

Aliens on Spaceship Earth: The Controversial Sierra Club Elections

by Lee Hall

For over a century, the people of the United States have, as a matter of national law, restricted immigration. The grounds for specific restrictions say much about the way in which our society chooses its members. Notwithstanding the Statue of Liberty's expansive call, debates over the rights and privileges acknowledged, upheld, and denied, and arguments over who will be accepted and who will be excluded, run fiercely through the nation's history.¹ No area of social life is untouched by the matter; and lately, the topic of immigration has found its way into environmentalists' debates.

When they decide to take positions, U.S. environmentalists have a number of issues to sort: How should they address the population issue? Do they face head-on the issue of births? Should they take a position on immigration, and if so, should it be liberal or restrictionist? How do they address complex issues of land use?

Recently, a group of environmentalists with an interest in restricting immigration formed a coalition of convenience with a group whose primary focus is animal protection. By joining as a voting bloc, these groups hoped to make the Sierra Club over to some part of their combined interests.² This essay will examine the interests of both of those subgroups, and will suggest that the Club's membership has sensibly rejected the proposition of adopting a restrictionist policy.

There are, however, babies in the bathwater of this controversy. The dissenting candidates and their supporters on the board appropriately highlight population growth itself as a key environmental issue. Humanity's swelling population, combined with its agricultural customs and its treatment of other living beings as a general matter, are issues that some environmentalists have dismissed without thorough examination. This essay will identify key reasons why certain sidelined views ought to play a stronger role in

carrying out the mission of environmental groups such as the Sierra Club. At the same time, environmentalists should be wary of the danger in the discourses around fecundity in the third world, and the racially pernicious aspect of anti-immigrant sentiments based on such perspectives.³

In Part I, I shall offer a brief history of the controversy at the core of this essay. The latest of a series of challenges to Sierra Club's neutral immigration policy involved a new twist: Animal protectionists joined the fray, hoping to see their interests addressed by the Club's board. The publicity generated by these activists was frequently negative, and a lawsuit underscored the polarized nature of the controversy.⁴ Seen in their best

³ This would likely pose questions for one scholar who had argued for open migration as a possible method of simultaneously addressing the U.S. and global fertility rates. Roger Nett has argued that the right of free movement across the face of the earth, if properly applied, could solve the overpopulation problem:

Here we would argue that, at the moment, the earth is not necessarily overpopulated in terms of its resources. Rather, some parts of it are, and people are multiplying rapidly to fill up parts of it that are relatively vacant. Would it not be better to move the population over to the more open parts and at the same time, for the privilege, demand more responsible reproductive behavior? Are we not losing one of the world's great opportunities? To be sure, a way for doing this is yet to be worked out and the difficulties should not be underrated.

Roger Nett, *The Civil Right We Are Not Ready For: The Right of Free Movement of People on the Face of the Earth*, 81 *ETHICS* 212-27 (1971), *quoted in Legomsky supra* note 1, at 244-45.

⁴ In February 2004, board candidates Richard Lamm, David Pimentel, and Frank Morris sued the California-based Sierra Club in San Francisco Superior Court, alleging that Club leaders broke the California Corporations Code by agreeing to mail a notice with 2004 election ballots essentially warning of an outside takeover campaign. Miguel Bustillo, "Anti-Immigration Candidates Sue Sierra Club Over Board Election," *supra* note 2. Lamm, Pimentel, and Morris, who were included in the election after collected petitions requesting their names be listed on the ballots, argued that the

¹ See generally Stephen H. Legomsky, *Immigration and Refugee Law and Policy* (3rd ed., 2002) (providing description and analysis of the turbulent history of U.S. law and policy regarding migration since the 1880s).

² Miguel Bustillo, "Anti-Immigration Candidates Sue Sierra Club Over Board Election," *L.A. Times* (Feb. 11, 2004) at B6.

light, all parties shared an interest in the most effective possible future for the Sierra Club. And when their positions are examined carefully, the key concerns within the varied contentions can and should be reconciled. If the Sierra Club itself is institutionally incapable of doing so, its members should interrogate its ability to function ethically and effectively.⁵ If, however, the Club is capable of reconciling these concerns, then I offer this article as an attempt to map a step forward.

Part II will discuss U.S. environmentalists' reasons for opposing immigration, and suggest that they are most likely to do so when the relevant social issues are oversimplified. Part III will outline the reasons animal advocacy groups took an interest in the Sierra Club elections, and discuss the matter of whether the Club ought to take an interest in animal advocacy. Part IV will discuss climate change and its implications for all of the issues that have come onto this stage: environmentalism in an industrialized era, human relations with the rest of the animal world, and cross-border migration. The climate question brings together the other questions in ways that call for timely and careful attention, and makes efforts to reach agreements on all of these issues especially critical.

Those who seek an effective environmentalism, this essay will conclude, should strive for a holistic environmentalism. A holistic view would perceive human beings as more than just the people of one nation — even more than the people of the “nation” of humanity. Recommended positions for the Sierra Club on the various controversial points of debate will be provided, and will be broadly applicable to any environmentalist groups.

notice would improperly skew the election, and sought an injunction delaying the vote. Glen Martin, “Sierra Club Candidates Drop Suit,” S.F. CHRONICLE (Feb. 20, 2004) at A28. The candidates withdrew their suit “when they were informed that the club was going to file a countersuit asking for legal fees if our suit was unsuccessful” under a state law that allows for redress of legal fees if a suit “arguably infringes on First Amendment free speech.” *Id.* (quoting James Turken, a lawyer for the plaintiffs).

⁵ It might be. Describing “the type of organization we are,” Sierra Club president Larry Fahn has said: “Most people join to go on hikes. Only 5-6 percent are activists.” *Quoted in* Ben Adler, “Sierra Club Votes for Its Future,” THE NATION, available at <<http://www.thenation.com/docprint.mhtml?i=20040426&s=adler>> (posted online on April 13, 2004; last visited Mar. 28, 2005). For an argument that the Club is too heavily invested in mainstream success to base ethical decisions outside what is politically expedient, see Jeffrey St. Clair, “Torquemadas in Birkenstocks: The War Club,” *infra* note 170.

Part I. Animal Advocates and Immigration Restrictionists Unite to Take Over?

A. A Scandal Erupts

In early 2004, the Internet and conventional media buzzed with the news that immigration restrictionists had sued the Sierra Club, the oldest and largest U.S. environmental group, as part of their bid to join the board and thus secure a majority of the Club's board of directors.⁶ As the *Los Angeles Times* described the situation: “Three prominent immigration control advocates — UCLA astronomy professor Ben Zuckerman, Wisconsin Secretary of State Doug LaFollette, and Paul Watson, leader of the group Sea Shepherd Conservation Society, already had won seats to the board in recent years, putting majority control within the grasp of the dissidents in this year's election.”⁷

Dr. LaFollette, a Sierran since 1993, emphasized the effects of population growth itself when discussing the Club's role in U.S. political life:

Bush and most politicians don't get it. They don't comprehend the essential role our natural environment plays in supporting human wellbeing. They don't acknowledge the critical contribution that wilderness, wildlife and scenic beauty make to the human spirit. They ignore our responsibility to protect the planet for future generations. ...We *must* address the root causes — both U.S. and global overpopulation and over-consumption — that imperil our planet...Unfortunately, our Club rarely speaks about population any more — the word ‘population’ never appears in 2001-2003 annual membership reports.”⁸

While population is a logically appropriate issue for environmental activism, injecting the immigration issue

⁶ See *supra* note 4; see also Glen Martin, “Environmentalists Renew Bitter Fight over Controlling U.S. Immigration,” S.F. Chronicle (Feb. 11, 2004) at A1.

⁷ In 2004, five seats on the 15-member governing board were open for members' votes. Miguel Bustillo, “Anti-Migrant Slate Rejected by Sierra Club,” L.A. Times (Apr. 22, 2004), at A12.

⁸ “Doug LaFollette is elected to the Sierra Club Board of Directors in April, 2003!”, candidate statement of Doug LaFollette, Sierrans for U.S. Population Stabilization (SUSPS), available at <<http://www.susps.org/candidates/lafollette.html>> (last visited Mar. 12, 2005).

into the debate caused especially bitter conflict, and LaFollette's role as an advisory board member of an organization called Carrying Capacity Network raised eyebrows.⁹ A look at this group's Web site alerts the visitor to numerous articles on the purported health and economic dangers of "mass immigration" and "illegal aliens."¹⁰ In its November 2003 newsletter, the restrictionist Federation for American Immigration Reform (FAIR) encouraged its members to join the Sierra Club in order to gain voter status in the board election.¹¹ The plot thickened as a hunting organization,

⁹ See Steven Rosenfeld, "Population Bombshell," TOMPAINE.COM (Feb. 5, 2004), available at <<http://www.tompaine.com/feature2.cfm/ID/9913>> (last visited Mar. 13, 2005) (noting Sierra Club past president Lawrence Downing's concern that the insurgents and their supporters on the board maintained "leadership roles with groups that have controversial if not inflammatory stands on U.S. immigration policy").

¹⁰ See the Carrying Capacity Network's Internet site at <<http://www.carryingcapacity.org/>> (last visited Mar. 9, 2005). The term "illegal alien" does not appear in the U.S. immigration laws; in Professor Stephen Legomsky's words, the term is "pejorative, irritating, and technically meaningless." LEGOMSKY, *supra* note 1, at 1.

¹¹ Bill Berkowitz, "Sierra Club Shenanigans: Anti-Immigration and Animal-Rights Activists Attempt to Hijack Nation's Oldest Environmental Organization," WORKING ASSETS ONLINE (Feb. 18, 2004), available at <<http://www.workingforchange.com/article.cfm?ItemID=16457>> (last visited Mar. 28, 2005). Project USA, a group that advocates a moratorium on immigration, told its supporters:

Back in the 1990s, when the entire nation was gripped by the "diversity-is-our-strength" hysteria, the Sierra Club abandoned its traditional commitment to an environmentally sound U.S. population policy. A faction of diversity extremists within the leadership incapacitated the Club's ability to fight for environmentally responsible immigration policies by subordinating the group's power and influence to a confused and environmentally irrelevant ideological agenda based on skin color, diversity, and "social justice." . . . From simple excessive use, to outright destruction, immigration policy is wreaking havoc on the nation's natural heritage. If you hate the destruction our national parks, if you care about the environment, and if you want to help bring the Sierra Club back to its common sense roots, please spend \$25.00 and join the Club before January 31. If you join before the end of the month, you will be given the opportunity to vote for Directors who will take a responsible and clear-sighted view of our mandate to protect our environment.

Fur Commission USA, also urged its members to join the Sierra Club, in order to counter one of the most vocal board members, Paul Watson, who not only argues for immigration restriction but is also a vocal animal protectionist, challenging Sierran habits of "giving grants to hunters and anglers and refusing to address the ecological impact of the meat industry."¹²

Painting the controversy as a matter of agitation by "outside groups" doubtless became easier with the addition of animal protectionists to the cluster of dissenters, through a coalition named Sierrans for U.S. Population Stabilization (SUSPS).¹³ By 2004, the combined groups — and the mainstream media — believed a majority of the Club's Board could well be

"Immigration Issue Roiling Even Enviro Groups," Project USA Ezine (Issue 179, Jan. 28, 2004), available at <<http://www.projectusa.org/ezine/2004/01-28-sierra.html>> (last visited Mar. 29, 2005).

¹² Watson insists that "[t]here is not a candidate running who is anti-immigration or anti-immigrant although [the Sierra Club's Executive Director] Carl implies that anyone who advocates immigration reduction is anti-immigrant." See Shepherd News Release [open letter from Paul Watson]: "The Sierra Club Elections" (Mar. 19, 2004), available at <http://www.seashepherd.org/news/media_040319_1.html> (last visited Apr. 14, 2005). Yet Watson's opinion that "we don't need to end immigration, just simply reduce the numbers to achieve population stabilization" would bar individual applicants, people with names and families. An intriguing question might arise if Watson asked to bar immigration to the colder latitudes — after all, vegetarian cuisine would have to be shipped in to such places using fuel-gulping, concrete-promoting air and road transit — but that wasn't the argument proffered by Watson, who instead urged tighter restrictions on migration to any point in the United States, and nowhere else. For related discussion, see Rosenfeld, "Population Bombshell," *supra* note 9 (referring to Watson as "the most outspoken backer" of the candidates who want the Club to back lower U.S. immigration levels, and quoting Watson as saying: "Nobody is anti-immigrant. We have to reduce the numbers to achieve stabilization. We're just saying 'Let's lower the numbers.'"). See also note 173, *infra*, and surrounding text.

¹³ See Adler, "Sierra Club Votes for Its Future," *supra* note 5; see also Martin, "Environmentalists Renew Bitter Fight over Controlling U.S. Immigration," *supra* note 6, (reporting that animal advocacy groups waded into the controversy, urging their members to join the club simply to cast their votes for one slate or the other). SUSPS formed in 1996 as a result of the Sierra Club Board's neutrality policy on immigration into the United States. See Sierrans for U.S. Population Stabilization (SUSPS), "History" (1996-2003), available at <<http://www.susps.org/history/history.html>> (last visited Apr. 3, 2005).

within the reach of their coalition.¹⁴ A particularly disconcerting attempt to draw animal advocates to the cause bubbled up to the surface of the Internet, focused on xenophobic harangues about "third world animal cruelty."¹⁵

¹⁴ See Berkowitz, "Sierra Club Shenanigans," *supra* note 11 (stating: "In March and early April, the Sierra Club's 750,000 members will vote for five new members for its 15-person governing board. If the anti-immigration candidates prevail, the *Los Angeles Times* reported in mid-January, they will control eight of the 15 seats on the board and the Club's \$95 million budget"); see also "Hostile Takeover," SPLC Intelligence Report (Issue 113, Spring 2004), available at <<http://www.splcenter.org/intel/intelreport/article.jsp?aid=379>> (last visited Feb. 23, 2005) (interviewing Sierra Club past president J. Robert Cox, who reported that Paul Watson supported board candidate Benjamin Zuckerman's efforts to reverse the immigration neutrality policy, and that Watson also boasted at animal advocacy conferences about an attempt to take over the Club, telling the audiences that just a few hundred or a few thousand animal advocates could effect the takeover). For related commentary, see Robert Cox, "Sierra Club Under Siege? Yes: Special Interests Trying to Take Over," DENVER POST (Feb. 1, 2004), available at <<http://www.denverpost.com/Stories/0,1413,36%257E172%257E1923493,00.html>> (last visited Mar. 31, 2004).

¹⁵ See, e.g., Frosty Wooldridge, "Immigration's Third World Cruelty to Animals," News with Views.Com (Feb. 18, 2004), available at <<http://www.newswithviews.com/Wooldridge/frosty15.htm>> (last visited Feb. 22, 2005). Wooldridge, who claims no affiliations with any established animal rights or animal protection group, blames the existence or acceleration of pet theft, dog fighting, cock-fighting, animal sacrifices in New York on the "Third World Momentum invading America." *Id.* Regarding "barbaric cultural practices" of "1.5 million legal and the estimated 1 million illegal aliens rushing across our borders annually," the author writes: "They know it's against the law, but they refuse to shed their Old World ways. The 'melting pot' has become the 'savage arena' of the celebration of 'diversity'." Wooldridge points to Asians, Muslims and Mexicans as the specific culprits. Wooldridge has reportedly been a keynote speaker at an event hosted by the California Coalition for Immigration Reform, introduced there as a "communicable disease expert"; announcement available at <<http://ccir.net/MEETINGS/030528.html>> (last visited Feb. 22, 2005), stating:

He will share his documented data on the outbreak of previously controlled diseases (terminal TB, Hepatitis, Leprosy, Chagas, Newcastle chicken disease and many more) and identifies *illegal aliens* as the primary carriers of these deadly diseases. He will also share their role in the spread of Aids and SARS.

Id. (emphasis in the original). Wooldridge's self-published book *Immigration's Unarmed Invasion: Deadly Consequences* (2004) is announced in Alan Kuper's "Comprehensive U.S. Sustainable Population (CUSP) Report No. 3" (Dec. 2004), available at <[Running for a board position in 2004 was Frank Morris, former executive director of the Congressional Black Caucus Foundation. Morris stated that "it is really important that I point out what is obvious to most African-Americans but unfamiliar to most other Americans. That is the fact that high flows of immigrants into the American labor supply have been an important part of the long history of American racism against African-Americans in the U.S."¹⁶](http://www.uscongress-</p>
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Former Colorado Governor Richard Lamm and Cornell entomologist David Pimentel joined Morris as new board candidates, emphasizing immigration restriction as part of an overall population solution.¹⁷ For years, Richard Lamm has asserted that Latin American and other immigrants create a "splintered society" due to

enviroscore.org/archive/Report3-04.html> (last visited Feb. 26, 2005); see *infra* notes 42-43, 66, and accompanying text.

¹⁶ See Rosenfeld, "Population Bombshell," *supra* note 9 (additionally noting that Dr. Morris has been a board member of restrictionist groups Diversity Alliance for a Sustainable America and Center for Immigration Studies) (internal citations omitted). In a parallel appeal focused on the concept of protecting U.S. women, Brenda Walker of VDARE.Com wrote in *The Social Contract* (a journal of opinion founded by John Tanton):

In Europe, women's rights and safety are under severe attack because fearful, politically correct leaders refuse to condemn the misogynously barbaric culture of Muslims.... The belief that all cultures are equal — the central tenet of multicultural society — does not bear even the most cursory examination. The intense media coverage of Muslim society in the wake of 9/11 has demonstrated how wretched life is for women in much of Arab world... The September 11 terrorist attacks certainly awakened many in Europe — particularly when Muslims in some communities were in the streets celebrating the death of thousands — and has allowed the discussion of immigration and multiculturalism to enter the political realm."

Brenda Walker, "The Canary is Choking: It Would Be if We Considered Europe an Immigration 'Coal Mine'," *The Social Contract* (Fall 2002) at 61, available at <<http://www.thesocialcontract.com/pdf/thirteen-one/xiii-1-60.pdf>> (last visited Apr. 3, 2005). Walker sums up this perspective by writing: "The liberal paradigm of tolerance has not worked but instead has invited wolves to dwell among sheep." *Id.*, at 60.

¹⁷ See Rosenfeld, "Population Bombshell," *supra* note 9.

their refusal to assimilate.¹⁸ Lamm pulled these strongly restrictionist views to the forefront of the Sierra Club's election debate. "Immigration is the ultimate environmental issue," Lamm stated, adding:

A pressing environmental question faces America: What is our demographic destiny? How big a country do we want to become? How many people can live satisfied lives within our borders? These issues will not go away and will only grow more complicated. Environmental organizations must add population and immigration to their list of issues and concerns. It is environmental malpractice not to, and the Sierra Club has never faced up to this issue.¹⁹

"I really don't think it's true," Pimentel said. "I think that the real environmental problems should be addressed and I don't think immigration is a major environmental concern."²⁰ Pimentel listed pesticide impacts, soil degradation, water pollution, invasive species and energy conservation as concerns that qualify as important environmental issues.²¹ Yet Pimentel is a director of the Carrying Capacity

Network,²² and has served on the advisory board of the Diversity Alliance for a Sustainable America (DASA),²³ whose mission statement urges: "Non-citizen legal immigrants should be denied all welfare benefits, cash and non-cash, except emergency medical care" because of its view that "rapid population growth in the U.S., driven in large part by record high levels of immigration, is adversely impacting America's environment, workers, infrastructure, social coherence and the quality of life of residents of all racial backgrounds."²⁴

At the beginning of 2004, Robert Cox and a dozen other past presidents of the Sierra Club wrote to its directors to warn of an "organized effort" to make the board over to anti-immigration policies.²⁵ Club leaders voiced concern about several "outside groups that may be attempting to intervene" in the election, including the Center for American Unity, Coloradans for American Immigration Reform, the Federation for American Immigration Reform, Limitstogrowth.com, the National Alliance ("ideology from a white racial perspective"), the National Immigration Alert and White Politics Inc.²⁶

¹⁸ See, e.g., Richard D. Lamm & Gary Imhoff, *The Immigration Time Bomb: The Fragmenting of America* (1985) at 76-98.

¹⁹ Richard D. Lamm, "Sierra Club under Siege? No: Immigration Should Be a Concern," *Denver Post* (Feb. 1, 2004), available at <<http://www.denverpost.com/Stories/0,1413,36-172-1923494,00.html>> (last visited Apr. 12, 2005). Lamm, long a board member of the restrictionist Federation for American Immigration Reform (FAIR), is listed on the FAIR website as Chair of the group's National Board of Advisors. Federation for American Immigration Reform, "About FAIR: Board of Directors," available at <<http://www.fairus.org/About/AboutList.cfm?c=21>> (last visited Mar. 30, 2005).

²⁰ Quoted in Jennie Daley, "CU Prof, Sierra Club Hopeful, Seen as Anti-Immigration," *ITHACA JOURNAL* (Feb. 28, 2004), available at <<http://www.theithacajournal.com/news/stories/20040228/localnews/40092.html>> (last visited Apr. 14, 2005) (referring to the Sierra Club leadership's opposition to the restrictionist platform).

²¹ See *id.* (referring to candidate David Pimentel's responses to the questions distributed in the Sierra Club's 2004 candidate forum).

²² Rosenfeld, "Population Bombshell," *supra* note 9. Also see "What is Carrying Capacity Network?," available at the group's Internet site at <<http://www.carryingcapacity.org/whatis.html>> (last visited Apr. 3, 2005).

²³ See "DASA's Leaders," available at <<http://www.diversityalliance.org/docs/DASA-BoardBios.html>> (last visited Mar. 16, 2005).

²⁴ "DASA's Mission Statement and Platform," available at <<http://www.diversityalliance.org/docs/DASA-MissionPlatform.html>> (last visited Mar. 9, 2005).

²⁵ Robert Cox, "Sierra Club under Siege? Yes: Special Interests Trying to Take Over," *supra* note 14.

²⁶ See Adler, "Sierra Club Votes for Its Future," *supra* note 5 (citing a January 2004 notice from Sierra Club leadership to its members); see also Martin, "Environmentalists Renew Bitter Fight over Controlling U.S. Immigration," *supra* note 6, which reports a Sierra Club spokesperson as saying that about 20 racist groups have urged their members to join the club and participate in the club's board elections, including Overthrow.com; and the National Coalition of White Writers, and VDare.com, named after Virginia Dare. Dare was the first white child born in a U.S. colony, according to Peter Brimelow's *Why VDARE.COM/The White Doe?*, available at <http://vdare.org/why_vdare.htm> (last visited Mar. 16, 2005). Peter Brimelow is probably best known for the book *Alien Nation* (1995), which advocates drastic reduction in immigration levels because of alleged refusal of non-Anglo Saxon immigrants to assimilate. For more about the roles of

Did that mean that the dissident candidates were racist? David Pimentel believed the Sierra Club leadership was engaging in deliberate conflation, and remarked, "I really think they're using it to tar us and prevent us from getting elected."²⁷ "No one has said that these people are racist, but that they're being supported by racist groups," said Kerri Glover, national media director for the Sierra Club, "It's a nuance but an important one."²⁸ At times, the distinction seemed to blur. Sierra Club past president J. Robert Cox states that after winning a board seat in 2002, Ben Zuckerman

asked for time in many board sessions to make speeches to us about the importance of immigration, often citing non-environmental reasons to reverse our neutrality policy, most recently having to do with post-9/11 security concerns. He has also cited concerns about U.S. workers being displaced by immigrants. At one point, we asked about the link between the environment and a story that he sent us about illegal crossings on the southern border. As far as I could see, the only documented environmental impact was that they were littering the desert with water bottles and trash — there was a photo of discarded bottles at a campsite. Most recently, he sent to several of us on the board an article from VDARE.com that claimed that Hispanics were spreading disease and crime in the U.S., and that "Hispandering politicians" were allowing this to happen.²⁹

Morris Dees of the Southern Poverty Law Center [hereinafter "SPLC"] ran for the board solely to publicize the troubling connection between immigration restrictionism and hate groups. "I am not asking that you vote for me," Dees wrote for a ballot statement. "Instead I am running to urge that you vote against the 'greening of hate' ... Please save the Sierra Club from a takeover by the radical right."³⁰ Robert F. Kennedy Jr.,

the restrictionist groups in the Sierra Club controversy, see Rosenfeld, "Population Bombshell," *supra* note 9.

²⁷ Quoted in Jennie Daley, "CU Prof, Sierra Club Hopeful, Seen as Anti-Immigration," *supra* note 20 (referring to the Sierra Club leadership's opposition to the restrictionist platform).

²⁸ *Id.*

²⁹ See "Hostile Takeover," SPLC Intelligence Report, *supra* note 14 (quoting Robert Cox); see also note 26, *supra* (regarding VDARE.com).

³⁰ Rosenfeld, "Population Bombshell," *supra* note 9.

the founder of Waterkeeper Alliance, spoke out in opposition to Pimentel and the other insurgents.³¹

B. Origins of the Storm

In 1979, John H. Tanton founded Federation for American Immigration Reform (FAIR), now the largest immigration restrictionist group in the United States.³² Notably, Dr. Tanton has long been a leader in the Sierra Club — chairing its national Population Committee in the early 1970's — and other mainstream environmental groups.³³ According to the SPLC's *Intelligence Report*:

Tanton had something akin to a conversion when he came across *The Camp of the Saints*, a lurid, racist novel written by Frenchman Jean

³¹ Miguel Bustillo and Kenneth R. Weiss, "Sierra Club in Battle over Immigration," L.A. Times (Mar. 28, 2004), available through the Duluth News-Tribune at <<http://www.myrtlebeachonline.com/mld/duluthtribune/news/nation/8297100.htm>> (last visited Apr. 14, 2005) (describing Kennedy and Sierra Club Executive Director Carl Pope as believing that "taking a stand against immigration runs the risk of alienating Latino and Asian immigrants who may represent the future of conservation"). Actor Robert Redford also opposed the anti-immigration candidates. See also Bustillo, "Anti-Migrant Slate Rejected by Sierra Club," *supra* note 7.

³² See "The Social Contract Press: Who We Are," available at <<http://www.thesocialcontract.com/aboutus.html>> (last visited Mar. 30, 2005); see also "The Puppeteer," SPLC Intelligence Report (Issue 106, Summer 2002), available at <<http://www.splcenter.org/intel/intelreport/article.jsp?aid=93>> (last visited Feb. 26, 2005). FAIR's budget for the year 2000 was \$4.2 million; however, 58 percent of the year's donations were provided by just six benefactors. See *id.* One of the group's key funding sources is the Scaife family, heirs to the Mellon Bank fortune; Richard Mellon Scaife has also been instrumental in establishing the Heritage Foundation. *Id.* Scaife family foundations provided some \$1.4 million to FAIR from 1986-2000. *Id.* Other major donations have been tied to white supremacy groups. See *id.* (citing \$1.2 million in donations from the Pioneer Fund between 1985 and 1994). FAIR's former legal director, Cordia Strom, became a staffer for the House Immigration Subcommittee in 1996, and later became counsel to the director and coordinator of congressional affairs for the Immigration and Naturalization Service. See *id.*

³³ See "The Puppeteer," SPLC Intelligence Report, *id.* Tanton also presided over the group Zero Population Growth in the mid-1970s and served as Chair of its Immigration Study Committee from 1973 to 1975. Federation for American Immigration Reform, "About FAIR: Board of Directors," available at <<http://www.fairus.org/About/About.cfm?ID=356&c=21>> (last visited Mar. 30, 2005).

Raspail that depicts an invasion of the white, Western world by a fleet of starving, dark-skinned refugees. Tanton helped get the novel published in English and soon was promoting what he considered the book's prophetic argument. "Their [Third World] 'huddled masses' cast longing eyes on the apparent riches of the industrial west," Tanton wrote in 1975. "The developed countries lie directly in the path of a great storm."³⁴

Tanton's influence is woven through the history of the "English Only" movement, which has, in turn, resulted in passage of statutes by over two dozen states and many more local communities enshrining English as the language of official business.³⁵ Many commentators agree that the official English movement is directed primarily against the immigration of many Latin Americans and Southeast Asians during recent decades.³⁶ Groups supported by Tanton campaigned

³⁴ See *id.* Tanton's ideas have remained consistent. To the attendees of a 1986 conference, Tanton posed the question, "Can homo contraceptivus compete with homo progenitiva if borders aren't controlled?" Memo to WITAN IV Attendees from John Tanton (Oct. 10, 1986), *cited in* "The Puppeteer," SPLC Intelligence Report, *attachment available at* <<https://secure.splcenter.org/intel/intelreport/article.jsp?sid=125>> (last visited Mar. 31, 2005). In 1998, the Social Contract Press released a special issue of its journal, *The Social Contract*, entitled "Europhobia: The Hostility Toward European-Descended Americans." See "The Puppeteer," SPLC Intelligence Report, *attachment available at* <<http://www.splcenter.org/intel/intelreport/article.jsp?aid=93&printable=1>> (last visited Apr. 12, 2005). Lead article writer John Vinson, head of the Tanton-supported American Immigration Control Foundation, argued that "successful Euro-American culture" was losing ground to "dysfunctional Third World cultures." *Id.* Tanton expounded on Vinson's remarks, saying that an increasing "unwarranted hatred and fear" of white Americans was being brought by immigrants and their ideological allies, the "multiculturalists." *Id.*

³⁵ See Juan F. Perea, "Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English," 77 *Minn. L. Rev.* 269, 340-44 (1992); *see also* "The Puppeteer," SPLC Intelligence Report, *supra* note 32.

³⁶ See Perea, *supra* note 35, at 343-44 (citing the writings of, e.g., Joshua A. Fishman, who in 1988 asserted that the English Only movement stems from "anglo-oriented middle class Americans" worried about their loss of social and political power); and Antonio J. Califa, who in 1989 observed that the influx of Cubans, Mexicans and Southeast Asians after 1959 caused "concern among immigration restrictionists like the Federation for American Immigration Reform." These observations jibe with a memo John Tanton wrote to other immigrant restrictions in 1986, which asked: "As Whites see

diligently for California's Proposition 187, which, in 1994, denied social services to undocumented workers and their children — even those children who were citizens.³⁷ The measure found support from Californians for Population Stabilization, a group which Ben Zuckerman serves as vice president, and on whose advisory board Richard Lamm serves.³⁸ In 1998, a

their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion?" Memo to WITAN IV Attendees from John Tanton (Oct. 10, 1986), *cited in* "The Puppeteer," SPLC Intelligence Report, *supra* note 34.

Professor Perea has further explained:

Nativism tends to grow and flourish at times of national stress, often in response to unwelcome immigration or wartime. Nativism triggers restrictive laws aimed at persons whose ethnicity differs from that of the core culture, ostensibly to serve the goals of national unity or national security. Nativist movements, at times of national stress, seek to reinforce their narrow view of American cultural identity through the law by restricting cultural traits deemed "foreign." Another feature common to these nativist movements is the desire to disenfranchise certain Americans, or to impede the naturalization of aspiring Americans, because of their difference from the core culture. The official English movement of the 1980s is part of this ignoble tradition. Former Senator S. I. Hayakawa, acting through U.S. English, an organization he founded with Dr. John Tanton, sought an amendment to the Constitution making English the official language of the United States. Subcommittees of the Senate Judiciary Committee, in 1984, and the House Judiciary Committee, in 1988, conducted hearings on proposed official English amendments. Despite persistent efforts and publicity, proponents of official English have not yet succeeded in achieving a federal constitutional amendment.

Perea, *supra* note 35, at 340-41 (internal citations omitted).

³⁷ See Legomsky, *supra* note 1, at 1163-64. *See also* Melinda Burns, "Latino Vote May Be Key To Recall Outcome," Santa Barbara News-Press (Sep. 18, 2003) (noting the long term effects of the measure in California politics, and quoting Annette Cordero, president of the Santa Barbara-based Latinos for Better Government, as saying that Prop. 187 both "politicized the Latino community" and "made racism acceptable").

³⁸ Californians for Population Stabilization, "About Us: Board of Directors," *available at* <http://www.capsweb.org/about_us/board_of_directors.html> (last visited Mar.

federal judge found much of Proposition 187 unconstitutional;³⁹ yet by that time a series of federal laws signed by President Clinton disqualified non-citizens from numerous social benefits at the federal level.⁴⁰

In the mid-nineties, Tanton was supporting efforts to get the Sierra Club, whose Population Committee he had headed during the 1970s, to make the anti-immigration plank an election issue.⁴¹ Alan Kuper claims credit for initiating that effort.⁴² Dr. Kuper is no outsider to the Sierra Club. "I am widely known as 'Mr. Sierra Club' in the Cleveland area," announces Kuper's résumé, which shows a background with the Club dating to 1986, and includes two national Sierra Club awards, in recognition for fund-raising and for initiating daily public radio announcements called "Notes From the Sierra Club"⁴³ and also states: "I serve on the FAIR Board of Advisors along with Paul Ehrlich and Judy Kunofsky and other prominent Sierra Club members."⁴⁴

29, 2005).

³⁹ Almost immediately, Judge Mariana Pfaelzer had granted its opponents' request for a restraining order, which prevented it from taking effect. See "Most Of California's Prop. 187 Ruled Unconstitutional," CNN.Com (Mar. 19, 1998), available at <<http://www.cnn.com/ALLPOLITICS/1998/03/19/prop.187/>> (last visited Apr. 12, 2005).

⁴⁰ See Legmsky, *supra* note 1, at 1174-78. A wave of suicides and attempted suicides followed in the aftermath. See *id.* at 1177 (internal citations omitted). For related commentary, see Tamar Jacoby, "Flawed Proposition," Wall St. J. (Sep. 14, 2004) at A20.

⁴¹ See "The Puppeteer," SPLC Intelligence Report, *supra* note 32.

⁴² See "Comprehensive U.S. Sustainable Population (CUSP) Report No. 3" (Dec. 2004), *supra* note 15. The CUSP site is not affiliated with the Sierra Club.

⁴³ See Comprehensive U.S. Sustainable Population, "About This Site: Alan Kuper, Ph.D.," available at <<http://www.uscongress-enviroscore.org/cuspframes.html>> (last visited Feb. 26, 2005).

⁴⁴ See *id.* Former Colorado Governor Richard Lamm, a 2004 board candidate, is one such prominent member. Lamm has chaired the FAIR advisory board. See FAIR Annual Report 2002, available at <http://www.fairus.org/About/About.cfm?ID=337&c=22> (last visited Mar. 13, 2005). See also Adler, "Sierra Club Votes for Its Future," *supra* note 5.

In response to the agitation, the Club's membership formally resolved to focus on the conservation of public lands, and to address the root causes of global population and migration through education and women's access to health care and family planning.⁴⁵ "Once the board adopted the neutrality policy," Robert Cox recounted, "it apparently motivated what we thought was simply a small group of Sierra Club members who began to object."⁴⁶ The board appeared to pay little attention to the objections, and "underestimated how serious this was" in 1998 when the next election came along, according to Cox.⁴⁷

In fact, arguments that the Club should promote stringent immigration controls to curb environmental destruction have been brewing for at least two decades.⁴⁸ In a 1986 memo, John Tanton specifically mentioned the Sierra Club as a potential target for anti-immigration activists.⁴⁹ Although the Southern Poverty

The Sierra Club published the 1968 book by Paul Ehrlich entitled *The Population Bomb*, which painted a dire picture of a planet straining under the weight of humanity. See Bustillo, "Anti-Migrant Slate Rejected by Sierra Club," *supra* note 7.

⁴⁵ See "Hostile Takeover," SPLC INTELLIGENCE REPORT, *supra* note 14 (interviewing Sierra Club past president Robert Cox). Thus, although the Club's policy in 1996 would seek to stabilize and ultimately reduce U.S. population, it would also state:

The Sierra Club, its entities, and those speaking in its name will take no position on immigration levels or on policies governing immigration into the United States. The Club remains committed to environmental rights and protections for all within our borders, without discrimination based on immigration status.

For a chronology of the group's policies on human population from 1965 through 2003, see "Sierra Club Population Policies," available at <<http://www.sierraclub.org/policy/conservation/population.asp>> (last visited Apr. 3, 2005).

⁴⁶ See "Hostile Takeover," SPLC Intelligence Report, *supra* note 14.

⁴⁷ See *id.*

⁴⁸ In 1978, the board urged Congress to study the "effect of immigration to the U.S. on population growth and environmental quality in this country." For a chronology of the group's policies on human population from 1965 through 2003, see note 45, *supra*.

⁴⁹ See "The Puppeteer," SPLC Intelligence Report, *supra* note 32, citing "Memo to FAIR from John Tanton" (1986), available at <<http://www.splcenter.org/intel>>

Law Center publicized the Tanton memo in 2002, Cox stated for an interview published in 2004 that the Sierra Club board “only became aware of that recently, as a result of the letter that the Southern Poverty Law Center sent to our president” in October 2003.⁵⁰ In that letter, Mark Potok, the editor of the SPLC's *Intelligence Report*, warned that John Tanton is the driving force behind the U.S. anti-immigration movement and linked with organizations listed as hate groups by the SPLC, and that, “[w]ithout a doubt, the Sierra Club is the subject of a hostile takeover attempt by forces allied with Tanton and a variety of right-wing extremists.”⁵¹

C. The Current Climate

But the majority declined to adopt the restrictionist approach, and the Sierra Club's current formal stance takes no position — which arguably condones the government's own current policies. In today's political climate, neutrality is a position, and not a particularly generous one.⁵² “As a matter of principle,” Mark Tushnet has asserted, “liberals ought to be committed to relatively unrestricted immigration policies.”⁵³ Barring

[/intelreport/article.jsp?sid=123](#) (visited Feb. 26, 2005).

⁵⁰ Sierra Club past president Robert Cox, referring to the October 2003 letter from *Intelligence Report* director Mark Potok to Sierra Club president Larry Fahn. See “Hostile Takeover,” SPLC *Intelligence Report*, *supra* note 14.

⁵¹ Letter from the Southern Poverty Law Center's *Intelligence Report* editor Mark Potok to Sierra Club president Larry Fahn (dated Oct. 21, 2003), available at <http://www.splcenter.org/images/dynamic/main/Potok_Sierra_letter.pdf> (last visited Feb. 23, 2005).

⁵² For example, under draconian immigration legislation passed in 1996 and policies which have become increasingly restrictive since September 2001, arriving asylum seekers are subject to an “expedited removal” process and may be detained, pending expulsion, by the U.S. Department of Homeland Security — a decision that cannot be appealed to an immigration judge or an independent authority. See Human Rights First, “Asylum Protection News No. 25” (Mar. 19, 2004), available at <http://www.humanrightsfirst.org/asylum/torchlight/newsletter/newslet_25.htm> (last visited Apr. 3, 2005).

⁵³ Mark Tushnet, “Immigration Policy in Liberal Political Theory,” *Justice in Immigration* 147, 155 (Warren F. Schwartz ed., 1995), cited in Kevin R. Johnson, “Open Borders?,” 9 *Bender's Immigr. Bull.* 3 (Mar. 2004) The call has come from other points on the political spectrum. “If Washington still wants to ‘do something’ about immigration,” the *Wall Street Journal* proclaimed in 1984, “we propose a five-word amendment: There shall be open borders.” *In*

non-citizens “likely at any time to become public charges”⁵⁴ — the most common way of invoking a substantive basis for exclusion — hardly seems a fit for the Sierra Club, whose mission involves preserving lands that all are free to enjoy. And a group whose members strive to serve people should be mindful of immigration enforcement's human impact. Military-style operations on the Southwest border have pressed migrants into desolate locations, notes Kevin Johnson, “where thousands have died agonizing deaths from heat, cold, and thirst.”⁵⁵

Although their efforts to control the Sierra Club's board failed in 2004, the restrictionists' efforts continue.⁵⁶ The mood of the nation, combined with the persistence of restrictionists, would suggest that they could yet secure significant backing.⁵⁷

Praise of Huddled Masses, WALL ST. J. (July 3, 1984) at 24; cited in Johnson, “Open Borders?,” *id.*, at n. 36.

⁵⁴ Immigration & Nationality Act § 212(a)(4), 8 U.S.C. § 1182(a)(4).

⁵⁵ Johnson, “Open Borders?,” *supra* note 53, at n. 20 and surrounding text, citing generally Justice Timothy J. Dunn, *The Militarization of the U.S.-Mexican Border, 1978-1992: Low Intensity Conflict Doctrine Comes Home* (1996); Joseph Nevins, *Operation Gatekeeper* (2002).

⁵⁶ Results made public in April 2004 showed that more than 22% of the members voted to select the governing board; candidates backed by the club's leaders received more than 110,000 votes apiece; in contrast, Richard Lamm, whom the *Los Angeles Times* deemed the best-known of the insurgents, received 13,090 votes. Bustillo, “Anti-Migrant Slate Rejected by Sierra Club,” *supra* note 7 (noting that Sierra Club President Larry Fahn “conceded that anti-immigration candidates were unlikely to give up their fight”).

⁵⁷ Californians for Population Stabilization (CAPS) links the September 2001 attacks with immigration levels. See Californians for Population Stabilization, “National Security” (2002) available at <http://www.capsweb.org/issues/national_security.html>; a related television advertisement appears at <http://www.capsweb.org/Images/newsroom/diablo_tv_ad.pdf> (both pages last visited Mar. 31, 2005). For related indicative commentary, see “Comprehensive U.S. Sustainable Population Report” No. 3, note 15, *supra*. See also “The Puppeteer,” SPLC *Intelligence Report*, *supra* note 34, stating that “Americans have grown increasingly xenophobic in the wake of the September terrorist attacks, and the rapid growth of the Congressional Immigration Reform Caucus that Tancredo heads reflects that — from just 10 legislators prior to the attacks to 59 by May

Worth noting is Proposition 200, an Arizona ballot initiative which passed during the November 2004 elections with 56% of the votes.⁵⁸ The measure — similar to legislation under consideration in California, Colorado, Texas, Oklahoma and Georgia⁵⁹ — requires Arizonans to show proof of immigration or citizenship status when applying for certain public benefits.⁶⁰ State and local employees who fail to refer undocumented migrants to federal authorities can face jail and fines.⁶¹ In response to a lawsuit filed by the Mexican American Legal Defense and Educational Fund, a federal district

[2002].” *Id.*, referring to U.S. Rep. Tom Tancredo (R-Colo.). And see Tony Perry, “San Diego County Elections: Illegal Immigration Back as Dominant Issue,” *L.A. Times* (Oct. 25, 2004) at B4. Ben Zuckerman has written a recent letter to the editor of *The Nation* magazine, arguing:

Lovato missed the boat on what’s been going on inside the Sierra Club. Progressive forces, initially allied with our late icon, David Brower, have been trying to improve its effectiveness since at least the early 1990s. There is a wide range of opinions regarding immigration among these reformers. But we all agree that, since the 1980s, the SC has been ineffective at the national level under its old leadership. We are trying to make it stronger and more effective.

See Ben Zuckerman, “Sierra Club Civil Wars,” *The Nation* (Oct. 11, 2004), at 27 (letter to the editor in response to “Fear of a Brown Planet” [June 28] by Roberto Lovato). Lovato replied, “If this is what “progressive forces” sound like, then it’s time to find new labels, new language.” *Id.*

⁵⁸ Susan Carroll and Yvonne Wingett, “Prop. 200 Now Law in Arizona,” *Arizona Republic* (Dec. 23, 2004), available at <<http://www.azcentral.com/specials/special29/articles/1223prop200hearing23.html>> (last visited Apr. 5, 2005).

⁵⁹ See Jacoby, “Flawed Proposition,” *supra* note 40; Scott Johnson, “The Border War: The Longstanding Debate over U.S. Immigration Now Threatens to Turn Violent,” *Newsweek* (Apr. 4, 2005), at 29 [hereinafter “Johnson, “The Border War”].

⁶⁰ “Mexican Government Opposes Ban of Public Benefits for Undocumented in Arizona,” *El Universal* (Mexico, D.F.) (Dec. 24, 2004).

⁶¹ Beginning in December 2004, state, county, and municipal employees were expected to alert federal immigration officials to suspected undocumented immigrants seeking public benefits. Those who failed to do so could face a Class 2 misdemeanor punishable by up to four months in jail and a \$750 fine. Carroll and Wingett, “Prop. 200 Now Law in Arizona,” *supra* note 58.

judge in late November issued a temporary restraining order, enjoining the state from implementing the measure.⁶² But in December Judge Bury lifted the order, clearing the way for Gov. Janet Napolitano to issue an executive order enacting the measure.⁶³ FAIR reportedly spent nearly half a million dollars to place Proposition 200 on the ballot.⁶⁴

Restrictionist candidates have appeared again on the Sierra Club’s 2005 ballot — Alan Kuper wishes to be voted in as a director in order to “be an ‘Elder Statesman’ with a creative bent”⁶⁵ — and their efforts have included support for a 2005 special ballot measure asking whether to “recognize the need to adopt lower limits on migration to the U.S.,”⁶⁶ which would, if

⁶² Carroll and Wingett, *id.* “It seems likely that if Proposition 200 were to become law, it would have a dramatic, chilling effect upon undocumented aliens who would otherwise be eligible for public benefits under federal law,” wrote U.S. District Judge David C. Bury. “Arizona: Federal Judge Temporarily Blocks Implementation Of Proposition,” *The Frontrunner* (Dec. 1, 2004). At the time of this writing, the constitutionality of Proposition 200 is being challenged in two separate court cases. Johnson, “The Border War,” *supra* note 59.

⁶³ See “Mexican Government Opposes Ban of Public Benefits for Undocumented in Arizona,” *supra* note 60; Carroll and Wingett, “Prop. 200 Now Law in Arizona,” *supra* note 58.

⁶⁴ Tamar Jacoby, in “Flawed Proposition,” *supra* note 40, writes: “The consequences could be positively Orwellian: a bloated bureaucracy, the hassle of constantly producing ID, a much more cumbersome voting process for everyone, Anglo and Hispanic. Add in the costs of likely lawsuits and lost federal aid, and the bill climbs into the hundreds of millions.” FAIR’s 2005 federal agenda includes imposing a national moratorium on all permanent immigration other than spouses and minor children of U.S. citizens and limiting claims of political asylum to individuals who were legally present in the U.S. at the time the triggering event occurred. “An Immigration Reform Agenda for the 109th Congress” (Jan. 2005), available at <<http://www.fairus.org/ImmigrationIssueCenters/ImmigrationIssueCenters.cfm?ID=2613&c=12>> (last visited Feb. 27, 2005).

⁶⁵ See Comprehensive U.S. Sustainable Population, “About This Site: Alan Kuper, Ph.D.,” *supra* note 43.

⁶⁶ Groundswell Sierra press release, “Breaking News: Sierra Club Ballots en Route to Sierra Club Members” (March 2005), available at <<http://www.groundswellsierra.org/index.php>> (last visited Apr. 5, 2005). An earlier membership vote pushed by anti-immigration activists inside the Sierra Club, led by Alan Kuper, the chair of the Ohio chapter’s Population-Environment committee and one of the original leaders of SUSPS, occurred in 1998; results showed 40% of Sierra Club members supporting the

approved, move Sierra Club policy in the direction of advocating greater restrictions upon immigration into the United States.⁶⁷

Part II. What Should Environmentalists Know about Immigration and Immigrants?

A. Guards at the Golden Door

By the 1880s, the U.S. Congress had clearly announced last-call for open borders.⁶⁸ The European-American voting majority had begun to feel uncomfortable with Chinese workers who remained after the completion of the western railroad construction.⁶⁹ Since that time, border laws have often displayed tendencies — some flagrant, some subtle — to disproportionately impede the entrances and the naturalizations of people classified as non-white, poor, or political non-conformists.⁷⁰ In a well-known opinion issued a hundred years after the federal controls began, one court called the Immigration and Nationality Act's⁷¹ growing list of exclusion

immigration restriction proposal over a board-sponsored alternative. See Sierrans for U.S. Population Stabilization (SUSPS), "Sierra Club Election Report: SUSPS Population-Immigration Ballot Question" (Apr. 25, 1998), available at <http://www.susps.org/info/election_results.html> (last visited Apr. 3, 2005).

⁶⁷ *Id.*; see also Leon Kolankiewicz and Roy Beck, "Forsaking Fundamentals: The Environmental Establishment Abandons U.S. Population Stabilization," Center for Immigration Studies Paper 18 (Mar. 2001) at n. 84, available at <<http://www.cis.org/articles/2001/forsaking/why.html>> (last visited Apr. 3, 2005).

⁶⁸ See Legomsky, *supra* note 1, at 2, 27, 381.

⁶⁹ *Id.* at 14. This was the beginning of an extensive historical pattern. See, e.g., Francisco E. Balderrama & Raymond Rodriguez, *Decade of Betrayal: Mexican Repatriation in the 1930s* (1995) (describing systematic ejection of persons of Mexican ancestry during the Great Depression); Juan Ramón García, *Operation Wetback: The Mass Deportation of Mexican Undocumented Workers in 1954* (1980) (discussing the mass removal of Mexican immigrants). Both works are cited by Johnson, *supra* note 53, at n. 35.

⁷⁰ See Johnson, *supra* note 53, explaining that border controls in the United States historically have tended to be race- and class-based, and that even today, "the laws' racial impacts stand in tension with modern notions of equality." For commentary addressing the history of exclusion on these bases as well as that of political opinion, see Legomsky, *supra* note 1, at 50-88 and 382-414.

⁷¹ Pub. L. No. 82-414, 66 Stat. 166 (1952) (as amended and codified in scattered sections of 8 U.S.C.).

grounds "a magic mirror, reflecting the fears and concerns of past Congresses."⁷²

And so, through its weighty accumulations of statutory provisions, the United States already restricts immigration.⁷³ Each further tightening of border controls is a self-imposed restriction on human potential.⁷⁴ People need the valve of free movement to ease the tension of political sturm und drang, and the interest of most human beings in striving to live up to our capacities leads us to long for chances to escape poverty, persecution, war, and natural disasters. But arguably the main reason to allow immigration, in an era when U.S. capital is displacing millions around the globe, is justice.⁷⁵ Climate change issues bring to the

⁷² Legomsky, *supra* note 1, at 381 (citing *Lennon v. INS*, 527 F.2d 187, 189 (2d Cir.1975)).

⁷³ Professor Johnson explains:

The current default rule is that a noncitizen is presumed to be inadmissible unless he or she establishes eligibility to enter the country. One could envision a system in which that presumption is reversed — that a noncitizen is presumed admissible unless the government establishes that he or she is a threat to the public order. This would represent a move from presumptively closed borders to presumptively open borders and would be more consistent with liberal theory.

See Johnson, *supra* note 53.

⁷⁴ See Kevin Johnson, *id.*, stating: "Although arbitrary constructs, borders contribute to suffering and inequality that is difficult to justify. The accident of place of birth effectively may create a life of relative opportunity or deprivation."

⁷⁵ As for the peril most relevant here, George Monbiot recently wrote to highlight the "profoundly unfair and undemocratic nature of decision-making" at the World Bank, noting that both the bank and the International Monetary Fund were founded by a U.S. economist who "laid the ground for what was to become the dollar's global hegemony." George Monbiot, "I'm with Wolfowitz: Liberal Handwringing over the World Bank Simply Reflects a Failure to Recognise the Role It Exists to Fulfil," *The (London) Guardian* (Apr. 5, 2005), available with citations at <<http://www.monbiot.com/archives/2005/04/05/im-with-wolfowitz/>> (last visited Apr. 18, 2005). Monbiot further explains that Robert McNamara, as World Bank president, argued that the bank should not fund land reform because it "would affect the power base of the traditional elite groups." *Id.* McNamara oversaw the deforestation of Nepal and the Amazon. *Id.* More recently, in March of 2005, the bank's executive directors approved the construction of the Nam Theun 2 dam in Laos, which, as Monbiot observed, "will flood 6,000 people out of their homes, damage the livelihoods

forefront one aspect of that dynamic, as described in the next subsection.

B. The Growing Threat: Admissions, or Emissions?

While some claim that new entrants into U.S. territory pose an environmental threat, a real threat is emitted from this very territory into the global commons.⁷⁶ Predicted changes in climate, largely the unintended consequences of wealth-creation through the burning of fossil fuels and deforestation,⁷⁷ threaten to wreak overwhelming environmental havoc, leading scientists and security experts to suggest that the possibility constitutes the most serious security danger facing the U.S. populace today.⁷⁸ The United States is responsible for disproportionate amounts of the atmosphere's excess greenhouse gases;⁷⁹ yet, together with Australia,

of a further 120,000, destroy a critical ecosystem" and also "generate enormous construction contracts for western companies." *Id.* See also Pope, "Lessons of the Immigration Debate," *infra* note 88. And see Legomsky, *supra* note 1, at 250 (observing that "the law has recognized exceptions to the no-duty-to-rescue rule" generally accepted by scholars on torts; for example: "One exception is that a person who even innocently created the peril to another has a duty to render reasonable assistance." *Id.* (internal citations omitted).

⁷⁶ Reuters, "Official: Global Warming Bigger Threat than Terrorism," CNN.Com (Feb. 6, 2004) available at <<http://www.cnn.com/2004/WORLD/americas/02/05/canada.environment.reut/>> (visited Feb. 27, 2005) (quoting Canadian Environment Minister David Anderson as saying, "Terrorism will come and go, it has in the past...and it's very important. But climate change is going to make some very fundamental changes to human existence on the planet.").

⁷⁷ See generally U.S. Dept. of Energy, Energy Information Administration, "Emissions of Greenhouse Gases in the United States 2003," Report #: DOE/EIA-0573 (2003) (released Dec. 13, 2004); available at <<ftp://ftp.eia.doe.gov/pub/oiaf/1605/cdrom/pdf/ggrpt/05730.3.pdf>> (last visited Feb. 27, 2005).

⁷⁸ See Mark Townsend and Paul Harris, "Now the Pentagon Tells Bush: Climate Change Will Destroy Us," *The (London) Observer* (Feb. 22, 2004), available at <<http://observer.guardian.co.uk/international/story/0,6903,1153513,00.html>> (last visited Apr. 13, 2005) (discussing the 2004 report co-ordinated by Pentagon adviser Andrew Marshall, "An Abrupt Climate Change Scenario and Its Implications for U.S. National Security."). For more information on the report and its authors, see *infra* notes 150-54 and surrounding text.

⁷⁹ Activity in the United States — home to about 5 percent of the world's population — generates approximately 24 percent of the extra greenhouse gases that presently endanger the global atmosphere. See "Emissions of Greenhouse Gases in

it has courted disaster through its undermining of the relevant international emissions limits.⁸⁰

In February 2005, after 13 years of negotiation, the Kyoto protocol on climate change came into force.⁸¹ The treaty has inherent limitations, including an expiry date in 2012; and it is due largely to steady undermining by the United States that there has so far been no progress in designing a replacement.⁸² It is incongruous, given this context, to think of the U.S. as an environmental utopia, justifying special barriers to the wretched refuse of other teeming shores.

Environmental disasters are poised to accelerate, if global climate change keeps up at the rate the U.N. and even the Pentagon have feared it might.⁸³ The

the United States 2003," *supra* note 77, at 2. For constantly updated U.S. and world population data, see U.S. Census Bureau, available at <<http://www.census.gov/index.html>> (last visited Feb. 27, 2005).

⁸⁰ See George Monbiot, "Mocking All Our Dreams," [Johannesburg] Mail & Guardian Online (Feb. 22, 2005), available at <http://www.mg.co.za/articlePage.aspx?articleid=198070&area=/insight/insight_international/> (last visited Feb. 27, 2005); see also Reuters, "Kyoto Debate Heats Up in Australia," CNN.Com (Feb. 16, 2005) <<http://edition.cnn.com/2005/TECH/science/02/15/kyoto.australia.reut/>> (last visited Feb. 27, 2005) (quoting Australian Greens Senator Kerry Nettle, who denounced the Australian government for not ratifying Kyoto, as stating, "Australia and the U.S. are absolute pariahs on this issue").

⁸¹ See "Kyoto Protocol to the United Nations Framework Convention on Climate Change," available at <<http://news.lp.findlaw.com/hdocs/docs/kyoto/kyotoprotocol.pdf>> (last visited Feb. 27, 2005).

⁸² See Monbiot, "Mocking All Our Dreams," *supra* note 80.

⁸³ In 2004, the World Bank received recommendations from an independent panel appointed to assess the environmental and human rights impacts of the Bank's investments in gas, coal, oil, and mining. The panel's recommendation was to phase out all investments in fossil fuels over the next eight years. See "Draft World Bank Group Management Response to 'Striking a Better Balance: The World Bank Group and Extractive Industries – The Final Report of the Extractive Industries Review'" (Jun. 4, 2004) available at <<http://www.worldbank.org/ogmc/files/eirmanagementresponse.pdf>> (last visited Feb. 28, 2005). Climate change "should be elevated beyond a scientific debate to a U.S. national security concern," said Peter Schwartz, CIA consultant and former head of planning at Royal Dutch/Shell Group, and Doug Randall of the California-based Global Business Network, regarding a report they were commissioned to carry out for the Pentagon. See *supra* note 78. Scientists have also expressed concern that warming is a likely factor in the

catastrophes are predicted to include more islands submerging under waves generated from unnatural causes.⁸⁴ Climatologists who met at the British government's conference in February 2005 heard that a rise of just 2.1 degrees Celsius (3.8 Fahrenheit), almost certain to happen this century, will confront as many as three billion people with water stress.⁸⁵ This, in turn, is likely to result in tens of millions of deaths;⁸⁶ it is also likely to result in pressure for more migration, not less.⁸⁷ Could the United States government claim to bar the ensuing migrations with clean hands? And in any case, where are these islanders to go? What is the environmentalist's logical reason for agreeing that they go somewhere else, but not here?⁸⁸ These critical policy

unexpected collapse of part of the massive west Antarctic ice sheet. Jenny Hogan, "Antarctic Ice Sheet Is an 'Awakened Giant,'" *New Scientist* (Feb. 2, 2005), *available at* <<http://www.newscientist.com/article.ns?id=dn6962>> (last visited Feb. 27, 2005).

⁸⁴ Antarctica contains more than 90% of the world's ice, and the loss of any significant part of it would cause a substantial sea level rise. *Id.* Bikeman island, in the Kiribati group, is now submerged, forewarning similar outcomes for other Pacific islands. Curtis A. Moore, "Awash in a Rising Sea: How Global Warming Is Overwhelming the Islands of the Tropical Pacific," *Int'l Wildlife* (cover story, Jan.-Feb. 2002), *available at* <http://www.findarticles.com/p/articles/mi_m1170/is_2002_Jan-Feb/ai_80903889/> (last visited Feb. 28, 2005). Rising temperatures expel tiny algae from coral reefs, starting a process that can lead to mass mortality of marine life. *Id.* Since 1980, this previously unusual occurrence has affected areas throughout the Pacific, striking most of Fiji's reefs and killing 15 percent of them; scientific experts believe the phenomenon is connected with global warming. *Id.*

⁸⁵ Monbiot, "Mocking All Our Dreams," *supra* note 80.

⁸⁶ *Id.*

⁸⁷ Residents of Tuvalu, which consists of nine coral atolls strung over 360 miles, have appealed to Australia and New Zealand to grant them permanent residence if their islands are submerged. Moore, *supra* note 84. The pressure on human life is multi-layered. "Warming and the growing intensity of extreme weather events have contributed to the increased severity of dengue fever outbreaks in Fiji, Samoa and other parts of the world," according to Dr. Paul R. Epstein, associate director of the Center for Health and the Global Environment at Harvard Medical School. *Id.*

⁸⁸ The Sierra Club's Executive Director has noted the irony in telling the rest of the world's people: "We know that our way of life is fatal to the biosphere, but we don't plan to change it, and we can't afford to have you join us. Please don't imitate us back in your own countries either." Carl Pope, "Ways & Means: Moving On; Lessons of the Immigration Debate" [hereinafter "Lessons of the Immigration Debate"] (Jul. 1998)

issues will need to be addressed in an informed setting.⁸⁹

available at <<http://www.sierraclub.org/sierra/199807/ways.asp>> (last visited Mar. 1, 2005).

⁸⁹ For an article published in the Sierra Club's magazine to show the conflicting views of immigrants themselves ("One wants to build bridges, the other walls. What's the best way to deal with a growing world population?"), see Marilyn Berlin Snell, "A Tale of Two Immigrants" in *Sierra*, *available at* <<http://www.sierraclub.org/sierra/200411/immigrants.asp>> (last visited Apr. 12, 2005). Although environmental migrants are mentioned in the article, the unprecedented surge associated with the climate change expected by scientists is not. Thus, a debate is framed without accounting for the urgency that the current scientific knowledge requires. More on point here is Pope, "Lessons of the Immigration Debate," *supra* note 88, stating:

Proponents of immigration restrictions tried to make their own global case. Because Americans consume more than their share of natural resources, they argued, it follows that the more Americans, the more environmental destruction globally. The problem with immigration, this position suggests, is that it raises the living standard of those who come here. But raising living standards elsewhere would have the same effect, so this logic would compel us to oppose economic growth in the Third World as well.

There is no doubt that Americans use too many natural resources, and in doing so generate a disproportionate amount of pollution—more carbon dioxide, for example, than any other nation. But the average inhabitant of Mexico City puts more pollution into the atmosphere than the average Angeleno; the average Greek accounts for more heavy metal in the ocean than the average American; and adding 100,000 people to the population of Sumatra displaces more critical habitat for more endangered species than adding the same number to New York or Illinois.

Some people leave their homes looking for a better life, while others are forced to leave because of war, repression, environmental degradation — and sometimes U.S. policy. In three short years since the approval — over Sierra Club objections — of the North American Free Trade Agreement, its agricultural provisions have forced some 400,000 families off the land in Mexico. Many of those displaced headed for El Norte. The proposed remedies to the financial crisis in Asia — backed by the United States and the International Monetary Fund — could, if adopted, send another tidal wave of migrants across the world. Rather than slamming the door, members directed the Club to devote its energies to global stewardship, to mitigating the conditions that drive people from their homes.

Sierra Club Executive Director Carl Pope has acknowledged this need, writing:

Immigration restrictions don't solve environmental problems, they merely shift them elsewhere. Proponents of the immigration-restriction initiative argued that we need to protect our own backyard, or "lifeboat," in environmental philosopher Garrett Hardin's metaphor. ... Instead of a lifeboat, the Sierra Club chose Buckminster Fuller's vision of "Spaceship Earth." After all, the lesson of the Kyoto Global Warming Summit was that the nations of the earth must act not only individually but also in coordination. Photos from the Mauna Loa Observatory in Hawaii show a huge brown plume carrying pollution to the West Coast of the United States from coal-fired power plants in Asia — at the same time that U.S. carbon dioxide emissions threaten to warm the earth enough to flood out hundreds of millions of people in Bangladesh and island nations.... The approach adopted by Sierra Club members ... encourages us to tackle the human and environmental tragedies that force people to migrate. It suggests that global overpopulation can best be solved by providing all people a decent standard of living and by giving all women the means to control their fertility.⁹⁰

Thus, the Sierra Club's leadership does acknowledge that immigration is simply one facet of a broader human population dynamic.⁹¹ The National Research Council of the U.S. National Academy of Sciences provides confirmation of this position, noting that "immigration involves primarily a redistribution of the world's population, not an absolute increase," and additionally stating:

Indeed, since the fertility of immigrants tends to decline after they come to the United States, total world population will be slightly lower...From a world perspective, (negative)

Id.

⁹⁰ Pope, "Lessons of the Immigration Debate," *supra* note 88.

⁹¹ See "Hostile Takeover," SPLC INTELLIGENCE REPORT, *supra* note 14 (interviewing Sierra Club past president J. Robert Cox). Regarding a chronology of the group's policies on human population from 1965 through 2003, *see* note 45, *supra*.

environmental effects in the United States may be counterbalanced by possible (positive) effects in the sending countries that are losing population. Total consumption by immigrants will typically be higher in the United States than in the places they left (which, after all, is one reason they immigrated), but efforts to abate environmental effects at any given level of consumption may also be higher in the United States.⁹²

Similarly, Walter A. Ewing has pointed out that "levels of resource consumption and environmental destruction are not directly correlated with population, even in countries with similar standards of living."⁹³ Dr. Ewing adds:

Rather, they are conditioned by a host of other factors, such as the degree to which a society depends upon polluting and non-renewable fossil fuels; utilizes pollution-reduction technologies; develops systems of mass transit to minimize individual automobile use; uses plastics and other non-biodegradable materials in manufacturing and packaging consumer goods; recycles potentially recyclable materials; and controls agricultural run-off into waterways. Put differently, a few people can pollute a lot, or a lot of people can pollute a little, depending on the systems of production

⁹² See James P. Smith & Barry Edmonston (Eds.), National Research Council of the National Academy of Sciences, "The New Americans: Economic, Demographic, and Fiscal Effects of Immigration" (1997) at 99, *available through* The Nat'l Academies Press at <<http://www.nap.edu/books/0309063566/html/99.html>> (last visited Apr. 14, 2005). Compare the statement of Carl Pope, who urges:

There is also much to be done in our own country. The United States has the highest fertility rate in the industrialized world, the highest rate of teen pregnancy, and the highest rate of unplanned pregnancies. (We have more unplanned pregnancies than we have immigrants — 1.3 million versus 1 million.) Bringing down these scandalous numbers would give the rest of the world a model, not a slap in the face.

See Pope, "Lessons of the Immigration Debate," *supra* note 88.

⁹³ Walter A. Ewing, Immigration Policy Brief, "Missing the Forest for the Trees: The Environmental Arguments of Immigration Restrictionists Miss the Point" (American Immigration Law Foundation; March 2004), *available at* <http://www.aifl.org/ipc/policy_reports_2004_missingtheforest.asp> (last visited Feb. 26, 2005).

and consumption within a society.⁹⁴

A critical question, then, is how to explore means of transcending a lifestyle largely based on such destructive practices as burning fossil fuels, contributing to water pollution through animal agriculture, and using excessive packaging. Some immigrants embrace those practices, but often because they come wrapped in the notion of the American dream rather than the environmental nightmare they comprise. Moreover, the flashy U.S. fast food restaurants proliferating throughout the world promote extravagance and despoliation as palatable, which has the infelicitous effect of turning environmental neglect into a badge of affluence.⁹⁵ The energies of U.S.-based environmentalists would be more effective if focused on curbing this national vice,⁹⁶ rather than on campaigning in vain against the aspirations of human beings in motion.⁹⁷

⁹⁴ *Id.*

⁹⁵ See "Emissions of Greenhouse Gases in the United States 2003," *supra* note 77, at 39 (detailing the global warming effect of animal-based agriculture).

⁹⁶ The U.S. Department of Commerce counts 56 million acres of land used to produce hay to maintain animals bred to be food; only 4 million acres produce vegetables for direct human consumption. "Global Meat Consumption Has Far-Ranging Environmental Impacts," *WORLD WATCH MAGAZINE* (Jul.-Aug. 2004), available at <<http://www.worldwatch.org/press/news/2004/06/21/>> (last visited Apr. 3, 2005).

⁹⁷ Johnson, "Open Borders?," *supra* note 53, notes that policymakers often support immigration controls without consideration of whether the enforcement of immigration restrictions is in fact possible, and that

in light of technological and transportation improvements combined with migration pressures, growing pains from the demographic change in the United States are in some ways inevitable. The sensible approach is to adopt laws and policies that facilitate these changes, rather than to seek to prevent the inevitable.

Id. Rather than deterring undocumented immigration and reducing the undocumented immigrant population, the aggressive border enforcement strategies adopted in the 1990s appear to have increased the permanent settlement of undocumented immigrants in the United States. See Johnson, *supra* note 53, at n. 45 (citing U.S. GEN. ACCOUNTING OFFICE, *ILLEGAL IMMIGRATION: SOUTHWEST BORDER STRATEGY RESULTS INCONCLUSIVE; MORE EVALUATION NEEDED* (Dec. 1997)). And notwithstanding aggressive enforcement at the borders after the infamous terrorist acts of 2001, undocumented migration continues at the same levels as it did previously. See Johnson, *supra* note 53 (internal citations omitted).

C. The Blowback of Fairness

Finally, opponents of tightening immigration controls have reasonably proposed campaigns in support of fair trade policies that encourage higher wages for workers in financially poorer countries.⁹⁸ Such campaigns would make efforts to reduce the intense economic pull of people across U.S. borders.⁹⁹ In direct contrast to that humane perspective, those opposed to immigration on environmental grounds may feed the vigilante psychology that opposes migration not only over national borders, but also along perceived ethnic and racial boundaries.¹⁰⁰

A general agreement to advocate for fair trade policies between the United States and other regions — and decided upon in a way that takes seriously the input of those in the global south whom they are designed to impact — would address Sierra Club board member Paul Watson's concern about an unsustainable future when, "by the end of the century, the U.S. will have one billion people."¹⁰¹ And in fact, the global population by the end of the century will change not due to human migration, but as a result of human procreation. Come mid-century, the United States will be retiring the youngest members of its baby-boom work force, and will demand more workers due to the heightened

⁹⁸ See "Hostile Takeover," SPLC INTELLIGENCE REPORT, *supra* note 14 (interviewing Sierra Club past president J. Robert Cox). See also Kevin R. Johnson, "Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States," 27 *U.C. DAVIS L. REV.* 937 (1994).

⁹⁹ Johnson, *id.*

¹⁰⁰ See Johnson, *supra* note 53 (identifying "nativism and racism" as "a strong undercurrent to this country's immigration history"). Professor Johnson also observes the ways in which "border restrictions have contributed to the maintenance of a large and easily exploited undocumented immigrant workforce in the United States" — a force "primarily composed of immigrants of color from the developing world." *Id.* In this way, Professor Johnson explains, the worker exploitation issue overlaps considerably with concerns about racial discrimination effectively encouraged by the U.S. immigration laws. See *id.*

¹⁰¹ See Rosenfeld, "Population Bombshell," *supra* note 9. The U.S. population now exceeds 295 million. U.S. Census Bureau, available at <<http://www.census.gov/>> (last visited Mar. 14, 2005). At the time of the elections, it was over 292 million. See Bustillo, "Anti-Migrant Slate Rejected by Sierra Club," *supra* note 7.

mortality rate of the older retirees.¹⁰² Along with fair trade policies, liberal migration policies would anticipate this demand in the most just way and the most sensible way. Attempting to replenish the work force by counting on adjustments in the birth rate amongst the U.S.-born while barring immigrant workers might be attractive local politics; but it is myopic in the global sense. It would be a tragic irony indeed if we dislodge our entire civilization from its planetary niche due to the self-interest of tribalism.

Fair trade, complemented by liberal migration policies, would not uproot racism; but as a practical matter it would play a significant part in answering Frank Morris's concerns about displacement of African-American workers. Actively and seriously campaigning for fair trade is a way of seeking positive alternatives to campaigns based on nativist platforms,¹⁰³ particularly in light of minority communities' long struggle to end the sort of racial or ethnic profiling that immigration enforcement has eroded in recent times.¹⁰⁴ Moreover, the prosecutorial emphasis on which a restrictionist platform relies has long rankled the African-American

¹⁰² See Commission on Behavioral and Social Sciences and Education, "The New Americans: Economic, Demographic, and Fiscal Effects of Immigration (1997) at 76, available through The Nat'l Academies Press at <<http://books.nap.edu/books/0309063566/html/76.html>> (last visited Feb. 26, 2005).

¹⁰³ This article uses the term "nativism" to refer to an ideological preference for people born on U.S. territory over immigrants.

¹⁰⁴ Profiling by police gained national attention in 1998 when two New Jersey state troopers admitted shooting at a van occupied by four people in an incident that state officials later acknowledged as racial profiling. See "Bush Orders Racial Profiling Ban," CBS News (Jun. 18, 2003), available at <<http://www.cbsnews.com/stories/2003/06/26/politics/main/560558.shtml>> (last visited Apr. 6, 2004). The Bush Administration has issued a policy against profiling, but the policy, which has been criticized by civil liberties groups for stopping short of mandating actual legislation, exempts work that authorities deem relevant to national security or border security. *Id.*; see also Sam Howe Verhovek, "A Nation Challenged: Civil Liberties; Americans Give in to Race Profiling," N.Y. Times (Sep. 23, 2001) at A1 (citing nearly 60 percent in support of profiling in the interest of addressing anti-terrorism fears). A poll of Michigan residents found that while 70 percent generally opposed racial profiling, 70 percent nevertheless responded that "authorities should take extra precautions in screening people of Arab descent when flying." Gregg Krupa, "Most in State Support Screening of Arabs," Detroit News (Feb. 28, 2002) at A1. Whether these polls are more effective at gauging the public mood than creating it is an important question, but beyond the capacity of this article to resolve.

community.¹⁰⁵ As for profiling that targets Muslim, Arabs, and Arab-Americans, which is particularly closely linked today with deportation and visa restrictions, it is worth noting that many names associated with Islamic roots are African or African-American.

Part III. Where Does Animal Advocacy Come In?

While the concept of alliances between animal advocates and immigration restrictionists wanting to influence the Sierra Club has been the subject of many media reports, the role that animal advocates could actually play has been less thoroughly discussed. The issues, however, are serious: Do environmentalists view other animals as resources to be protected? As objects of aesthetic interest? Or should environmentalists take the position that animals, other than the human ones, have their own interests?

The Sierra Club identifies its mission as environmental advocacy for people.¹⁰⁶ The Club's respect for humanity can be shared by animal rights theorists. One need not be a misanthrope to see animal advocacy as having a valid place in the Club, or in environmentalism generally.¹⁰⁷ And yet, more than a decade since J. Baird Caldicott urged environmentalists to accord moral consideration to non-human animals,¹⁰⁸ traditional forms of environmental discourse prevail — forms which have yet to accommodate the idea that animals might have

¹⁰⁵ Immigration-related concerns continue to augment U.S. society's acceptance of, and reliance on, police authority. See Mae M. Cheng, "Budget Would Increase INS Funds 24%," N.Y. Newsday (Feb. 6, 2002) at A34 (observing that the Immigration and Naturalization Service's fiscal year 2003 budget plan's increase over that of 2002 would mean that "[a]bout \$712 million of the \$1.2 billion in additional funding would go to enforcement efforts at U.S. borders").

¹⁰⁶ Executive Director Carl Pope has said that the Club's "dominant perspective has been to protect nature for people." Miguel Bustillo and Kenneth R. Weiss, "Election Becomes a Fight over Sierra Club's Future," L.A. Times (Jan. 18, 2004) at A1.

¹⁰⁷ A holistic animal-rights movement does show consideration for the environment, for the clear reason that no conscious life can exist apart from nature.

¹⁰⁸ See J. Baird Caldicott, "On the Intrinsic Value of Nonhuman Species," in *In Defense of the Land Ethic: Essays in Environmental Philosophy* 129, 153-55 (1989), cited in Holly Doremus, "The Rhetoric and Reality of Nature Protection: Toward a New Discourse" [hereinafter "The Rhetoric and Reality of Nature Protection"], 57 Wash. & Lee L. Rev. 11 (2000) at n. 154.

interests of their own, rather than exist as part of the inanimate world.

And as part of nature as a whole, their legal status is bleak, if we look to the rhetoric of current environmental laws as indicative. Professor Holly Doremus has claimed that arguments for protecting natural resources have proven self-contradictory. Concentrating primarily on the material or aesthetic value of the natural world, ignoring other values, these arguments follow the short-term or personal preferences of the territory's human residents, and suggest that no action need be taken until disaster looms.¹⁰⁹ Doremus writes:

Nature advocates have obtained much of what they have asked for, but they have not asked for what they really want. In the interest of achieving political success, nature advocates have deliberately limited the vocabulary they use to describe the problem of nature protection. Not surprisingly, the political success they have achieved does not go beyond the problem they have articulated.¹¹⁰

John Muir, who helped establish the Sierra Club,¹¹¹ combined the political rhetoric of conceptualizing

¹⁰⁹ Doremus, "The Rhetoric and Reality of Nature Protection," *supra* note 108, at 46.

¹¹⁰ See Doremus, *id.*, at 14. Doremus prefers aesthetic and ethical discourses to reliance on "sustainable development" theories, for the latter value nature as a material resource and may give primacy to economic uses. *Id.*, at 65, and n. 331 (defining "sustainable development" as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (internal citation omitted). Yet the aesthetic grounds also have shortcomings, argues Doremus, as protecting a handful of spectacular areas may allow us to rationalize the rampant destruction of nature over much larger areas. *Id.* at 50 (internal citations omitted). Further progress in the area of nature protection, Doremus concludes, will require a broader political discourse, creating both a place for humans in nature and a place for nature in human lives. *Id.*, at 15.

¹¹¹ Colleagues "suggested to Muir that an association be formed to protect the newly created Yosemite National Park from the assaults of stockmen and others who would diminish its boundaries." The Sierra Club, John Muir Exhibit, "John Muir: A Brief Biography," available at <http://www.sierraclub.org/john_muir_exhibit/> (last visited Apr. 6, 2005) In 1892, Muir and several others founded the Sierra Club to, in Muir's words, "do something for wildness and make the mountains glad." *Id.* Muir served for life as the Club's president (until 1914). *Id.*

nature as a composite of material resources¹¹² and as an aesthetic benefit to humanity¹¹³ when supporting the establishment of a national forest system, whose primary purpose would be to ensure a perpetual national timber supply.¹¹⁴ Although the forests were obviously finite, with proper management Muir believed they could supply "a never failing fountain of wealth and beauty."¹¹⁵

Given the inherent growth needs of the capitalist system, it is naïve to disregard the likelihood that economic values will prevail.¹¹⁶ And indeed, although aesthetic arguments contributed significantly to the adoption of Progressive-era nature protection laws,¹¹⁷

¹¹² Early in the twentieth century, such economic arguments buttressed the creation of a National Park Service. The legislative history explains: "The great trend toward the parks means retaining in this country the millions expended by our tourists in foreign travel previously spent abroad." Doremus, "The Rhetoric and Reality of Nature Protection," *supra* note 108, at 28 (citing H.R. Rep. No. 64-700, at 2 (1916)).

¹¹³ This brought a theme that had already been developed in art and literature into political discussions. See Doremus, *id.*, at 49. In U.S. literature, the aesthetic discourse reached a pinnacle in the work of Henry David Thoreau. See Doremus, *id.*, at 24, citing, at n72, Henry David Thoreau, *The Journal of Henry D. Thoreau* 294 (Bradford Torrey & Francis H. Allen eds., 1984): "This earth which is spread out like a map around me is but the lining of my inmost soul exposed."

¹¹⁴ Doremus, *id.*, at 62-64 (internal citations omitted).

¹¹⁵ *Id.* at 63 (citing John Muir's essay "The American Forests" in *Our National Parks* (1901), at 360). In the book's preface, Muir wrote:

I have done the best I could to show forth the beauty, grandeur, and all-embracing usefulness of our wild mountain forest reservations and parks, with a view to inciting the people to come and enjoy them, and get them into their hearts, that so at length their preservation and right use might be made sure.

John Muir, in the preface to *Our National Parks* (1901), *cited in* Doremus, *id.*, at n. 83.

¹¹⁶ Professor Doremus characterizes as "optimistic" the internationally popular concept of sustainable development, which considers nature sufficiently resilient to support continued economic development and human exploitation, with careful management. For related discussion, see Doremus, *supra* note 108, at 23; also see *supra* note 110.

¹¹⁷ Doremus, *id.*, at 25-27 (citing, e.g., the creation of Yellowstone National Park via the Act of March 1, 1872, ch. 24, 17 Stat. 32).

the limitations of the framework quickly became apparent, when people with less rugged tastes convinced legislators that modifying nature could actually increase its beauty.¹¹⁸ Doremus suggests, then, that an effective environmentalism would emphasize the idea of nature itself as an intrinsically valuable object of moral obligations.¹¹⁹ The animals living freely in nature would benefit most directly from a paradigm that declines to see nature as a mere source of material value; alternatively, that material value should be respected for providing to such animals the material needed to meet their most basic needs and interests. In other words, non-human animals should be freed from the limitations our current legal paradigm imposes, for as long as they carry the status of things to serve human interests, by simple operation of law we obstruct our ability to perceive them as beings with their own interests in, and experiences of, the natural world.¹²⁰ As

¹¹⁸ Doremus, *id.*, at 27-28, 49 (internal citations omitted).

¹¹⁹ *But see id.* at 63-64 (suggesting that a workable ethic must see humans as part of nature). Much of what Doremus classifies as the moral argument to date is infused the material. For example, although the Endangered Species Act of 1973 is often applied in terms of conservation of resources, Doremus finds strains of the ethical discourse behind the scenes of its enactment, because “[s]ome legislators were bold enough to assert directly that human-caused extinction was morally wrong.” *Id.*, at 39 (internal citations omitted). Yet the same arguments could be applied to the stealing of property. Doremus states that “the ecological horror story” encouraged Congress to pass the National Environmental Policy Act in 1969 the Endangered Species Act in 1973. *See id.* at 21, and at n. 56. Doremus expounds upon the idea of the horror story by describing the motivation of legislators and witnesses as concern about the disruption of the balance of nature; “many speculated that human survival was at risk.” *Id.* at 21. Also influential in this period was Rachel Carson’s 1962 book *Silent Spring*, which begins with a warning of a future in which chemical pesticides transform a village into a biotic wasteland bereft of spring songbirds. *See id.* at 19. Given that Doremus states, at 14, that “the material discourse has often been reduced to the ecological horror story, warning that careless treatment of nature may result in ecological catastrophe,” internal consistency requires us to see Doremus’s view of the ethical discourse to date as inhibited by material arguments.

¹²⁰ About rattlesnakes, John Muir wrote:

Certainly they cause not the hundredth part of the pain and death that follow the footsteps of the admired Rocky Mountain trapper. Nevertheless, again and again, in season and out of season, the question comes up, “What are rattlesnakes good for?” As if nothing that does not obviously make for the benefit of man had any right to exist; as if our ways were God’s ways. Long ago, an Indian to

Dale Goble and Eric Freyfogle have pointed out, “[e]nvironmental law, once focused on direct threats to human health, now is concerned with assaults on non-human life”.¹²¹ This suggests a recent willingness to perceive non-human animals as more than simply part of the legal landscape.¹²²

Such proposals, however, are slow to make an impression on with large, donor-reliant organizations. About one in five current Sierra Club members is an angler or hunter.¹²³ And although The U.S.

whom a French traveler put this old question replied that their tails were good for toothache, and their heads for fever. Anyhow, they are all, head and tail, good for themselves, and we need not begrudge them their share of life.

From John Muir’s essay “The Yellowstone National Park,” in *Our National Parks* (1901), available at <[http://www.yosemite.ca.us/john_muir_writings/our_national_parks/cha](http://www.yosemite.ca.us/john_muir_writings/our_national_parks/chapter_2.html)pter_2.html> (last visited Apr. 9, 2005).

¹²¹ Dale D. Goble & Eric T. Freyfogle, *Wildlife Law* (2002), preface page v. Although courts have applied stringent tests for standing in cases on behalf of non-human animals — most notably in *Lujan v. Defenders of Wildlife* 504 U.S. 555 (1992) — successful arguments have been presented that cognizable environmental impact can be incurred by animals themselves. In *Progressive Animal Welfare Society v. Department of the Navy*, the U.S. District Court for the Western District of Washington held that the National Environmental Policy Act of 1969 required the Navy to prepare a “reverse” environmental impact statement before dispatching 100 Atlantic bottle-nosed dolphins at the Trident nuclear submarine base at Puget Sound in Bangor, Washington, as dolphins are an integral part of the environment. 725 F. Supp. 475, 476-78. (W.D. Wash. 1989). The heart of the plaintiffs’ concerns was that the dolphins would not be able to withstand the cold temperatures of Puget Sound and would be isolated in single holding pens. *Id.* at 477. The court held that the Navy’s decision to use the dolphins was a major federal action under the NEPA that required an analysis of the effects of that use on the dolphins themselves. *Id.* at 479.

¹²² The current legal literature is making room for arguments for the extension of constitutional personhood to non-human animals, pursuant to the Fifth, Eighth, Thirteenth, and Fourteenth Amendments. *See* Lee Hall & Anthony Jon Waters, “From Property to Person: The Case of Evelyn Hart,” 11 *Seton Hall Const. L. J.* 1, 13 (2000), cited in *Animal Rights: Current Trends and New Directions* (Cass R. Sunstein & Martha C. Nussbaum, eds., 2004) at 323-24.

¹²³ According to a recent press release by the Sierra Club’s Washington Representative for Fish and Wildlife Issues, “[a]pproximately 20 percent of Sierra Club members reported buying hunting and/or fishing licenses in the past year, and Sierra Club policy explicitly recognizes sport-hunting and

Environmental Protection Agency estimates that livestock waste has polluted more than 27,000 miles of rivers, and the demand for meat has become a driving force behind virtually every major category of environmental damage,¹²⁴ materials offered by the Sierra Club do not face this issue squarely.¹²⁵ Information

fishing as a valuable wildlife management tool." See Bart Semcer, "Sierra Club Reaction to False Accusations by the National Rifle Association, Sets the Record Straight on Gun and Hunting Policies" (Jan. 28, 2005) available at <<http://www.commondreams.org/news2005/0128-13.htm>> (last visited Mar. 3, 2005). The release adds that in 2005 the Sierra Club will be sponsoring a new "Backcountry Sportsman Award." *Id.* Yet John Muir had urged Theodore Roosevelt to give up the "childish habit" of hunting. See Robert Kuhn McGregor, "Make Way" (book review of J. Baird Caldicott and Eric T. Freyfogle, eds., *For the Health of the Land* (1999)), available at Illinois Periodicals Online Project, <<http://www.lib.niu.edu/ipo/ii000730.html>> (last visited Apr. 9, 2005).

¹²⁴ "Global Meat Consumption Has Far-Ranging Environmental Impacts," *supra* note 96.

¹²⁵ More than a hint of contradiction muddies Sierra Club's position on the issue of animal agriculture. For example, the Club has objected to the Environmental Protection Agency's efforts to shield operators of feedlots from prosecution under the Clean Air Act or other environmental laws if they voluntarily allowed the collection of emissions data from their farms. Michael Janofsky, "E.P.A. Offers An Amnesty If Big Farms Are Monitored," N.Y. Times (Jan. 22, 2005) at A8. "Instead of forcing polluters to clean up their act," the Sierra Club said in a statement, "the Bush administration has given them a 'get out of jail free' card." *Id.* Undoubtedly the best way (and, in highly populated world, arguably the only way) to force feedlots to clean up their act involves vegetarianism — a conclusion to which the Sierra Club has chosen not to arrive. See Sierra Club, "Inside Sierra Club: Our Top Priorities" (listing clean water; ending commercial logging; stopping sprawl; forests and wildlands protection and restoration; clean energy; global population; stopping global warming; and responsible trade), available at <<http://www.sierraclub.org/inside/>> (last visited Mar. 3, 2005). Under the section on clean water, factory farms are listed, but the page concludes by recommending "a national online directory of sustainably-raised meat." Sierra Club, "Keep Animal Waste Out of Our Waters: Stop Factory Farm Pollution," available at <<http://www.sierraclub.org/factoryfarms/>> (last visited Mar. 3, 2005). Low-density farms may be easier on their immediate surroundings, but they would lead us to destroy and deplete vast areas of natural land and water; and in a world of finite resources, what appears sustainable for buyers of organic meats in some areas of the United States is not sustainable for the populace in general. Aquifers are running dry the world over, largely due to abstraction by farmers who produce animal products for those who can afford them. See Garrick Utley, "World's Wealthiest 16 Percent Uses 80 Percent of Natural Resources," CNN.Com (Oct. 12, 1999), available at

published in connection with a recent Sierra Club campaign, *The True Cost of Food*, informs readers that three fourths of the land in the continental United States is devoted to agriculture or grazing, and much of the cropland produces grain for cows, not people.¹²⁶ The page stops short, however, of unequivocally advocating a plant-based diet as the best choice of an ecologically informed populace.¹²⁷ Today, vegetarians make up just 1.5% of the general population of the United States, and vegans, who forego all resource-costly animal-based calories, hardly register at all.¹²⁸

To be sure, some thoughtful people in a variety of fields might understandably conflate animal advocacy itself with a tendency to dismiss human needs and goals.¹²⁹

<<http://www.cnn.com/US/9910/12/population.consumption/>> (visited Feb. 27, 2005); George Monbiot, "Why Vegans Were Right All Along: Famine Can Only Be Avoided if the Rich Give up Meat, Fish and Dairy," *The (London) Guardian* (Dec. 24, 2002), available at <<http://www.guardian.co.uk/famine/story/0,12128,865087,00.html>> (last visited Apr. 10, 2005).

¹²⁶ Sierra Club, "The True Cost of Food," available at <http://www.sierraclub.org/sustainable_consumption/truecost/> (last visited Mar. 10, 2005). Moreover, boundary conflicts arise at the edges of the largest nature reserves, notably between free-living animals and cattle ranchers, sometimes ending in routine killings by state wildlife officials. See Doremus, "The Rhetoric and Reality of Nature Protection," *supra* note 108, at 57 (internal citations omitted).

¹²⁷ "The True Cost of Food," *supra* note 126 (including, as resources for further reading, material from a broad spectrum of approaches, including information from the National Campaign for Sustainable Agriculture's "Sustainable Livestock" Committee).

¹²⁸ Sharon Bernstein, "Automakers Getting a Taste for Vegan Values," L.A. Times (Aug. 23, 2004) at A1 (Metro Desk) (citing Joe Marra, executive director of a market research firm that tracks environmentally conscious consumers).

¹²⁹ Moreover, as environmental journalist George Monbiot has pointed out, a small number of vocal animal advocates have enabled crackdowns on civil liberties with repercussions for all who would seek political change, stating:

Among them is a small number of dangerous and deeply unpleasant characters, who appear to respect the rights of every mammal except *Homo sapiens*. This unpopularity is a gift to the state. For fear of being seen to sympathise with dangerous nutters, hardly anyone dares to speak out against the repressive laws with which the government intends to restrain them.

George Monbiot, "Comment: A Threat to Democracy," *The*

Paul Watson, who has been associated with animal protection and environmental activism for more than three decades,¹³⁰ has been quoted as defending the tactic of tree-spiking (driving steel spikes into trees to damage chain saws),¹³¹ an activity denounced publicly in 1990 by Judi Bari for its effect of threatening the safety of timber workers and alienating them from the environmentalist cause.¹³² More recently, Watson said, "I personally cannot get overly worked up about deprivation of human rights in a world where non-

humans have no rights at all."¹³³ Watson continued:

I personally feel that humanity is doomed. We are the last of the hominid primates, and this was a group that was never very successful to begin with — overly territorial, obsessed with trivialities, violent, petty, and completely lacking in empathy for other species. The world will be a much nicer place without us.¹³⁴

Yet humans did evolve, and we comprise, at this time, part of the animal world and the natural world.¹³⁵ Those

[London] Guardian (Aug. 3, 2004) *available at* <<http://www.guardian.co.uk/comment/story/0,,1274676,00.html>> (last visited Feb. 27, 2005).

¹³⁰ In 1972, Watson was a co-founder of Greenpeace, but the group has since distanced itself from Watson's tactics. Anthony Browne, "Eco-Rambo Becomes Film Hero," *The [London] Observer* (Mar. 25, 2001), at 13. Watson has been a board member of the Sierra Club since 2003.

¹³¹ *See* Tree-Spiker in Line for Top B.C. Award," *Toronto Star* (May 20, 1993) at B6. A California sawmill worker was severely disfigured in 1987 when a saw blade hit a spike and shattered in his face. *Id.*

¹³² Gene Lawhorn, "A Worker's Tribute to Judi Bari," presented at University of Oregon's Land, Air and Water (environmental law) Conference (Mar. 15, 1997), *available at* <http://www.judibari.org/lawhorn_worker_tribute.html> (last visited Feb. 27, 2005) (written by the Oregon millworker who prompted Bari to lead the movement against tree-spiking). Watson wrote:

[The 1990 project] Redwood Summer would have us believe that the loggers are not our enemy. Judi Bari considers them her allies while accusing me of being her enemy. The reality of her views are plain. She is acting from an anthropocentric ethical foundation and I am coming from a biocentric base. The hands of the individual who has destroyed a tree are the hands of a person who has murdered a sacred citizen of this planet. Livelihood, material well-being, these are not sufficient justification for this crime against nature. Loggers are pathetic foot-soldiers to the corporate generals of the logging industry. Certainly they are being exploited by the companies, but they have made the decision to be exploited. The trees have not."

Paul Watson, "In Defense of Tree-Spiking," *Earth First! Journal* (Sep. 22, 1990) (reprinted on the Web site of Industrial Workers of the World), *available at* <<http://www.iww.org/unions/iu120/local-1/EF/CPWatson1.shtml>> (last visited Apr. 18, 2005).

¹³³ Sea Shepherd Conservation Society, "The 'Good' Pirate: Interview with Capt. Paul Watson" (edited from a piece which first appeared in the Spring 2003 issue of *Bite Back magazine*), *available at* <http://sealhunt.seashepherd.org/interviews_biteback.html> (last visited Apr. 12, 2005).

¹³⁴ *Id.* For related commentary see Larry Fahn, President; Chuck McGrady, Former President and Current Vice President; and Jennifer Ferenstein, Former President and Current Director, "[Sierra Club] Statement Regarding Comments of Paul Watson, Director, Publicized by the Center for Consumer Freedom," stating in part:

Whatever the individual opinions of any Club leader, the policies of the Sierra Club reflect the values and participation of millions of members over its 112 year history. No leader at any level of the organization has the authority or credibility to deviate from those policies while representing the organization publicly."

Press release dated Sep. 8, 2003, *available at* <<http://www.sierraclub.org/pressroom/releases/pr2003-09-08.asp>> (visited Mar. 3, 2005). Presumably, the Club leaders were reacting to Center for Consumer Freedom's distribution of comments made at a 2003 animal welfare conference in Los Angeles, where Watson claimed to owe "no allegiance to humanity" and suggested that it would be appropriate for environmentalists to "rise up and rip those loggers limb from limb." *See* Center for Consumer Freedom, "Sierra Club: Ever More Radical" (Sep. 4, 2003), *available at* <http://www.consumerfreedom.com/news_detail.cfm?headline=2103> (last visited Mar. 3, 2005). The Center for Consumer Freedom is, according to its website, "a nonprofit coalition of restaurants, food companies, and consumers working together to promote personal responsibility and protect consumer choices." *See* Center for Consumer Freedom, "About Us: What Is The Center for Consumer Freedom?" , *available at* <<http://www.consumerfreedom.com/about.cfm>> (last visited Mar. 3, 2005).

¹³⁵ *See* Doremus, "The Rhetoric and Reality of Nature Protection," *supra* note 108, at n. 256 (internal citation omitted) (citing Sahotra Sarkar, who has stated that human

who denounce that presence appear to be lacking in empathy for other humans — a perspective just as disturbing, surely, as one that lacks empathy for any other species. A morally consistent and effective animal-rights position would promote unbounded empathy. And therefore, empathy for non-citizens is morally consistent with advocacy for non-human beings, as serious acknowledgment of the interests of non-citizens would reinforce an expansive view of legal personhood that has expanded outward, over the decades, from its early core of privilege.¹³⁶ Professor Gerald Neuman has noted that non-citizens are discussed as though they lack basic personhood, remarking, “It is no coincidence that we still refer to noncitizens as ‘aliens,’ a term that calls attention to their ‘otherness,’ and even associates them with nonhuman invaders from outer space.”¹³⁷ Non-human beings here on Earth similarly lack legal personhood, and have been treated as hostile interlopers, to be kept at bay. Yet the most basic of human rights involve bodily integrity and freedom from restraints — ideas that apply because of a quintessential trait of our animal being: sentience. Logic precludes a place for xenophobia in the animal rights movement, which, to be consistent, would respect the interests of *Homo sapiens* wherever they are born.¹³⁸

Empathy for humanity could, moreover, relieve intercultural tensions in the interest of fostering

presence alone is not necessarily detrimental to biodiversity).

¹³⁶ In 1982, the Supreme Court considered for the first time the substantive due process rights of the involuntarily-committed mentally disabled, and held that the Constitution protected Nicholas Romeo -- who, although 33 years old, was thought to have an I.Q. between 8 and 10, was unable to talk, and lacked basic self-care skills -- from bodily injury and bodily restraints at the institution. *Youngberg v. Romeo*, 457 U.S. 307, 314 (1982). The Court stated that in the past, courts have noted that “the right to personal security constitutes an ‘historic liberty interest’ protected substantively by the Due Process Clause.” *Romeo*, 457 U.S. at 315 (quoting *Ingraham v. Wright*, 430 U.S. 651, 673 (1977)).

¹³⁷ See Gerald L. Neuman, “Aliens as Outlaws: Government Services, Proposition 187, and the Structure of Equal Protection Doctrine,” 32 *UCLA L. Rev.* 1425, 1428 (1995). See also Kevin R. Johnson, “‘Aliens’ and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons,” 28 *Univ. of Miami Inter-American L. Rev.* 263 (1996-97).

¹³⁸ This is not to say that thoughtful animal rights advocates must avoid critiques — even highly incisive critiques — of the actions of *Homo sapiens* and the impact of its conduct upon other species and to the planet.

continued co-operation on questions about the environment and any of its inhabitants.¹³⁹ Numerous animals depend upon protected public borderlands for migration between countries,¹⁴⁰ and as a matter of immediate practicality, animal advocates should know that sealing the borders against non-citizens can work directly against non-human beings and the habitats they need. A case in point is the “Real ID Act of 2005,”¹⁴¹ passed by the U.S. House of Representatives in February 2005 by a vote of 261 to 161.¹⁴² The bill, designed to give the federal government unprecedented authority over states’ driving permits, identification cards and related data, would have environmental ramifications as well, as it would enable the secretary of Homeland Security to waive federal, state and local environmental laws in order to expedite construction of security fences and barriers at the borders.¹⁴³

Regardless of whether such proposals pass, they draw attention to the damage that construction has already done to border areas; which include parts of national parks, forests, and wildlife refuges such as Cabeza Prieta, Buenos Aires and Lower Rio Grande.¹⁴⁴ A total

¹³⁹ For a brief article that describes some of the co-operation to date, see Susan D. Jewell, “Conservation along the Border,” *Endangered Species Bulletin* (May-Jun. 2003), available at <http://www.findarticles.com/p/articles/mi_m0ASV/is_3_28/ai_105619059> (last visited Apr. 10, 2005).

¹⁴⁰ Jewell, “Conservation along the Border,” *id.*

¹⁴¹ H.R. 418, introduced Jan. 26, 2005; referred to Senate committee on Feb. 17, 2005; read twice and referred to the Committee on the Judiciary. See Bill Summary & Status for the 109th Congress, available at <<http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.00418>> (last visited Apr. 10, 2005).

¹⁴² The non-profit organization Project VoteSmart supplies a chart of how all members voted, available at <http://www.vote-smart.org/issue_keyvote_detail.php?vote_id=3461> (last visited Mar. 10, 2005).

¹⁴³ See H.R. 418, Section 102(c) (including sweeping language allowing the Secretary of Homeland Security to exempt that Department from when constructing walls, fences, roads and other barriers along U.S. borders). Section 102(c)(2) of the proposed law would strip courts of all jurisdiction to hear claims arising under any law when waived by the Secretary of Homeland Security, regardless of any damage caused or threatened in any areas “in the vicinity of” U.S. international borders with both Mexico and Canada.

¹⁴⁴ Roughly 50 percent of the land along the Mexican border and 25 percent of the land along the Canadian border are federal or tribal lands that encompass

of about 500 Sonoran pronghorn antelopes, animals now unique to the Arizonan and Mexican flatlands, reside at Cabeza Prieta National Wildlife Refuge and in Sonora, Mexico; about 60 inhabit the Buenos Aires National Wildlife Refuge.¹⁴⁵ The three main threats facing pronghorns surviving into adulthood are the loss of habitat associated with building and conversion of grasslands, being hit by vehicles, and fencing — for pronghorn don't jump.¹⁴⁶ Barriers don't selectively obstruct the movement and survival of one species alone. For this reason too, the notion that animal rights activism means opposing immigration contradicts an informed animal advocate's position.¹⁴⁷

In summary, because the history of the immigration-restriction platform so often reflects socio-economic concerns rather than genuine environmental awareness, it ill serves both the animal protection community and the environmental community, and the overlapping interests of each of these groups, to entertain the idea of adopting a restrictionist platform with regard to migration. It is in the best interest of an enlightened animal rights movement to respect immigrants and environmental awareness alike, and it is in the best interest of the environmental movement to welcome

national parks, forests, and wildlife refuges. United States General Accounting Office, Report to Congressional Requesters, "Border Security: Agencies Need to Better Coordinate Their Strategies and Operations on Federal Lands," GAO-04 590 (Jun. 2004).

Federally owned borderlands are under the jurisdiction of the Bureau of Land Management, the Fish and Wildlife Service, the Bureau of Indian Affairs and National Park Service within the Department of the Interior; and the Forest Service within the Department of Agriculture. The National Park Service has the largest percentage — 19 percent, or 365 linear miles — of federal land on the Mexican border, including the biodiverse desert area of the Organ Pipe Cactus Monument. *Id.*

¹⁴⁵ U.S. Fish & Wildlife Service, "Southwest Refuges: Pronghorn," *available at* <<http://southwest.fws.gov/refuges/arizona/pronghorn.html>> (last visited Apr. 12, 2005).

¹⁴⁶ *Id.*

¹⁴⁷ Ironically, the Sierra Club was a plaintiff in a suit filed in February 2004 to block the final portion of a 14-mile project involving the construction of two fences and roads for the use of for Border Patrol agents at the Mexican border. Tony Perry, "Groups Sue to Block Border Fences," *L.A. Times* (Feb. 11, 2004), at B8. The suit claimed that the project would needlessly destroy sensitive habitat in the region near the Tijuana Estuary, home to animals such as the coastal sage scrub bird. *Id.*

immigrants and serious, enlightened, animal rights advocacy.

Part IV. Temperatures Rise: Scientists Warn of Turbulence Ahead for Spaceship Earth

The climate question brings together the questions discussed above and renders efforts to reach agreements on all of these issues more urgent than ever. For to take climate change seriously is to view the people of all countries — indeed, all life on Earth — as linked in a common future.¹⁴⁸ Numerous scientific predictions now suggest that the only real border for this planet's inhabitants is the ozone which shields us all. According to a report commissioned for the Pentagon, climate change over the coming two decades could result in a global catastrophe, resulting in an overwhelming flood of human migration.¹⁴⁹ The document's authors, Peter Schwartz and Doug Randall,¹⁵⁰ say that an imminent scenario of catastrophe, "although not the most likely, is plausible, and would challenge United States national security in ways that should be considered

¹⁴⁸ But *see* Doremus, "The Rhetoric and Reality of Nature Protection," *supra* note 108, at 73, suggesting that activism based on the threat of ecological catastrophe has limited political effectiveness because, among other reasons, it "encourages us to ignore the loss of nature short of catastrophic ecological collapse." Nevertheless, Doremus contemplates a range of potential horrors, at one point stating that, "Nature advocates should openly discuss the kind of people a world without nature will spawn." *Id.*, at 72. Doremus further considers the warnings of David Quammen, who fears that the current wave of extinctions is carrying us to a "planet of weeds" — i.e., of aggressive, generalist species that reproduce quickly, tolerate a broad range of habitat conditions, and succeed in disturbed habitats. David Quammen, "Planet of Weeds: Tallying the Losses of Earth's Animals and Plants," *HARPER'S MAGAZINE* (Oct. 1998), at 66-69 (cited in Doremus at notes 215, 315, and surrounding text). In that world, starlings and pigeons will dominate the skies; rats and raccoons will be everywhere, but grizzly bears and sea otters will be gone; and the vegetation will consist largely of species like purple loosestrife, tamarisk, and leafy spurge. *Id.* at 69. And Doremus points out the belief of some scientists that the evolution of large mammals has already ceased because of a lack of large habitat areas. *Id.* at n. 255 (internal citation omitted).

¹⁴⁹ *See* note 78 *supra*; *see also* Peter Schwartz and Doug Randall, "An Abrupt Climate Change Scenario and Its Implications for U.S. National Security" (Feb. 2004), *available from* Global Business Network at <http://www.gbn.org/ArticleDisplayServlet.srv?aid=26231> (last visited Apr. 13, 2005).

¹⁵⁰ Schwartz and Randall, "An Abrupt Climate Change Scenario and Its Implications for U.S. National Security," *id.* (providing biographies of the authors along with their report).

immediately.¹⁵¹ “There is substantial evidence to indicate that significant global warming will occur during the 21st century,” the report states, adding that “[t]he research suggests that once temperature rises above some threshold, adverse weather conditions could develop relatively abruptly, with persistent changes in the atmospheric circulation causing drops in some regions of 5-10 degrees Fahrenheit in a single decade.”¹⁵² The authors conclude that “large population movements in this scenario are inevitable” and that climate change could become such a challenge for some countries “that mass emigration results as the desperate peoples seek better lives in regions such as the United States that have the resources to adaptation.”¹⁵³ The authors add:

Learning how to manage those populations, border tensions that arise and the resulting refugees will be critical. New forms of security agreements dealing specifically with energy, food and water will also be needed. In short, while the U.S. itself will be relatively better off and with more adaptive capacity, it will find itself in a world where Europe will be struggling internally, large numbers [of] refugees washing up on its shores and Asia in serious crisis over food and water. Disruption and conflict will be endemic features of life.¹⁵⁴

This global scenario reduces to provincialism David Pimentel's fear for the future of California, which, due to the “high immigration rate, both legal and illegal” will, by 2035, “approximately double to 64 million, if current population growth continues!”¹⁵⁵ Pimentel, in a co-authored essay, concludes that “conservation measures alone will not be sufficient to ensure food security for future generations unless population growth is curtailed,” adding: “The lives and livelihood of future

Californians depend on what action present generations are willing to take to reduce population numbers. Otherwise, the harsh realities of nature will impose a drastic solution for us.”¹⁵⁶ If nature imposes that drastic solution it will happen not because of California's immigration rate, but because, as Schwartz and Randall point out, the entire planet is burdened by a higher level of consumption than it can sustain.¹⁵⁷

In this context the issue of animal agriculture raises pertinent questions, for the burgeoning human population will soon be faced with a choice between feeding animals — which means maintaining their growth before they are killed for food — or feeding humanity. We cannot do both.¹⁵⁸ Animals bred to be human food already outnumber human beings three-to-one, and their numbers are rising rapidly.¹⁵⁹ Methane, an inevitable by-product of the use of cattle and fuels in all methods of animal agriculture, has 21 times the warming potential of carbon dioxide.¹⁶⁰ And while Doug Randall says that it “seems obvious that cutting the use of fossil fuels would be worthwhile,”¹⁶¹ it takes far more

¹⁵⁶ *Id.*

¹⁵⁷ George Monbiot, “Why Vegans Were Right All Along,” *supra* note 125. It's not just the human population that makes for unsustainable circumstances, Monbiot explains; it's also the cumulative effects of the massive population of domesticated animals bred into existence for human consumption. *See id.*

¹⁵⁸ *See id.*

¹⁵⁹ John Robbins, *The Food Revolution* 234 (2001).

¹⁶⁰ “National Program Annual Report: ARS Global Change National Program (204)” (FY 2001) *posted by* the Agricultural Research Service, the in-house research arm of the U.S. Department of Agriculture, *at* <http://www.ars.usda.gov/research/programs/programs.htm?np_code=204&docid=1066> (last visited Apr. 10, 2005). Methane accounts for 9 percent of all greenhouse gas emissions in the United States, and its significant sources are agricultural processes, especially digestion by ruminant livestock. *Id.*

¹⁶¹ Townsend and Harris, “Now the Pentagon Tells Bush: Climate Change Will Destroy Us,” *supra* note 78. Doug Randall told the *Observer*: “The consequences for some nations of the climate change are unbelievable. It seems obvious that cutting the use of fossil fuels would be worthwhile.” *Id.* Randall added that it is already possibly too

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ David Pimentel and Kelsey A. Hart, “Rapid Population Growth in California: A Threat to Land and Food Production,” published by Diversity Alliance for a Sustainable America, *available under* “Articles by DASA Supporters” *at* <<http://www.diversityalliance.org/docs/Pimentel-LandandFood.html>> (undated; last visited Apr. 10, 2005).

fossil-fuel energy to produce and transport meat than to deliver equivalent amounts of protein from plant sources.¹⁶²

Thus, promoting a shift away from animal agriculture would be aligned with, and necessary to meet, the Sierra Club's stated goals. According to its mission statement, the Club aspires to "promote the responsible use of the earth's ecosystems and resources; educate and enlist humanity to protect and restore the quality of the natural and human environment; [and] use all lawful means to carry out these objectives."¹⁶³ It's pertinent, then, that vegetarianism peacefully and lawfully spares forest land,¹⁶⁴ and that trees, in turn, are a key to preserving the earth's atmosphere.¹⁶⁵ In contrast, numerous endangered species are imperilled due to ranching in the United

late to prevent a disaster. *Id.* See also note 149, *supra*.

¹⁶² "Global Meat Consumption Has Far-Ranging Environmental Impacts," *supra* note 96; Robbins, *The Food Revolution*, *supra* note 159, at 266.

¹⁶³ Sierra Club, "Inside Sierra Club: Our Mission Statement," available at <<http://www.sierraclub.org/inside/>> (last visited Feb. 27, 2005). A 2003 press release states that the Sierra Club does not endorse violent environmentalism:

The Sierra Club strongly condemns all acts of violence in the name of the environment, and we specifically denounce the Earth Liberation Front's recent acts of arson and vandalism at a construction site in San Diego and at car dealerships in Southern California. While nonviolent civil disobedience has a distinguished place in American history, the Sierra Club uses only lawful means to protect the environment.

Carl Pope, Sierra Club Executive Director, "Statement on Recent Acts of Violence in the Name of the Environment" (Aug. 25, 2003) available at <<http://www.sierraclub.org/pressroom/releases/pr2003-08-25a.asp>> (last visited Apr. 5, 2005).

¹⁶⁴ In order to trade in the lucrative meat markets, Central Americans clear an area of tropical rain forest the size of a football field every second, mainly to create grazing land for cattle. Robbins, *The Food Revolution*, *supra* note 159, at 255. Thus, 40 percent of Central American rainforests have been cleared or burned down in the last 40 years, mostly for cattle pasture. "Global Meat Consumption Has Far-Ranging Environmental Impacts," *supra* note 96. In the process, natural ecosystems where a variety of plant and animal species thrive are destroyed and replaced with monoculture grass. *Id.*

¹⁶⁵ See Robbins, *The Food Revolution*, *supra* note 159, at 258.

States,¹⁶⁶ and conversion of wilderness into grazing land is the most threatening physical impact of human existence on the planet's other living beings.¹⁶⁷

Some candidates in past Sierra Club elections have opposed proposals for a vegetarian platform, because "it is our job to lead and win conservation victories, and that means building bridges and alliances everywhere we can."¹⁶⁸ Given that no other single action is as effective at saving water, sparing habitat, and easing our overall impact on the ecosystem as eating a plant-based diet, logic indicates that an effective plan to conserve wilderness would involve interrogating the diet of our affluent culture, and the damage that it does to our forests and to the rest of the world.¹⁶⁹

¹⁶⁶ *Id.* at 270-72. Robbins refers to grazing as the "leading cause of species in the United States being threatened or eliminated." *Id.*, at 270 (internal citations omitted).

¹⁶⁷ *Id.*, at 270 (stating that grazing is also the leading cause of species in the tropical rainforests being threatened or eliminated). For related commentary see Jonathan H. Adler, *Treaties Don't Save Species*, National Review Online (August 26, 2002), available at <<http://www.nationalreview.com/adler/adler082602.asp>> (last visited Apr. 10, 2005). See also Arne Naess and George Sessions, "The Deep Ecology Movement Platform," which holds that while "[t]he flourishing of human life and cultures is compatible with a substantial decrease of the human population," the flourishing of nonhuman life "requires such a decrease." *Id.*, available at <<http://www.deepecology.org/deepplatform1.html>> (last visited Mar. 14, 2005).

¹⁶⁸ Dave Karpf, quoted in Sierra Club, "Sierra Club 2004 Election Candidate Forum: The Questions," available at <http://www.sierraclub.org/bod/2004election/candidate_forum/questions_all.asp> (last visited Apr. 10, 2005), states:

I have been impressed and pleased with the Sierra Club's new Partnerships Program, headed by Melanie Griffin in the [Washington] D.C. Legislative Office. The Partnerships Program seeks to forge alliances with people of color communities, religious communities, young people, and hunters and anglers. If we are going to succeed in making our aggressive conservation goals a reality, we are going to need more allies rather than fewer. Thus, while I welcome alliances with the animal rights movement, I am opposed to proposals for making the Sierra Club a vegetarian or anti-hunting/fishing organization. There are excellent groups devoted to these causes, and I am happy to work with them. But it is our job to lead and win conservation victories, and that means building bridges and alliances everywhere we can.

¹⁶⁹ John Robbins observes that there is nothing as effective at saving water as eating a plant-based diet. Robbins, *The Food Revolution*, *supra* note 159, at 240. The U.S. Environmental Protection Agency estimates that livestock waste has polluted

By refusing to take a position on an issue that's likely to implicate its own members and potential members, the Sierra Club in this instance has opted for the short-term safety of keeping its large donor base to the detriment of its mission.¹⁷⁰ Carl Pope believes that "[i]t's important to have hunters and fishermen in the Sierra Club" because "[w]e are a big-tent organization."¹⁷¹ And yet, a rethinking of its stance on agriculture and food policy could be a pragmatic undertaking for Sierrans as well as an environmentally consistent one. This is because it might well provide a safety valve that allows dissenters to believe that their concerns are being heard, and shift the focus to healthful introspection rather than allowing an atmosphere of xenophobia to fester.

Part V. Understanding: The Final Frontier

more than 27,000 miles of rivers; globally, humans are now taking half the available fresh water, leaving the other half to be divided among a million or more species. *See* "Global Meat Consumption Has Far-Ranging Environmental Impacts," *supra* note 96. Notably, producing a steak requires thousands of gallons of water. Robbins, *The Food Revolution*, *supra* note 159, at 238. About vegetarianism, John Robbins writes:

Eighty percent of Americans, in polls, say they are environmentalists. Virtually everyone understands that the environment is deteriorating under the impact of human activities. And yet, most of us have remained unaware of the one thing we could be doing on an individual basis that would be most helpful in slowing the deterioration and shifting us toward a more ecologically sustainable way of life...I'm talking about what you eat.

Id. at 233.

¹⁷⁰ For related commentary, *see* Jeffrey St. Clair, "Torquemadas in Birkenstocks: The War Club," *CounterPunch* (Dec. 12, 2002). The Sierra Club, observes St. Clair, spends more than \$2 million a year and employs 25 people in its Communication and Information Services unit — its largest single amalgamation of funds. *Id.* Although some of its members pressed the issue, the Sierra Club refused to court controversy by opposing the invasion and occupation of Iraq. And yet, St. Clair points out, "[t]he day-to-day operations of the military complex itself — weapons production and testing — amount to the most toxic industry on the planet" and the nuclear industry threatens to extinguish all life on earth. *Id.* Executive director Carl Pope threatened to oust anyone who did not accept the Club's neutrality. "For the board to compel our silence," said one of the dissenters, Dan Kent, "plays right into Bush's mad world, where a nation of police, prisons, bombs, bunkers is better than lowering oneself to diplomacy to save lives." *Id.*

¹⁷¹ Bustillo and Weiss, "Election Becomes a Fight over Sierra Club's Future," *supra* note 106.

Why are environmental groups inconsistent regarding population policies? Richard Lamm replied, "Political correctness reigns."¹⁷² Similarly, Paul Watson stated, "I would rather be politically incorrect than ecologically incorrect."¹⁷³ These answers oversimplify, as most answers using the term "political correctness" do. The environmental movement can take a reasonable position on population without assuming that reasonableness includes opposing immigration and migrants. The issues in this analysis, seen in their totality, suggest that the dissenting candidates and their allies on the board are not wrong to say the Club must confront the hard realities posed by a growing U.S. population and its disproportionate use of global resources, but it is the Club's decisions about the methods used to address that problem that will, ultimately, ensure the health and the integrity of the organization in light of its salubrious mission.

Restricting immigration is a problematic policy for an environmental movement; yet concerns about the global population boom should not be dismissed by being conflated with the views of its least wise or least generous proponents. On this matter, the Sierra Club's current leadership should stay the course: address overpopulation and the root causes of social upheaval. These should be done through interventions that challenge the membership in positive ways, and sometimes that will mean asking complex questions, accepting politically unpopular stances, and consequently risking donations.

The animal advocates' views too should be examined for essential truths. Unquestionably, respect for humanity is a positive attribute for an environmental movement, and it's a positive element of the Sierra Club. Animal advocates devoted to contrary views are unlikely to prevail in the long run; meanwhile, they damage the entirely respectable proposal that environmentalists see themselves as part of a larger biocommunity, and that inherent worth was not bestowed by nature upon one species alone and unconnected.

These points are interrelated. Respecting the interests of other animals with whom we share the planet rather than objectifying and threatening them furthers the goals of a holistic environmentalism. We are unlikely to see significant progress in environmental responsibility

¹⁷² Quoted in Rosenfeld, "Population Bombshell," *supra* note 9.

¹⁷³ Paul Watson, "Re: Second Response to David Karpf re: The I Question," *Sierra Club Council Open Discussion* (Feb. 23, 2004) (e-mail on file with author).

before we can change the basic human attitude to those outside of their immediate circle. That means seeing ourselves as more than just the people of a successful social class or ethnic group or nation. It also means seeing ourselves as part of the greater biocommunity.¹⁷⁴

I submit that the synthesis of these two perspectives will enable us to enjoy the fullest sense of our global identity — that of responsible voyagers on Spaceship Earth.

*Legal director, Friends of Animals, Inc.; member of the adjunct faculty of law at Rutgers University (Newark). Lee Hall has taught immigration law and co-taught seminars in animal law. A number of key insights would have eluded this article but for Kevin R. Johnson's scholarship on the concept of open borders, and the wise counsel of Priscilla Feral and Raj Patel.

¹⁷⁴Environmental law to date would not necessarily contradict this goal. While the National Environmental Policy Act (NEPA) acknowledges the value of aesthetics to the quality of human life (see 42 U.S.C. § 4331(b) (1994) (declaring national goal to, among other things, “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings”), it also envisions humanity as living in harmony with our environment. See § 4321 (purposes of NEPA include “encourag[ing] productive and enjoyable harmony between man and his environment”).