands. The National Forests were set up initially for logging, but over the past 30 years that focus has changed to preserving wilderness—that is, doing nothing. The worst part of this ‘doing nothing’ has been to allow the buildup of wood fuels in forest that would normally burn off in small fires. In California, for example, instead of large, beautiful forests with big trees and green, open areas underneath, fire suppression has created a dense underbrush, so that now when there is a fire, it burns hot enough to reach the crowns of the bigger trees, killing them. They are also more susceptible to disease and pests such as bark beetles. On private lands, however, there has been salvage harvest, work to limit noxious pests and control of the undergrowth. Many private forest owners in the United States are also moving away from logging as the sole revenue generator, toward such activities as camping, hiking and fee-hunting (paying to hunt on private land). They are also managing their land more actively.

National Parks in both the United States and Australia have also suffered from political mismanagement. In the United States, reports from the federal government’s General Accounting Office continue to document the mismanagement

of our National Parks. Much of this has to do with the incentives that Park managers face—where the bottom line is not environmental health but political savvy. For example, it may be more important to escape the blame for mismanagement (and keep one's job) than to try to find innovative ways to improve either the environment in the park or its accommodation of visitors (and become a lightning rod for criticism). For this reason, US National Parks, much like the aforementioned National Forests, have suffered especially from the trend toward 'natural regulation', which means, once again, doing nothing.<sup>3</sup> Environmental economist Randal O'Toole has pointed out that under this regime of 'natural regulation', if 10,000 elk starve to death after eating all of the available forage, park managers can simply say, 'It's not us—it's nature'.

However one looks at the natural world, virtually everything is in some sense 'disturbed' (touched or at least affected by human contact). So nature must be managed, in some sense, like a garden. The question that remains is not whether to build a wall around nature, but who should be the gardener? And a landlord with the environmental record of most governments would be widely condemned, not extolled or encouraged to expand.

It is widely believed that government is really the only entity capable of conserving huge tracts of land, but that is simply not the case. In Zimbabwe, for example, a remarkable transformation has taken place in recent years with the formation of private wildlife conservancies. The conservancies were formed by adjoining property owners, mostly cattle ranchers, who contracted with each other to manage all of their properties as a single unit. All of the internal fences have been torn down and all of the cattle are being replaced by wildlife. The largest, the Savé Valley Conservancy in the south-eastern lowveld of Zimbabwe, is an amalgamation of over twenty properties that covers almost one million acres.

One impetus for creating the conservancies was to put the last remaining black rhino in Zimbabwe onto private lands. The black rhino population in Zimbabwe had dwindled to just a few hundred. Much of the eco-tourism revenues of

the conservancies depend on the black rhino, and so they are vigilantly protected. A scout tracks each rhino all day, and not a single rhino has been poached on the Savé since its formation. In addition, for the first time in decades, the black rhino population in Zimbabwe is increasing (at its biological maximum, no less).

## Earth Sanctuaries Ltd

Earth Sanctuaries Ltd (ESL), an Australian company, is one of the best demonstrations in the world of how incentives and private ownership facilitate conservation. ESL was founded in 1969 by Dr John Wamsley, who had the insight that the way to save Australia's endangered species was to protect them from feral predators (mostly cats and foxes). More importantly, he also had the wherewithal to actually do something about it.

Which is a good thing, because more mammals have become extinct in Australia in the last 200 years than anywhere else in the world. Since ESL started buying land, building feral-proof fences and reintroducing native species, the results have been remarkable. Endangered Australian species like woylies, rufous bettongs, long-nosed potoroos and southern brown bandicoots have thrived inside the feral-proof fences. Some species, like the eastern quoll, can only be seen on mainland Australia in an Earth Sanctuary. ESL is well into a 40-year business plan that includes target numbers for specific species and the goal of turning one per cent of Australia into private wildlife reserves by 2025. Revenues come from eco-tourism, consulting and wildlife sales, but ESL's biggest bottom line is saving Australia's endangered species. And it is producing results and attracting investors.<sup>4</sup>

The US Government's strategy for saving endangered species, on the other hand, consists largely of declaring them endangered and then imposing restrictions on any activities surrounding them. Not surprisingly, hardly any species have been taken off the endangered list since 1972 (and of those 20-odd that have been taken

3 For an in-depth discussion of the deterioration of National Park management, see Alston Chase, *Playing God in Yellowstone: The Destruction of America's First National Park*, New York: Harcourt Brace Jovanovich, 1987.

4 In May 2000, Earth Sanctuaries Ltd was listed on the Australian Stock Exchange (ASX code: ESL), earning the distinction of being the world's first listed company whose 'core business is conservation'. See <http://www.esl.com.au> for more information.

off the list, most were either due to extinction or data error). Fortunately, there is no Endangered Species Act equivalent in Australia.

No wonder Dr Wamsley has no faith in government and believes the only way to save Australia's native wildlife is through private enterprise. (Although it should also be noted that some State conservation departments, especially Western Australia, Queensland and New South Wales, have made many of ESL's relocations and reintroductions possible.)

## The Case of the Fisheries

The power of human ingenuity to solve problems and overcome obstacles should never be underestimated. Rosalie Edge and John Wamsley are prime examples. Human resourcefulness is also one reason why private conservation has succeeded where other efforts have failed—because the incentives and the institutions that direct those efforts are crucial.

One of the best examples comes from the fisheries. Garret Hardin, and a number of economists before him, explained the problem—no-one will cut back their harvests if whatever they leave behind may simply be caught by someone else. Left to their own devices, however, people have been remarkably successful at devising ways of monitoring and enforcing rules among themselves to try to overcome this tragedy.<sup>5</sup> These agreements, however, are often tenuous and open to expropriation, and so government intervention in fisheries management has been the norm.

Regulatory approaches to fisheries management have had few successes. One of those few is the remarkable recovery of the striped bass along the Eastern seaboard of the United States. The method used, however, was an absolute moratorium on all harvest of striped bass. And one official with the National Marine Fisheries Service described this as the only success story he'd been involved with in 40 years.

Apart from moratoria, external rules and restrictions on fishing direct human ingenuity into finding ways to beat the system, rather than ways

to protect and enhance resources. One of the most extreme examples was the Alaskan halibut and sablefish fishery, where regulators tried to reduce harvests by shortening the fishing season. Before long, what was once a nearly nine-month season had been reduced to 48 hours—with no reduction in the catch! People respond to the incentives they are given, and they are very resourceful, and so they figured out how to catch more fish in less time.

Today that fishery is one of the better managed fisheries in the United States. The fishery is now managed by an Individual Transferable Quota (ITQ) system that allots a certain percentage of the total catch to fishermen. No more race to fish and no more huge investments in the capacity necessary to catch a year's worth of fish in two days.

This system is common in Australia for some species like abalone, but it has been taken furthest in New Zealand. As ownership rights to the fisheries have grown stronger, New Zealand quota owners have formed management companies that are effectively managing the fisheries, investing heavily in research, enhancement and other measures to protect the health of the fisheries. After all, the value of their ITQs is directly tied to the future health of the fishery. New Zealand is one of the few places in the world where fishermen have balked at catching their allotment of fish because they thought it had been set too high.

The secret is not ITQs, but a sense of ownership. The South Australian rock lobster fishery, for example, is managed by two different management regimes—ITQs in one zone and simple trap limits in another. Both systems work well because the industry was able to drive the rules and restrictions that were set, and so it devised systems to suit the situation (the trap limit zone, for example is more spread out and difficult to monitor). Unfortunately, this success is now threatened by other interests who would like their own control over the waters—recreational anglers and those who would like to see the creation of marine parks and reserves that would be off limits to fishing.

Just like the RFA, the lack of any sort of clear ownership has led to conflict, and will continue to do so in the future. Conflict is common in the United States as well, where fishermen in the Florida Keys have vehemently opposed the creation of a marine sanctuary, and in numerous States that have seen voters move to ban certain com-

5 Many of these examples come from the common property literature of anthropologists. See, for example, Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, Melbourne: Cambridge University Press, 1990.

mercial fishing gear to free up more fish for the recreational.

There is at least one recreational/commercial success story, and it involves the Icelander Orri Vigfusson and his efforts with the North Atlantic Salmon Fund (NASF). The NASF represents anglers who would like to see less offshore salmon fishing. But instead of trying to exert political pressure, the NASF has raised enough money in recent years to completely buy out the Greenland commercial salmon fishery, allowing many more salmon to return home to their native rivers and streams. The Greenlanders do not have any individual fishing rights, but they do know who has the right to fish and who does not—and so there is a group of ‘owners’ to bargain with. The NASF is one more example of an ingenious solution to an environmental conflict, made possible by at least some form and definition of property rights.

Another good example of how private ownership leads to tradeoffs rather than conflicts comes from a private sanctuary in Louisiana owned by the Audubon Society. Audubon has vehemently opposed drilling for oil on public lands in any number of cases, but they actually have some wells on their Rainey wildlife sanctuary. Rainey is such an important bird sanctuary that even the public is not allowed to visit, but because they own the land, Audubon was able to weigh the benefits of drilling against the environmental hazards—and to take whatever precautions they thought necessary to protect the birds.

## The Problem of Unowned Resources

But what about those companies that aren’t good stewards of the environment? Once again, it is a question of ownership. The resources that are being degraded, whether a river, a forest or an airshed, are generally unowned. They are more examples of the tragedy of the commons, just a little less obvious than the fisheries.

Timber leases in the United States are a good example. Timber companies tend to behave very differently when they are harvesting trees from their own land or from public lands. Private timberland owners tend not only to invest in the future health of the land, but also to consider alternatives to logging such as fee-hunting or hiking, which they cannot with a short-term lease

on public forest lands. The problem is not with the timber company but with the incentives created by a system of public ownership.

Another caller to the Eoin Cameron radio show was convinced that shareholders demanding ‘short-term profits’ would drive corporations to destroy even the environmental amenities that they owned. They might desire short-term profits, but it would make more sense to sell out completely than to destroy the value of the resource. A fishing company desperate for cash, for example, would simply sell its right to the fishery rather than starting to fish with dynamite to kill everything. If resources are unowned, however, then there is no real asset to capitalise on, and resources are much more likely to be polluted, depleted or degraded.

The good news is that even partial rights can have a dramatic effect on environmental quality. In the United Kingdom, private, heritable rights to fish for salmon in rivers and streams are common. And under English common law, these owners have a recourse to stop activities, such as pollution, that damage their rights.<sup>6</sup>

Even in Washington State, where there is no right to clean water, the fact that oyster beds can be privately owned has led to cleaner water. Because oysters are filter feeders, they depend on clean water, and so the oyster growers have fought for clean water—and obtained it.

## Moving toward Private Conservation

If one accepts private conservation as a viable alternative, the next question is how to create more opportunities for private conservators. There are no simple answers to this question, but one of the most successful first steps has been to remove legal impediments. In Zimbabwe, for example, a change in the law that allowed landowners to manage and utilize the wildlife on their property (where before wildlife had been the sole province of the state) spurred huge investments in protecting and enhancing wildlife habitat. Zimbabwe has ceded a great deal of control over wild-

6 For a more in-depth analysis of common law approaches to pollution prevention, see Elizabeth Brubaker, *Property Rights in the Defence of Nature*, Toronto: Earthscan Publications Ltd, 1995.

life to poor, rural communities and villages through a programme called CAMPFIRE, which has served to benefit both the people and the wildlife that surrounds them. This change in the law was also a key element in the formation of the private conservancies mentioned earlier. Other southern African countries such as Zambia and Namibia have created very successful communal conservation efforts that rely on the right to manage and benefit from wildlife.

In places like Texas, however, the native game remains 'the king's game'. As a result, many ranchers in Texas have turned their attention to exotic species, which they can actually own. And they take care of what they own. In some cases, for species like the scimitar-horned onyx, there are bigger populations in Texas than in their native environment.

Legal restrictions on how rights may be exercised can also impede private conservation. Until recently, water rights in Oregon were based on a 'use-it-or-lose-it' regime in which leaving water instream for salmon was not considered a 'use'. This created conflict between farmers and the environmental community. Once the law was changed to include instream flows in the definition of 'use', however, a group called the Oregon Water Trust was formed to start buying water rights to leave them instream.

In Australia, the Australian Conservation Foundation laments that only twenty per cent of the Murray River's natural flow reaches the ocean, but without water markets, there is very little direct action they can take to improve instream flows. Their only recourse is to wade into the political morass. The same problems exist when conflicts arise over dams, which have become controversial in some areas for their effects on wildlife and riverine ecosystems. Without a system of water rights, however, there can be no private solution, only public conflict.

## Human Ingenuity Overlooked

Human ingenuity underlies just about every private conservation success story. When private property rights institutions prevail, problem-solvers become remarkably resourceful at protecting and enhancing the value of what they own, for reasons as broad as profit and aesthetics, and covering everything from fisheries and forests to

backyard gardens. Unfortunately, that is rarely the environmental message that is heard.

A recent visit to the Australian Museum in Sydney, for example, turned up a rather remarkable display entitled 'Populate and Perish'.<sup>7</sup> The display focused on how people, and an expanding human population, are at the core of all of our environmental problems. It stated, for example, that:

- 'We change habitat through agricultural, urban and industrial development, and the exploitation of natural resources';
- 'We pollute soil, water and air';
- 'We overharvest resources which reduces both population sizes and genetic diversity of commercial species such as fish'.

Certainly, more people living in a certain area will affect the landscape, but the presentation was determined to portray people *only* as a problem, *never* as a solution, which is an egregious error. Human ingenuity is exactly why Malthus was wrong when he predicted mass starvation as population grew faster than food supplies. Instead, innovation allowed agricultural productivity to far outstrip population growth.

The view that insists on portraying people as the problem must be addressed before any broad reform will really take place. People like John Wamsley continue to build on the stack of evidence that demonstrates that, to the contrary, people are the solution. Is there really any doubt that people take better care of what they own than what they do not? The heart of the problem lies in the political management of natural resources.

What Thomas Jefferson understood so well in the eighteenth century—that private ownership is the surest way to protect something—has faded in recent years. But it has hardly gone away. And in some form or another, a return to this approach is inexorable. For if one looks at the conservation success stories that exist today and acknowledges why some resources are conserved and others depleted, there is no denying the vital role that private institutions and human ingenuity play in overcoming the environmental problems we face.

7 From notes taken on a personal visit to the Australian National Museum in Sydney, November 1999.

## About the Author

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Many of the private conservation case studies discussed are available on the CPC Website: <http://www.cei.org/cpc>.

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## About the Lecture

This lecture is named after the founder and Chairman of the Clough Engineering group. Hal Clough has been a leading figure in the Western Australian business community for many years and during that time has been a strong supporter of economic freedom and the Institute. As John Hyde, a former Executive Director of the Institute of Public Affairs, once remarked of Hal Clough:

he has always clearly understood that a liberal social order, including its market economy, is dependent on an ethos, an idea, without which it will not function or survive.

The Institute is proud to host an annual Perth-based lecture in Hal Clough's honour.

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