

Introduction

The Muir woods in California are named for the now revered conservationist who called for the preservation of his ‘cathedrals’ in the mountains and led a comprehensive campaign to preserve what is now Yosemite Nation Park. While John Muir is primarily remembered as an explorer and conservationist concerned with environmental degradation, deforestation, and disruption of wild places. Muir had little patience for the science based conservation of Gifford Pinchot that sought to apply the European model of forest extraction in the United State and that explicitly recognized the extractive use as positive and legitimate. The traditional told of these early conservationists is one of competing visions and methods in conservation. The actual story, however is less about conservation and far more about the actions of entrepreneur scanning the policy horizon and seeing an opportunity to capture his preferred outcome for a particular outcome from those with the power to enforce his preferred outcome.

While the traditional narrative is one of competing visions, even the most conventional retellings of Muir’s calls for conservation acknowledge (and often highlight) the fact that with his co-option of (the already friendly) President Teddy Roosevelt by touring the area with him and convincing him that without formal protection the admittedly awe inspiring landscapes were in danger of degradation and destruction at the hands of those who sought to use the land as part of managed use approach. Roosevelt who had written to Muir after hearing that Ralph Waldo Emmerson had turned down an invitation to tour with the famous explorer claimed for himself the privilege that Emmerson had declined. Those, including the Sierra Club, who explored the time Muir and Roosevelt spent together have clearly illustrated how the radical

preservationist Muir was encouraged to meet with the far more conservationist Roosevelt to convince him that preserving Yosemite in fundamentally different ways than Yellowstone had been was a necessary and critical step in achieving his vision of a permanent wilderness in the Yosemite Valley.

Muir who was most at home in the mountains away from the civilizing influences of California, must have found this prospect disconcerting at least and likely a distasteful task as Roosevelt had fully embraced the mixed use notion of Pinchot and others. His engagement with Roosevelt reveals his project of preservation was as what it was, a fundamentally political enterprise. Muir had found an unexploited opportunity and capitalized on it to preserve his 'Cathedral' in the mountains.

His actions reveal Muir as something more than the semi-hermit explorer of myth, they reveal an entrepreneur who had a preferred outcome and once he had received Roosevelt's letter asking for the same privilege as Emerson to travel the area with Muir, took the opportunity to convince Roosevelt to preserve Yosemite, the outcome he most wanted.

While Muir's entrepreneurship is clear from even a cursory read of the historical record the scholarly literature that has explored the founding of Yosemite has failed to capture this reality in any substantial form. While this oversight might seem glaring it is consistent with the larger literature on Public Policy generally, Environmental Policy in particular and the wider Political Science literature have failed to classify political actions in this way.

Dennis Mueller's *Public Choice* III, the definitive review of the Public Choice literature contains no reference to what might be construed as political

entrepreneurship. *Political Science: State of the Discipline* (Katznelson and Milner, 2003), the American Political Science Association's decennial review of the previous decade's scholarship in political science, is also devoid of discussions of political entrepreneurship. Although Public Choice and political science view politicians as strategic actors, their actions are not analyzed through the lens of entrepreneurship. They tend to be viewed simply as brokers between competing groups and not as animated actors that have 'property' to sell and 'profits' they desire.

In particular the actions of environmental groups and the politicians they court are illuminated if they are viewed through the entrepreneurship lens. We seek understand these 'entrepreneurs' in a defined context and explore the actions of four groups that illustrate how our definition of political entrepreneurship impacts policy.

Political Entrepreneurship

We start with the proposition that political actors can be modeled as entrepreneurs who operate in a public market. We use the term "entrepreneur" broadly to mean *homo agens* (the human actor) of Austrian theory who "possesses the propensity to pursue goals effectively, once ends and means are clearly identified, but also possesses the alertness to identify which ends are to be sought and what means are available" (Boettke, 1993). Israel Kirzner, whose work in Austrian economics focuses on entrepreneurs, defines entrepreneurial behavior as "alertness to hitherto unnoticed opportunities" to achieve private outcomes (Kirzner, 1973, p.39). Following Kirzner's lead, we suggest that political entrepreneurial behavior is "*alertness to unnoticed opportunities to achieve policy outcomes.*"

This definition is somewhat at odds with what political scientists call “policy entrepreneurs.” An early use of the term was by John Kingdon (1984). He defined policy entrepreneurs as “advocates for proposals or for the prominence of ideas.” Later, Schneider and Teske (1992, 737) changed the definition and name from policy entrepreneur to political entrepreneur. Their definition is “individuals who change the direction and flow of politics.” This definition, they believe “transforms the notion of entrepreneurs from the study of heroic figures to the study of a larger class of individuals who help propel political and policy change.” Mintrom (1997, p. 738), who is co-author with Schneider and Teske on other papers, used the term “policy entrepreneur” and proposed a broader definition that does not require the direction and flow of politics to change: “political actors who promote policy ideas.” Later in the same article, however, he defines policy entrepreneurs as “people who seek to initiate dynamic policy change”(739),

Notice how these definitions differ from our Austrian-inspired definition that centers on “alertness.” Being an advocate for a proposal does not mean that you are alert to possibilities for making it happen. And while “individuals who change the direction and flow of politics” may do so because they were alert to unnoticed opportunities, they may also have simply been reacting to political pressures. Finally, promoting policy ideas or “dynamic policy change” in an environment where there are no opportunities is not entrepreneurship, at least by our definition.

One more difference in our definition is that we include those who advocate for and those who block proposals. Kingdon’s point that policy entrepreneurs “could be in or out of government, in elected or appointed positions, in interest groups or research

organizations” is consistent with our understanding of political entrepreneurship. What matters is not whether people are elected, but, to quote Kingdon, whether they “invest their resources — time, energy, reputation and sometimes money — in the hope of a future return” (122). We would add that the “future return” may be preserving the status quo.

One critical difference between private and political entrepreneurs is private entrepreneurs attempt to create change, while political entrepreneurs may act either to create or prevent change. Change is rejected in markets by consumers, not by other entrepreneurs. In politics, rejecting change requires an entrepreneur. The political entrepreneur attempts to use politics to create benefits or to prevent costs. In fact, preventing costs is as much an entrepreneurial opportunity as seeking benefits and reacting to a cost prevention opportunity seems to us to qualify as Kirznerian alertness. So, a political actor acting to thwart change is as much an entrepreneur as one trying to create change.¹

Entrepreneurs acting in a private market where property rights are well defined and the rule of law prevails expand the economic pie. political entrepreneurship at best divides the pie and at worst shrinks it or prevents it from expanding.

The reward for successful entrepreneurship in the private market is money. In the political market the rewards vary. For the politician rewards can include campaign contributions, credit taking, praise or avoiding criticism, and vote maximizing. Political entrepreneurs’ motives are mixed and the games they play are mixed-motive games. Appointed officials claim credit or avoid criticism, increase support from politicians and

¹ Thanks to Dianna Thomas for suggesting this reasoning.

interest groups, and increase status. Private actors such as lobbyists, consultants, and interest group staffs gain many of the same rewards—credit, support, status, etc.

Strategies of Political Entrepreneurship

Political entrepreneurs operate in an environment that separates cost and benefit considerations. That is, those who pay the costs are often not those receiving the benefits.

Divorcing payers from those who benefit is a time-honored activity among political entrepreneurs. Milton Friedman (1962, pp. 16-17) may have been right when he asserted that TANSTAAFL—There ain't no such thing as a free lunch—but part of the job of a political entrepreneur is to find ways to get others to pay for his clients, or voters, or cause's lunch. That is, identifying available rents and securing them is part of the "alertness" required to be today's political entrepreneur.

The fact that political entrepreneurs engage in rent seeking suggest another role—announce an intention (by himself or someone else) to introduce legislation or regulation that threatens the Bootleggers and Baptists' common interest. Fred McChesney (1997) called this "rent extraction." McChesney says that politicians and bureaucrats extract rent by acting like William Faulkner's "mud farmers" who created muddy roads, trapped vehicles in them, and pulled the vehicles out in exchange for a "contribution." In this case the political entrepreneur traps the interested parties by threatening to introduce legislation or rules that repeal regulation that each group would support.

Another strategy employed by political entrepreneurs is policy symbolism: making grand policy statements whose objectives cannot be achieved. This is a tactic

comes in at least two forms. Lyons (1999, 207) explains the two forms. “The first form is grand statement of sentiment, “such as congressional resolutions that have no legal policy effect” and the second is decisions that “legally establish real policy objectives, but which are designed *not* to achieve their objectives.”

Regulatory law provides many opportunities for policy symbolism, a common tactic is to create grand-sounding legislation but not provide funds sufficient to accomplish its objectives. In addition, Congress often provides policy objectives that are completely unrealistic or gives agencies “lengthy lists of actions to take and deadlines to achieve that the agency cannot even begin to accomplish” (Bryner 1987: 207). Often political entrepreneurs know, for example, that policies are so strict that they will be unenforced, especially by state and local officials who are fearful of driving out industry and employment.

Most political entrepreneurs representing know they are in a game of symbolism and work to appease their group’s desire to “do something.” Your co-author Simmons, for example, worked in the Department of the Interior at the same time Yandle was at the Federal Trade Commission. He was assigned to be a member of an interagency and interest group working group on global issues. At one of the sessions clean air legislation was discussed and Simmons asked the Natural Resources Defense Council representative if she was interested in real reform or just the symbolic reform that took place in the previous Clean Air Act amendments.² She responded that she had been

² The best book on the topic is *Clean Coal/Dirty Air or how the Clean Air Act became a Multibillion-Dollar Bail-out for High-Sulphur Coal Producers and What Should be done about it* by Bruce A. Ackerman and William T. Hassler. It describes how legislation to bail out the dirty coal industry was wrapped in the rhetoric of clean air and trumpeted by national environmental groups as a significant win for environmental policy.

part of the negotiations over those amendments and she should not be judged harshly because she “needed to get something passed.”

In some cases political entrepreneurs have a strong incentive to magnify threats to their group(s). By magnifying threats they keep their group members involved and contributing to the cause. James Q Wilson (1995, xi) concludes that political organizations that rely on threat appeals will find that “their leadership will have a stake in magnifying the threat (whatever the reality) and conducting legislative campaigns that demonize opponents (however great the need for allies).” This analysis suggests that ideology, inflexibility, and dogmatism are likely to be common traits of modern interest groups. Rosenbaum (1995: 31) finds that to be true of environmental groups and worries about environmental leaders’ credibility because they “resort to the rhetoric of crisis so habitually that the mother tongue of environmentalism may seem inspired solely by the Apocalypse.”

The Greenpreneurs:

As our initial story of John Muir illustrates, few areas of are as rife with examples of our understanding of political entrepreneurship as is environmental policy. In fact nearly every environmental group we are familiar with that we would classify as successful in meeting their objectives utilizes all three of the general approaches and often fully integrate all three into their efforts simultaneously. To highlight this reality we have explored the actions of two groups that have learned the Kirznasrian lesson of Alertness and have found their policy preferences realized as a result.

The first group whose actions we explored has long made Policy Symbolism its primary goal, the Southern Utah Wilderness Alliance and its ever changing demand for

increased wilderness in Utah had coalesced a vocal group of supporters and substantially increased the total amount of wilderness in the state of Utah by exaggerating threats to pristine locales, and continually increasing demands for wilderness protection.

Our second group, are true innovators who scanning the policy horizon saw an opportunity for advancing their agenda through the use of the courts. Wild Earth Guardians has advanced a strategy of 'Litigating for Wild' that has substantially moved environmental policy in their preferred direction.

Each of these cases illustrates the common theme that our definition of Political Entrepreneurship illustrates, by noticing the unexploited opportunity and acting each group has been able to capture the 'profits' of their alertness in the form of policy rents.

SUWA

Over the last fifty years the issues surrounding preservation of wilderness areas has been an extraordinarily controversial topic in environmental law. Rather than clarified, the issue was made more contentious by The Wilderness Act of 1964; the goal of this Act was the protection of lands deemed "untrammeled by man" (Wilderness Act, 1964). In order to protect those lands, Congress was given the authorization to place area in the National Wilderness Protection System for management (Wilderness Act, 1964). Since the passage of this Act, controversies and litigation have often surrounded the creation and subsequent use of designated Wilderness Areas. Litigants for both preservation and extractive activities have been highly active in controversies surrounding Wilderness Areas. One such group, from the preservation side of the issue, is the Southern Utah Wilderness Alliance (SUWA).

SUWA, a 501(c)(3) non-profit established in 1983, has established its reputation as an uncompromising advocate for the preservation of wilderness. Its stated goal, in

1983, was “to defend America’s redrock wilderness from oil and gas development, unnecessary road construction, rampant off-road vehicle use, and other threats to Utah’s wilderness-quality lands” (SUWA, 2012, A). SUWA works toward achieving “... the preservation of the outstanding wilderness at the heart of the Colorado Plateau, and the management of these lands in their natural state for the benefit of all Americans” (SUWA, 2012, B). Since its creation in 1983 SUWA has expanded to become the foremost advocate for the wilderness areas found in Southern Utah and various other areas of the Colorado Plateau. The organization’s approach to its goals is through promotion of “local and national recognition of the region's unique character through research and public education” (Better Business Bureau, 2012). SUWA “supports both administrative and legislative initiatives to permanently protect the region’s wild places within the National Park and National Wilderness Preservation Systems or by other protective designations where appropriate” (Better Business Bureau, 2012).

The administrative body of SUWA is highly connected with other preservation groups. For example, Darrell Knuffke, who holds the position as chair of SUWA's Board of Directors, is also a leading member of the Wilderness Society. Knuffke served as a regional director of the Wilderness Society from 1985 to 1995, and vice president for regional conservation from 1995 to 2000 (Friends of the Boundary Waters Wilderness, n.d.). He also served as a senior writer for the Society from 1985 to 2004 (Friends of the Boundary Waters Wilderness, n.d.). Knuffke was the interim policy director at Friends of Boundary Waters Wilderness (FBWW) from 2006-2007 and has been a member of the board of FBWW since 2000 (Friends of the Boundary Waters Wilderness, n.d.).

SUWA exists as a predominantly locally focused group that centers its efforts upon the preservation of the red rock wilderness areas that are found in Southern Utah, as well as smaller areas in Northern Arizona, Western Colorado, and Eastern Nevada. Due to their smaller size, SUWA is usually joined, or joins, in lawsuits by larger environmental groups such as the Sierra Club. An example of this is their recent

cooperation with a number of other environmental groups as a part of the Greater Canyonlands Coalition in a formal request to the Secretary of the Interior Ken Salazar regarding ORV routes and usage in the areas surrounding Canyonlands National Park (SUWA, 2012, E). In addition to SUWA, the Greater Canyonlands coalition includes such notable environmental groups as the “Sierra Club, Natural Resources Defense Council, National Parks Conservation Association...” among others (SUWA, 2012, E).

SUWA's advocacy of the preservation of wilderness has been focused largely upon preventing creation, or expansion, of resource extraction in wilderness areas. In 2009, the Secretary of the Interior, Ken Salazar, made the decision to not to honor 77 leases that were sold at auction during the final month of the Bush Administration (Loomis, 2012). In response to this, Uintah and Duchesne Counties joined with Impact Energy Resources, Peak Royalty Holdings, and Questar Exploration and Production in a lawsuit designed to block the decision by the Secretary. SUWA, while not an official party in the case, did intervene through an attorney in favor of the rejection of the issuance of the leases (Loomis, 2012).

Besides the 2009 case, SUWA has filed numerous suits. An example of this is the case of *SUWA v. Norton*, which directly challenged the management of wilderness areas by the Bureau of Land Management (BLM). In this suit, SUWA alleged that the BLM “violated the Federal Land Policy and Management Act... and the National Environmental Policy Act... by not properly managing off-road vehicle and/or off-highway vehicle (collectively, ORV) use on federal lands that had been classified by the BLM as Wilderness Study Areas (WSAs) or as having ‘wilderness qualities’ ” (*SUWA v. Norton, 2002*). This suit, originally filed on October 27, 1999, contained allegations that the BLM had “...‘failed to perform its statutory and regulatory duties’ by not preventing harmful environmental effects associated with ORV use” (*SUWA v. Norton, 2002*).

In general, SUWA's lawsuits are directed at government agencies, particularly the BLM. In 2005, SUWA was joined by the Sierra Club in a lawsuit filed in the United States Court of Appeals, Tenth Circuit. This suit was brought by SUWA and the Sierra Club in response to the actions performed by road crews employed by San Juan, Kane, and Garfield counties on BLM lands. In September and October of 1996 these road crews entered into public lands and graded roads without obtaining permission or even notifying the BLM. The suit contended that six of the roads were located in wilderness study areas; nine were located in the Grand Staircase-Escalante National Monument, and “six others traversed a mesa overlooking the entrance corridor to the Needles District of Canyonlands National Park” (*SUWA v. Bureau of Land Management, 2005*).

SUWA's voice is heard not only through their participation in the litigation process, but also through their participation in organized efforts in support or opposition to proposed and enacted policies that deal directly with wilderness. An example of this can be seen in one of the more controversial aspects of environmental law in Utah, the proposed plan of Utah's Governor Gary Herbert which would shift federally owned lands located in Utah to state control and management. This issue began in March 2012, when Governor Gary Herbert signed the Transfer of Public Lands Act which demanded the transfer of over thirty million acres of federal land to state control (SUWA, 2012, C). SUWA has been opposed to this measure from the beginning, arguing that such an action would place these areas at greater risk of damage and degradation. SUWA's concerns surrounding this measure stem from what they see as the inability of the State's government to properly manage these lands. SUWA makes the assertion that “... the federal government currently spends between \$200 and \$300 million *per year* managing public lands in Utah...”(SUWA, 2012, C). SUWA maintains that if these federal lands were to be transferred to state ownership “... Utah taxpayers would be stuck with the cost of managing them”(SUWA, 2012, C). While this is fairly patently true, it is unclear whether state administration of lands would be less effective than federal

administration. In reality, taxpayers are already stuck with the cost of managing lands, as federal income tax supports the administration of public lands.

Not limited only to litigation and local lobbying, SUWA also engages in federal lobbying activities. A recent example of federal lobbying activity is SUWA's ongoing campaign to secure the protection of the area collectively referred to as Greater Canyonlands. SUWA has been lobbying for President Obama and his administration to bar ORV use on 1,050 miles of trails through roughly "1.4 million acres of Bureau of Land Management ("BLM") land surrounding Canyonlands National Park" (SUWA, 2012, E). This attempt at a grassroots movement in favor of the protection of Greater Canyonlands area is largely being conducted through social media, including Twitter and Facebook (SUWA, 2012, G). Despite these efforts to pressure the President into the protection of Greater Canyonlands, the administration has not deemed it prudent to protect this area. Instead the administration has opted to continue the management plans written by the Bush Administration claiming that these management plans already provide adequate protection for the areas in question (SUWA, 2012, E). The management plan that the Obama Administration continues to implement contains provisions that specifically allow for "... proposed uranium and tar sand mining, and oil and gas development" (SUWA, 2012, E). The Obama Administration refused, in August of 2011, "... to host a public discussion on protecting the Greater Canyonlands region" (SUWA, 2012, E).

WEG

WildEarth Guardians is an environmental activist organization whose core mission, according to their website, is "to confront the threats facing the beauty and diversity of the American West." Their primary strategy is to file lawsuits to uphold their interpretation of environmental laws; they call this strategy "litigating for the wild." They also "use public awareness campaigns and political pressure to protect wildlife, wild

places, and wild rivers.” Besides their legal and political activism, they organize and participate in riparian area restoration projects.

Their 2010 budget was just over \$1.6 million, \$490,000 of which was from government grants. Ten percent of their income was from settlements of legal actions. In their 2010 Annual Report they highlight legal actions filed to protect 100 species they believe are imperiled. They also highlight the use of a “little-known but powerful” section in the Clean Water Act to designate 700 miles of streams and rivers in New Mexico as “outstanding waters.” In 2012 they plan to challenge “every single new” coal lease in the Powder River Basin, lying between Wyoming and Montana.

Introduction to WildEarth Guardians and their litigation efforts

WEG is a 501(c) 3 non-profit organization originally created as Forest Guardians in New Mexico. Originally formed in 1989 to fight a logging project on northern New Mexico’s Elk Mountain, the soon began to challenge grazing on public lands. WEG organized a campaign to outcompete ranchers for grazing leases. After purchasing the leases, they installed fencing, removed non-native plant species, and replanted riparian areas. In 2008 they merged with Sinapu, an organization focusing on carnivore restoration, and renamed themselves WEG. WEG has offices in Santa Fe, New Mexico; Denver, Colorado; and in Phoenix and Tucson, Arizona. Their mission is to “protect and restore wildlife, wild rivers, and wild places in the American West”. They use several strategies to pursue that mission including litigation, science, media, and lobbying.