



Property and Tyranny

by Tom Bethell

In the 1980's, Peggy Reigle was vice president of finance for the *New York Daily News*. But she grew tired of battling printers' and drivers' unions and so she retired with her husband to a farm in Cambridge, Maryland. One day her neighbors, an elderly couple from West Virginia, came to her for help. They had invested their life-savings in a 44-acre parcel and planned to sell one half in order to build a house on the other half. A few months earlier, the federal bureaucracy had issued new "wetland" regulations, covering two-thirds of Dorchester County, including the couple's entire property. If they built anything at all they would probably go to prison. "Stroke of a pen," Peggy Reigle said. She couldn't believe it at first. "Not in America," she thought. That was in the summer of 1990.

When she heard about dozens of similar cases across the country, she came out of retirement and went to war on behalf of the expropriated. She started the Fairness to Land Owners Committee, which publishes a newsletter and now has 15,000 members in all fifty states. About 90 percent of the members have been subjected to "wetlands abuse," she estimates. The Endangered Species Act has also given rise to serious invasions of property rights, but it "pales by comparison with wetlands." Reigle estimates that she works with between 250 and 275 other property-rights groups across the country, and many of them put out newsletters and "action alerts."

This is the property-rights movement. It has come in waves, starting with the organizing efforts of Chuck Cushman, who founded the National Inholders Association (an inholder is an owner of private property within or surrounded by federal property). Then came Ron Arnold's Wise Use movement, based in Western states, which pro-

motes the continued use of resources on federal lands (mining, logging, ranching). The most recent impetus has come from the Endangered Species Act, and from George Bush's wetlands folly. Myron Ebell, the Washington representative of the American Land Rights Association, told me that "we have about 800 groups on our fax list." Overall, he believes that there may be as many as 1,200 groups. All this gives us an idea of the severity of the federal assault on property rights in recent years.

Environmentalists have periodically sought to denigrate the property rights movement as a child of big business, perhaps some kind of an Exxon spin-off, but the truth is that it is the environmentalists who are funded by big business (also big foundations, of course). Modern corporate philanthropy would hardly dare touch anything so bold as the defense of property rights. Leafing through a 1993 issue of *Nature Conservancy* magazine one day, Myron Ebell came across a clue as to why this should be so. An article headlined "Corporate America Turns on to the Environment" included the quote: "Like Dow, DuPont believes its efforts yield indirect economic benefits. 'Since we are good neighbors, we are allowed to continue making products,' says DuPont's Megan Burns." DuPont, allowed to stay in business! This suggests what many suspect—that the law is so ill-defined and environmentalists so influential that prudent corporations make contributions to them in order to avoid lawsuits.

Private property decentralizes power, and so it is fitting that the property-rights movement has no central direction or figurehead leader. "It is pretty much a grass roots movement, which is a problem, because it means there's no silver bullet," said the W. Alton Jones Foundation's Debra Callahan in a speech to the Environmental Grantmakers Association.

If the property-rights movement has leaders, Peggy Reigle is certainly one of them. Her most recent newsletter has been making waves on Capitol Hill because it urged congressmen to support a particular bill reauthorizing the Clean Water Act. The bill would actually define wetlands, which is something that Congress has not yet bothered to do.

The increasing extremism of environmental regulation has caused the de facto seizure of a great deal of property all over the country, forestalling billions of dollars worth of economic activity. The regulations have also led to the unjust imprisonment of several people. Here is just one example, reported in Reigle's newsletter:

On May 15, 1989, Ocie Mills and his son Carey entered a federal prison to serve a 21-month sentence as environmental criminals. In building a home for his son, Ocie placed nineteen loads of clean builder's sand in a dry ditch on a small lot in Florida. The federal government said it was a wetland. Carey's crime was that his name was on the title deed. They were in prison for nineteen months. Ocie defended himself, but the trial exhausted the family's savings and they were forced to rent out their home and move into a trailer. Ocie's wife depended on neighbors for food and assistance during his incarceration. Making Freedom of Information requests from behind bars, Ocie found the probable cause of his treatment: an Army Corps of Engineers colonel was annoyed at his "highly publicized" and "documented furnishing of advice to others with intent to subvert the Corps Regulatory Program," and so recommended that he "be prosecuted criminally." He was. Later a federal district court judge concluded that the lot "probably was never a wetland."

The wetlands police, mostly employed by the Environmental Protection Agency and the U.S. Army Corps of Engineers, have all along operated without a license

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from Congress. These agencies expanded their own jurisdiction administratively, with an assist from the federal judiciary, and of course did so under the somnolent eye of Republican presidents. Current law derives from the Clean Water Act of 1972, which applied to rivers and did not mention "wetlands" at all. Its language bears no resemblance to its present interpretation. Then, in 1975, a federal judge ruled that the act applied not just to rivers but to wetlands that drain into them. Taking the advice of his future EPA administrator, William K. Reilly, George Bush promised in 1988 that if he was elected there would be "no net loss of wetlands."

The effect was to ratify the stealthy expansion of wetlands that had already taken place. The Corps of Engineers and the EPA were ready with new regulations a few weeks after Bush was sworn in. "Wetlands" had by now doubled in area and most of the added areas were on private property. Lands could be classified as "wetlands" if they were dry for 350 days a year, and if they were as small as puddles. Robert J. Pierce of the Army Corps of Engineers, who had helped write the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," declared that "for regulatory purposes, a wetland is whatever we decide it is."

The constitutional fig leaf has been the interstate commerce clause. Geese flying overhead are "interstate waterfowl" and while in flight might glance down and spot an enticing puddle—20 feet by 20 feet would be sufficient to satisfy the EPA. Even "Saturday Night Live" might think twice about a parody along such lines. In 1992, Federal Judge Daniel Manion boldly struck down the "glancing geese" test, but the Seventh Circuit Court of Appeals reaffirmed it. Meanwhile, Bill Ellen, a conservationist who ran a rescue/rehab mission for injured waterfowl, was sent to the federal penitentiary in Petersburg, Virginia, for six months, for the crime of creating a wildlife sanctuary, thereby disturbing wetlands. "Ellen knowingly filled wetlands without any federal authorization," said assistant U.S. Attorney Jane Barrett, who helped prosecute him. "It was a premeditated environmental crime."

Congress still had said nothing about wetlands. Last August, the Clinton administration responded to this oversight by urging Congress "to amend the Clean

Water Act to make it consistent with the agencies' rule-making." In his new book, *Lost Rights: The Destruction of American Liberty*,¹ James Bovard observes that Clinton thereby

sought to codify the nature of modern government: Congress as a tail being wagged by the federal bureaucracy. In earlier eras, the statement that federal agencies were imposing burdens and restriction on private landowners that were not justified by federal law would be a confession that the government was violating people's rights. But nowadays, it is simply a technicality requiring a few words from Congress to retroactively sanctify the actions of lawless bureaucrats.

I would like to go out of my way to recommend this remarkable book—400 densely packed pages about the mounting war on property and contract, the tyranny of taxation, and the growth of federal power in the guise of expanding our rights. In this field, Bovard is surely the leading researcher in the country. On the subject at hand, here is a characteristically brilliant paragraph:

While EPA and the Army Corps have heavily fined many farmers for wetlands violations, the U.S. Department of Agriculture followed a different wetlands policy. Keith Bjerke, a high-ranking USDA official, gave North Dakota farmers explicit permission in 1989 to drain 6500 acres of swampland in order to expand their crop acreage. While the EPA was sending people to prison for filling a quarter-acre of wetlands, USDA—by promising farmers lavish subsidies for future crops—effectively underwrote the destruction of thousands of acres of wetlands. Federal farm price subsidies far above market prices provide a strong incentive for farmers to produce more crops than they otherwise would. . . . Price supports and strict import quotas are the main reason why sugar is still produced in Florida—and sugar production is the main reason why the Everglades are being poisoned, with the loss of thousands of acres of wetlands each year. But it is easier for politicians to send federal agencies on vendettas against landowners than to end the gravy train for selected campaign contributors.

¹ St. Martin's Press, 335 pages, \$24.95.

Legislative authorization for the Clean Water Act has now expired, and a 600-page reauthorization bill, which would only make things worse, co-sponsored by Senators Max Baucus and John Chafee, has emerged from committee. But it is not expected to get any further. A House bill supported by property-rights defenders, compensating landowners who are affected by wetlands regulations, also seems to be stymied. In effect, the rise of the property rights movement has led to an impasse on Capitol Hill. Environmentalists are unable to pass new laws making things worse, and property-rights advocates aren't strong enough to make them better. The Endangered Species Act is caught in just such a vise. The two sides are strong enough to ensure that the act is neither strengthened nor weakened.

A property measure to write into law a "takings implications assessment," comparable to environmental impact statements, has made headway. It was opposed by Janet Reno, but, says Myron Ebell, "the killer was a letter from Defense Secretary Perry saying that he won't be able to defend the country if he also has to defend property rights." Bills to elevate the Environmental Protection Agency to Cabinet level, and to authorize a National Biological Survey, are also blocked. The latter is the child of Bruce Babbitt, who has single-handedly revived the "Sagebrush Rebellion" in the Western states.

The legislative impasse could mean more environmental outrages and a further growth of the property-rights movement. But Ebell issues a warning: it's a race against time. Western ranchers feel threatened by grazing-fee increases because certificates of deposit already offer a better rate of return than cattle. "In the Western states, there are lots of crossroads communities that are barely hanging on," Ebell said. "If the environmentalists can get rid of the loggers, the ranchers and the miners, they will have turned those states into Democratic strongholds." Sen. Harry Reid won in Nevada even though he lost everywhere except for Las Vegas and Reno. As for a prospective Republican majority in the Senate, John Chafee (Environment) and Mark Hatfield (Appropriations) would become committee chairmen. Philosophically, they are indistinguishable from Democrats. □



The Tragedy of Macdeth

by Francis X. Bacon



Francis X. Bacon is a writer living in Vatican City.

ACT I

Scene I—*A heath in Arkansas.*

[*Enter MACDETH and LYONS, jogging*]

MACDETH

How now, my gentle Lyons, what's o'clock?

LYONS

My liege, the moon our sister Artemis,
like a T-cell new ruptured
by plaguy ill-bred pathogen hath done
dismissed herself from the field of play.
[*Pushes button on wristwatch*] Six-thirty.

MACDETH

Then let us canny falconers uncage
our Reeboks to th'unruly winds and speed
on wings of Taiwan-sculpted rubber hence,
lest time should turn our stomachs cuckold
and torpor the McBreakfast Special cheat.

[*Enter three WITCHES*]

Yet stand I traitor to mine eyes or they
to me, who credit not their troth?
For these appear not women, nay, nor men,
but antecedents of the pronoun s/he—
three Deans of Gender Studies, it would seem,
the very substance of delirium.

1st WITCH

Hail, Macdeth, all hail to the chief!