

PROBLEMS IN CONSERVATION

BY THE RIGHT HONOURABLE SIR GARFIELD BARWICK*

Much has been written and said about conservation in various contexts, and a great deal of activity displayed by a wide diversity of people, each as a rule particularly concerned with some specific proposal of government, of local government or of industry. The community has been alerted to the paramount need for vigilance in conservation: and an increasing part of the community is responding to the real claims of conservation. I wondered at first when asked to write a few lines for this Journal, whether anything could usefully be said or written: but turning it over in my mind whether I should, and if so what I would write, I have come to think that there is room for me to say something for those of this generation, who by disposition and also by training are likely to be concerned with the future of the country both for the sake of our own generation and for that of succeeding generations. In the idealism which trained minds are wont to display, there is room for a very strong sense of the trusteeship or guardianship of the environment, a sense of obligation or duty which, in my view, each generation should feel. If that sense of trusteeship is present, the requirements of conservation will constantly be in mind: and all the restraints for which it calls will more readily be observed. That trusteeship is of a particular and perhaps unusual order, for the trustee has the usufruct of the resources of the country in respect of which on this view it has fiduciary obligations. Of course, that use of strict legal categories in a discussion of this kind may be apt to mislead or perhaps be too confining. But the fiduciary quality of each succeeding generation's relationship to the resources and environment of the earth is a useful concept and in my view quite real in its application, and convenient in description.

I will return in a moment to develop the consequences of this characteristic of the trusteeship or guardianship. But first I should adumbrate the broad purpose of my paper. I am not setting out to offer solutions of any of the many problems of pollution and resource use which have arisen and which may be expected to arise in the future, particularly if mankind's standard of living is to continue to rise. What I wish to do is to suggest some basic criteria by the use of which some if not all of such problems may be solved: and also to suggest the approach which should be made in any endeavour to find solutions. I want also to emphasise the complexity of conservation problems and briefly to expose at least some of the reasons leading to that complexity.

To return to the theme I had begun, the concept of a trusteeship which allows a use by the trustee of the subject matter of the trust immediately raises the question of the

*G.C.M.G., Chief Justice of the High Court of Australia.

identification of the limits of the permitted use. Thus there is need to decide what is the justifiable use by each generation of the resources of the earth, a use which will not be inconsistent with that fiduciary obligation. It must be conceded at the outset of any such consideration that some use of these resources is a right of each generation, what I have called the usufruct. It may be expected that the permitted extent of that use would reflect the state of development of each generation, and fairly reflect the just needs of that generation. But in the consideration of that extent the overriding fact of trusteeship for the benefit of succeeding generations must ever be a factor. As I later remark, humanity must progress: progress, true progress, however narrowly defined, involves change and frequently modification of the environment.

I would like at an early point in my remarks to repeat a definition which I used in a speech at the Edinburgh Congress of Commonwealth Universities held in 1973. Perhaps I should put the definition in the setting in which I placed it when first I spoke it:

First, something as to terminology. 'Conservation', 'environment' and 'ecology' are now terms in frequent use. Their current prominence and their fashionable use has tended in a significant degree to reduce their impact. Perhaps the lack of precision of the concepts they are intended to convey leads both to genuine misunderstanding and, at times, to opposition. But no more useful terms are at hand. For my part, I shall use the compound expression, the 'conservation of the environment' to embrace the concept of the maintenance whether by positive or by negative action, of a proper framework, both natural and contrived, in which humans can have and enjoy a life which engages and satisfies their capabilities, both as of nature and as cultivated by education and social contact. This, I realize, is a wide reaching formula: but so I intend it.

Though wide, that definition may not be exhaustive but it will suffice for present purposes. There are various facets of that definition about which something might be said. But for the present, the immediately significant thing is that emphasis is there placed upon the use of the earth and its resources by man and for man: that I think forms a significant part of what I am proposing to write. In so saying, I do not mean to exclude from the activities of the conservationist the care of animal and bird life and of the preservation of suitable habitat for its own sake. But, even in that sphere, the occasional competition between the development of human life and the maintenance of these natural conditions must be resolved: and might well be resolved along the lines which I indicate in this paper.

Further, that definition included in the description "humans" both the current and future generations. It sought also to reflect the relationship between the justifiable use a generation may make of resources, and the state of development of that generation, for example the reference to the satisfaction of "capabilities as of nature and as cultivated by education and social contact". The capacity of each succeeding generation to enjoy the use of the earth's resources will be likely to increase in a world of ever increasing technology, of widening leisure time and capability and of changing distribution of national income. These both create more ways of using the earth's resources and, at the same time, by the very availability of such new uses, stimulate

not merely a desire for such uses but may indeed create a need which justifies its satisfaction. Thus the limits of the current generation's use of the earth's resources cannot be regarded as the extent of the use which satisfied an earlier generation. On the other hand, having regard to the fact of trusteeship or guardianship the satisfaction of all these desires or so called needs may not be justifiable. The trusteeship will import the possibility of self-denial by the generation in relation to the use of those resources, confining it to a use which may not fully satisfy the ultimate in human desire. Such self-denial is not of the order of the monk of mediaeval times, nor similarly motivated, but rather involves the distinction between justifiable need and mere extravagance, between using and squandering, in relation to the generation's and the individual's demand on the resources. That raises a problem difficult of resolution, though readily capable of expression and of recognition.

Use of the earth's resources, not merely involves their possible reduction in extent, even though the resources be renewable in a future time of varying duration according to the nature of the resource, but it also involves the conversion by use of the matter of which the resource is composed into some other form of matter, visible or invisible. It is this result of such use which modifies the environment as it existed before such use: thus there emerges the possibility not merely of the depletion of resources but of what we broadly call pollution. Therefore both aspects of this modification, actual or as reasonably to be expected, become factors in the decision whether or not the use by the current generation which produces that modification is a justifiable use, or whether on the other hand it really involves a breach of the trusteeship of which I have spoken.

Man has used the earth and its resources from the beginning, whenever that was, perhaps from the time he emerged as a species. This use has involved change and modification of the earth and its resources. Sometimes the change was unnecessarily harmful and damaging to the earth, other times it was possibly beneficial. In days of man's technological immaturity his capacity to change or modify the environment was relatively small; less damage can be done with a primitive agricultural instrument than with a bulldozer. But even primitive hunting involving the use of fire modified the forest and habitat of the wild life. None the less, earlier man was not unconscious of the need to conserve: and, indeed, many of his agricultural and hunting habits acknowledge the obligation his generation had to ensure a continued availability of the earth and its resources for the use of his descendants and succeeding generations. Interesting examples can be found of early man's totems or tribal rules and customs exhibiting this concern for the maintenance of the resources of the earth for the benefit of succeeding generations.

Modern man, however, has achieved a greater capacity for change, for alteration and modification of the environment. Because of an advancing technology, the rate and direction of change and of modification of the environment has increased to the point where only the most alert guardianship can prevent undue and harmful modification. With the increase in the possibility of greater use the duty of awareness of possible harm and the sense of trusteeship must have greater recognition and exercise.

Further, as perhaps I have already indicated, the advancing technology has brought within the reach of the ordinary man many advantages of the use of the country's resources which he has come to regard as necessary for the fulfilment of his ambitions as a human. There has come to be implanted in him and increasingly manifested by him a desire for greater use by technology of the earth's resources which use will be accompanied by a modification of the environment.

This use through developing technology of the resources of the earth to satisfy human desire for a more expansive life and for better opportunity for the exercise of human talent, is not only with us, but to my mind, generally speaking, it is acceptable. This advancing use is comprised in the description of progress. But that means no more than that uses reasonable or indispensable for human life and satisfaction can be embraced in what is true progress. That means also that some modification of the environment and some use of the earth's resources is not only likely but must be accepted.

The problem for the present generation in the exercise of its trusteeship or guardianship of the earth and its environment is therefore a highly complex one. There is no room to solve the problem by a standstill order, a prohibition of user, made almost as of course. Nor can it be solved by simply harking back to what satisfied a former generation. However much some may yearn for a more primitive life it cannot be enforced upon a generation which has a desire to enjoy the evident opportunity for a more complex existence.

The problem, therefore, like so many with which humans are faced from time to time, involves an intelligent balance, achieved by the use of knowledge, reason and wisdom: that balance will be found in the use, which though effecting a not undue change and not more than an acceptable modification of the environment, yet results in the proper maintenance of resources and environment for the benefit of another generation. But by the very expression of the problem in that way the difficulties of deciding what is undue and what is unacceptable readily emerge. There are, in most cases, two sides of the argument, much to be said pro and con. The solution must be the result of calm and objective consideration, however strongly opinions may be held and expressed, and however much emotion or intensity of feeling may have been aroused.

The problem is compounded by the nature of the society in which we prefer to live. That society places individual freedoms very high on its priorities: sometimes to the point that freedom of the individual is pressed to the point where we are apt to forget that man probably has more duties than rights and must perform the duties if the society is to survive. Included in these freedoms is an ability or capacity to do many things which may be harmful to the environment and which are not subjected to community control through law: or, if they are, they are but partially so controlled or only nominally controlled because of the difficulties of the enforcement of the community's will. Thus, there is a great need for conscious self-control and self-discipline, whether the self be a natural person or a corporation, in relation to the use which is made of the earth and its resources. In other words that sense of

trusteeship or guardianship of which I have spoken needs to be universal, whether what is in hand is government action or individual activity. The problem is not merely a problem for governments or official bodies.

What I have emphasized in what I have already written is that the conservationists' problem — indeed the community's problem — is not a simple one: rather, it is highly complex. It is the problem of finding and holding a proper balance between what use the generation may justly make of the resources, bearing in mind the extent and the permanence or impermanence of the modification of the environment involved in such use, and what use may not be made because of the proper requirements of the present and succeeding generations to an environment which has not been unjustifiably modified. So to state the problem is to deny that it may be solved by a mere denial that this generation can use the resources at all. Of course, there may be a situation in which because of the unjustifiable claim to such use, either because of its nature or because of its eradicable impact on the environment, the use should be wholly denied. But that is likely to be a relatively rare situation. It affords no justification for adopting a general standstill as *prima facie* a proper solution of the problem. The task is much more complex and involves much deeper consideration in order to achieve a balanced view which accommodates to the reasonable and proper demands of this generation the requirements of its trusteeship of the earth and of its resources for the generations.

Perhaps I could lend point to what I have said by referring to an illustrative situation. One particular area of which I might speak is the use of land in Australia for agriculture and grazing. This is one of the aspects of human activity which cannot be ignored in the economics of the country. The living satisfaction of each of us depends basically on the economic health of the community. Land use has a focal position in that economic health in Australia because, however much we may industrialize, fundamentally we depend on our primary industries, in which I include the extraction of minerals. History reminds us that flourishing agricultural and grazing communities have disappeared because of supervening infertility of the soil resulting from the manner in which it has been used. In Australia the extent of the off-take from the land, whether of grain or of animal flesh, depends predominantly upon the use of artificial manures. Some of the countries of the old world, because of their limited area or of the nature of their soil, are less dependent on such fertilizers and are better able to use natural manures. Further, pesticides are of general use in Australia in securing the product of the land, and may in some instances be indispensable to economic success. A matter of high priority in conservation is, in my view, the question whether or not our land will indefinitely produce for us as it does now or even better than it does now. That question involves consideration of our use of fertilisers and pesticides. Also it must be remembered that we are a granary in a world which is, and is likely to remain, hungry. Therefore, continued availability not only of food for ourselves but of a surplus for disposal is fundamental not merely to our own life but to our fulfilment of our position in the world.

Thus the agricultural and grazing use of land may afford an illustration of what I have been speaking about. That it is proper to use the land for such purposes is

undoubted. But such use may be undue and may involve unacceptable modification of the environment. The conservationists' task is to be alert to the misuse or undue use of land causing unacceptable modification of the environment, in this instance endangering the stability and fertility of the soil and the continuance of natural life on the land to a desirable degree. Here, undue clearing of the slopes of timbered country is an illustration of an unacceptable modification of the environment. The ploughing of slopes so cleared is another illustration of such an unacceptable use. Again, the undue use of chemical manures or of pesticides may be or become in given circumstances unacceptable.

It will immediately occur to your critical minds that the use of such descriptions as "undue" and "unacceptable" introduces an area of judgment for the exercise of which knowledge and wisdom are required: I emphasize the need for both knowledge and wisdom. The line which separates permissible use from breach of obligation can only be drawn after careful and deep consideration. Whether any use of land is due or undue in the sense I have mentioned is ever a problem to be considered and resolved by individuals and by authorities at all levels of government alike.

Again, an illustration of the complexity of the problems of conservation and of the fact that a mere standstill will not necessarily be a correct solution may be found in the problem of fixing the upper limits of the overall population of the country. Here, what I have called trusteeship or guardianship is also involved. When one considers the nature of this country, with its problems of drought, flood and variable climate, there must be a desirable limit to the rate of increase in its total population — desirable in the interest of the generations. The question is not what maximum population the country might or could physically support. The question is rather what is the desirable level of population which will ensure for the humans constituting that population both now and hereafter a satisfying life both in employment and in leisure. So many features of this country which make life within it acceptable and, indeed, pleasant may very well depend upon the desirable population being very much less numerous than that number of people which physically this country could carry. We have only to look around us geographically to perceive the reduction in the quality of life which pressure of population may bring. Again, a question of balance arises. But remembering natural increase, which may from time to time increase the totality of the population and not merely replace those dying, whether from old age or earlier disease, there is here a real question for the conservationist. In resolving that question, the temptation to expand population merely to provide labour for dispensable industries in an expanded industrial system which can only be supported behind very high tariff walls might well need to be resisted. But of course there are many matters pro and con to be considered; yet the problem should not be resolved otherwise than with a sense of trusteeship and an obligation to posterity.

I am conscious that in what I have written I have offered no solution — as I said at the outset I would not do. But I hope I have indicated the complexity of the problem which faces those who with idealism and goodwill desire constantly to promote the effective exercise of that trusteeship or guardianship of the environment of which I

have spoken. Though strong feelings are readily excited when a proposed use of resources is under consideration, the resolution of the question whether or not that use is acceptable must be objective, balancing the claims of this generation and those of succeeding generations. Further, the problems cannot be resolved without a knowledge of the facts and factors involved and, in the last resort, without the employment of wisdom.