RESTORATION AND CONSERVATION: THE IMPORTANCE OF PERSPECTIVE

Stewart L. Udall*

Good morning. I am here because I am a loyal alumnus of my alma mater. I am here because the subject of this symposium fascinates me. I am also here because I am substituting for Bruce Babbitt. Somebody told me that he was in Bisbee yesterday and might wander in the door today; unfortunately, we can't count on that.

One of my brother's mottos was: "Don't take yourself too seriously." You get the feeling with the Congress the last few years as though they're pointing a finger to each other and saying, "If you do what he wants, you will destroy the United States." The partisanship, the rancor, we didn't have it in the 1950s and 1960s. As many of you know, Mo Udall used humor to soften often divisive issues and overcome partisanship.

My favorite example of political humor is a Barry Goldwater-Mo Udall "real life" tale. Mo had the insight to appreciate the human comedy in everyday life. Mo said that if you have a good joke all you need is a new audience—you keep telling the story.

When Sandra Day O'Connor, an Arizona ranch girl and judge, was nominated to the U.S. Supreme Court by president Ronald Reagan, the Reverend Jerry Falwell held a press conference to declare that Judge O'Connor should be rejected. He said that she voted wrong on an abortion bill in the Arizona legislature and also pointed out that Ms. O'Connor had been the head of Planned Parenthood, a presumptive "subversive organization" in Phoenix, for ten years.

He continued by saying that he was sure President Reagan didn't know these things when he nominated this woman. Falwell then asserted that if every good Christian would write or wire the President, Reagan would certainly withdraw Judge O'Connor's name. The reporters headed for Senator Goldwater's office and he was furious. In his usual forthright way, Barry minced no words.

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* Attorney, Santa Fe, New Mexico; United States Secretary of the Interior, 1961 to 1969; U.S. Congressman, 1954 to 1961. B.A., The University of Arizona, 1945; L.L.B., The University of Arizona, 1948.

Goldwater said, "Falwell doesn't know what he is talking about. Every good Christian should line up and kick Falwell's ass!"

That's what Barry said. My brother saw it on the front page the next day and he scribbled a note and had it hand-delivered to Senator Goldwater. It said, "Barry, it's a terrific idea but it won't work. Falwell is a good Christian and he will turn the other cheek!" That, I submit, is real, earthy Arizona humor.

If you invite an old-timer that doesn't have to worry about any constituency, you are inviting that person to pontificate and ramble. I am going to just roll on for awhile here; I will get to restoration but you will just have to be patient.

First, I would like to say something about my dear Arizona friend, Bruce Babbitt. Congress' worst idea in the last twenty years was the law creating special prosecutors.[1] As you will hear me emphasize today, there are times when concepts heralded as good ideas turn out, in practice, to be bad ideas if carried too far or executed with excess. Bruce Babbitt was not involved in any way with the President's program to get soft money and rent out the Lincoln bedroom. You know who owns the Lincoln bedroom? We do. Presidents don't—they just pass by. Secretary Babbitt was caught in this thing out at the edges. There were two congressional hearings that were more rigorous than any grand jury he could have appeared before. But, as she did in five other cases, Attorney General Janet Reno appointed a special prosecutor. What happens when a special prosecutor with an unlimited budget comes after you? You have to hire a lawyer; you have to spend your life savings defending yourself.

I don't think Bruce, or his fine record as a public servant, has been tarnished, certainly not among the people that know him. If Bruce walks in the door while I'm here on my feet, I will say to him that this was outrageous, that he has a wonderful public record, and that he has been a fine Secretary of the Interior.

Now for some thoughts about good and bad decisions by elected leaders. I was elected to Congress in 1954 and I have seen policies that were envisioned as enlightened when they were conceived, but ultimately became bad policies; now our nation must restore the damage caused by some of these shortsighted policies. I am going to talk about some of these misguided decisions. Life is filled with change. Conditions change, tides of histories sweep through, spurred by advances in science and technology. Often the next generation makes harsh judgments about decisions made by their elders. Judgments are easily made with the benefit of hindsight.

My advice to your generation is: don't let your thinking or your attachment to a policy get you into a groove where you can't maintain a sound perspective and change course if it is apparent that a mistake was made.

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1. *See* 28 U.S.C. §§ 591–599 (1994).

Let me give you a prime example. I voted for many dams as a member of Congress in the 1950s, and advocated building other dams as Secretary of the Interior. I was a "dam builder," as Charles Wilkinson has recorded for history,[2] for much of the 1960s. Being known as a dam builder, some thought I should have been embarrassed when my daughter was working for the Environmental Defense Fund in the 1980s trying to stop the building of large dams in foreign countries. However, my outlook had changed, and I learned many things about ill-planned dams under her tutelage. If you try to be open-minded, you often will have experiences that expand, and possibly change, your perspective.

One truth I have been thinking about has nothing to do with the environment except in the largest sense. This century has been a horror in many ways. A holocaust, two wars—the most destructive in history—all the nuclear weapons we piled up. I never expected to see the Cold War end peacefully. I never expected to see freedom come to South Africa without a blood bath. It's in our history to love wars and admire warriors. One of the great war lovers was Winston Churchill, a big towering figure. Well, in my estimation, his repute will slowly shrink with time. He never understood much about peace.

I sense an appearance in the last few decades of a different, more sophisticated and sensitive brand of leadership. I have enormous respect and affection for John McCain and his reform ideas. He's the only guy running for president who recently said something distinct about changes in our military posture: the government gives the Pentagon 20 billion dollars for equipment that they don't want and don't need. Is it possible that in our country we are seeing a new type of leader emerging? I hope we will see leaders emerge who are not war leaders building up military machines or threatening to use martial power in order to do achieve national aims.

It is important that we reflect on the great leaders who have appeared in the last half of this century. Among the leaders who might be models for the upcoming century are: Gandhi, Gorbachev, Andrei Sakharov—the inventor of the H-bomb who saw the horror of what would happen unless we dismantled nuclear weapons. And an American, Martin Luther King, and what he did using non-violence as his weapon for social change. Above them all, Nelson Mandela. Each of these people have leadership styles that make you stop and think and wonder. They used tools other than war to effectuate great and noble changes in the world.

Dam building was a secular religion in the American West, and the East also, because the Corp of Engineers had pet projects they pushed in that region. Every dam was a good dam. It was such a religion that when foreign visitors came in the 50s and 60s they were always sent to see the Tennessee Valley Authority ("TVA"). The TVA in the beginning years was a very good thing; it restored the economy of the region and cheap hydropower helped produce economic changes. The problem was that they adopted a policy of comprehensive development which

2. *See* CHARLES WILKINSON, FIRE ON THE PLATEAU: CONFLICT AND ENDURANCE IN THE AMERICAN SOUTHWEST 217–20, 231 (1999).

meant damming every section of the river all the way to the headwaters. That policy got them into trouble with one of the first big environmental lawsuits.[3]

So we sent our engineers abroad to tell other countries about the virtues of big dams. In Egypt, Iran, and Ghana, for example, we assisted these developing nations build big dams as economic panaceas. But some of us in the government in the early 1960s began wondering if it didn't make sense to select rivers and tributaries that shouldn't be dammed. That idea became the Wild and Scenic Rivers Bill of 1968.[4] Then, within the last decade, the era of dam building in the United States was officially terminated.

I presented the Central Arizona Project[5] to Congress many times. Why did Arizona need the Central Arizona Project? To provide water for farmers who were over-pumping groundwater. That was the case we made to Congress. We didn't tell them that Phoenix needed the water to be another Los Angeles. We didn't tell them that Tucson needed the water so that it could be another Phoenix. We told them it was for agriculture. We sold them on the concept that it was a rescue project for Arizona's farmers. It was a gargantuan project, extraordinarily expensive, but we finally got Congress to approve it.

It surprised a lot of Arizonians when Barry Goldwater left the Senate in 1986 and a reporter asked him the question: "Senator, is there any vote you regret?" Barry, with his usual forthrightness said, "One—Glen Canyon Dam." A lot of Arizonans were startled. It didn't startle me. I don't think it startled Mo. Barry had seen Glen Canyon. In 1939, I think, he made the trip that Powell made, all the way from Green River, Wyoming down through Arizona. I saw Glen Canyon in the summer of 1960 before it was inundated, but it was too late. I had already voted for the Upper Colorado project and didn't have the insight to see that the Canyon should have been a National Park, not a lake.

The Colorado River Compact[6] was really a misbegotten interstate agreement. It was a California idea. California wanted to build Boulder Dam to take the power and the water from the dam to fuel a new era of growth in Los Angeles. They were using up the Owens Valley water and they needed a new source to continue their galloping growth. And Herbert Hoover butted heads and pushed the compact through in 1922.

It did not represent sound river basin planning. No one ever asked what the highest and best use of the river's water was. Should you use it up at 7000 or 8000 feet in Wyoming, where there is a fifty-eight day growing season, or should you apply it in desert irrigation where you can raise more cotton than any other

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3. *See* Tennessee Valley Auth. v. Hill, 437 U.S. 153 (1978).

4. *See* Wild and Scenic Rivers Act of 1968, Pub. L. No. 90-542, 82 Stat. 907.

5. *See* Colorado River Basin Project Act, Pub. L. No. 90-537, Title III, 82 Stat. 887 (1968).

6. The full text of The Colorado River Compact of 1922 was not published in the Statutes-at-Large or the U.S. Code, but it is available in other sources. *See, e.g.*, 70 CONG. REC. 324 (1928).

place in the West? These kinds of questions weren't discussed. They simply split the water into pieces and left it up to each state to persuade Congress to approve projects to use "their water." Now your generation has to live with the consequences of that "great" decision.

Other ideas came to birth that everybody believed in at the time, but turned out, over time, to be wrong or misconceived. Take atomic power, for example. In 1955, this was the future, plutonium was going to be the ultimate energy source for humanity. Great physicists said that we were going to have power so cheap that it wouldn't have to be metered. And a few years later they said nuclear power was economical, before all of the facts were put on the table.

The biggest and most costly environmental problem the United States faces today is the disposal of nuclear waste. We are still adding up the bill. But in the 1950s, this was the future. The Atomic Energy Commission, which I ended up fighting in court in the 1980s, and getting my face smashed,[7] was the flagship of the future.

Federal aid for state highways was a very good idea for expansive western states when it was started in 1916. Senator Carl Hayden was one of the founding fathers. I voted in 1956 for the Interstate Highway program.[8] It was a short-sighted decision. It committed the country to automotive transportation as a panacea. It gave states and cities little latitude to decide what they wanted to do with their allocated transportation money. It took three or four decades before little changes were made so that cities had options. It wiped out the railroads and crimped the power of cities to develop alternative systems of urban transportation.

My lesson for you today is that a good idea carried too far may become a bad idea. Where will we be, for example, when the world petroleum supply peaks and the price of gasoline goes up five or ten times? Our go-with-the-automobile policy that influenced us to throw away our railroads and public transportation systems in many parts of the country then will be seen as a great disaster.

My son, Tom, the congressman,[9] is on the House Resources committee. He called me excitedly two days ago to tell me they had voted out of committee a revival of the Land and Water Conservation Fund.[10] This is a program that we started in the 1960s and it produced about 10 billion dollars to spend on saving land for restoration to benefit future generations of Americans.[11] If you take the figure for this fund that we got through Congress in 1967 and update it, you would

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7. *See* Begay v. United States, 768 F.2d 1059 (9th Cir. 1985).

8. *See* Federal-Aid Highway Act of 1956, Pub. L. No. 627, Title I, 70 Stat. 374 (1956).

9. Tom Udall was elected to the U.S. House of Representatives by the Third District of New Mexico in 1998.

10. *See* Public Bills & Resolutions, 145 CONG. REC. H11702-01 (daily ed. Nov. 8, 1999) (statement of Rep. Young).

11. *See* Land and Water Conservation Fund Act of 1965, Pub. L. No. 88-578, 78 Stat. 897 (1964).

have roughly five billion dollars a year by present-day standards. The renewal of this program could provide billions for restoration. If the 1960s pattern is followed, and all federal appropriations are matched by the counties, the cities, and the conservation districts, there can be money to do many of the things you will be discussing at this symposium.

The American people are very resilient. In terms of national conservation efforts, we have been in a kind of a dark age since the James Watt era exploded in our faces. But what has happened? The lack of effort by the national government has been filled in by people and non-governmental organizations. Let me list some of the wonderful programs citizens have begun in the last two decades.

The Grand Canyon Trust, formed by a group led by Arizonans, is one good example. When Bruce Babbitt asked me to help, I agreed on condition that the charter encompass the whole Colorado Plateau, the entire ecosystem of that region. The Grand Canyon Trust is now carrying out vital restoration work. For example, it is buying grazing rights on the Colorado Plateau and retiring them in areas that never should have been grazed in the first place.

Rails-to-Trails is another non-governmental entity that started about twelve years ago.[12] Today, they have over 10,000 miles of abandoned railroad beds that are now versatile recreation trails.[13] There is one of about 150 miles along the Niobrara River in Nebraska. The system of bicycle and walking trails around Pittsburgh and other Midwestern cities is extraordinary. The only federal money they were able to obtain were funds freed up when the Interstate Highway Act was amended.[14]

In 1980 I helped start another non-governmental organization called the Archaeological Conservancy.[15] It's now a national organization and is preserving archeological sites in all parts of the country. On another front, the Nature Conservancy[16] and other regional and local conservation organizations are obtaining conservation easements on land so it never will be developed. We started one in Sante Fe a few years ago and we are getting an easement of 10,000 acres from ranchers near Las Vegas, New Mexico next week. This is valuable conservation and restoration work.

The American people don't sit back and wait for Washington to act. They do something; they are organizing and doing farsighted things everyday.

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12. *See Rails-to-Trails* (visited Mar. 28, 2000) <http://www.railstrails.org>.

13. *See id.*

14. *See* Intermodal Surface Transporation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 2005 (1991).

15. *See The Archaeology Conservancy* (visited Mar. 28, 2000) <http://www.americanarchaeology.com>.

16. *See The Nature Conservancy* (visited Mar. 28, 2000) <http://www.tnc.org>.

Every time I attend a conference of this kind I'm heartened. I was heartened to hear Rebecca Tsosie and her presentation this morning.[17] Thirty-nine years ago in January, when I was asked to be Secretary of Interior, I tried to find a Native American to serve as Indian commissioner. I failed to identify someone to fill the position. I also tried to find a trained Native American lawyer to head the Indian section of the Solicitor's office. I failed in that task also. What law schools have done to remedy this situation in the last few decades is tremendous. The present-day Indian lawyers and law professors in the United States show what education can do. I marvel at what has happened in forty years in the field of Indian law and the training of Native American lawyers.

The two people that I hoped would be in my audience are not here. One is Secretary Babbitt; the other is Jim Rogers. I want to say something about him, for he is one of my new heroes. I have not met him, but his work as a benefactor of this law school is remarkable. I've been using a quotation by Mr. Rogers in an Article I recently wrote entitled, *How the Billionaires Can Stabilize the World's Population Soon.*[18] He said, "What it all boils down to is that nobody should have this much money. We teach people in this country how to make money. We don't teach them what to do with it after they have made it."[19] This is a great truth by a farsighted individual.

I am going to end my presentation with a quotation from one of Dylan Thomas' verses celebrating the love many of earth's inhabitants leave for the land. He wrote: "Though lovers be lost love shall not; And death shall have no dominion."[20] The earth is our life-giving system, eternally sustaining us. Ultimately, all of us will die, but our love of the earth is not lost because so many are striving to restrain human overreaching that can destroy the beauty and bounty that is our home.

Thank you.

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17. Rebecca Tsosie, Professor of Law and Executive Director of the Indian Legal Program at the Arizona State University College of Law, spoke during Session II of the Symposium, *Why Do Humans Seek to Restore the Environment?*.

18. Stewart L. Udall, How the Billionaires Can Stabilize the World's Population Soon (1999) (unpublished manuscript).

19. *Id.* (quoting James E. Rogers).

20. DYLAN THOMAS, *And Death Shall Have No Dominion*, *in* THE POEMS OF DYLAN THOMAS 49 (1971).