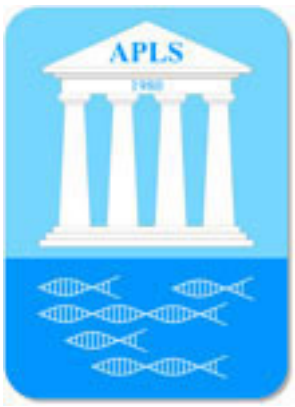

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ETHICS AND ENVIRONMENTAL POLICY

The Kankakee Wetlands: A Case Study in Ethics and Public Policy

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Abstract. **In 1996, the U.S. Fish and Wildlife Service made a proposal to restore and preserve 30,000 acres of wetlands in Indiana's Kankakee River basin. Local farmers opposed this, expressing concerns about how a wildlife refuge would affect farming communities along the Kankakee River. Undergirding what seems to be a simple conflict between incompatible environmental and economic interests is a more fundamental conflict between competing ethical frameworks for evaluating public policy. One helpful approach is to examine the normative issues in the Kankakee dispute in terms of the contrast between consequentialist and non-consequentialist ethical frameworks. This article attempts to establish that a failure to recognize alternatives to the consequentialist framework has resulted in a failure of opposing parties to recognize and address each other's ethical concerns. An analysis of the Kankakee wetlands dispute will reveal why it is important for environmentalists to be cognizant of alternatives to consequentialist ethical frameworks.**

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IN 1996, THE UNITED STATES Fish and Wildlife Service made a proposal to restore and preserve 30,000 acres of wetlands in Indiana's Kankakee River basin. The proposal has been opposed by local farmers, who express a variety of concerns about how a wildlife refuge will affect the farming communities along the Kankakee River. Undergirding what seems to be a simple conflict between incompatible environmental and economic interests is a more fundamental conflict between competing ethical frameworks for evaluating public policy. One helpful approach to thinking through the normative issues in the Kankakee dispute is to examine them in terms of the contrast between consequentialist and non-consequentialist ethical frameworks.[1] This article will attempt to establish that a failure to recognize alternatives to the consequentialist framework has resulted in a failure of opposing parties to recognize and address each other's ethical concerns. An analysis of the Kankakee wetlands dispute will reveal why it is important for environmentalists to be cognizant of alternatives to consequentialist ethical frameworks.

An Overview of the Kankakee Case

At one time, the Kankakee River drifted slowly across northern Indiana, creating one of the largest freshwater wetlands in the United States. In 1852, Indiana governor Joseph Wright proposed draining the marsh in order to convert the area into "more productive" agricultural lands. Plans to straighten the river and drain the marsh began in 1889, and the project was completed by 1917. What was once a 240-mile meandering river became a 90-mile drainage ditch.

The conversion was a success in some respects—the Kankakee River valley proved to have very rich and productive agricultural land. But in other respects, the conversion of the wetlands to agricultural lands was an ecological disaster. Today, the U.S. Fish and Wildlife Service (FWS) reports

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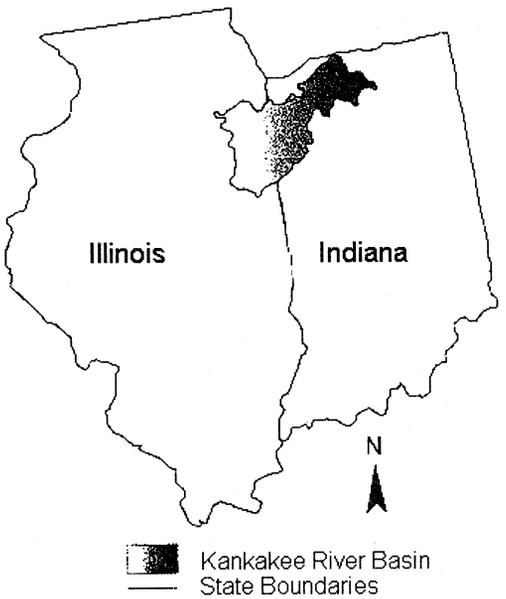

Figure 1. Kankakee River Basin

that only 13% of Indiana's original wetlands remain, as well as only 1% of other important river basin ecotypes, such as tall grass prairie and oak savannas. The Indiana Division of Fish and Wildlife estimates the remaining wetlands continue to diminish annually at a rate of 5%. Because of their reduced size, as well as the effect of farming and urban development on water quality, the remaining ecosystems cannot support the full array of plants and animals that originally lived in these areas. There have been significant annual declines in numerous grassland-dependent and wetland-dependent species, such as the grasshopper sparrow and the western meadowlark. Included among the inhabitants of these wetland areas are many federally endangered and threatened species, such as the Indiana bat, the Mitchell's satyr butterfly, the copperbelly watersnake, Mead's milkweed, eastern prairie-fringed orchid, and many species of mussels and fish. The destruction of wetlands could result in the permanent loss of some plants and animals (Clark et al., 1998).

In an attempt to protect the wetlands and their inhabitants, efforts to restore some of the marshlands have been made by a variety of people and agencies. The proposal that is the focus of this article is a project initiated by government agencies. In 1996, a proposal was made by the United States Fish and Wildlife Service—the Proposed Grand Kankakee Marsh National Wildlife Refuge—which, if approved and funded, would restore 30,000 acres scattered within the 3.3-million-acre Kankakee River basin. Using money from the Land and Water Conservation Fund and the Migratory Bird Conservation Fund, the FWS proposes to restore lands with high resource value through a combination of voluntary partnerships, easements, and land acquisition (purchases from willing sellers). The FWS began the project in response to the studies that indicated that loss of wetland habitat in the Kankakee River basin was resulting in a decline of migratory birds, fish, and a variety of endangered species. The stated goal of the proposal is "to provide Federal leadership to conserve, protect and enhance fish and wildlife and their habitat for the American people" (Clark et al., 1998). The project is in an early stage; preliminary studies of the potential impacts on the economy and the environment were completed and published in June of 1999. The final decision to implement or reject the project is expected to be made sometime before the year 2001.

Many local farmers have opposed the project. Some of the families farming in the Kankakee River basin have been there for several generations. They have established important social, emotional, and economic ties to the land. Although no one is threatening to take land from those who are unwilling to sell it, the farmers have some concerns about how a neighboring wildlife refuge would affect their ability to sustain their rural agrarian lifestyle. The nature of their concerns vary. One major worry for farmers is drainage. Given the layout of the land, being able to drain one's property is essential to farming it. In recent years, a concern about the environmental damage caused by large dredging projects has led government agencies more frequently to deny farmers' applications for drainage permits. Already facing regular flooding problems that cost them large sums of money, the farmers see restoration projects as a new incentive for the government to deny them drainage permits. Another major concern of farmers regards the economic effect of taking 30,000 acres of agricultural land out of production. They are worried about how a refuge would affect the agrarian economy, as well as the tax base. Finally, farmers are concerned about issues of local control over policy decisions. They feel that large government agencies are making decisions about their community without adequately seeking their input.

Ethical Frameworks for Evaluating Public Policy

Sorting out the conflicts and controversies of this case is not easy. One could construe it broadly as a conflict between human interests and environmental interests. Or perhaps a more skeptical onlooker would view it as a conflict between political interests and economic interests. In the following pages, I will argue that it is more helpful to view it as a conflict between different ethical frameworks for evaluating public policy.

There are many different value frameworks that one could use to guide public policy decisions. One common way is to evaluate various policy choices on the basis of their consequences. This has been aptly named a "consequentialist" approach. There are numerous ways in which one could evaluate consequences, and thus numerous forms of consequentialism. One could be a totally egoistic consequentialist and argue that the best policy is the one that produces the most benefits and the least costs for oneself. More commonly, public policy decisions are based on an

assessment of the benefits and costs for society as a whole. A consequentialist might argue that policies are justified only insofar as they produce favorable consequences in terms of things like health, economics, or social goods for the public as a whole. This kind of a procedure for policymaking is characteristic of one of the most influential forms of consequentialism, namely, utilitarianism (see, for example, Mill, [1861] 1974).

On the other hand, there are numerous value frameworks for evaluating public policy that have little or nothing to do with the consequences of the policy. One common non-consequentialist approach is a rights-based framework that argues that policies are justified if and only if they are consistent with a certain set of moral or political rights. For a non-consequentialist, these rights have moral significance in themselves, quite apart from a consideration of consequences. For example, one might argue that if I buy a toaster, I should have the right to do with that toaster as I please. I could use it to make my breakfast, display it in my garden as a lawn ornament, bang it against my head, or make toast for the homeless. It is clear that some of these ways of using the toaster will produce better consequences than others, but most people would argue that it would be morally impermissible for anyone to force me to use my toaster in the way that would produce the best possible consequences. The basic non-consequentialist intuition behind this is that there is something morally important about my being allowed to do with my property as I please, regardless of whether or not my having that autonomy would produce the best consequences.[2] There are numerous kinds of rights-based philosophies of public policy. Thompson, Matthews, and Van Ravensway divide them roughly into two classes—libertarian and egalitarian (1994). The major difference between them concerns the distinction between noninterference rights and opportunity rights. A noninterference right is a right that protects one's life and property against interference from others. Thus, any law that protects one from theft, murder, or other forms of harm is a law that protects one's noninterference rights. On the other hand, an opportunity right is a right to certain basic goods that requires the aid and interference of other people. The right to education is a good example of an opportunity right. Protecting the right to education requires school buildings, teachers, administrators, and public money. It is not sufficient for people not to interfere with one's right to education. The right to education can only be protected through the cooperation and help of other people.

A libertarian argues that the rights that ought to be protected by public policy are limited solely to noninterference rights (see, for example, Hospers, 1971). For a libertarian, public policy should only intervene in citizens' lives in order to protect their rights to life, liberty, and property against interference by others. Good policies are those that protect noninterference rights, without imposing any additional demands on citizens that might limit their autonomy.

On the other hand, many philosophers argue that while noninterference rights are important, they are not enough. An egalitarian argues that fairness demands that each person have the right to certain basic goods needed for a decent life (see, for example, Rawls, 1971). The right to these goods entails more than merely the noninterference of others; it also demands the aid of others. An egalitarian would argue that public policy decisions should be evaluated on the extent to which they protect certain noninterference rights, as well as ensure opportunity rights to basic goods such as health care and education. For an egalitarian, good policies are policies that protect both noninterference rights and opportunity rights.

A different kind of non-consequentialist approach to public policy can be found among those who focus on procedural issues. A proceduralist might argue that the only appropriate justification for public policy is that it has been discussed and agreed upon by those whom it affects. For a radical proceduralist, this may mean that a public policy decision that is made through an appropriate procedure is acceptable, regardless of the rights it endorses or the consequences it has. Other proceduralists, such as Jürgen Habermas, argue that appropriate procedure requires that each person who is affected by the policy has certain rights (1990). A proceduralist of the Habermasian school would argue that reasonable discussion can only occur under certain conditions of fair debate. These conditions may include that each person involved be respected by the others, and viewed as someone whose standpoint deserves equal consideration. Thus, a procedural philosophy may also consider rights-based ethical discussions important. In any case, for a proceduralist, public policy decisions should be evaluated on the basis of the procedures used in the decision-making process. Generally, a good procedure is one that includes all affected parties in the decision-making process.

There are two points worth noting. First, the four ethical frameworks for evaluating public policy that are mentioned above are not the only, or perhaps even the best, ways to incorporate ethics into policy. They do, however, represent dominant philosophical schools and encompass a large spectrum of approaches currently being employed in applied ethics. Second, these four approaches are not exclusive. A particular person or institution may use elements from more than one of them. People readily shift from one kind of argument to another, often without being explicitly aware of the

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very different frameworks from which the arguments originate. Sometimes one can consistently and productively appeal to several different frameworks. On the other hand, sometimes this can lead to a confused and inconsistent position on a public policy issue. Thus, in order to become clear about one's own values, as well as those of other people, it is helpful to distinguish between these different ways of justifying public policy.

In the Kankakee case, both consequentialist and non-consequentialist moral concerns have been raised. In the following discussion, I will argue that consequentialist considerations have dominated the U.S. Fish and Wildlife Service's decision-making process. Further, as a result of the (likely unintentional) bias towards consequentialism, there has been a failure to address certain non-consequentialist moral concerns.

Consequentialist Moral Concerns

A consequentialist approach to the Kankakee case entails analyzing the issue in terms of a comparison of the consequences each particular policy choice would produce for things like health, welfare, the economy, and the environment. Deciding the issue in consequentialist terms would involve making a value judgment about which consequences have the most moral significance.

Examples of these kinds of consequentialist criteria are abundant on both sides of the Kankakee debate. Farmers have given arguments focused on the consequences that a refuge may have on the farming community. Bob Ax, a local advocate of the farming community, argued in a July 16, 1997 guest editorial in the *Starke County Leader*, that the environmental projects along the Kankakee would have devastating effects on the community. He pointed out the current economic losses due to flooding, and suggested that further environmental protection would compound the drainage problems and thus the economic losses. In addition, he raised concerns about the costs that a loss of 30,000 acres of farmland would have on the agrarian economy in the Kankakee valley, as well as on the tax base.

Similarly, environmentalists generally tend to focus on the consequences that the policy choices will have on the environment. For example, the Isaac Walton League published a pamphlet in support of the proposed wildlife refuge, arguing it will reduce flooding, decrease topsoil loss, and increase biological diversity. This could be understood as expressing an approval of the proposal based on the net value of the *consequences* the policy option will have on the environment.

The U.S. Fish and Wildlife Service, like other parties, has largely focused on consequences. As a part of the official policy evaluation process, the FWS had two studies done on the potential impact of creating a national wildlife refuge in the Kankakee area. The Draft Environmental Assessment (DEA) is an FWS internal study in which each policy alternative is evaluated with regard to the potential effect it will have on biological diversity, water quality, agricultural land, drainage, and flood control. The Economic Impact Assessment (EIA) is a document written by a contracted third party that examines each policy alternative with regard to the effect it will have on the local economy. The DEA and EIA are, in effect, careful and scientific studies of the potential *consequences* of each policy alternative. The FWS decision-making on the proposal centers around these studies. As a result, there is a tendency to evaluate the policy almost exclusively in terms of *consequentialist* criteria.

Insofar as the issue is evaluated in terms of consequences, the dispute is limited to basically three types of disagreement: (1) disagreements about the facts of the current situation, (2) disagreements about what will be the actual consequences of a particular policy decision, and (3) disagreements about which particular consequences have the greatest moral significance (Thompson, 1997). The first two of these types of disagreements are disagreements about the facts. Only the third of these involves a disagreement about values. Because of the reductionist approach of most consequentialists, even this value disagreement quickly evolves into a disagreement about facts. Consequentialists generally argue that there is one ultimate good toward which all policies should aim, and against which the significance of policy consequences should be judged. For example, utilitarians such as J. S. Mill ([1861] 1974) argue that the ultimate good toward which government policies should aim is the happiness of its citizens. Once the ultimate good is agreed upon, the only questions that are left are factual questions about how to produce that good. Thus, for a utilitarian, the third type of disagreement becomes focused on factual questions regarding which particular policies produce the greatest balance of happiness. Thus, when an issue is analyzed solely in terms of the consequences, there is a tendency to view the dispute as mainly a disagreement about facts.

Because of the predominantly consequentialist focus of the Kankakee case, the debates have generally fallen into one of the above three categories. In the Kankakee case, the consequentialist value issues have rarely been the subject of disagreement. The FWS has never questioned the significance of farmers' interests. The farmers have been vocal about their support for environmental protection. Rather than disputing each other's goals, the parties in the case tend to dispute about the facts. A significant amount of the dispute has concerned the second category of disagreement—the question of the actual consequences of a wildlife refuge for the people living in the Kankakee watershed.

The FWS has argued that many of the farmers' objections are based on misunderstandings of the facts about the potential consequences of creating a wildlife refuge. FWS representatives argue that the refuge will not have a negative impact on drainage, the tax base, or the local economy. They have offered evidence that wetland preserves could actually help alleviate some of the drainage and flooding problems. Currently, a U.S. Army Corp of Engineers study is underway

to explore how to address flooding problems in a way that could accommodate farmers' needs as well as enable restoration of some wetland habitat. Further, the FWS argues that the concern about how the proposal will affect the tax base is misplaced. Loss of tax revenue will be replaced by revenue-sharing funds. Moreover, it is argued that the economic worries are likely unfounded. The EIA predicts that most of the policy options would actually improve the local economy over time.

In turn, the farmers question the facts presented by the FWS. In the public meetings, farmers questioned the FWS claim that a wildlife refuge was necessary for the protection of wetland species. They pointed to the thriving waterfowl population as evidence that wildlife was flourishing in the farming communities. On other fronts, the farming community advocates have questioned whether the FWS economic impact studies were accurate in their predictions of the economic effect of a wildlife refuge (Ax, 1998). Thus, it seems that an important element of the dispute has involved disagreements about the facts.

Insofar as the focus remains on consequentialist criteria, farmers and FWS representatives alike seem to have taken the attitude that getting the facts straight about the case would resolve much of the problem. The solution is to be found in a good scientific study. Thus, focusing on the consequences tends to make the issue become a question of facts rather than values. While straightening out the facts is extremely important, it will not, by itself, solve the Kankakee dispute. There are several non-consequentialist value concerns that have not been—and perhaps cannot be—addressed within the consequentialist framework.

Non-Consequentialist Moral Concerns

There are two moral issues that seem to involve non-consequentialist value concerns: property rights and policymaking procedure. While both issues are clearly present in local discussions, neither of them have been carefully developed by participants in the dispute. This section will attempt to sort out what seems to be the ethical significance of these issues for those who raise them.

Property Rights

The property rights debate has probably been one of the most fierce, and yet the most poorly articulated, of the controversies surrounding the Kankakee restoration project. Farmers express vague concerns about violations of their "rights" with regard to drainage of their property, as well as their "right" to keep or sell their property (see, for example, Ax, 1997, 1998). The FWS, as well as environmental groups such as the Sierra Club, argue in return that the proposed project will have no effect on property rights whatsoever (see, for example, Clark et al., 1998:48). In fact, the issue may be more complex than either side has acknowledged.

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Almost no one believes that the right to property is absolute in the sense that it entails the right to do whatever one wants on and with one's own property. For example, no one argues that the right to property includes the right to murder one's spouse on that property. One's right to property is limited by other people's rights to life and property. Moreover, in the U.S. legal system, one's right to property is constrained by a tax system and regulations regarding health and the environment, among other things. For good reason, then, the right to property is often described as a bundle of limited rights (see, for example, Varner, 1994). Generally, this bundle includes things like the right of access to the property, the right to certain uses of the property, the right to exclude others from access and use of the property, and the right to sell or transfer these rights to others. The philosophical questions about property rights involve what should be included in that bundle of rights we call property rights, how those rights should be limited, and for what reasons.

Most of the property rights concerns expressed by farmers in the Kankakee River basin involve the right to certain *uses* of one's property, especially with regard to things like drainage and pesticides. Will neighboring wetlands provide an incentive for government officials to deny farmers permission to drain their own land? Is such a denial a violation of their property rights or the justified interference of government? Further, if one has a wetland bordering one's land, would there be additional government restraints on which pesticides and herbicides one can use and how much? Is that a justified restriction of one's property rights? If so, what justifies it?

How one answers these questions depends largely on the value framework to which one appeals. For a libertarian, the most important moral concept is liberty. Libertarians argue that the only acceptable reason to restrict someone's liberty is in order to keep them from interfering with the liberty of others. In the tradition of John Locke, libertarians invariably include the right to property as being among the most basic liberties that ought to be protected by the government. Thus, libertarians would argue that the only appropriate reason for the government to intervene with a person's property rights is to protect the noninterference rights of others. For the libertarian, answering the value questions surrounding the property rights issue would involve deciding what counts as a violation of noninterference rights, and whose noninterference rights ought to be protected.

Are anyone's noninterference rights violated when farming practices harm wildlife? Actions that contribute to the

elimination of wetlands threaten the health of ecosystems, which in turn can threaten the health of humans. Thus, some people would argue that when a farmer damages a wetland area, he or she is violating other people's right not to be physically harmed. On the other hand, it is difficult to trace damage to the environment on one plot of private property to identifiable harm to other humans. Some people would argue that if there is no identifiable human being harmed, then there is no violation of noninterference rights. To say that a person's noninterference rights are violated whenever his or her neighbor does something that might, sometime in the future, cause some health damage to humans somewhere, would be to lend such a broad definition to "noninterference rights" that enforcing it would no longer be practical. For this reason, scholars such as Richard Epstein argue that most environmental regulations are in fact designed not to prevent harm to others (or to prevent the violation of others' noninterference rights), but to procure a public benefit to which no one in particular has a right (Epstein, 1985).

An entirely different set of moral issues arises when one asks who should be included among the bearers of noninterference rights. Some people argue that the government ought to protect the noninterference rights, not only of people who are now alive, but also of future generations. They claim that restricting property rights in order to maintain a wildlife refuge is an appropriate way to prevent harm to future generations. Others question whether it makes sense to ascribe noninterference rights to people who do not yet exist. Taking a different approach, some scholars argue that it is a mistake to restrict the subject of rights to the human species. They maintain that the government should restrict uses of a person's property in order to protect the health of animals and plants, even if human health is not in danger. Although it would be impractical to grant every grasshopper the same noninterference rights as humans, there is some precedent for granting government protection to domestic animals, to game animals, and to both plant and animal species that are endangered. Is it appropriate to regard these protections as granting noninterference rights to plants and animals? Is there a better way to explain the moral importance of these protections?

Approaching the issue from a different angle, egalitarians argue that even if a farmer's damage to wildlife cannot be considered a violation of anyone's noninterference rights, it could be understood as a violation of opportunity rights. For the egalitarian, the most important moral concepts are equality and fairness. This means that public policy should guarantee not only equal liberties, but also a fair distribution of other social and economic goods. For some philosophers, this entails literally distributing goods equally among all citizens. For other philosophers, such as John Rawls (1971), a fair distribution merely entails equality of opportunity. In either case, the concept of rights is extended to include the opportunity to have basic social goods, in addition to liberties. For the egalitarian, answering the question of appropriate limits on property rights involves deciding which basic goods and liberties are so important that they ought to be made available for every citizen. Gary Varner, among others, argues that all citizens have a right to thriving wilderness areas and healthy ecosystems. He points out that in the Anglo-American legal tradition, dating back to Roman law, certain resources—such as wildlife, air, and the oceans—are not considered candidates for private property, but rather are held as resources that all people have a right to use. Varner argues that wetlands should be included in that list of resources to which all people have a right.

> Wetlands do much more than provide us with ducks to shoot. They help reduce flooding by slowing the runoff of heavy rains and cycling nutrients, among other things. Such ecological processes are paradigm cases of things that, if they can be said to be owned at all, are inherently public property. They cannot be captured or reduced to possession; they can only be used. And as no individual can own them, they are by right available to all. (Varner, 1994:157)

Varner's interpretation of opportunity rights entails that environmental regulations that restrict property rights are acceptable because they protect people's opportunity rights to public resources.

For a proceduralist, the value questions surrounding property rights would be entirely different. A pure proceduralist would argue that if a bundle of property rights is established by means of the appropriate procedures, it is acceptable, regardless of the content of that bundle. For the proceduralist, there are no moral limits set up in advance, determining the appropriate scope and limits of property rights. The only requirement is that the property rights policy be formed by means of an acceptable procedure. Thus, in the Kankakee case, the value questions surrounding property rights would likely be focused on the fairness of the policymaking procedures of the FWS, the DNR, and the EPA, and their consistency with other United States laws and policies regarding property rights.

It is important to note that recognizing property rights does not commit one to a non-consequentialist framework. What makes one's moral position consequentialist or non-consequentialist is the kind of *justification* one gives for a thing's moral significance. Consequentialists can (and do) argue for property rights, on the assumption that a policy that respects property rights generally produces better consequences (see, for example, Epstein, 1994). Because property rights are deemed to be morally significant solely on the basis of their consequences, a consequentialist would confine the normative debate to questions about which restrictions on property rights would produce the most favorable consequences for society as a whole. For a utilitarian consequentialist, the guideline for measuring "favorable consequences" is human happiness: the policies with the best consequences are the policies that produces the greatest

happiness for the greatest number of people. Thus, for the utilitarian consequentialist, resolving the Kankakee property rights disputes would involve examining the social costs and benefits (in terms of human happiness) of both property rights restrictions and wetland preservation.

It is possible that the policy that produces the best consequences will be a policy that protects a broad range of noninterference rights or opportunity rights, but it is also possible that the greatest social good might be achieved by violating the rights of a few individuals. For example, it may be in the long-term best interest of all people to create a more sustainable planet by establishing massive wildlife preserves, which can only come about by violating the property rights of some individuals. This kind of calculus is precisely what worries non-consequentialists. A non-consequentialist might argue that there is a certain set of inviolable rights (whatever they are—noninterference, opportunity, participatory, or otherwise) that should not be weighed in as just one factor to be considered, and perhaps in some cases sacrificed, in the calculus of greater social happiness. They would argue that these rights should take moral priority, regardless of social utility.

Admittedly, the value questions surrounding property rights are numerous and difficult to resolve. But it is important to recognize that each of the ethical frameworks discussed above raises different value issues regarding property rights. Thus, it seems likely that considering the value issues surrounding property rights from a variety of frameworks, both consequentialist and non-consequentialist, will result in a more careful and fruitful discussion of property rights.

Unfortunately, in the Kankakee case, there has been very little discussion of these value issues at all. The FWS has to some extent recognized concerns about private property rights by insisting that this particular proposal will not, in fact, affect property rights. In the DEA, one paragraph is devoted to the subject, under the heading of "Potential Impacts to the Socio-Economic Environment," which includes the following statement: "Any landowners adjacent to lands acquired by the Service retain all the rights, privileges, and responsibilities of private land ownership, including the right of access, hunting, vehicle use, control of trespass, right to sell to any party, and obligation to pay taxes" (Clark et al., 1998:48).

It is significant that concerns about property rights are listed by the FWS as just one of many "socioeconomic *impacts*" of the proposed wildlife refuge. In other words, the FWS has treated it as one of many *consequences* of potential policy decisions to be weighed against other consequences. In this case, the question has become—like so many questions in a framework dominated by consequentialist considerations—one of facts. It is assumed that there is only one rigid set of property rights already established, and the only question of concern is whether *in fact* the proposed project would violate those property rights. What is not recognized is that questions of fact about property rights are completely dependent on unresolved value questions.

The FWS's reasoning seems to be that there is already a certain set of property rights established by the law, to which the department itself is subject. Thus, department representatives view their policy decisions as having to comply with existing laws on the issue, rather than forming those laws. They conclude, naturally, that their policies will in no way affect anyone's property rights. But the plethora of literature in the legal journals on the question of property rights, as well as the continuing Supreme Court cases on the subject, indicates that, despite FWS contentions, the issue of property rights is *not* a settled issue in U.S. government policy. To what extent the government has a right to regulate the use of private property is still very much under debate. Thus, the value questions about what justifies the government in limiting the uses of one's private property cannot be reduced to a question of fact about current U.S. law. Indeed, it may well be the case that the FWS policy does or will influence legal policies regarding property rights. The DNR, the EPA, and the U.S. Army Corp of Engineers all take a formative role in property rights policy when they tell farmers what they can or cannot do on their land with regard to drainage and pesticide use. It would be a mistake to claim that the policies of these agencies are "completely independent" of the proposed refuge. The creation of a wildlife refuge very well may influence their decisions on these matters. Further, the FWS has the legal authority directly to alter property rights with regard to the way in which people's use of their property may affect endangered species. It seems likely that creating a wildlife refuge would increase FWS's focus on the farmers' impact on endangered species in the Kankakee area. Thus, it is perhaps reasonable to request that the FWS engage in a discussion of the value issues surrounding property rights, as well as to consider in advance how the creation of a wetland refuge will affect their value judgments regarding the appropriate limits of property rights.

In sum, viewing the property rights issue almost exclusively within the consequentialist framework—as one of many socioeconomic "consequences" of policy decisions—reinforces a tendency to treat the issue primarily as a question of fact. But it is important to recognize that the property rights conflict cannot be reduced to a factual issue. The questions of fact are totally dependent on unresolved value questions about the appropriate scope, limit, and justification of property rights. In particular, they are dependent on the question of when the government is or is not justified in restricting certain uses of one's private property, such as

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drainage techniques and pesticide use, and why. It is these value questions with which the farmers are most concerned. As a result of the tendency to evaluate the Kankakee policy choices solely in terms of their consequences, the farmers' value concerns about property rights have not been adequately addressed.

Procedure

A second non-consequentialist concern of the farmers involves the question of procedure. Participants on all sides of the issue have raised concerns about how much (or little) the FWS has involved the local community in the process of decision-making. Advocates for the farmers have expressed concerns that the FWS has not adequately consulted farmers' opinions in the process. In an editorial, Bob Ax declared, "The 'consent of the governed' has not been obtained for this project" (1997).

As was the case with property rights, the question of local input can be dealt with in either a consequentialist or a non-consequentialist framework. In a consequentialist approach, public opinion is sought out only as a means to producing the best possible consequences. A consequentialist might argue that the purpose of consulting the governed is to gain new information about the potential effect that the proposal would have on the community. One would consult the locals because the locals have some special insight into their own situation. Their views would help policymakers to find a policy that would bring about the best *outcome*. Of course, it is possible for the locals to be wrong on occasion. Therefore, in the interest of the best consequences, a consequentialist might recommend taking the information the locals give, evaluating it, and using it only if it seems to be correct and helpful. Therefore, their views would be *informative*, but not necessarily *formative*.

On the other hand, if there are non-consequentialist reasons for seeking local views, then one might conclude that the participation of members of the community in policy decisions should not be merely *informative*, but also *formative*. A non-consequentialist might argue that one should seek local opinion because there is something intrinsically important about the people of a community participating in decision-making that will affect the future of their own community. Regardless of the consequences, the local people have a fundamental right to participate in decisions that affect them. This means that *even if the local people make really bad decisions* for themselves and their land, one might be obligated to respect those decisions. If one takes this non-consequentialist view, then local participation should not be merely *informative*, but also *formative*.

Congressman Steve Buyer has been extremely active on the issue of local participation in the Kankakee case. Buyer advocates delaying the project, arguing, "It is very important that the federal government slow down, seek local public input and address concerns of the local community because they are the ones personally affected—long after any project is complete" ("House Bill...," 1997). Interestingly, he seems to offer consequentialist justifications for his proceduralist concerns. He argues that the best policy will come from one that has duly considered local concerns. In an article in the *South Bend Tribune* of August 26, 1997, he argues, "These are your lands, you grew up here, know your lands and what is best for them..." (Turner, 1997). The point seems to be that the importance of local input is that the locals know better than anyone what is best for their community. Their input is important because they know which policy will bring about good or bad consequences for the community.

The FWS has also placed importance on seeking out local views. The agency has solicited the opinions of many public and private agencies, as well as private citizens, in the planning process. The FWS has held public meetings all over the Kankakee River basin area. In the DEA, the stated purpose of these numerous public meetings is to "exchange information on the Refuge Proposal" (Clark et al., 1998:13). That is, these meetings have an *informative* function. The FWS uses it as an opportunity both to educate the public about what the agency is doing, and to find out what kinds of concerns the people have about the project. Local opinion is sought out in order to gain as much information as possible about all the ways in which the policy decisions will affect the local community. In other words, the function of local participation is viewed in a consequentialist framework: one seeks local opinion in order to *inform* decision-makers so that they can choose a policy that will bring about the best possible outcome for everyone.

One might argue that these public meetings also serve a formative function. That is, one of the reasons the FWS has these meetings might be to allow the local people an opportunity to participate in the decisions that affect them. It is certainly possible that the citizens' participation in the public meetings will have an effect on the final policy decision. But it would be a mistake to say that the potential effect of these public meetings grants the local people genuine autonomy over the situation. The final policy decision is made by the FWS regional director, and it will only conform to local public opinion if the issues raised by the public are deemed significant by the FWS.[3]

In sum, both Congressman Buyer and the FWS have taken a largely consequentialist view of the local participation issue. The participation of the local community is important because it will help policymakers choose a policy that has the best possible consequences for the community as well as the environment. Local opinion is given consideration through public meetings, but it will have an influence on policy only if the FWS officials decide public views are consistent with the best interests of people and the environment. In other words, the procedures are set up such that policy decisions are made according to the consequences the policy has on people and the natural environment, and not necessarily according to the wishes of the local citizens.

In contrast, it seems clear that the farmers raised the issue of local participation for non-consequentialist reasons. They believe their opinions ought to be considered in the policymaking process, not just because it will produce better consequences, but because they have a fundamental right to participate in public policy decisions that will affect them. Because this is their reason for wanting to participate in the policymaking process, they feel that the FWS's efforts to involve them through public meetings have not adequately addressed their concerns. As one farmer noted, the FWS had lots of hearings but the officials did not seem to hear what the locals said. The truth is probably that they did hear what locals said, considered it, and decided that the best consequences could be produced by policy decisions that do not conform to all the local citizens' wishes. By taking a consequentialist view, the FWS saw the meetings as having an informative function. Because the farmers were interested in the non-consequentialist issue of autonomy, they wanted the meetings to have a formative function. That is, they wanted their voices to have an influence on policy decisions, regardless of whether or not the FWS believed they voiced legitimate concerns. As a result, they did not feel that their participatory concerns were being met.

It is not clear how the farmers' participatory concerns can be met or even if they should be met. Indeed, it remains an open question whether one ought to take a consequentialist approach or a non-consequentialist approach to the issue of local participation in the policymaking process. While most people seem to share the belief that autonomy is morally significant apart from its consequences, it is not clear that the appropriate response to this intuition would be to have all affected parties participate in every government policy decision. Indeed, this kind of participatory policy would make government decision-making extremely difficult. One could argue that the actions of farmers and environmentalists on the Kankakee have such a far-reaching impact, that the participant list would have to be broadened to include persons downstream in Illinois, as well as perhaps all taxpaying citizens who support local farmers through government subsidies. Yet it does not seem reasonable to suggest that the government hold a national referendum before it acts on the Kankakee case, or any other like it.

On the other hand, it might be the case that the citizens' participatory concerns are already being met through their government representatives. Citizens do have a voice on policy decisions, but it is not through these FWS public meetings; rather, it is through their elected officials who control the laws and policies governing the FWS, as well as the funding for the FWS. In that sense, as one commentator expressed it, the conflict between farmers and the FWS may in fact be better construed as a conflict between the autonomy of local people and the autonomy of the American public as a whole. Solving the dispute would involve finding an appropriate balance between local and national control over environmental policy.

In any case, it remains true that the FWS is not going to be able to address the farmers' participatory concerns unless the agency is cognizant of the nature of the concerns. At this point, FWS representatives have largely responded to farmers' concerns about autonomy by pointing to the FWS public meetings. In other words, they have answered the non-consequentialist concerns for local input with consequentialist answers. As such, they have not really spoken to the issue that the farmers raised. One cannot make progress towards solving disputes without addressing or acknowledging the concerns of one's opponent in the dispute.

Conclusions

It seems likely that there are ways in which the United States Fish and Wildlife Service could create the proposed wildlife refuge, while addressing the non-consequentialist concerns of the people living in the Kankakee area. Indeed, it would be ideal if it did. There appear to be good, important reasons for creating a wildlife refuge in the Kankakee River basin. But it is clear that the only way the proposal will be implemented without significant public opposition is if the FWS understands and addresses non-consequentialist concerns.

It is worth noting that the consequentialist approach of the FWS to the Kankakee case is representative of the approach of government agencies to many other environmental policy issues. A quick review of the literature would reveal that environmentalists, both in and outside of government agencies, frequently appeal to consequentialist justifications. This analysis of the Kankakee wetlands case illustrates why it is in the interest of environmentalists to take into consideration non-consequentialist moral concerns. It is important because significant progress on environmental issues can be made only with the cooperation of large numbers of people. In order to reach a consensus among a wide variety of people, environmentalists have to address a wide variety of moral concerns. Taking a purely consequentialist approach puts environmentalists in a weak position for communicating and cooperating with persons who have non-consequentialist moral concerns.

I have argued that there are practical reasons for considering non-consequentialist ethical frameworks. It is worth asking whether or not there are also moral reasons for environmentalists to consider non-consequentialist frameworks. The overwhelming bias toward consequentialist justifications for environmentalist policies should raise questions in the minds of environmentalists. Is consequentialism adequate to the task of expressing what is morally significant about protecting the natural environment? Are there non-consequentialist reasons for doing so? It would be worthwhile for environmentalists to explore these questions further.

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Notes

1. In an academic climate in which "dichotomy" is a dirty word, it is perhaps worth commenting on why I have chosen to examine this controversy in terms of the seeming "dichotomy" of consequentialism and non-consequentialism. My intention is not to construe all value frameworks as falling into only one of two simple categories. Rather, it is to broaden ethical thinking by arguing that there are numerous alternatives to the one value framework (consequentialism) that currently dominates public debate on environmental issues. That is, rather than assuming that there are only two approaches to ethics (A and B), I am arguing that there is much more than one approach (A and numerous, diverse not-A).
2. One might argue that toaster autonomy is morally important because protecting autonomy produces better consequences in the long term. That is certainly the sort of argument consequentialists such as J. S. Mill have offered. But a non-consequentialist would simply reply that he or she values autonomy for itself, quite apart from any consideration of the good consequences it may produce. Thus, the difference between the consequentialist and non-consequentialist approaches to this issue is not that one approach places value on autonomy and the other does not. Rather, the difference is in the reason given for placing value on it. See below for further explanation.
3. It might be argued that the FWS actually appeals to procedural, rather than consequentialist, justifications for policy. The FWS is bound by federal laws. The various steps in the policymaking process, including the public meetings, are legally mandated. In that sense, one could argue that the FWS policy, is in fact, justified by procedures, not consequences. But I do not think that argument is convincing. Policies that are bound by procedures are not necessarily policies that are justified by those procedures. It may be that the procedures are in place because of other consequentialist or non-consequentialist concerns of lawmakers. That is, it may be the case that lawmakers enacted these procedures because they believed that following them would produce the best consequences, or that respecting rights would be best accomplished through following those procedures.

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