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Panel: Ethical Dilemmas: Finding Common Ground on Controversial Issues

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PANEL: ETHICAL DILEMMAS: FINDING COMMON GROUND ON CONTROVERSIAL ISSUES

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I. FOCUS OF THE PANEL

This panel discussion applied ethics to the theme of the conference. Panelists examined ways ethics may help reconcile industry (such as business and development) with environmentalism.

II. EXCERPTS OF THE TRANSCRIPT (EDITED, REVISED AND EXTENDED)

MODERATOR: Ms. Blackner, would you begin our ethics panel discussion, and remind us of Florida's state-of-the-wetlands, as you have found it to be, and what efforts you began about it?

BLACKNER: I believe that at least in Florida, a great number of laws which are good laws, are simply unenforced. As a case in point, I agreed to take a case for the Sierra Club and a number of citizens, concerning a road near Tampa called the Suncoast Parkway. I got the documents relating to the permitting of this road as construction commenced. The permitting of this road was like the perfect law school exam: Let's figure out how many

1. Panelist: Attorney, Blackner, Stone & Associates. *See infra* APPENDIX, for full biography.

2. Panelist: Ph.D., University of Florida Departments of Religion and History and College of Natural Resources and the Environment. *See infra* APPENDIX, for full biography.

3. Panelist: Ph.D., University of Florida Department of Religion, College of Natural Resources and the Environment, and Center for Latin American Studies. *See infra* APPENDIX, for full biography.

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environmental laws have been violated here. The C answer would be 5, the B answer would be 10, and the A answer would be all of them. My husband said it was like a kamikaze effort to challenge it. It was as if the agencies who were involved had gotten into a room, cut the deal on wetland mitigation, and that was it.

The flip side about the permitting was that the people involved from the citizens side had no clue how the law worked on the permitting process. There are all these different agencies out there, you've got the Water Management District, DEP, Army Corps of Engineers, U.S. Fish and Wildlife Service, the Counties, cities. It's not a user friendly system unless you want a permit, then it's very friendly. And I was so upset that nobody had commented during the public comment period on the permits, when I looked into it. And I was surprised at the extent the environmental movement in Florida did not understand how the Clean Water Act worked. And I looked through the permits which the Army Corps of Engineers issued in Florida, and I realized that they just rubber stamped these permits and that the public had no involvement in the comments or process. I guess like a lot of people I thought this beautiful Clean Water Act is on the books, it must be protecting waters of the United States. But I found, that is not how it works. I began really thinking about things. Everything west of I-95 in South Florida, is historically Everglades, but much or most of that has been dredged and filled since the Act has been on the books for the last 30 years. So, I filed this big law suit. And the Judge did not say, "You're wrong on the merits." What he said, was "Too little, too late." And the legal term for that is "Laches", too little, too late. It's very painful to know, you can be right on the merits, but if you sit there and don't get ahead of your curve, you're going to lose.

The way the system sits, you're probably going to lose anyway. I've become very disillusioned with our government in Florida. What I did with my frustration, with being upset with the Army Corps of Engineers not following its own regulations, was to start going around the state giving workshops to people to explain how these laws work or don't work. My opening spiel is, "Imagine if the Federal government says, 'We're not going to enforce the Civil Rights Act in the states of Mississippi and Alabama. Why? Well because there are too many African Americans in those states!'" Well, in Florida, the Clean Water Act is not enforced. Why? Well, they say, there's too many wetlands in the state! That's where I'm coming from. So I started this web site, Floridasos.com, and I'm now a member of this group, Floridians for Environmental Accountability, whose film was shown to the conference. So you can see where I'm coming from. I believe that government is supposed to be of the people, by the people, for the people. But no, it's of the

developers, by the developers, and for the developers. And I used to think our state government didn't care about us. But now I think it's worse. I think it's dangerous to us. And I'm very angry and I wish I could mobilize people. I know there a lot of people out there who are upset. But somehow we have to harness this anger, and do something productive with it. I'd like to see that anger unleashed on Tallahassee.

MODERATOR: Let's take Attorney Blackner's example, and try to address it in an ethical analysis. Perhaps Dr. Peterson can speak to the underlying assumptions in debates such as this, the general values that begin to apply, and other thoughts flowing from what we just heard.

PETERSON: My training is in social ethics and I approach environmental ethics from that background. One of the things that I try to do is think about the underlying assumptions. What is it that we value? What is the stake of the different parties? It is hard not to be very cynical. But you can come to an understanding and answer, at least partially accurately as nothing is ever definitive, by looking at what's being valued in a case like the one just described. I don't know the parties involved, but there are usually two obvious main ones. The environmental organizations and activists and the lawyers that will be with them, and the industry or developers, or the government agency siding with them. And of course, there are a lot of others. The mistake we sometimes make is thinking there are only two parties. But for simplicity's sake, what is it the main or more in-power side's value? And what are the assumptions that underlie what they are trying to do?

Before becoming concrete on the example, we can focus on the language and context for the different claims and push more beneath the surface, rather than simplify it for developers for example to "all they care about is money" (although that is perhaps true to a large extent). We can still think about why do they value that. Is the value greed, or power? Well, the environmentalists value nature, the state staff value their jobs, which depend on developers, developers value the money they can gain, and that's an accurate answer I think.

Then you can ask why do they value this over this? What are the reasons when reasonable people might say it's very short sighted to value say, short-term profits over long-term environmental health. We might say, gee, that doesn't make any sense. And I think that's where a little ethical analysis can help, because people have a tremendous capacity for self-justification. . . . People have a great capacity to find ethical and moral

justification. People almost never say, "I'm greedy, and that's why I want this." People say "It's jobs that are more important." People value nature, but people value nature in different ways and for different reasons.

And this is where environmental ethics as a discipline offers language about for example, intrinsic versus instrumental values. Valuing nature in and of itself, including what is known as "deep ecology," is called a "biocentric" perspective. This states that the value of a natural place, or plants, or a landscape, or a non-human animal, the value of those is entirely independent of any relationship or utility to humans. Then there are other ways of valuing those that do relate them to humans. There is an endless variety of ways to do this. But while there are reasons that people give for valuing what they value, people may also have reasons that they do not give and even that they are unaware of, which have to do, for example, with what they understand as the purpose of human life. That may sound very abstract, but it is not really, because those abstract questions and those ideas that we may not think about very explicitly, or only in passing . . . Nonetheless, they really shape our actions, and they shape the actions of developers. Even though they may not be thinking about it at all, they have values, and oftentimes their values may not be something particularly noble, and they may not be something that they want to think about very explicitly. It may be selfishness, and there may be selfishness on both sides, too. You can be on the right side of an issue and it doesn't mean that you are necessarily morally flawless.

When we think about what we value collectively, and why we value it, we also want to think how we protect what we value. And understanding why we value what we value, is very important to thinking about how we can protect it. What are the obstacles that can prevent our realizing that protection, or our fulfilling what we want to do? That is why we have to think about strategies, means and ends and the relationship between those.

MODERATOR: Perhaps Dr. Foltz can describe some mistaken assumptions that are made, some of the differential perceptions affecting some of the publicly debated matters.

FOLTZ: Well, Dr. Peterson made a good point, that things are often presented to us (the public) in terms of the two-party system. In other words, the notion that there are two views on a subject, therefore two sets of competing interests, which is almost always a gross oversimplification. There is often a deliberate effort to obscure the complexity of issues so that cases can be made very forcefully and often very emotionally. So I think the most useful

approach, in such cases, is to attempt to deconstruct this polarization. Don't let anybody get away with sharing an unsupported opinion with you. When somebody states their position, ask them to explain it. This is the Socratic method we use with our students. We say, fine, you have an opinion, we all have opinions on just about everything. But how many of us have actually thought through our opinions from beginning to end, recognized and come to terms with the underlying values that have caused us to absorb things in a particular way and to formulate that opinion? I suspect that nine times out of ten, we are comfortable with expressing an opinion without actually having any sense of where we got that opinion, or it may be a very mistaken or unclear sense.

One exercise we like to do with students (often on the first day of class) is have them open the Bible to Genesis 1:28, the verse in which God commands us to be fruitful and multiply, and to fill the earth and subdue it. More than one theologian in recent years has commented that this is apparently the only command in the entire Bible that we've obeyed! It's interesting to think about where we get this notion that we're fundamentally different from all other species. Nobody knows how many species of life forms there are on earth. The leading experts, people like Ed Wilson at Harvard and others who have devoted their lives to counting things like species of insects, they have narrowed it down to anything between 15 million and 150 million, they are pretty sure that is the range. And how many have we actually counted? 1.7 million. There are 1.7 million species that we actually have named and classified, perhaps 11% of the low end or 1% of the higher estimate. We don't know anything about the biodiversity that surrounds us, and yet we're only one species within this huge unknown catalogue of species, so where do we get this idea that we're the one species that matters, that everything else was made for us? In some passages at least, the Bible gives some support to this, but there are other passages (like in Psalms) that kind of round out the picture somewhat. But people tend to be selective in terms of picking and choosing what supports their existing views.

A lot of classroom discussion has to do with having students think through these assumptions. Where did they get these ideas? Why do you just assume automatically that, say, logging jobs are more important than spotted owls? Of course we all know that is a red herring, because those loggers are going to lose those jobs anyway, it is just a question of now or later. But that brings up another issue of how deeply engrained these kinds of culturally informed assumptions are, getting programmed into us from virtually the day we are born. We are not very aware of it but they

are incredibly operative in affecting our thinking. We react spontaneously to things intellectually, but very often on the basis of these deeply buried assumptions. So part of it is bringing them to the surface, into the light of day. Shine the light on your assumptions so that you can examine them and see them for what they are, rather than just taking them for granted.

I work mostly with the developing world, environmental organizations in the Middle East and South Asia and elsewhere, where the underlying assumptions are different. It is often easier dealing with contexts like this, where you can see very clearly there are different value systems, not just one value system which is universal. Living in the United States, it is a little harder to get at that, because a lot of people assume that our commonly shared notions are universal notions and therefore they must be right. I think it helps as a first step to deconstruct that. But then once we've recognized that these sort of diverse cultural assumptions exist, we can start looking at how they get manipulated by people that have a particular agenda. So even though on further analysis it becomes clear that the choice is not between spotted owls and lumber jobs, the idea that the choice could be presented in these terms is only possible given a widely shared cultural assumption that humans are more important than owls.

The media has a lot to do with how these debates get framed. We do not have an independent media in this country--I think that's becoming clearer and clearer to people who watch the media and who are seeing the way it's concentrated into larger and larger and fewer and fewer corporate hands. If, on the other hand, you look at the alternative media and see what is being discussed, you will see that it is a completely different set of issues in many cases. Many of the most important issues never get discussed in our political process, while there is a certain set of issues that keep coming up again and again. The Republicans and Democrats differentiate themselves from each other on the basis of this very limited set of issues, while agreeing at the same time that both parties will completely exclude from the discussion a wide range of other issues which are therefore simply not brought into the public debate and on which it often turns out both parties basically stand in exactly the same place. And that is why the major parties do not want to discuss such issues, because then everybody would see that there is no real debate and people might start calling for some genuine opposition. That is a real problem, and that is where grassroots mobilization is really the only solution that I can see.

In order to make truly informed choices, people need access to a wider range of information than they are getting, the kind of information that is not made available thru the mainstream

channels. I think this is something everybody can play a role in, and I think it is necessary for a true democracy.

MODERATOR: Let's then take it back to our grassroots "prototype." The *floridasos.com* web site has some assumptions. Some quotes making assumptions in the site are "How was the Clean Water Act highjacked by developers?" or, "The Army Corps of Engineers has only heard consistently from one interest group, developers", or "Florida SOS believes the Corps routinely caves in to developers and will probably view you as a problem, so don't expect much from the Corps in terms of hospitality" or, "The Corps views developers as its clients." These are some of the position-taking there...

BLACKNER: No, those are facts!

MODERATOR: Did you, when you started working on wetlands, believe that was the way it was going to be, or did you learn that in the school of hard knocks?

BLACKNER: I must say when I came out of law school, I had a deep respect for the law. And I went and worked for the Florida Fifth District Court of Appeal for four years, and I believed the system, at least the legal system, the appellate system, worked equitably. And I can tell you that everybody who worked there was fair and open minded. Then I went out into private practice, and I did a lot of nuts and bolts kinds of cases, car accidents and so on, and I thought those were processed fairly depending on how aggressive your lawyer is, but I do think environmental cases are different.

I really believe that, and I've done a few environmental cases, I've taken a few selectively, I have a handout reprinting an article that pretty much sums up what I think about labeling people, and assumptions underlying what we say. But I have learned the hard way. I've been to court on any number of cases and I do believe that judges do look at cases where you are suing the government differently than if you are suing in a car accident case or a contract case or something like that. So my anger built slowly.

I came from the background that you do respect the law, you do respect the government, you assume that we are the preeminent legal system in the world. And our laws are important, and we are an nation of law. I was raised in Jacksonville, in a very southern family. Very deferential to authority. My mother is very southern. My anger has come up slowly. I had to break out of the mold. I didn't start to think for myself until I was 35. In law school, I was

very deferential to authority. But I'm not anymore. Because I don't believe that the laws are being enforced that address the environment.

MODERATOR: You are staking some ground, and I want to go to Dr. Peterson with this. Because Dr. Peterson has written maybe the latest book out in the field, *Being Human: Ethics, Environment, and Our Place in the World*. It was so new, they hadn't catalogued it in the library that I got it from, and I had to get them to hurry it up. From what I've been able to read of it, there is a quote towards the end discussing "Lived Ethics," and you say, perhaps slightly taking it out of context, "We can construct a liveable and lived ethic only in and through a process of listening to others and working with them." But in this tough world that Mrs. Blackner depicted, what features of this process of listening to others and working with them, do we in the legalistic environmental area need to address?

PETERSON: I do think that dialogue and listening to people is important, although I also think that we have to have very limited expectations. And I think that realistic experience of activists in legal and other settings is that sometimes the dialogue is not mature, and should not be listened to and taken seriously.

That can be for a variety of reasons. People may not listen because they are so convinced on either side. More often, the side that is powerful, the people that are powerful, do not have to listen. They do not have the interest in listening to differing opinions. Or in really allowing their assumptions and their actions to be challenged. There is no reason, why should they? The status quo works well for them. For that reason, morally, people in power, whether it is a teacher and a student, or a developer or a small grassroots group, the people that have power have morally a greater responsibility to listen and to be open and to take seriously the challenges of the other. But practically speaking, that rarely happens. So while dialogue and listening and trying to understand each other is important, it is not always fun, it is not always possible, particularly when you are in a sort of David and Goliath situation. It is not always possible to be taken seriously, to have people to acknowledge your claims.

Sometimes it is the case even where people are saying they value the same thing. They say, "But, oh, we value wetlands, too, we just have this trouble protecting them and what we have always done is always sufficient to protect them." People will not engage you at the level you want to be engaged at, by saying, "Oh, we already value that, and this is our way of protecting that, and your way is just an alternative way of protecting them and we've already

taken care of that." So sometimes dialogue is not really possible, although it is important and is a part of what I was saying and Dr. Foltz was saying: we need to deconstruct it and think a little about what is at stake. You can ask if you really value wetlands or nature, or owls or manatees or whatever you say you value.

Everyone says they are for nature, no one says they are not an environmentalist. It is very rare, it is sort of like saying, "I hate babies, *and* I hate spotted owls!" And so everyone is an environmentalist. But do people then support policies that are good for babies or spotted owls? No. Do they always take their personal actions that are good for what they say they care about? No. There is always a gap at the level of individual behavior and at the level of institutional policies.

And those are the people that have a much bigger impact. But even there you can challenge people if you can engage people in a dialogue.

But maybe you have to engage them in that dialogue by a lawsuit or a demonstration or other means to engage people and challenge them. As Dr. Foltz said, "You say you value this. But look, we can prove that your means to protect what you say you value don't work. So then what do you say?" And you can keep pushing.

MODERATOR: Dr. Foltz, could you take this into the legal sphere that has been raised by Dr. Peterson, about engaging in suits and demonstrations or activities and then you get the dialogue and things going. James P. Sterba, an ethical philosopher focused on the environment, says a moral approach to practical problems does not include the legal approach. He separates us out. He says this because a moral approach to do or not do certain things must be reasonably acceptable from the standpoint of everyone affected by them. That is, even if it is not actually accepted by them, it must be reasonably acceptable to everybody that is affected. And I wonder if that is right, then in talking about this, that the law is going to be amoral because not all affected should be expected to find the laws or enforcement acceptable.

FOLTZ: Well, I think it is obvious that a lot of laws are not moral and a lot of things that are moral are not legal. So that is probably the beginning of enlightenment, to realize there is no one-to-one correspondence there. Sometimes to do the moral thing you have to break the law, or work to change the law. I think that when people talk about the magnitude of the challenge that is facing us, we are trying to deal with a political system that is basically owned

by a wealthy and powerful elite. There are a lot more of us, but they out-gun us a million-to-one. It is a very daunting challenge.

How do you face up to the challenge of changing an entire paradigm that a society is structured on? We have a society that probably more than any society on earth is founded on principles like individual rights, and this really comes out in so-called private property issues. This is in contrast with other societies. We are probably the least civic-minded society on earth. And the paradigm our society favors, which it generously calls "individualism," is really one of greed.

Unless we change that, I don't see that there is going to be much progress. But how do you change something that is so deeply set in society? And so widely accepted? Well, one thing we can do is look at historical precedents of equal magnitude. We can take the challenges our society has faced in dealing with race relations and with gender relations. They are the two really big examples that come to mind. If you look at the legal apparatus or structure that pertained in the United States as late as 1860 and compare it to what exists in our legal system today, in terms of allocating rights according to skin color, it's been a complete flip-flop. Of course we have not eliminated racism, but as a society we did choose to reverse the weight of the problem. What I mean is that prior to the 1960s not only could Americans exercise racism in the absence of any serious social sanctions, there actually existed social support for it. That has changed.

So you can still be a racist in this society, but you're not going to get the kind of legal and social support that you did once. The same thing is true with sexism. You can look at law, and you can look at general social values. There have been dramatic changes to what pertained fifty years ago. Again, you can still be a sexist and you can still exercise sexual discrimination, but you do not have access to the kind of legal and social support that you used to. These are huge reversals.

We have not eliminated sexism, or racism, and we will probably never eliminate human greed or environmental destruction. But we can turn the tables. And we have models for how to do that. But one thing is pretty clear. It didn't come from the top down. It came from the ground up. And, there were prices to pay. Neither of these movements was free of violence, neither was free of considerable social upheavals, and if you look at for example, the abolition of slavery, there were serious economic consequences. The South economically as a region has never really recovered. Does that mean that the South is going to rise again, that we will re-institute slavery? I don't think so. In other words,

as a society we made a choice to make certain sacrifices on the part of some, so that the welfare of all could be better.

And I think that the environment is a really good analogy to that. It's about models. In other words, we have to be honest. And we cannot be like Al Gore during his presidential campaign and say we can have it both ways—sustainability and justice without giving up any of our comforts and privileges. We have to be honest, it's not going to help to lie to people and say you can have everything you want but still save the environment. It's not true. We're going to have to make sacrifices. That's a notion that is out there, that there are "soft" ways of making the adjustments that we need to make. I think that some changes are going to be more traumatic than others, but there's no getting around the fact that we are going to have to give up something. We can't keep taking and taking, and still ensure that the poor or future generations are going to have their fair share.

MODERATOR: Let's take the concept of this type of grassroots thing, and ask attorney Blackner, about the course that she has taken. That is, involvement through technology. We have heard our banquet speaker last night describe how suddenly and dramatically technology is making access, information, and participation occur. With the web site, you have discussed some 26,000 permits issued and some sixty denied, in the recent history of the Jacksonville District of the Army Corps of Engineers under the Clean Water Act.

BLACKNER: In the last twelve years, our web site reports it, at floridasos.com. The story that was published by the Daytona Beach News-Journal about two weeks ago, that when they did a ten-year review, giving statistics, less than half of one percent of the wetland permit applications were denied.

MODERATOR: Putting the permit approval volume in terms of what we were discussing, the public campaign, you seem to have a huge immobile object to move. And, you are attempting to do it through participation aided by new technology. To share information, to get people motivated. Are you getting that many hits on the site, are the number of objections to permits going up, is it a campaign that can bring the type of change you seek?...or is it better characterized as the best thing you can do?

BLACKNER: I have been so upset about the Corps, the self-regulators. So many environmentalists in Florida know about water management, yet they ask, what does the Corps do? The

Corps is in its offices, they don't do public hearings, you are not entitled to public hearings, you get thirty days to comment, how do you even get on the public notice list? How do you even know what they have jurisdiction over? What exactly are they doing? Why is the Army protecting the environment? All these things are going on for years, as a result of an historical accident.

George Washington needed the Corps in the Revolutionary War to build bridges and win the war, and they have been in charge of all these military engineering aspects of winning a war. Somehow when the Clean Water Act was amended, to provide for protection of the water of the United States not just for construction of water works, the Corps fell into this because they always had control over the rivers and harbors. So I started looking at the Corps and found them to be extremely user friendly. I started looking at some of their permits, and finding that they hardly ever denied permits, and I have the February 2001 Fish and Wildlife Service report criticizing the dredge and fill program in southwest Florida and saying, you don't follow your own rules! And I've been giving workshops for the last year and a half, in which I explain to people what the rules are, I give them the rules at my workshops, and I say the laws on the books really aren't that bad. But they are just not being enforced. And there is an institutional mind-set that is at play, in which the only real value that the Corps cares about as expressed in its permitting program is facilitating development.

And there are all these other values, that the Clean Water Act says are supposed to be looked at, including water control, wildlife, aesthetics (can you imagine the Clean Water Act actually says aesthetics are important!), water purification, all these wonderful tools that on paper are supposed to be protected as it all plays out in the day-to-day activity it just doesn't happen and the Corps fails to comply with its own rules and regulations. And here we are, we are told we are to follow the law, and the government does not follow its own law on a day-to-day basis. It is hypocrisy, yes, but it is worse than that. The Clean Water Act was not passed as some ideal of nirvana, but there is a real concern of protecting the public health. And all of this dredge-and-fill is going to affect the quality of life, your life, what about the future what about people 200 years from now? Do they count? I read a lot of permits and all I see the Corps say is, this permit will facilitate economic development, it will bring jobs, it will bring revenue into the community, and so on, and that is the only value I see reflected in the permit program. With respect to the water management district, they are supposed to go through this balancing test too, it is bogus! Let's be honest! At least the government should be honest enough to tell us that they really don't care about these other values, that what they care

about is development. At least we deserve honesty from our government, and we are not getting that.

MODERATOR: Dr. Peterson, you have looked at other cultures, and the magnitude of what we have to do as environmentalists. Perhaps you can describe where we go from here and what happens if we get an ethical dialogue going.

Is the consequence of the campaign that is going on by floridasos, if it comes to successful result, going to be some kind of a day when there is going to be a new dialogue? What do we do to get ready for that kind of a time, where they have had too many objections to these permits and their system is under enough of an assault that they come back to the table so to speak? When we get to that point, do we know what to do? Because we have been fighting them, we have been calling them bad names, or accurate names, but we are so polarized.

And do we have to alter our criteria further? We have been using wetlands as only one example. Some have suggested we could have a standard of sustainability as one concept for an inter-generational criteria.

PETERSON: There are a couple of things. When and if we got to the point where we can actually call "them" to account, one lesson from other cultures and specifically I am thinking of Central America, is that it is very different to be in opposition, challenging, fighting the noble fight, than actually to have some power. Your role is different. You have the same values but you have different means and resources at your disposal. You have different configuration of forces. It changes when the power and party changes. That is one thing we should keep in mind.

Although of course most of the focus is on getting there. And one thing that Ms. Blackner is saying about the law being on the books, but not being enforced, that echoes what was mentioned of the civil rights movement as a sort of analogy. It echoes what a lot of the rhetoric in the civil rights movement was. As a society we are saying we value liberty, equality for all, we say one person one vote, but that isn't being enforced. Although the civil rights movement had many streams, of course, it was able to say "We are not asking those in the United States to change your values, we are asking you to live up to them – which you are not doing." That is a less radical charge than saying "turn your values upside down," which other social movements had to do, and some aspects of the civil rights movement had to do. But at least there is a starting point in shared values.

As with civil rights, the environmental effort can always say, look, we have laws on the books, they may not do all that we'd like them to do, but if we could just get them enforced, we'd certainly be a lot better off than we are now. And those laws are on the books because Richard Nixon, among others, agreed to them. They represent widely shared values, as in the Clean Air Act and the Clean Water Act. That is not a radical, biocentric, deep ecology, or saying let's go (as Paul Shepard describes) back to the Pleistocene. These laws are not calling for that.

So if we already agreed that these are good things, that clean water is a good thing, that development has to take a back seat, in many cases, to issues of the common good, of public health, that the endangered species act is another law that has widespread social support, it's not radical. The Clean Water Act is not radical. You can say, "You guys already agreed to this, on paper at least. These laws are already on the books. We aren't asking you to do anything new. We are asking you to acknowledge that your actions don't provide a path to fulfill the values that you say you value."

I think that can be very fruitful approach. I don't want to sound like an undue optimist here. But there is an approach in ethics called communication and discourse ethics which has a lot of problems, but it can get people to think about values that we share. Maybe they have different approaches to getting to those values. Some of us have not been realistic about having it all, perhaps. We value jobs and we value wetlands, we value migratory birds, we value etcetera, but maybe we cannot really have it all.

And maybe that is a problem not just in terms of sustainability . . . we have to decide as a society what we are willing to sacrifice . . . to redefine what the good life means.

FOLTZ: I would just add a footnote of what was said a few minutes ago about the individualistic character of our society. Of course we all value our individual rights, and we value liberty and all of those other emotionally-charged terms that we associate with our culture. But I think that we are less willing to accept that these are concepts that have a flip side.

In other words, we are very quick to talk about rights. We are not so quick to talk about responsibilities. And I think that to talk about rights without responsibilities is pretty much meaningless. You have to deserve your rights. You have to earn them and you have to do it every single day. You do that by being responsible. This applies on the individual level, and it applies on the corporate level as well. It is a problem all the way around. Property owners often claim it is their right to do whatever they want on their

property, but such individuals are also members of a society and benefit from that membership in numerous ways.

And those benefits should carry responsibilities with them. In other words, it is not the end of discussion that you own the land deed. So where do we get these cultural values, how do we educate people to think differently? It is the same thing with corporations. Corporations have all kind of protections under the law, but relatively few responsibilities. For the past hundred years or so corporations have enjoyed the status of legal persons--which is something which I still find completely bizarre--except that they are only one-dimensional persons. They are persons in that they can enjoy the rights that persons can enjoy. But you cannot punish them in the way that you can punish persons. And the trend these days is to shield corporations even more from accountability for their acts. We need to be moving in the opposite direction; as a society, we need to get to the stage where it becomes impossible to talk about rights without talking about responsibilities in the same breath.

PETERSON: Just a kind of footnote on the corporations as persons concept. A conservative theologian, Michael Novak, several years ago wrote an article arguing that corporations are the Suffering Servant in today's world.

Q. Let's turn to our wetlands problem a little bit. Mrs. Blackner, mostly what people tell us about wetlands, is that the wetlands are mitigated. If someone confronts a permit applicant, the wetland still goes away. The applicant pays its dollars to save wetlands maybe in another county, and that is the result of the campaign and the emotional commitment and everything that has gone into the permit challenge.

BLACKNER: There are a number of reports, which you can click onto on the web site, which are by esteemed governmental bodies like the GAO, and the National Academy of Sciences, say that there are no real standards for evaluating whether mitigation is sufficient to compensate for what is being ruined. There is no follow-up enforcement, basically there is a gentlemen's agreement that oh, you're going to do this that and the other as your mitigation. The Corps certainly does not have the manpower to go out and see that people are doing what they are supposed to do. I think mitigation many times is just paper games to survive or pay for compliance. If mitigation were so great, Florida ought to be doing very well, but that's just not the case. It is sad that there is so much money pressure on these laws. Mitigation is sort of a feel-good mechanism

for everybody involved. . . And so much discretion is afforded to agencies to determine what the mitigation is going to be. Even though, the Clean Water Act says, and we have it on our web site, the presumption is that if you have a jurisdictional wetland, and you want to do something on that wetland that is "non-water-dependent".

In other words you don't have to be in the wetland to do that particular thing. Is a house water-dependent? No, you don't have to be in a wetland to build a house. Is a road water-dependent? No, you don't have to be in a wetland to build a road. Is rice farming wetland-dependent? Well, yes, I guess it is. But if you have a non-water-dependent activity, the presumption is that there are other places other than wetlands to do your dirty deed. And one of the things that was reported, the Corps never invokes the fundamental rule, that if you have a non-water-dependent activity the presumption is there are other places for you to do your business, and you shouldn't be getting your permit in the first place. And this is what I have been trying to teach people. That on paper the Clean Water Act could be an extraordinary tool. But the people in power really don't want the Clean Water Act to succeed. So we have pretty laws sitting in books, on the shelves and they aren't playing out on a day-to-day basis to protect the public interest, as I construe the public interest. And, the wolves are assigned to guard the hen house.

That's another one I'd like to see. I'd like the Corps stripped of its authority; it makes me sick to see the Corps put in charge of Everglades restoration, when they are the ones who were the source of the problems. They are engineers, they want to "fix" everything. And, our county and local governments are much the same.

So what do we do? They need to be stripped of their zoning authority. I heard of a situation in California, where the public became so sick of the upzoning of everything, that you know what they did? They amended their county charter, to strip the county commission of their upzoning authority, now if anyone wants to upzone, it has to be put to vote. That should be the environmental movement's focus, because local government is at every level it is so controlled by developers. How do we give the power back to the people? That's what I want to do. Amend the Florida Constitution, restricting upzoning to voter-approved changes.

I would like the Corps to get five to ten comments on permits. Over time, the Corps might have to change its ways. (Audience discussion.)

(Audience remarks: Some stated they have pressured the Army Corps of Engineers successfully at times. Reflections on the need

to change the system after thirty years of experiencing the problems, systems are always designed against those who want to bring change. There is a desire on the part of the public to go to work, come home, and be with family and friends. But developers at work concentrate on their needs in the permit system - "their life is development." The Corps of Engineers is one of the most effective organizations to have doing anything. Because the one thing they know is, "follow your orders." They are being told to act the way they are. That is our problem. The law firm advertisement slogan is, "You do have rights, but justice is not automatic." This is like environmental law enforcement. The government acts, and demonizing the opposition is not the point. Government personnel take the path of least resistance. With only one player in the game, it is easy for them. And the government is there to represent the government, not to represent the citizens. They are an arbiter. Government staff will tell you, you can say things the government staff cannot, due to their role as a neutral arbiter. It is an adversarial public and legal system. To get a favorable decision, it has to be easier, with some kind of basis to rule for the public interest. And, the citizen at the bargaining table or with a public interest attorney in court is likely to be the only one there not being paid. Citizens with day jobs need public interest attorneys with some level of funding. The other side is more just players, than demons. Others say the government has to be expected to resist the one-sided pressure. A comment from an Orlando resident reflected that she sees a million issues all at the same time, so that she could not even go to every county commission meeting, write letters to the editor daily, and even with all the support of organized groups. More expectation on public officials as representatives is needed, and accountability of the staffs. Another said in presenting an issue on a permit for citizens at a negotiation, the motives of the objecting citizens were questioned, and the validity of representation of a group of its members was rejected. Public hearing requests were rejected out of hand.)

BLACKNER: I once experimented, sending comments on some permits, and testing for the reaction. After several months, I got a call from an attorney with the Corps to request I call them before I comment. The reason was, "It's really slowing it down for the Corps to issue the permit, and the morale at the Corps is very low anyway. We are terribly overworked because as you know, a permit applicant pays \$100 to process an application." That is regardless of the size of the project, and only if they issue the permit. If they do not, they do not have to pay. The Corps trusts the information provided by the applicant or the consultant. So the applicant is in

charge of all the information that the Corps relies on. The Corps rarely goes out and does an on-site inspection to assess jurisdiction. It is likely the massive amount of wetlands and massive amount of development in Florida were not being thought of when the Clean Water Act was being adopted. If the rules were followed, it would be expensive and time consuming. I have talked to people at the Corps. Well, they say, Water Management says it is O.K., and the local government does not have an objection, but what people do not understand is that the rules governing the Corps are quite different than the rules and obligations of the others.

(Audience: There are technical ethics, but legislators and the rest know the strong public view requires them to enact good laws. But it is like laws in Florida are not meant to be enforced. The problem is the ethic is that the laws are not to be enforced here.)

MODERATOR: Do we have to have the stepped up litigation and objection, to get the other side to the table?

(Audience: Maybe a public relations campaign to educate the public of the lack of enforcement.)

BLACKNER: Why should the public be paying for a permitting program?

(Audience: People are jaded, they think government works.)

PETERSON: There are subsidies for so many things. Whether it is cars, or beef, or you name it, the real cost is not measured. Here full cost accounting is a very valuable tool.

FOLTZ: And there have been some steps in this direction, for instance Germany, in modifying products and their packaging in ways that take their ultimate disposal into account. The existing paradigm has been that a company manufacturing a product only deals with that product through a brief window of that product's existence. The point is to expand that involvement. Public subsidies and other forms of corporate welfare are also good targets, but the problem is that these are deliberately hidden from the public and a lot of digging is required to bring them to light. Then the problem is industry's typical response, that the product will be priced out of the market. But we need to recognize that maybe there is a good reason why that product should be priced out of the market. Then products like wind energy and solar power will be seen to be economically preferable to petroleum. We will cease

growing our fruit in deserts like central California. People who talk about supporting the free market often do not want free markets at all; they want all kinds of government interference and control, but they want the kind that which benefits them. If we believe in a free market, let's really free it. And let the market tell us that certain activities are not economically viable.

PETERSON: Socialism for the rich, capitalism for the rest of us.

(Audience Q.: When we deal with case-by-case, we are bound to oversimplify the issue and the sides. We deal in a world where communication and media are strong forces. The complex layering that is present is often overlooked, is there a method to apply in public settings so it will not occur that way?)

FOLTZ: When Neil Rudenstine was president at Harvard he used to introduce the law school graduates as "those responsible for the wise restraints that make us free." It helps I think if we acknowledge that we already accept a lot of constraints, which is what laws are, on our freedom. We talked about false dichotomies, but they are not dichotomies. Being pro-environment does not mean being anti-people. It is the opposite. To be pro-people means to be pro-environment, because people cannot live outside of an environment and they cannot thrive in an unhealthy one. We have to look at where these notions come from, the idea that the interests of people are separate from the interests of the environment. Part of this comes from Enlightenment thinking, some 300 years ago, that humans exist somehow in some vacuum in isolation from all other phenomena in the universe. If you think about it, and state it, it is obviously false. Yet very often, we operate as if that is the case. Once we identify the false dichotomies, like being pro-environment is anti-human, I do not see where the ethical dilemma is. What is the ethical dilemma about survival?

PETERSON: I use a book in a social ethics class by Anthony Weston, called *A Practical Companion to Ethics*, which is helpful about dichotomies. Weston talks about the debate over abortion, which is of course more polarized than even environmental debates, people are either "pro-choice" or "pro-life." That's it: if you are one, you cannot be the other. But even people who are pro-life, in the vast majority, do want abortions permitted in certain cases where rape, incest, or the woman's life is in danger, so they are not absolutist. And most pro-choice people also have limits where they would be opposed to abortion in certain cases. So in a debate where things are polarized, discussion has brought out agreement on

certain education and policies and training and social welfare. There have been some dialogues and in Wisconsin, there were policy changes. That is a good but isolated example. Causing people to focus on what they agree on is a first step that we could aim for.

BLACKNER: That was my experience. I saw myself as middle of the road, but I was labeled a radical. Environmental concerns are like police, or good schools. It is all bread-and-butter middle-class stuff. Why are we painted into this corner, of being special interests? What of future generation rights?

(Audience: Environmental justice, the debate over the siting and planning of activities that have impacts especially on low income and minority communities, can cover the same issues that are covered by direct environmental approaches. Whether wetlands, or wildlife, or others, the issue of environmental justice and proper environmental decisions intersect.)

PETERSON: Reduction of consumption is crucial also. To protect forests, less demand for paper needs to follow. Stopping logging is not a solution where demand for the product continues, and logging is just shifted to Indonesia, or Mexico, or Brazil.

FOLTZ: I would add that, especially in the Western states, industries like logging, mining and grazing enjoy enormous taxpayer subsidies through bargain rates on public lands. Part of the answer to giving people something else to do, can be rephrased as giving them something socially beneficial rather than socially harmful to do. For instance, the defense industry pays people to build bombs that kill people; is that something we want to do? We do not want people to be out of work, but if the price is paying them to do harmful or destructive things, is that appropriate? Whereas if we were to eliminate the public subsidies on grazing, mining and so on, millions of dollars would become available which could then be used instead for socially constructive purposes, retraining and creating industries and livelihoods for displaced workers, and so on. These kinds of social welfare programs would not require raising peoples' taxes, but rather not squandering them on the wrong kind of subsidies.

(AUDIENCE: If you do not have extremes, you do not have a middle. If they can pull me toward their side, it makes their job easier. I am one of the unpaid citizens, in the room where everyone else is paid to be there. We have to challenge even when we know we will not win. But a fight is really necessary. Reconciling our

differences, the conference theme, is really lovely, but in practice, if you do not have the extreme position and go against insurmountable obstacles, you never get to the middle. So I prepare for battles that create the middle that is probable.)

BLACKNER: I make a living with my husband, and I'm lucky he indulges in this, because I do not get paid for the environmental work. I do it because of the Florida I knew when I grew up, and I feel a personal responsibility. I do not expect a panacea or to change the world, but at least I have some peace of mind. I may be labeled, but I cannot be like people that talk the talk but do not walk the walk. But as far as the different points of interest, I do not see any reconciliation for a long time.

AUDIENCE: What are some of the arguments for different values that Dr. Peterson referred to earlier, that can be offered by people wishing to protect the environment?

PETERSON: You could argue to preserve, say, wetlands because it is important for human health. Or because there is an aesthetic appreciation. Or because of rights. There are rights apart from any human benefit. . . . Christopher Stone's discussion in *Do Trees have Standing?* raises some of that.

FOLTZ: I would add that the intrinsic value argument is ethically speaking the highest level of argument. But in terms of actually making it operative, is perhaps the most difficult. Still, there are analogies to other major paradigm shifts. Our ancestors in many cultures did not acknowledge non-white humans as being human in the same way as they considered themselves to be humans, so the idea of extending rights, or, in legal terms, "considerability," to non-white humans was a major hurdle. Then the same hurdle had to be gone over with non-male humans, to extend moral considerability to women. That non-white or non-male humans might have interests of their own, independent of whether they are useful to white male humans, was once as revolutionary a notion as the idea of non-human interests is today. Agreeing that some group other than your own has valid interests which are independent of your own group's interests is a pretty tough moral argument to make, but it is a very high moral argument.

APPENDIX: PANELIST BIOGRAPHIES

LESLEY BLACKNER is an attorney in the firm of Blackner, Stone & Associates. She is a graduate of the University of Florida School of Law and was a law clerk for the Fifth District Court of Appeal for several years before entering private practice. For the past few years she has practiced law in Palm Beach with her husband, Richard Stone. She has litigated several environmental citizen suits on behalf of environmentalists. Her particular interest is in educating citizens as to the nuts and bolts of how environmental laws should work and started a website, *floridasos.com*, to teach people how to demand enforcement of the Clean Water Act. She is also a founder of a new organization, Floridians for Environmental Accountability & Reform, devoted to the novel proposition that environmental laws that have been on the books for years are not enforced in the State of Florida.

PROFESSOR RICHARD C. FOLTZ, Ph.D. is Assistant Professor at the University of Florida in the Department of Religion and with the College of Natural Resources and Environment, Department of History, and Asian Studies program. His teaching includes courses on religion and nature and on the Muslim world. He holds a Ph.D. in History and Middle Eastern Studies from Harvard University, an M.A. in Applied Linguistics from the University of Utah, and a B.A. in Middle East Studies/Persian from the University of Utah. He has traveled to fifty-five countries on five continents. He has studied and written scholarly works on the intersection of environmental positions and religious views of many cultures. Among his many written contributions is a forthcoming book he has edited, *Worldviews, Religion, and the Environment: A Global Anthology*.

PROFESSOR ANNA L. PETERSON, Ph.D. is Associate Professor in the Department of Religion and affiliate of the Center for Latin American Studies and the College of Natural Resources and the Environment at the University of Florida in Gainesville. In 2001, she was named a University of Florida Research Foundation Professor. She received a Ph.D. in Ethics and Society from the University of Chicago Divinity School in 1991. She teaches and writes on social and environmental ethics and on religion and politics in Latin America. With her colleagues Manuel Vasquez and Philip Williams, she co-edited *Christianity, Social Change, and Globalization in the Americas* (2001). Her present research focuses on the role of religious ideas and structures in the creation and maintenance of sustainable communities in Latin America and the

U.S. Peterson chairs the Sierra Club National Sustainable Consumption Committee and serves on the club's Sustainable Planet Strategy Team. She has written numerous journal articles as well as the books *Martyrdom and the Politics of Religion: Progressive Catholicism in El Salvador's Civil War* (1997) and *Being Human: Ethics, Environment, and Our Place in the World* (2001).

