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Thank you very much, Jeff. Professor Miller talked about a particular road that we traveled beginning in the 1970s. Professor Robinson discussed a different road that we traveled when we adopted the National Environmental Policy Act (NEPA) in 1969.[1] I would like to talk about the road not traveled, a road that led in the direction that Professor Miller just charted. We considered a different more comprehensive approach in the early 1970s when our national environmental policies were being formed. The time may be right to reconsider what we then narrowly rejected, both here and in Argentina.

Before I do that, I would like to note that the federal system in the United States is very similar to the federal system in Argentina. What Professor Miller said about the United States is true in Argentina, as well. We have decided in both countries that our states (provinces in Argentina) make the laws that affect our property and that states have jurisdiction over natural resources and land use. In both countries, we give our national and state governments concurrent jurisdiction over "interstate" economic and environmental matters. This makes establishing the balance between these two levels of government difficult in both countries, politically and legally. It also means that the experiences of one nation are at least somewhat relevant to the other.

Senator Henry Jackson chaired the committee out of which NEPA came. NEPA was the product of his Senate Interior Committee in the late 1960s. Senator Jackson proposed NEPA partly in response to the problems caused by the serious conflicts in policy, jurisdiction and programs that Professor Miller talked about which were observable even then.

1. 42 U.S.C. §§ 4321-4370d (1994).

Senator Jackson focused a great deal on the Florida Everglades as an example of what was wrong with the system in the late 1960s. He documented at one point that there were three separate federal agencies, funding or undertaking an action in the Florida Everglades, each working at odds with the others. One was responding to a local government's request in Florida, the other was responding to a county government policy and the third was cooperating with the State of Florida. Each of these agencies in Florida was requesting different federal agencies to take actions that would impact on the Everglades. One federal agency would build an airport - a major jetport outside of Miami, the other would create a major federal recreational park in the same general area, and the third would drain that land for flood control purposes. Senator Jackson knew that the three agencies were not talking to each other. Worse, he knew that the state, county and local governments in Florida were not coordinating their policies and programs.

The adoption of NEPA solved part of that problem. It insured that the individual agencies of the federal government would consider the environmental impacts of their actions, which gave them some basis for coordinating their decisions. But, Senator Jackson knew that there were other dimensions to the problem of conflicting jurisdictions, policies and programs. He knew that the requirements of NEPA alone were insufficient to create the vertical and horizontal integration that was needed within the federal system to eliminate problems typified by the Everglades example.

In response, Jackson proposed, as a bookend to NEPA, the National Land Use Policy Act.[2] It was quickly adopted in the Senate, by a large majority, but it did not pass in the House of Representatives. It was adopted again the next year in the Senate by a large majority, but again, it did not pass the House of Representatives. And, finally, because of political issues surrounding Watergate and unfriendly amendments to the Jackson bill, the House failed to act on

2. S. 3354, 91st Cong., 2d Sess. (1970).

the measure in 1974. It then died. The National Land Use Policy Act charted the direction we chose not to travel.[3]

Let me describe to you briefly what this law would have done. First, under the Act, the federal government would have provided incentives to states: not mandates, but incentives to encourage states to create land use plans. One of those incentives would have been planning grants, money to enable the states to prepare plans. Another incentive was to be the creation of a national data system that would have provided to states and local governments the land-related data that was available through federal agencies. This coordinated data network would have given states the technical ability to conduct sophisticated land use planning in conjunction with their localities.

Senator Jackson, through this legislation, called on states to develop plans for entire geographic areas: whole systems of the environment such as rivers and their tributaries, aquifers and their watersheds. He envisioned that some portions of these areas would be designated as areas of special environmental importance and others as areas for development and growth. Then, he thought, federal agencies could spend their resources and take other actions in support of conservation and development in appropriate places, as designated by the states. This would provide the vertical and horizontal integration of the entire land use system that the Senator was seeking to encourage.

Under the National Land Use Policy Act, there would have been a single agency at the federal level to ensure that all federal agencies were coordinating properly with the state plans. The proposal would have given incentives to the states to encourage them to establish coordinating agencies to inte-

3. For further information on the National Land Use Policy Act, *see* John R. Nolon, *Fusing Economic and Environmental Policy: The Need for Framework Laws in the United States and Argentina, infra* this volume, at 671. *See also* John R. Nolon, *National Land Use Planning: Revisiting Senator Jackson's 1970 Policy Act*, LAND USE L. AND ZONING DIG., May 1996, at 3; Jayne E. Daly, *A Glimpse of the Past, A Vision for the Future: Senator Henry M. Jackson and National Land Use Legislation*, URB. LAW., Winter 1996, at 7. The research by Professors Nolon and Daly on this subject was conducted under a grant from the Henry M. Jackson Foundation.

grate their activities with those of municipal governments. Under this approach, the state plan would be the organizing mechanism of the system. These plans would be evolving strategies, calling for broad local input and constant revision as more was known and as conditions changed. Of course, these state plans would have had to respect the proper use of federal lands and the achievement of federal and interstate objectives where these were paramount. The very existence of this state planning process, however, would allow decisions to be made regarding what was predominately a federal, or interstate, objective and what was not.

What Senator Jackson was looking for, in this bookend to NEPA, was a system that would have infused comprehensiveness, coordination and cooperation into a system that increasingly exhibits conflict and confusion. Today, there are several "property rights" bills pending in the U.S. Congress that would radically change environmental legislation; they are aimed at correcting perceived defects in, and the high costs of, this system. One of the key issues pertaining to that discussion is federalism; the proper balance of state and federal power and who should make decisions. Another issue involves whether our public regulatory systems sufficiently incorporate the private sector in the formulation and implementation of resource and environmental policy.

Some in Congress argue that our abatement control laws at the federal level are fine; they are already balanced, objective, and allow some private sector input and choice. As Professor Miller explained, we use tough federal standards and allow the states to enforce those standards, thus achieving a degree of integration. But, then, there are others who say that there are problems in this system. Our states are beginning to wonder whether they can afford the administrative costs, absorb the private sector losses and overcome emerging political resistance caused by the enforcement of the current federal system. States are also wondering whether federal environmental laws are properly coordinated with important economic development activities in their regions.

These property rights bills in Congress and these questions from the states and the private sector suggest that we

should reconsider the road that Senator Jackson would have had us travel twenty-five years ago. What many seem to be saying is that we need a more integrated system, more incentives, more coordination of policy, more collaboration with the states and the local governments and, very importantly, more collaboration with regulated parties in the creation and enforcement of regulations.

These are important emphases and we need to adjust our system to accommodate them. Whether they call for a radical reconsideration of our legal system, or simply the infusion of some of the balance that Professor Miller called for, is a question that our political leaders are addressing at the moment. I look forward to returning to Argentina because this emphasis and balance are now built into the amended Argentine Constitution. It calls on the National Congress to protect the citizens' new right to a healthy environment through sustainable development, a term that implies balance and integration. Perhaps the light that country sheds on this subject will illuminate the new road we need to travel here.