

Controversy:
Are Strong Protections of Private Property Rights
Necessary for Species Preservation?
A Response to Frederick W. Krueger

Jay W. Richards
Senior Fellow & Program Director
Center for the Renewal of Science and Culture
Discovery Institute

I will set aside the *ad hominem* attacks and Delphic exhortations in Mr. Krueger's response. Instead, I would like to clarify a few matters of substance. Mr. Krueger introduces his response with the following claim: "Mr. Richards is certainly aware that my position has the Bible and the entire weight of Christian ethics, theology, and spirituality in its corner." I am not sure how he can say with confidence what I am aware of. In any event, I should say for the record that I am not only unaware of such things; I deny them. As I argued in my initial response, the biblical witness and the Christian tradition underdetermine Mr. Krueger's argument. More strongly, I argued that his recommendations conflict with certain biblical themes such as the ubiquity of sin, and that they would likely have the opposite effect from the one he intends.

In so arguing, I pointed out the distance between the biblical theme of human stewardship, on the one hand, and the Endangered Species Act (ESA) combined with a refusal to compensate private landowners affected by the Act, on the other. In response, Mr. Krueger says that such a distinction between biblical principle and policy proposal is an "arbitrary" tactic of "divide and conquer." On the contrary, I offered straightforward distinctions and justified them with argument. For instance, the distinction between the biblical notion of "kinds" and the contemporary and ambiguous concept of "species" is significant and well-known. Moreover, it is clearly relevant, since the modern notion of species is codified in the contemporary legislation under discussion. I made several other arguments that lead me to doubt that Christian stewardship entails the specific federal legislation Mr. Krueger defends. These arguments remain unanswered, so I will not repeat them here.

In several places, Mr. Krueger misconstrues my response. First, he misstates my definition of the broad biblical theme of human stewardship over creation (which I endorse) as species preservation. This is odd since I deny that there is any such biblical theme. Stewardship, I argued, is not identical with an absolute obligation to preserve every extant species at all costs. Among these costs are the dangers inherent in concentrating power unnecessarily in the hands of the federal government, the historical difficulties of enforcing the Endangered Species Act fairly, and the perverse incentives it is known to create.

Second, he claims that I use the ambiguity of the contemporary definition of *species* to claim that the biblical concept of kinds has no relevance to contemporary ecological questions.¹ I did not say this and I do not believe it. What I said was this: "Such considerations make it unlikely that absolute species preservation is a universal human obligation. Whatever our obligations are as stewards of the earth, they are much more subtle than this." To say that our stewardship obligations are subtler than Mr. Krueger describes them is not to say they do not exist.

Mr. Krueger confirms my initial accusation that he does not adequately distinguish between the state and civil society. Thus he responds: "Perhaps Mr. Richards (and the readers of *Markets and Morality*) need to be reminded that unless one lives somewhere other than the United States, all levels of government are representative of the people. The government is not 'them'; it is 'us.'" Notice the conflation. For Mr. Krueger, in the United States, the state is "us." If this is as self-evident as he thinks it is, then how is it that large segments of the American population can oppose the actions of the government?

As I said previously, "The problem with statist and utopian policies is, of course, their tendency to exempt the state from the effects of sin and self-interest. The ubiquity of human sin means that the potential for evil is greatest when power is concentrated, especially in the state." This does not cease to be the case in countries where leaders are democratically elected. The potential for the misuse of state power is less severe in liberal democracies, but this does not justify endowing the federal government with powers unnecessarily. A tyranny of the majority and a tyranny of elites are both live possibilities. I do not find evidence of sensitivity to these issues in Mr. Krueger's initial essay or in his response. At the very least, serious cost and benefit questions should be addressed, and not shrugged off with the assurance that in democracies the interests of civil society will always be accurately expressed in the power of the state.

I intentionally described Mr. Krueger as supporting state "confiscation" of private property, a description to which he objects. I do not mean for this to be

inflammatory, but to highlight that this is the logical outcome of the Endangered Species Act in the form he supports. If the federal government prevents a farmer from farming on his property, it is effectively confiscating his property. If he is insufficiently compliant, he will have his property (including himself) more literally confiscated. The term *confiscation* is also appropriate because Mr. Krueger *opposes* government remuneration of those individuals who become subject to ESA strictures. State power is the power of coercion and confiscation, and it does everyone a disservice not to face this prospect directly. When promoting specific legislation, he who wills the ends must will the means as well.

Interestingly, Mr. Krueger seems to retreat from the specific policies he defends in his initial essay. He now says: "The main point I am making is that animal species ought to be protected and that the individual Christian has a religious responsibility in this regard." In his initial essay, however, he claims more strongly that Christians must not only support the Endangered Species Act (enforced by the federal government) but also opposes compensation to affected property owners. He now indicates that he is not particularly concerned with the question of which governmental entity enforces this responsibility. If this is the case, then he should withdraw his claim that Christian stewardship entails the *federally* mandated policies he previously defended.

Strikingly, Mr. Krueger says nothing about my concluding argument, namely, that his policy proposals likely would have the perverse effect of pitting land-owners against endangered species. He is apparently unrepentant in his requirement that a few private individuals bear the burden of a putative public good. We have good reason to believe that the mixture of legislation he advocates would lead to the private destruction—not preservation—of endangered species and their habitats. If this is the case, then no matter how strong the Christian case for preserving endangered species, the justification for his policy recommendations collapses. If Mr. Krueger wants to persuade rather than simply denounce those who disagree with him, he should take these problems seriously.

Note

1. At least, I think, this is what he means. In his response, he says: "However, what strikes the reader endowed with common sense as absurd is not the recognition of a link between biblical 'kinds' and modern notions of 'species,' but the belief that invoking the problematic nature of the scientific definition somehow renders 'questionable' or 'unlikely' any application of ecological principles based on the Bible's understanding of kinds to contemporary problems of species destruction or loss of biodiversity."