

Controversy:

**Are Strong Protections of Private Property Rights
Necessary for Species Preservation?**

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The protection of endangered species is a biblically mandated responsibility for Christians and Jews. The Scriptures declare that all land is owned first by God; humans are stewards who act on behalf of God and in obedience to His commandments. The Judeo-Christian tradition requires property owners to care for the land so that endangered species are protected and preserved. Therefore, Christians and Jews should not only support protection for endangered species and their habitat, but they should oppose the notion that public funds should compensate landowners who must use their property to further the good of creation and society.

Observant Christians and Jews should have no question about the importance of protecting endangered species. The Scriptures are clear on this question. Orthodox Christian theology, as expressed through its saints and great theologians, declares care for the animals. Roman Catholic, mainline Protestant, Orthodox, and evangelical churches, plus the main branches of Judaism, all support care for animals, especially endangered species. Even medical science declares the value of saving species, and emphasizes that human research has barely surveyed 5 percent of botanicals for potential pharmacological benefits, this means their value for human well-being is scarcely appreciated.

The Biblical Foundation in Brief

References to animals occur hundreds of times in the Bible. Some key Scriptural themes include the intrinsic worth of animals, the obedience of animals to their God-given nature, the service of animals to humans, and the fact that animals give glory to God and shall "sing in the heavenly choir."¹ These themes weave together to form a biblical imperative for the ethical treatment of

animals. The few passages cited here only introduce the depth of meaning in Scripture about animals.

Animals Fulfill a Command from God

And God said, "Let the waters bring forth abundantly the moving creatures ... and fowl that may fly above the earth in the open firmament of heaven." And God created ... every living creature that moveth ... and God saw that it was good. And God blessed them, saying, "Be fruitful and multiply, and fill the waters ... and let fowl multiply in the earth" (Gen.1:20–22).

The implications of this passage are several: (1) biodiversity is inherent in creation; (2) humanity shares the world with other creatures; (3) destruction of species violates God's intention as he gives them purpose and direction; and (4) habitat preservation is fundamental to species preservation.

When God creates the birds, animals, and plants, each is given a place and purpose in creation. Each species has value in God's sight because He deliberately creates them and calls their creation "good." This implies that an exclusively utilitarian view is not an appropriate perspective as there is intrinsic value in all parts of creation.

God commands every creature to "be fruitful and multiply" and to fill the earth. Therefore, they owe an obedience to God to perpetuate themselves. This means human action cannot abrogate or set aside what God has commanded by destroying any species. Preservation of animal species becomes a ministry and noble work of discipleship because it gives love and service toward the maintenance of God's good creation.

Importantly, the command to the animals to be fruitful and multiply comes before the command to humans to be fruitful and multiply. This means that any action that destroys a species or that passively stands by and fails to act when the command of God is being violated disregards God's intent for the world. Failure to respect this command is a sin, because it represents willful disobedience of God's decree for the world.

God's command that every place where creatures dwell bring forth abundantly presumes suitable habitat. This means a healthy environment in which people, animals, and plants all live together and flourish. Human society must therefore integrate with the prior demand from God for the animals to live upon the earth. Construction and development without regard for God's creatures represents callous disregard for this command.

God Commands the Preservation of Species

Most people learn the story of Noah and the Flood as children. The story

relates the saga of Noah, the first preserver of animal species. The biblical narrator describes how Noah was obedient to God when He commanded the construction of a great ark and the collection of every living creature (cf. Gen. 6:5–8:17). The key lessons from this story are (1) God commands the preservation of each species; (2) God requires a setting (i.e., habitat) in which animals may be fruitful and multiply; and (3) God was more concerned about preserving animal species than disobedient people.

The story of Noah is the story of righteousness surviving while evil is vanquished. In preserving righteousness, Noah preserves the animals. Before the Flood, it might be noted, Noah's contemporaries were so concerned about business and private affairs that they neglected righteousness and charity.

God's command to Noah is for the preservation of all creatures. God does not ask Noah to preserve only the large creatures or only the most useful creatures; all are preserved, "two of every kind" (Gen. 6:19). Significantly, animal species are preferred before those humans who are disobedient and wicked.

In the plan for the ark, Noah makes a "stall" for each creature. In Hebrew this literally means *nest*, which implies that Noah takes care to fit the ark to accommodate each pair of species. There is an intentional place for every creature. This models how we should still make a "place" for every creature.

Historical Witness

A study by the Reverend Andrew Linzey shows that while many clergy fail to engage animal issues, over two-thirds of canonized saints have commentary about animals.² This indicates that the best of theology has always perceived the inherent worth of animals.

Saint John Chrysostom says we should respect the animals because they have the same origin as we do.³

Saint Basil writes, "O God, enlarge within us the sense of fellowship with all living things, even our brothers, the animals, to whom Thou gavest the earth as their home in common with us. We remember with shame that in the past we have exercised the high dominion of man with ruthless cruelty so that the voice of the earth, which should have gone up to Thee in song, has been a groan of pain. May we realize that they live, not for us alone, but for themselves and for Thee, and that they love the sweetness of life."⁴

John Woolman, an early Quaker, captures the American colonial spirit, "I believe that where the true spirit of government is watchfully attended to, a tenderness toward all creatures will be experienced, and a care felt in us that we do not lessen that sweetness of life in the animal creation which the Great Creator intends for them under our government."⁵

President Abraham Lincoln put it more bluntly: "I care not for a man's religion whose dog or cat are not better for it."⁶

Reverend Billy Graham continues this tradition and says, "The Bible's emphasis is on the good treatment of animals, and not just the forbidding of cruel treatment."⁷

Hundreds of other statements could be added to show how strongly Christians and Jews view respect for animals. From this perspective, it could never be allowed that land development should be the cause for the extinction of any of God's creatures.

From a Christian perspective, the issue goes deeper. The place of animals in their nexus to human society raises the question of how much one genuinely seeks to place God's commands before mammon. The First Commandment in this regard becomes bluntly tangible in human affairs. At some point each person must ask, "Does my preference in land use put personal profit (mammon) so much before God's commands for the earth, that I also place my own will before that of God?" The next question involves how this responsibility to preserve animal species affects private landowners.

A Christian View of Land Use

The Judeo-Christian land ethic and its suppositions about property include dozens of biblical and social principles. For brevity, these may be reduced to three key assumptions: (1) the land belongs first to God; (2) human dominion means that people serve as God's stewards; and (3) the fruits of the land must be shared, i.e., used for the common good. A fundamental premise in the theology of land is that the quality of human obedience to God determines the quality of creation's fruitfulness, and therefore the degree to which human society will prosper. When human actions become selfish or forgetful of their Creator, the degradation that results, both in society and the earth, becomes a teacher to remind people of their duty to obey God.

In the relationship between government, private property, and landowners a view of land rights is emerging that increases the rights of property owners and decreases accountability for the ways in which they use their land. This view attempts to deflect responsibility for laws that "take" developmental opportunity from private property. This view is termed *takings* and is a new interpretation of the Fifth Amendment's "takings" clause. As proposed, it asks government to reimburse landowners if any law or regulation diminishes the owner's ability to extract potential economic benefits from land holdings. In effect, this is an effort to circumvent environmental legislation that affects private landowners.

Early American land use supported Christian suppositions about land. The American colonies were refugees from Old World religious oppression. They

sought a society in which religious freedom could manifest and demonstrate a right orientation to neighbor and all creation, including property ownership.

A review of colonial attitudes toward land ownership shows that the early colonists felt that they were embarking upon a holy mission whose success depended both upon the blessings of God and their corporate ability to conform to His will. To the colonists, this meant that love of neighbor and community—not land rights—was primary to the fulfillment of their purpose. John Winthrop, the first Governor of the Massachusetts Bay Colony, expounds on this perspective in the sermon “A Modell of Christian Charity.” He declares that the success of the colonial venture was dependent upon the quality of the people’s actions in accordance with God’s laws. To secure God’s blessings, the key was conformity by the community to His will.⁸

The pilgrims understood community as a sacred association that derived from Christ’s command to love one another. The full weight of the community was applied to prevent disruption or disunity. The priority of community over individuality meant that little appreciation existed for any right to dissent. This sharply contrasts with the assumption in the Property Rights movement that unrestrained land use was an inviolate right during the colonial era. This supposition is fiction, a self-serving revisionism that fails even the most casual historical scrutiny.

Throughout the colonial era, colonists held to an unquestioned right and responsibility of the legislature to regulate individual conduct, including a person’s use of the land. This was true, not only in New England, but also in the remaining colonies. Land use regulations extended far beyond nuisance restrictions and included reasons of public safety, community health, aesthetic uniformity, use mandates and restrictions, plus any other cause upon which the majority agreed.⁹ In Connecticut, for example, a copper mining law authorized the taking of private property that was already devoted to mining, but that was not being used as expeditiously as the Assembly desired. This “takings” legislation was authorized on the basis that “a publick benefit might arise.”¹⁰ In Maryland, the largely Catholic population followed a similar course and allowed the taking of an individual’s property if it might serve as a mill site and was not already used for that specific purpose.¹¹ North Carolina and South Carolina both imposed fines for failing to build on patented land within a certain time frame.¹²

The penalty for non-compliance with land use laws was often stiff. Public authorities in New York commanded that landowners fence their property or pay a fine. If the landowner remained in default longer than seven days without cause, “being considered of an obstinate disposition,” he shall be deprived

forever of his lands, which shall be turned over to the disposal of the Honorable Company to distribute to others.¹³ These examples of colonial land use legislation are significant because they were never the cause for discontent. Even though the colonial era was marked by prolonged crises over the legitimacy of other types of governmental action, land use was never a subject of contention. This is certain because discontent existed on issues of taxation and trade, and lists of grievances were common. Any dispute about land use regulations would certainly have been added to the complaint list. But it never happened.

This fact reflects three assumptions about land ownership that were strong during the colonial era, but have grown weak in the present era: (1) the spiritual assumption that the earth belongs to the Lord;¹⁴ (2) a vigorous social framework in which the individual is responsible to the community; and therefore, (3) the community has the right to make decisions that support the general welfare, even if it comes at the expense of some individuals' land use preferences or economic interests.

Because the framers of the Constitution and the Bill of Rights were aware of colonial land use practice prior to the Declaration of Independence, it is within this context that the "takings" clause of the Fifth Amendment exists. This is significant because concern for the common good and the general welfare shapes the historical framework in which the "takings" clause was drafted. This implies that those who promote this modern concept of "takings" legislation are in some combination ignorant of history, resistant to the religious impulses that gave birth to the American experiment, and/or insensitive to the common good, which calls for the protection of endangered species.

In summary, a Christian perspective on land use denies the validity of regulatory "takings" because it exaggerates suppositions about the rights associated with private property. This assessment is made (1) because "takings" denies God's ultimate ownership of the land; (2) because "takings" minimizes landowner responsibility to the community; (3) because "takings" extends the modernist views of individualism to the land in a manner that fragments the cohesiveness of society and undermines the general welfare; (4) because "takings" represent an effort by the rich to maximize investment value at the expense of others (see the John Merck Fund study¹⁵); and (5) because "takings" attempts to apply the false concept that one parcel of land can be separated from the whole of the land. For these reasons, the idea of regulatory "takings" is wrong and immoral.

Endangered Species and Property Rights

With Christian and Jewish theological principles of respect for creatures summarized, and with an understanding that the land and its features are first God's and its fruits in principle for all people, we can put forward a redefined religious notion of "takings."

"Takings" represents the privatizing and usurping action by individuals of what is the heritage of humanity and the commonwealth of the nation. Those who cause animal species to become endangered or to go extinct are guilty of a "takings" from the public of those animals that are the gift of the Creator to all the earth and all humanity. For the individual, this is the unlawful "takings" for which there shall be a heavenly accounting.

For society, the broader lesson is that as long as we worship at the altar of individual self-fulfillment, unrestrained personal freedom, and material success, we will be good stewards of nothing but our own shortsighted selfishness. If we do not change this self-serving, community-denying direction, we will allow the very liberty upon which America was founded to become the stumbling block and downfall of the Republic.

The land suffers from the sins of the people.
 The land is defiled by crime, the people have twisted
 the laws of God and broken his everlasting commands.
 Therefore the curse of God is upon them....
 (Isa. 24:4-5)

Notes

1. Since 1990 Roman Catholics, mainline Protestants, Eastern Orthodox, and evangelical groups have all issued statements on the importance of preserving endangered species.

2. The Reverend Andrew Linzey's research on animal writings concludes, "The lives of more than two-thirds of canonized saints 'east and west' demonstrate a practical concern for, and befriending of, animals, which was often in sharp contrast to the conventional view of their contemporaries." This survey only includes commentaries on animals and excludes writings on creation, livelihood, and other nature-oriented topics, which would significantly increase the percentage stated in the text. "Christianity and the Rights of Animals," *The Animal's Voice* (August 1989): 45.

3. The full text of the quote from Saint John Chrysostom reads: "The saints are exceedingly loving and gentle to mankind, and even to the beasts.... Surely we ought to show them great kindness and gentleness for many reasons, but, above all, because they are of the same origin as ourselves." *Commentary on the Epistle to the Romans*.

4. Excerpted from the Liturgy of Saint Basil.

5. As quoted in C. W. Hume, *The Status of Animals in the Christian Religion* (London, 1957), 59.

6. Quoted in *Green Cross* (Winter 1996): 12.

7. *Ibid.*

8. John Winthrop, "A Modell of Christian Charity," in *Statism in Plymouth Colony*, ed. Harry M. Ward (Port Washington, N.Y.: Kennikat Press, 1973), 5.

9. John F. Hart, "Colonial Land Use Law and Its Significance for Modern Takings Doctrine," *Harvard Law Review* 109 (1996): 1257.

10. "The Act of May 20, 1709," in *The Public Records of the Colony of Connecticut*, ed. Charles Hoadley (Hartford, Conn.: Case, Lockwood and Brainard Co., 1876), 104.

11. "The Act of May 8, 1669," *Archives of Maryland*, ed. William Browne (Baltimore: Maryland Historical Society, 1884), 211–12.

12. These "use it or forfeit it" laws contrast with the modern supposition that landowners are entitled to cease using their property for reasons that seem sufficient to them. This shows that the colonial view of property was far more community-oriented than present land use assumptions. It shows, too, that the needs and concerns of the community always outweighed the private whims of the individual. Therefore, the common good was the primary criterion for determinations concerning land use and not individual preferences.

13. "Ordinance of February 23, 1656," *Laws and Ordinances of New Netherland, 1638–1674*, 218; and "Ordinance of November 27, 1656," *Laws and Ordinances of New Netherland, 1638–1674*, 266.

14. The necessary corollary to this assumption is that humans are responsible to steward the land for the Creator-Lord because He has specifically delegated this task to people.

15. A 1992 study of the Wise Use Movement, undertaken by the John Merck Fund, concluded with a telling insight: "With only one exception, every group studied had at its core people with a direct financial interest in eliminating [environmental] protection and preventing community discussion over how to protect resources." As quoted in Betsy Loyless, "Information on the Takings/Private Property Movement and Its Threat to Protective Laws," in *Handbook for the League of Conservation Voters* (League of Conservation Voters, September 29, 1995), 9.