Ben Cone is a relatively wealthy man, and so to many people he may not be a sympathetic figure. But we don't have to have sympathy for him personally to see that he faces a genuine problem and that other landowners may well act the same way. Indeed, after Cone informed the owner of neighboring land about possible liabilities in connection with the red-cockaded woodpecker, he noticed that the owner, a business firm, clear-cut its property.

Experiences like Ben Cone's have encouraged landowners around the country to prevent their land from harboring listed species. Some landowners now manage their land in a way that almost assures it will not be suitable for endangered species. Others may even be going to the extreme of "shoot, shovel, and shut up." No one knows for sure that this has happened, but the government's takeover of land for the sake of protected species is having a perverse effect. In 1993 an official of the Texas Parks and Wildlife Department wrote that in his state, more habitat for the black-capped vireo and the golden-checked warbler has been lost since they were listed under the Endangered Species Act than would have been lost if the ESA had not been applied to them.

Our Constitution explicitly forbids the U.S. Army from forcing citizens to "quarter" soldiers (that is, provide them with food and shelter), even in the name of national defense. Yet the government can now require the same citizen to quarter a grizzly bear, a spotted owl, or any other member of a threatened or endangered species—all at the landowner's expense without any society-wide sharing of the burden.

If the Army had the same power to demand the billeting of soldiers as the Fish and Wildlife Service does for endangered species, we would expect to see soldiers feared, despised, and perhaps even ambushed, as listed species reportedly are today. But in fact, the armed forces are nearly always welcome, for the simple reason that the military pays its way. Communities currently battle the military leadership not to have soldiers removed from their midst but to ensure that they stay. Thanks to the policy of compensation, the Pentagon must struggle to close a base.

Several groups are trying to come up with modifications of the Endangered Species Act that would provide similar incentives capable of transforming rare species from feared enemies of landowners to welcome friends. One suggestion is to provide property tax credits for landowners who commit themselves to long-range habitat protection. Another is to pay landowners "bounties" or "rewards" for endangered species found on their land. Still another is for the government to "rent" the land whose use is to be confiscated for endangered species' habitats.

For two species in Texas, more habitat has been lost since they were listed under the Endangered Species Act than would have been lost if the ESA had not been applied.

All these approaches are worth considering, but the critical change is to remove the ability of the Fish and Wildlife Service to seize control of land without compensation. This could be accomplished through court action or through legislation. Such a change would have two benefits: (1) landowners would no longer fear finding endangered species on their property, and (2) the Fish and Wildlife Service would for the first time have to consider the costs of its regulations. Rather than foisting the costs of its programs onto a few unfortunate landowners, the service would be able to take only those actions it could afford, based on funding it received through the normal congressional budget process. This would encourage the service to be more thoughtful and efficient in its executive actions. Once they had to pay for the land they used, the agency staff would begin searching for less intrusive and more cost-effective ways to preserve species.

At present, the Fish and Wildlife Service's chief way of protecting threatened animals is to control wildlife habitat directly and to forbid other uses of the land. Since that habitat costs the service nothing, its officials have an incentive to overuse it, the same way a driver handed a free supply of gasoline would use his car more. Yet there may be ways of protecting wildlife that don't exclude so many other uses of land. The captive breeding that brought back the peregrine falcon, for example, requires little or no habitat set aside specifically for the falcon. Specially designed nesting boxes that would replace the cavities of old trees might be an excellent alternative means of protecting red-cockaded woodpeckers. (Companies such as International Paper are already using the boxes, and many more landowners could be persuaded to do so if their very success at housing woodpeckers wouldn't increase the danger of draconian land-use controls.)

Putting the Fish and Wildlife Service "on budget" does not mean that species protection would disappear or even diminish. Under such a scheme, the current bizarre incentives for destruction of flora and fauna would end, and landowners would become far more cooperative in protecting rare creatures. Strong evidence exists that individuals and organizations would take action on their own to protect species, if the penalties for owning valuable habitat were removed. For decades, private organizations—both for-profit and non-profit—have pursued effective, low-cost means of habitat preservation. Removing penalties to landowners' cooperation will make it much easier for such groups to expand their preservation efforts.

Here are a few examples of what to expect:

- The Delta Waterfowl Foundation has an "adopt-a-pothole" program that pays farmers to protect prairie potholes (depressions in the land that harbor nesting areas for ducks).

• The Montana Land Reliance keeps large stretches of agricultural land from development through voluntary donations of conservation easements.

• Many private refuges protect birds and other species; some of these refuges pay for themselves by allowing oil or gas drilling.

• The Nature Conservancy's Pine Butte Preserve in Montana, which protects lowland habitat for the threatened grizzly bear, offsets expenses by providing "ecotourist" facilities for environmentalists. The managers of the preserve have actually created new habitat for the bear by burning grasslands in the spring to allow vegetation to grow and by planting chokecherries, a prized food of the grizzly.

Enforcement of the Endangered Species Act doesn't only cause problems on private land; it also causes government-owned lands to be mismanaged. For just as the mission of the ESA trumps all other goals on private land, so it trumps all other government agencies' goals, including the Forest Service's goal of harvesting timber for land-management purposes and lumber production. Agencies like the Forest Service must bend to the wishes of the Fish and Wildlife Service, just as private landowners do, even when less extreme actions could solve habitat problems equally well.

To correct this imbalance, some means of deciding how land should be managed is needed. One option is for the Fish and Wildlife Service to be required to compensate another federal agency whenever its commands reduce the ability of that agency to use land to pursue its own goals. But since all federal land is owned by taxpayers and its management overseen by Congress, another approach may be more feasible: the Fish and Wildlife Service could be required to go to Congress when it believes that a parcel of land managed by another agency is necessary to protect a listed species. Congress could explicitly debate the transfer of control over any sizable tract of federal land to Fish and Wildlife. In this way, the goals of all citizens could be considered, and a single goal would not automatically triumph in every case. Congressional debate could be triggered by the quantity of land the Fish and Wildlife Service wants to take over, with the control of any parcel over 100 acres perhaps requiring Congress's concurrence. (This process might also include appropriating compensation to the agency whose land is being seized.)

Another reform would enlist the help of private groups to protect endangered species on federal lands: federal laws could be changed to allow environmental groups to bid for the lease or purchase of federal lands in order to protect endangered-species habitat (or to pursue other environmental goals). Today, only someone planning to cut down timber can bid at Forest Service timber sales. It's actually illegal to purchase timber and then not harvest it. This law could be changed so that Defenders of Wildlife, the Wilderness Society, or some other group could bid for timber parcels and then leave them unlogged in order to preserve the habitat for some species. (Concerns over disease and fire control, however, would have to be addressed.)

STRONG EVIDENCE EXISTS THAT INDIVIDUALS AND ORGANIZATIONS WOULD TAKE ACTION ON THEIR OWN TO PROTECT SPECIES IF THE PENALTIES FOR OWNING VALUABLE HABITAT WERE REMOVED.

In short, any reform of the Endangered Species Act should aim to make endangered species the friend, not the enemy, of landowners, whether they be private citizens or government agencies. This can largely be accomplished just by ending the Fish and Wildlife Service's power to control land without compensation. Then landowners will no longer fear finding exotic plants and animals on their property, and the Fish and Wildlife Service will begin weighing its goals against other desirable goals and have an incentive to husband its resources, try new approaches, and establish priorities.

These much-needed reforms appear unlikely to come through the courts. The Supreme Court recently had a chance to set them in motion but declined, and so the ball passes to Congress. Through broad-ranging "takings" legislation, lawmakers could require that any reduction in property value that results from government action—such as restricting logging on Ben Cone's land—requires compensation from the agency that "takes away" that value. Or Congress could just amend the Endangered Species Act to require compensation for lost property use. That would give Congress an opportunity to specify the way in which the Fish and Wildlife Service should compensate landowners and encourage mutually beneficial land uses.

On public land, where other worth goals besides endangered-species protection should be considered, one approach would be to require some sort of interagency compensation. A more feasible way may be to let Congress decide which goal has priority whenever the Fish and Wildlife Service wants to control a significant amount of federal acreage in another agency's domain.

However they come about, these changes will end the tragic situation that now occurs when landowners learn they will lose their freedom to use their own land if they find endangered species on it. Only by respecting property rights will landowners and species both benefit.

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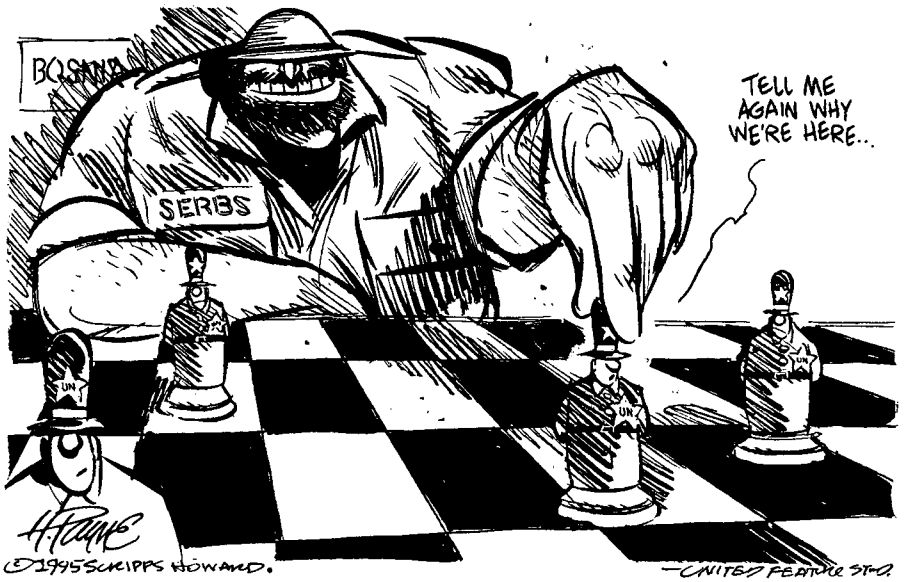
Flashback

TO KNOW NOTHING OF WHAT HAPPENED
BEFORE YOU WERE BORN IS TO REMAIN EVER A CHILD—*Cicero*

Peacekeeping Forever



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To hear Senate Foreign Relations Committee Chairman Tom Connally tell it, the only Americans opposed to ratification of the Charter of the United Nations in the summer of 1945 were a few shrill harridans whose preposterous belief was that "the charter would bring into being a world government" of which "the duke of Windsor was to be the world king."

Connally permitted the cranks a brief opportunity to testify before his committee, but treated them with ill-disguised contempt. The ladies were a spirited lot, given to fantastic predictions: they imagined that someday a president, without the consent of Congress, might send American soldiers on a U.N. "peacekeeping" mission halfway around the globe. The hysterical fear-mongers!

Mrs. Cecil Norton Broy, representing a 25-member study club of Arlington, Virginia, cautioned the senators against "the further disruption of normal American family life.... We would be working on the principle of scattering the most virile of our men over the face of the globe." Mrs. Elise French Johnston announced that she represented no group but was speaking "as a free-born American citizen exercising my right of appeal and protest." Connally snickered—the kooky old broad!—until La Johnston riposted, "This room with its marble walls—has it also marble ears?"

Mrs. Grace Keefe of the Women's League for Political Education in Chicago insisted: "The easy comparison of a world army with a local police force is sheer nonsense. A local policeman is called upon to act where an individual breaks existing law and the individual is held responsible for his crime. An international army or air force which moves in with bombers against helpless populations and indiscriminately burns, maims, and destroys is not an instrument of justice or law and order."

Pro-U.N. witnesses either ignored or patronized the dowdy antis. Livingston Hartley, director of the American Association for the United Nations, assured Senator Hiram Johnson, the California warhorse who had been Teddy Roosevelt's Bull Moose running mate in 1912, that the United States' contribution to U.N. occupation forces would be "very small," at most "a few thousand."

"If that did not suffice to put down the trouble, would you send a few thousand more?" Johnson asked.

Oh no, Hartley replied; recalcitrants would be cowed merely by the show of blue helmets, and if any were crazy enough to actually defy U.N. authority, well, it then became a simple matter of "mobilizing the machinery of war, the bombing planes, and the mechanized weapons." (Mr. Hartley was not, evidently, of Serbian ancestry.)

The committee reported the measure, and the ensuing floor "debate" was a dreamy lovefest of global harmony, disrupted only by a few spoilsports who kept adverting to the Constitution.

Senator Burton K. Wheeler (D-Mont.) predicted, "We are not going to send a police force to stop aggression by Russia...because Russia is not going to permit it to be done. We are only going to use such powers against the small and the weak nations who have not any friends and who are not satellites of some powerful nation."

One of the last of the classical liberals, Senator Robert Taft (R-Ohio), mused, "I cannot imagine anything more likely to bring about war than the attempt to intervene in the domestic affairs of other nations."

Enlightened opinion scoffed. So what if we "send a few tanks or a few ships or even men," asked Senator Claude Pepper (D-Fla.); "I am not one of those frightened by what some call a superstate." The patrician Leverett Salstonstall (R-Mass.) lectured his benighted cow-state colleagues that "one result of this smaller world is greater centralization of governmental authority"; the U.N., sighed the Brahmin, was just "another step" on the path to One World.

The charter was ratified by a vote of 89–2, the dissenting duad made up of "Wild Bill" Langer of North Dakota and Henrik Shipstead of Minnesota. "The control of the war power, as provided in the Constitution, must remain in the Congress if the United States is going to remain a republic," Shipstead bellowed to his chamber's marble ears.

Thus did these United States enter the United Nations, to the distress of a few old ladies who feared that someday a president and the U.N. Security Council would send American boys to exotic deathtraps with names like Mogadishu.

—Bill Kauffman