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EAGLES AND INDIANS: THE LAW AND THE SURVIVAL OF A SPECIES

Kenneth P. Pitt

I. THE DECLINE OF THE BALD EAGLE

An ambiguity concerning Indian treaty hunting rights exists within the Eagle Protection Act.¹ This ambiguity may be severe enough to negate the intent of the act; hastening the bald eagle's rate of decline or at least slowing its rate of recovery. To the bald eagle's misfortune, the Eighth and Ninth Circuit Courts of Appeal have interpreted this ambiguity in a conflicting manner.

The bald eagle (*Haliaeetus leucocephalus*), is generally a migratory bird. In the Rocky Mountain fly-way, major concentrations of bald eagles winter in central Utah, and nest in the Great Slave Lake region of the Northwest Territories.² Seasonal concentrations in excess of 600 bald eagles have been reported during the fall salmon migrations in Glacier National Park, Montana.³ In the central fly-way, the bird winters along the lower Missouri and central Mississippi Rivers, and summers in central Saskatchewan.⁴

The decline of bald eagle populations was first noticed in the late 1930's.⁵ Throughout the United States and Canada bald eagle populations dwindled. In several areas breeding populations disappeared entirely. A variety of causes was suspected for the decline, including loss of habitat, illegal shooting, pesticides, electrocution from high voltage lines, and other human disturbances.⁶ More recently high concentrations of DDT, DDE, and dieldrin, all of which cause eggshell thinning and drastically reduce

1. Eagle Protection Act, Pub. L. No. 76-567, 54 Stat. 250 (codified as amended at 16 U.S.C. § 668, 668(a)-(d) (1976)).

2. L. Young, *Movements of Bald Eagles Associated With Autumn Concentrations in Glacier National Park* at 27 (February 1983) (Unpublished Masters Thesis, available at the Mansfield Library, University of Montana, Missoula, MT).

3. B. McClelland, *The Bald Eagle Concentration in Glacier National Park, Montana: Origin, Growth and Variation in Numbers*, 19 *THE LIVING BIRD* 133 (1982). Glacier's landlocked Kokanee salmon population, upon which the migrating bald eagles feed, has decreased in recent years due to possible feeding competition from introduced Opossum shrimp (*Mysis relicta*), and water fluctuations from an upstream dam. Consequently, the annual concentration of eagles has never again reached its record high of 600. See, Schwennesen, D., *Tiny Shrimp Reach Flathead Lake; Small Invaders Pose Big Threat to Salmon Population*, *The Missoulian*, December 27, 1982, at 11, col. 1.

4. BUREAU OF RECLAMATION, DEPT OF THE INTERIOR, *A SURVEY OF WINTERING BALD EAGLES AND THEIR HABITAT IN THE LOWER MISSOURI REGION* at 2 (1981).

5. B. McClelland, *supra* note 3 at 133.

6. Bureau of Reclamation, *supra* note 4.

reproductive success, have been found in the body tissue of eagles.⁷ After Congress banned DDT in 1972, scientists noticed a rapid and unexpected decrease in DDE levels.⁸ Because DDE is one of the most persistent contaminants in the environment, they were able to determine that the surprisingly low levels of DDE were caused by a high level of turnover (deaths of adult and subadult birds) in eagle populations.⁹

In 1980, Alaskan researchers found that although bald eagle reproductive rates were improving, population sizes were decreasing. Survival rates were found to be far more important to eagle populations than reproductive rates.¹⁰ Their studies indicated that approximately 90% of the bald eagles studied did not make it through their first year, and that each year approximately 5.4% of the adult population was killed.¹¹

While loss of habitat is the primary cause of population declines, the large number of gunshot eagles treated at raptor rehabilitation clinics continues to attest to the significance of shooting as an important mortality factor. Shooting accounts for 18% of all reported eagle deaths and 32% of all reported eagle injuries.¹²

Congress first recognized the decline of eagle populations in 1940 and, accordingly, passed the Eagle Protection Act.¹³ The amended Act now states in part:

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided [elsewhere in the Act] shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald eagle commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles . . . shall be fined . . . imprisoned . . . [or] assessed a civil penalty (emphasis added)¹⁴

The language in the Act regarding the golden eagle was added in 1962.¹⁵ This necessary protection was added because immature bald and

7. *Id.*

8. Exec. Order No. 11,643, 37 Fed. Reg. 2,875 (1972). See also, J. Grier, *Ban of DDT and Subsequent Recovery of Reproduction in Bald Eagles*, 218 SCIENCE 1232 (1982).

9. J. Grier, *supra* note 7 at 1233.

10. S. Sherrod, C. White, and F. Williamson, *Biology of the Bald Eagle on Amchitka Island, Alaska*, 13 THE LIVING BIRD 143 (1976).

11. *Id.* at 152.

12. S. Sherrod, *Young Bald Eagle Deaths High*, 2 EAGLE RARE BOURBON STRAIGHT NOTES 1 (Autumn 1982). See also Bureau of Reclamation, *supra* note 4.

13. Eagle Protection Act, Pub. L. No. 76-567, 54 Stat. 250 (codified as amended at 16 U.S.C. § 668(a)-(d) (1976)).

14. 16 U.S.C. § 668a (1976).

15. Pub. L. No. 87-884, 76 Stat. 1246 (codified as amended at 16 U.S.C. § 668 (1976)).

golden eagles are virtually indistinguishable to the untrained eye.¹⁶ Notably, the 1962 amendments also allowed Indian tribes to take eagles for religious purposes.¹⁷

Aroused by reports of unabated destruction, and of possible extinction, Congress amended the Act in 1972 by increasing penalties to include higher fines and loss of grazing privileges on public lands.¹⁸ A letter written by Nathaniel Reed, Assistant Secretary of the Interior to the Chairman of the Committee on Commerce, indicates the intent of Congress at the time. The letter in part states:

There exist but 10-20,000 golden eagles in North America, and 20-30,000 northern bald eagles. The prompt enactment of H.R. 12186 will help to protect these majestic birds, aptly described by the Congress in 1940 as "a symbol of the American ideals of Freedom."¹⁹

Despite the good intentions of Congress, destruction of essential eagle habitat and shooting of the threatened eagles continues. In addition, new and serious questions not addressed by Congress have surfaced. Does the Eagle Protection Act abrogate guaranteed Indian hunting rights? Does the Eagle Protection Act apply to treaty Indians shooting eagles for non-religious purposes?

II. CAN CONGRESS ABROGATE TREATY RIGHTS BY IMPLICATION? *United States v. White*²⁰

Early in 1974, Jackie White, a member of the Red Lake Band of Chippewas, was observed shooting and killing a bald eagle. He was charged with the taking of a bald eagle in violation of the Eagle Protection Act.²¹ White moved for dismissal of the charge on the grounds that the Act was inapplicable to tribal Indians on their reservations exercising traditionally guaranteed tribal hunting rights.²² White based his contention on *United States v. Cutler*,²³ in which the district court, basing its decision on the Congressional silence underlying the enactment of the Migratory Bird Treaty Act, held that a treaty Indian was not subject to the Migratory Bird

16. S. Sherrod, *supra* note 10. See also, *United States v. Fryberg*, 622 F.2d 1010, 1016 (9th Cir.), *cert. denied*, 449 U.S. 1004 (1980).

17. Pub. L. No. 87-884, 76 Stat. 1246 (codified as amended at 16 U.S.C. § 668a (1976)).

18. Pub. L. No. 92-535, 1, 86 Stat. 1064 (codified as amended at 16 U.S.C. § 668b (1976)).

19. Letter from Nathaniel Reed, Assistant Secretary of the Interior, to Senator Magnuson, Chairman of the Committee on Commerce, S. REP. NO. 1159, 92nd Cong., 2nd Sess. 11 (1972). See also, *Fryberg*, 622 F.2d at 1016.

20. 508 F.2d 453 (8th Cir. 1974).

21. Eagle Protection Act, Pub. L. No. 76-567, 54 Stat. 250 (codified as amended at 16 U.S.C. § 668, 668(a)-(d) (1976)).

22. *White*, 508 F.2d at 454.

23. 37 F. Supp. 724 (D. Idaho 1941).

Treaty Act while on an Indian reservation.²⁴

The United States opposed the motion for dismissal relying on the Federal Enclaves Act.²⁵ The Eighth Circuit Court of Appeals affirmed the district court's dismissal of the charges against White.²⁶ The Court of Appeals held that although Congress had the right to abrogate an Indian treaty, "the intention to abrogate or modify a treaty [was] not to be lightly imputed to Congress."²⁷ Citing *United States v. Winans*,²⁸ the court stated: "The right to hunt and fish was part of the larger right possessed by the Indians in the lands used and occupied by them. Such right, which was not much less necessary to the existence of the Indians than the atmosphere they breathed remained in them *unless granted away*." (emphasis added)²⁹

The Court of Appeals found that Congress had never expressly abrogated nor modified the Red Lake Band of Chippewa's hunting or fishing rights, and thus could not abrogate nor modify those rights by implication. "The specificity which we require of our criminal statutes is wholly lacking here as applied to an Indian on an Indian reservation."³⁰ Despite a very strong dissent by Judge Lay, in which he insisted that the court follow the intent of Congress and save the bald eagle from extinction, this holding is still the law in the Eighth Circuit of Appeals.³¹ Recently, in *Lower Brule Sioux Tribe v. State of South Dakota*,³² the Eighth Circuit Court of Appeals reaffirmed its position, stating:

The 1944 Flood Control Act, § 4, could also be found to have abrogated treaty hunting and fishing rights, if the *White* dissent and *Fryberg* stated the governing rule in this circuit. They do not. Instead the Eighth Circuit requires more specific reference to the

24. *Id.* at 725.

25. 18 U.S.C. § 1152 (1976). This section provides, "Except as otherwise provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country . . . This section shall not extend to . . . any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively."

26. *White*, 508 F.2d at 454.

27. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 566 (1908), and *Menominee Tribe v. United States*, 391 U.S. 404 (1968), both establish the power of Congress to alter or abrogate Indian treaty terms. Treaties stand on no higher footing than ordinary federal legislation. See also G. Coggins, *Federal Wildlife Law Achieves Adolescence: Developments in the 1970's*, 1978 DUKE L.J. 753 (1978).

28. 198 U.S. 371, 381 (1905).

29. *White*, 508 F.2d at 457.

30. *Id.* at 459.

31. See, *Lower Brule Sioux Tribe v. State of South Dakota*, 540 F. Supp. 276 (D.S.D. 1982). The court uses a "surrounding circumstances" type test while discussing other aspects of this case. See also *United States v. Winnebago Tribe of Nebraska*, 542 F.2d 1002, (8th Cir. 1976). In *Winnebago*, the 8th Circuit Court of Appeals, found *White* controlling.

32. 540 F. Supp. 276 (D.S.D. 1982).

Tribe and its treaty rights.³³

The impact of these decisions may be significant: the Eighth Circuit encompasses over 10,000 square miles of Indian reservations, a population of approximately 136,700 on and off reservation Indians, and a fluctuating population of approximately 2,447 wintering and resident bald eagles.³⁴

III. ABROGATING TREATY RIGHTS BY THE SURROUNDING CIRCUMSTANCES TEST; *United States v. Fryberg*³⁵

In contrast to the Eighth Circuit, the area within the jurisdiction of the Ninth Circuit Court of Appeals, an area with 17,320 square miles of Indian Reservations, approximately 350,500 on and off reservation Indians, and some 3,914 wintering and resident bald eagles, is guided by the rule set forth in *United States v. Fryberg*.³⁶ This rule is in harmony with Judge Lay's strong dissent in *White*, which argues that the intent of Congress was to save the bald eagle, and thus the Eagle Protection Act applies to Indians and non-Indians alike.³⁷

Dean R. Fryberg was an enrolled member of the Tulalip Indian Tribe. While out hunting deer on his tribe's reservation, approximately 40 miles northwest of Seattle, Fryberg shot and killed an immature bald eagle. He was charged with violating section 668a of the Eagle Protection Act.³⁸ Fryberg initially claimed that he shot the eagle to obtain its feathers for religious purposes. Conflicting evidence led the district court to find that the killing was not done for religious purposes.³⁹ The court held the Eagle Protection Act, embodying the Congressional intent to save the bald eagle, excluded any hunting of eagles. This exclusion extended to those Indians enjoying a treaty right to hunt on their reservation.⁴⁰

Fryberg appealed to the Ninth Circuit Court of Appeals, and, citing *White*, contended that his treaty rights to hunt on the reservation were neither modified nor abrogated by the Eagle Protection Act.⁴¹ The Ninth Circuit Court agreed with *White* in part, holding that Congress did not show an unambiguous express intent to abrogate Indian hunting rights. The Court stated: "[A]bsent explicit statutory language [the court must

33. *Id.* at 284.

34. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, *Statistical Abstracts of the United States*, 102d Edition (1981). BUREAU OF RECLAMATION, *supra* note 4.

35. 622 F.2d 1010 (9th Cir.) *cert. denied*, 449 U.S. 1004 (1980).

36. BUREAU OF THE CENSUS, *supra* note 34. BUREAU OF RECLAMATION, *supra* note 4. *Id.*

37. *White*, 508 F.2d at 459.

38. 16 U.S.C. § 668(a) (1976). Fryberg was an enrolled member of the Tulalip Tribe, to whom the privilege of hunting had been guaranteed under the Treaty of Point Elliott, 12 Stat. 927 (1859).

39. *Fryberg*, 622 F.2d at 1011.

40. *Id.*

41. *Id.*

be] extremely reluctant to find congressional abrogation of treaty rights."⁴² However, utilizing the "surrounding circumstances test" expounded in *Rosebud Sioux Tribe v. Kneip*,⁴³ the court also found that: "[C]ongressional intent may be clear from surrounding circumstances and legislative history, despite the absence of a Congressional expression on the face of the Act to abrogate or modify treaty rights."⁴⁴

Judge Jameson agreed with Judge Lay's dissent in *White*, noting that the majority's analysis overlooked the broad wording and pervasive purpose which the Act is intended to fulfill; the protection of bald eagles. He stated: "We are persuaded that the surrounding circumstances establish a congressional determination to modify or abrogate the treaty to the extent of prohibiting the taking, shooting, and killing of bald eagles."⁴⁵

The recent holding in *Washington State Charterboat Association v. Baldrige*,⁴⁶ has affirmed Judge Jameson's holding, and perpetuates the *Fryberg* rule in the Ninth Circuit. However, the U.S. Supreme Court denied *Fryberg*'s request for certiorari in 1981, and it remains to be seen how the rest of the Circuits will rule.⁴⁷ It should be noted that the Eighth and Ninth Circuits contain most of the contiguous 48 state's bald eagles, and a very large portion of this country's Indian population.⁴⁸ The final resolution of the conflicting holdings in *White* and *Fryberg* may significantly affect the bald eagle's future.

IV. THE 1962 AMENDMENTS; TAKING FOR RELIGIOUS PURPOSES

In 1962, Congress amended the Eagle Protection Act to include golden eagles within its protection. In addition to the golden eagle provisions, additional language allowed some "taking" by special groups, including Indians.

Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, *or for the religious purposes of Indian tribes*, or that it is necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in any particular locality, may authorize the taking of such eagles

42. *Id.* at 1013.

43. 430 U.S. 584, 609 (1977).

44. *Fryberg*, 622 F.2d at 1013.

45. *Id.* at 1014.

46. 702 F.2d 820, 823 (1983).

47. *United States v. Fryberg*, 449 U.S. 1004 (1981).

48. BUREAU OF THE CENSUS, *supra* note 34. BUREAU OF RECLAMATION, *supra* note 4.

pursuant to regulation which he is hereby authorized to prescribe.⁴⁹ (emphasis added)

Does this language suggest that Congress originally considered Indians to be within the "Whoever, within the United States or any place subject to the jurisdiction thereof,"⁵⁰ language of the Act, but was now making a special exception? In *United States v. Top Sky*,⁵¹ the Ninth Circuit recognized that the Eagle Protection Act "is a federal statute of general applicability making actions criminal wherever and by whomever committed."⁵² In *White* the majority cites *Federal Power Commission v. Tuscarora Indian Nation*,⁵³ as authority for its ruling that general laws of the United States do not apply to treaty Indians.⁵⁴ Ironically, Judge Lay's dissent also cites *Tuscarora* to support his contention that general laws do apply to treaty Indians.⁵⁵ In *United States v. Allard*,⁵⁶ the District Court held that Judge Lay was correct and that the 1962 amendments:

[D]emonstrate that Congress (by making special provisions for Indian permits to take bald and golden eagles) did have Indians in mind; that Congress was gravely concerned with the threat that these magnificent birds might disappear from North America; and that it intended the prohibition to apply to all persons regardless of treaties.⁵⁷

Judge Ross writing in *White* did not find the "religious purposes" exception a clear and unambiguous expression of Congressional intent. He wrote:

Theoretically non-Indians could be thus permitted by the Secretary to take the eagles, on or off a reservation, as long as it was for the "religious purposes of Indian tribes." It is difficult to understand, then, how this exception could be interpreted to show an express intent of Congress to abrogate treaty rights of Indians to hunt on their own reservation.⁵⁸

Surprisingly, Judge Jameson in *Fryberg* agreed with the majority in *White*, and held that the language in the Act as amended, in itself did "not show an unambiguous express intent to abrogate Indian treaty hunting rights."⁵⁹ To date, no other court has taken up the issue. It seems settled

49. 16 U.S.C. § 668a (1976). Act of October 24, 1962. 76 Stat. 1246.

50. See *supra* note 14.

51. 547 F.2d 486 (9th Cir. 1976).

52. *Id.* at 488.

53. 362 U.S. 99 (1960).

54. *White*, 508 F.2d at 455 n. 2.

55. *Id.* at 461 n. 4 (Lay, J., dissenting).

56. 397 F. Supp. 429 (D. Mont. 1975). The Supreme Court reversed *Allard*, but was not presented with the treaty abrogation issue. See *Andrus v. Allard*, 444 U.S. 51 (1979).

57. *Allard*, 397 F. Supp. at 431.

58. *White*, 508 F.2d at 457.

59. *Fryberg*, 622 F.2d at 1013.

then, that the 1962 amendment to the Eagle Protection Act, which extends to Indians the right to hunt eagles for religious purposes, does not alter any treaty hunting rights they may have held before, or after, the amendment was passed.

V. THE EAGLE PROTECTION ACT AS A CONSERVATION STATUTE

In *Fryberg*, Judge Jameson presents in dictum the seed of an important thought. The Eagle Protection Act should be considered a conservation statute, and for that reason alone should be enforced against all persons.⁶⁰ The Department of Interior, Office of the Solicitor has since adopted Judge Jameson's dicta and incorporated it into an Opinion.⁶¹ The reasoning of the Opinion follows: In *Andrus v. Allard*,⁶² the very first sentence of the Supreme Court's opinion states: "The Eagle Protection Act and the Migratory Bird Treaty Act are *conservation statutes* designed to prevent the destruction of certain species of birds."⁶³ In *Puyallup Tribe v. Department of Game of Washington*,⁶⁴ (Puyallup I) the Supreme Court held, "[T]he manner of fishing, the size of the take, the restriction of commercial fishing, and the like may be regulated by the state in the interest of conservation, provided the regulation meets appropriate standards and does not discriminate against the Indians."⁶⁵ The court in *Washington Game Department v. Puyallup Tribe*⁶⁶ (Puyallup II) held:

Rights can be controlled by the need to conserve a species; . . . The police power of the State is adequate to prevent the steelhead from following the path of the passenger pigeon; and the Treaty does not give the Indians a federal right to pursue the last living steelhead until it enters their nets.⁶⁷

In *Puyallup Tribe v. Washington Game Department*,⁶⁸ (Puyallup III) the Court held: "Rather, the exercise of that [hunting and fishing] right [is] subject to the reasonable regulation by the State pursuant to its power

60. *Id.* at 1015. Judge Jameson states: "[F]inally, the avowed purpose of the Act is to prevent the extinction of the bald eagle, the emblem of the nation, rather than merely to conserve a resource. The life of the bald eagle has become so precarious that all threats, including takings pursuant to Indian treaty, should be banned to assure the species survival . . . Congressional intent to ban all conceivable threats to the bald eagle's existence, including those posed by treaty Indians is also reflected in the comprehensive structure of the Act."

61. OPINION OF THE SOLICITOR, UNITED STATES DEPARTMENT OF THE INTERIOR, No. M-36936, APPLICATION OF EAGLE PROTECTION AND MIGRATORY BIRD TREATY ACTS TO RESERVED INDIAN HUNTING RIGHTS (1981).

62. 444 U.S. 51 (1979).

63. *Id.* at 52.

64. 391 U.S. 392 (1968).

65. *Id.* at 398.

66. 414 U.S. 44 (1973).

67. *Id.* at 49.

68. 433 U.S. 165 (1977).

to conserve an important natural resource." (emphasis added)⁶⁹

The Office of the Solicitor has concluded that reasonable conservation statutes affect Indian treaty rights when:

- (1) The sovereign exercising its police power to conserve a resource has jurisdiction in the area where the activity occurs;
- (2) the statute applies in a non-discriminatory manner to both treaty and non-treaty persons; and
- (3) the application of the statute to treaty rights is necessary to achieve its conservation purposes. *A total ban of all treaty taking is allowable when necessary to assure the survival of the species.* (emphasis added)⁷⁰

VI. CONCLUSION

Judge Jameson's use of the "surrounding circumstances test" attempts to assure us that *Fryberg* will not represent the total extinguishment of treaty hunting and fishing rights.⁷¹ However, the possibility exists that *Fryberg* might serve as precedent for abrogating Indian treaty rights by the mere implication of Congress. As the cases of *Lower Brule Tribe*,⁷² *Winnebago Tribe of Nebraska*,⁷³ and *Washington Charter Boat Association*⁷⁴ point out, the Eighth and Ninth Circuits are holding fast to their respective tests for treaty abrogation. It seems inevitable that this issue will come before the Supreme Court. Should the Court rule that treaty rights cannot be abrogated by implication, a valuable part of the bald eagle's protection will be stripped away.

Judge Ross was correct when he stated in *White* that Indian treaty rights should not be abrogated by implication.⁷⁵ Treaty rights of any sort should only be altered by express legislative language, not mere implication, even if the intent of the implication is well-meaning.⁷⁶ The decision in *Fryberg*, even though it had the best interests of the eagle in mind, is perilously weak. The bald eagle's continued existence must not be dependent upon well meaning but unsound law.

The bald eagle as our national symbol and even more importantly as a

69. *Id.* at 175.

70. OPINION OF THE SOLICITOR, *supra* note 61. See also, *Fryberg*, 622 F.2d at 1015.

71. *Fryberg*, 622 F.2d at 1014.

72. *Lower Brule Sioux Tribe*, *supra* note 32.

73. *Winnebago Tribe of Nebraska*, *supra* note 32.

74. *Washington Charter Boat Association*, *supra* note 46.

75. *White*, 508 F.2d at 458.

76. See Wilkinson & Volkman, *Judicial Review of Indian Treaty Abrogation: "As Long As Water Flows Or Grass Grows Upon The Earth"—How Long A Time Is That?*, 63 CALIF. L. REV. 601 (1975), for a comprehensive treatment of treaty abrogation by implication. See also, Note, *Statutory Construction—Wildlife Protection Versus Indian Treaty Hunting Rights*, 57 WASH. L. REV. 225 (1981).

distinct species, should be preserved.⁷⁷ As other species are forced to depend on man's laws for their survival, protective legislation must be designed and drafted to protect the species for its own sake, not for our own anthropocentric purposes. The Eagle Protection Act is a conservation statute. Conservation statutes are enforceable, and should be enforced against all persons. As Judge Lay simply but eloquently stated in his dissent: "A conservation statute will achieve its purpose only if it applies to everyone."⁷⁸

77. For an interesting discussion of the natural rights of non-human life forms, see Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972). Professor Stone advances the concept that natural objects should have full legal standing. To those who think that this idea is preposterous, he notes that not so long ago corporations, women, blacks, Chinese, and other minority groups also lacked standing. See also, Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315 (1974). Professor Tribe contends that currently environmental law is only concerned with the environment because of the possible repercussions on human existence. He suggests that we re-evaluate our conception of environmental law and approach it from the standpoint of saving the environment for its own sake.

78. *White*, 508 F.2d at 461 (Lay, J., dissenting). Judge Lay cites *Kennedy v. Becker*, 241 U.S. 556 (1916), as authority for this.