Nature Conservation and the Voluntary Principle

JOHN M. FRANCIS[1]

49 Gilmour Road
Edinburgh EH16 5NU

ABSTRACT: Primary legislation in Britain has enshrined the 'voluntary principle' at the centre of the working relationship between nature conservationists and other land-users. This paper examines the dilemma that arises from the application of the legislation to long-term land management strategies in support of nature conservation. In its historical context this approach does not sit easily with wider goals such as the land-use ethic of Aldo Leopold or the search for an ethic of sustainability.

KEYWORDS: Nature conservation, legislation, land-use ethics, conservation management.

When the Wildlife and Countryside Act 1981 was placed on the Statute Book after a lengthy and sometimes turbulent debate in both Houses of Parliament, the 'voluntary principle' became enshrined in legislation relating to the management of nature conservation interests throughout Scotland, England and Wales. A central feature of this Act was the requirement that all of the Sites of Special Scientific Interest previously notified under the provisions of the National Parks and Access to the Countryside Act 1949 should be re-notified to ensure that they were fully protected and therefore not subject to the risk of damaging land management practices which might reduce or entirely remove the nature conservation value of these areas. The task of re-notifying the SSSIs throughout Britain was assigned to the Government's principal conservation agency, the Nature Conservancy Council. During Parliamentary debates on the Bill Ministers had indicated that on completion of this task around 7% of the total land area of Great Britain would become designated under the new Act. However this statement did not fully acknowledge that the scale and political implications of the task were likely to be quite different in each of the three countries.

In defence of the statutory requirement to attach what amounted to a restrictive covenant to the designated land for the foreseeable future, it was also stated that the officers of the Nature Conservancy Council would operate according to a 'voluntary principle' by negotiating management agreements so that owners and occupiers of SSSIs would be no worse off in financial terms according to a formula of 'net profits foregone'. The latter formula was incorporated in the Financial Guidelines to the 1981 Act which Ministers

Environmental Values **3** (1994): 267-71

subsequently approved. This inevitably raised a number of concerns amongst the voluntary conservation bodies that in these circumstances the gains to nature conservation associated with site designation would only be achieved at the expense of other conservation activities, such as species protection in the wider countryside. Some 10 years or so after the implementation of the Act it is now possible to take stock and to judge whether any of these initial concerns have been borne out in practice.

At the start it is worthwhile to examine some of the statements that were made in Parliament so that the Wildlife & Countryside Act 1981 can be understood in the context of the initial debate. For example, the then Secretary of State for the Environment on Second Reading provided the following perspective:

> The Bill is a compromise. It acknowledges that there is a balance of argument. It sets out the position to which the Government now believe it is right to move. It will not be the last Bill. It does not in any way seek to create a Maginot Line. It seeks a balance between the often conflicting and deeply held views of people whose motivation and sincerity are not in question, although they line up on opposite sides of many arguments. (House of Commons 1981)

Similarly on the compromise which needs to be reached between agriculture and conservation, the Department of the Environment submitted the following evidence to the Select Committee on the Environment in the 1984-85 Parliamentary Session:

> The provisions of Part II of the Act depend essentially on the voluntary approach to conservation. The alternative would be the imposition of permanent statutory controls on farming and forestry operations. Instead, the Act allows for temporary restrictions in certain areas while management agreements are negotiated whereby owners and occupiers forego the benefit of improvements to their land in return for compensation. (House of Commons 1985)

This is the supreme paradox associated with nature conservation in Britain. A clear conflict of interest arises when the responsible Government agency proceeds to designate land as being of 'special interest' under Section 28 of the 1981 Act. This has not been resolved by any subsequent amending legislation and will continue to present difficulties in the years ahead. As originally drafted Section 28(1) of the Act states:

> Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna. or geological or physiographical features, it shall be the duty of the Council to notify that fact –
>
> (a) to the local planning authority in whose area the land is situated;
> (b) to every owner and occupier of any of that land; and
> (c) to the Secretary of State. (Wildlife & Countryside Act 1981)

The interpretation of this statutory duty immediately placed a heavy burden of proof on the shoulders of the members of the Nature Conservancy Council and

its officers to justify in scientific terms the growing inventory of SSSIs covering the length and breadth of the country. This was no small undertaking and even the more limited task of re-notifying the sites previously designated under the 1949 Act was not completed for all practical purposes until the end of 1991 – some 10 years after the introduction of the new Act. As this work was being taken forward a real clash of environmental values became apparent. However it has taken some time for a full appreciation of the depth of the problem to emerge.

It all begins with the decision to proceed to notify an area of land because of its nature conservation value as described by its intrinsic scientific features as required under Section 28(1) of the Act. Once the detailed survey work is completed and assessed against the guidelines for site selection a provisional designation label is associated with the area and it falls to be considered on its merits by the agency concerned.

Following the Environmental Protection Act 1990, the Nature Conservancy Council was disbanded and replaced by three separate country agencies in Scotland, England and Wales. Each agency is now territorially responsible for implementation of the 1981 Act but there has been no substantive change in the procedural requirements governing site designation. The only variant is to be found in Scotland where an amendment introduced in the Natural Heritage (Scotland) Act 1991 requires the confirmation of sites with outstanding objections on scientific grounds to be scrutinised by an independent advisory committee. However it must be emphasised that the initial decision by the statutory agency to proceed to designate is governed solely by scientific judgement and not by the possible financial implications. This focuses the dilemma that then confronts the statutory conservation agencies in resource terms. They cannot escape their duty to notify an area if this is warranted because of the intrinsic scientific interest but at the same time they cannot limit their obligation to enter negotiations over a management agreement if the nature conservation value of the area is threatened by the intended actions of the owners or occupiers of the land in question.

The final turn of the screw is achieved if the voluntary conservation bodies scrutinise the performance of the official agencies and publicly declaim that the full range of statutory requirements are not being upheld in practice with regard to a particular area of land. This situation can arise if the statutory agency decides not to confirm the site designation on further investigation or fails to act decisively to prevent damage to an existing area of designated land. To say that a form of creative tension then exists between the respective interests is a generous piece of under-statement as more often than not a good deal of mutual suspicion and mistrust can arise in these circumstances. This dissipates a considerable amount of energy within the conservation movement and does nothing to maintain good working relationships.

Unfortunately this can create a situation where the voluntary principle enshrined in legislation is all but obscured. On such occasions it is essential to try and persuade the various parties involved in a dispute over the effectiveness

or otherwise of conservation practices to go back to first principles and begin to rebuild a shared understanding of the longer term aims and objectives.

Writing in 1948 Aldo Leopold made an observation that still appears to live on in the minds of many landowners and occupiers of land, namely that

> The land-relation is still strictly economic, entailing privileges but not obligations. (Leopold 1949)

Leopold goes on to state that the extension of ethics to address this problem is both 'an evolutionary possibility and an ecological necessity'. He argues that in the evolutionary process so far accomplished the foundation of ethics has largely rested on a single premise, namely,

> that the individual is a member of a community of interdependent parts.... The land ethic simply enlarges the boundaries of the community to include soils, waters, plants and animals, or collectively, the land. (Leopold 1949)

It follows that in the long term the use and management of this land, and the resources which it contains, require both the exercise of responsibility and a due measure of accountability to affirm the rights of that 'community' to exist and in some places to 'their continued existence in a natural state'. (Leopold 1949)

Such statements would be supported by most conservationists, but faced with an intransigent farmer or landowner it can be very difficult to convey this simple message in a clear and cogent manner. The so-called environmental enlightenment has not reached large numbers of people who work the land and who depend on it to generate their income and way of life. They often argue that the opinions of those who do not take part in this lifelong struggle for existence on the land have no validity. There is evidence of prejudice and resistance to change here which is deeply rooted and may take generations to overcome completely. That is why the present effort amongst philosophers and others to clarify the origin and structure of environmental ethics is so important.

It is essential to reach a common understanding of the principles on which long term economic and ecological survival depend. The so-called 'voluntary principle' applied to nature conservation practices in Scotland, England and Wales will only work effectively if there is such a shared perspective on environmental values operating from the start of negotiations over a particular area of land. It is simply not good enough for a farmer or landowner to declare that they are the real conservationists if the proposed change of land-use or alleged improvement to their land immediately threatens the viability of the intrinsic nature conservation values of that land.

The lack of any such common ground has been acutely evident in recent years throughout Scotland, where valuable upland or peatland habitat has been fragmented by piecemeal afforestation with non-native species. Past fiscal and taxation measures introduced to promote forestry on poorer quality land have frequently proved to be untenable, leading to economic distortions at both national and local levels, and subsequent adjustments to these schemes have still

left the statutory conservation agencies with an expensive legacy of costly settlements that they should never have had to address in the first place. If there had been some elementary strategic planning for forestry to stand as a frame of reference for planting applications, then for the most part confrontation with conservation interests could have been avoided. The move to adopt regional forestry strategies in the three countries is an open acknowledgement of that prerequisite and it is to be hoped that with the support of local planning authorities the new approach can be made to work in a just and sustainable way. It is not just treatment when officials of the conservation agencies are castigated in the press and elsewhere for applying the law of the land. If the present legislative framework is considered to be inadequate then the law should either be amended to allow it to work or revised completely to incorporate more generally understood principles which can be upheld by those who work and respect the land and its intrinsic values.

The evident lack of justice in many land-use disputes involving nature conservation is reason enough for promoting broader public acceptance of ethical codes to be applied in these working situations. There is an urgent need for a code of environmental ethics that can be respected and rigorously applied. That is the task that should now be addressed by the statutory and voluntary conservation agencies alike. An honest attempt has been made to meet this requirement in the opening sections of the Second World Conservation Strategy – *Caring for the Earth* – published in 1991 by IUCN/UNEP and WWF (IUCN et al. 1991). It is no more than a beginning but it should be examined by professional philosophers and ethicists who could offer informed and constructive criticism. Unless this is done the conservation bodies will be left with a series of generalised well-meaning statements that unfortunately will have no lasting practical effect.

NOTE

[1] Formerly, Chief Executive, Nature Conservancy Council for Scotland.

REFERENCES

House of Commons, 27 April 1981. Official Report, Col. 525.

House of Commons, 1985. Environment Committee, 1st Report Session 1984-85, Volume I, Chapter 2. London: HMSO.

IUCN, UNEP and WWF (International Union for the Conservation of Nature, United Nations Environment Programme and World Wide Fund for Nature) 1991. *Caring for the Earth: A Strategy for Sustainable Living*. London: Earthscan.

Leopold, Aldo 1949. *A Sand County Almanac*. New York: Oxford University Press.

Wildlife and Countryside Act 1981, Chapter 69. London: HMSO.