THE BANKRUPTCY OF COLLECTIVIST ENVIRONMENTAL POLICY

By Fred L. Smith Jr.[1]

> Our economics fails to see, let alone measure, the full value of major parts of our world...Much of what we don't see with our economics involves the accelerating destruction of the environment. – Al Gore, *Earth in the Balance*. [2]

> It is true that where a considerable part of the costs incurred are external costs from the point of view of the acting individuals or firms, the economic calculation established by them is manifestly defective and their results deceptive. But this is not the outcome of alleged deficiencies inherent in the system of private ownership of the means of production. It is on the contrary a consequence of loopholes left in the system. It could be removed by a reform of the laws concerning liability for damages inflicted and by rescinding the institutional barriers preventing the full operation of private ownership. – Ludwig von Mises, *Human Action: A Treatise on Economics*. [3]

The Environmental Threat to Classical Liberal Values

Classical liberals have done much over the last century to revive the ideas and ideals of freedom, scoring important gains in the war of ideas. Our partial success owes something to the quality of our arguments but also (and possibly more importantly) to the disastrous economic experiences of the progressive/socialist state. The result is that many are now convinced that classical liberal institutions – private property, voluntary arrangements, a rule of law –offer a superior means of organizing economic affairs. The

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[2] Gore, Al. *Earth in the Balance*. New York: Houghton Mifflin, 1992. p.183.
[3] Von Mises, Ludwig. *Human Action: A Treatise on Economics*, 3rd rev. ed. (Chicago: Henry Regenery Co., 1966), 657-658.

frontal socialist assault on economic liberty has been thwarted although mixed economy advocates still dominate most policy debates.

But these gains are now threatened by the widespread belief that classical liberal approaches cannot address environmental concerns. Conservatives, liberals and even many classical liberals hold that view. Most classical liberal scholars have viewed environmental policy as a minor challenge compared to economic or foreign policy concerns; environmental policy is perhaps foolish, but not dangerous. That attitude has been particularly dominant among scholars in the developing world who have viewed environmental concerns as irrelevant to their nations. I do not agree and argue in this paper that our neglect of this increasingly powerful policy area threatens all that we have gained over the last century. Having fought back a red tide, we are now in danger of being engulfed by a green one.

Old Socialist Wine in New Green Bottles

As others have noted, the old reds have become the new greens: socialism has become eco-socialism. The forces that once marched under the banner of economic progressivism have regrouped under a new environmental banner. These people are still progressives. They are still convinced of the superiority of centralized control; they remain arrogantly confident that they should play a key role in the management of society.

Still convinced that the market cannot adequately address certain problems (economic growth then, environmental protection today), these new progressives now concede the superiority of the market as a means of wealth production. They no longer see economic goals as threatened by market failures. They still, however, view market failures as pervasive in the ecological sphere. Indeed, given that almost any economically-justified interventionist policy can now be justified on ecological grounds, they have given up very little ground. *Economic* central planning is not in vogue, but *environmental* central planning has taken its place.

However, the modern progressive environmental movement is different in several important ways from its economic predecessor. The most significant difference is that our

green progressives are no longer optimistic, no longer so convinced that history is on their side! The optimism of the economic progressives led them to champion economic and technological growth. The resulting changes would not only make the world a better place, they claimed, they would also enhance their standing as the mandarin planners of the regulatory/welfare state. Allowing us to manage change, they argued, would create "heaven here on earth."

Change has indeed been a dramatic fact throughout the progressive era. However, that change did not proceed along the path that the progressives had envisioned. Rather, economic and technological growth moved outside the ambit of progressive control, encouraging deregulation and privatization. Change did not enhance the status of the progressives, rather it threatened their power. That fact has led green progressives to be far less supportive of change – of economic and technological growth. Thus, these new progressives are best viewed as "Malthusian" in outlook. Such individuals now seek to limit change, to move toward a "steady state" economy.

Their opposition to change threatens the future of civilization. Progress, which they once championed, is now viewed as illusory, obtained only by depleting the world's resources, by steadily increasing ecological risks. While their criticisms of the market focused on how markets exploited mankind, they now focus on the market's exploitation of the environment. They now argue that economic and technological growth poses risks to the very existence of Planet Earth. If that framing goes unchallenged, the prospects for liberty are dim indeed.

These green or Malthusian progressives have aligned themselves with traditional reactionary and protectionist forces to restrict trade, economic development, and technological progress. The goals of the global greens are extensive. In the words of (at the time of this writing) U.S. presidential candidate Al Gore: they seek nothing less than a "wrenching transformation of civilization." Abandoning their "modest" attempt to manage the global economy, they seek to manage the whole ecology of Planet Earth (and they seem to believe that their quest is attainable).[4] Curt Pendergraft notes that this

[4] The most prominent advocate of this position is Al Gore himself in his book, *Earth in the Balance: Ecology and the Human Spirit* (NY: Houghton Mifflin, 1992) The book is replete with examples of the

"global" approach is similar to that which Hayek feared would lead to authoritarian governance: "the belief that order can be created only by forces outside the system." To our green progressives, environmental policy is not only closely associated with political power – to a large extent it *is* political policy.

Unfortunately, Malthusian Progressivism is not a paper tiger. It is extremely powerful and well funded. As documented in studies by CEI staff members and published by the Capital Research Center,[5] the environmental movement has billions of dollars of resources, major influence in government, business, and government, and it dominates most international meetings (specifically, those establishing the rules likely to influence the course of globalization). Moreover, the environmental movement has inherited much of the moral authority once vested in economic progressivism. Finally, it has a superficial appeal which in some ways is stronger than that of old progressivism; even some market advocates may believe that such resources as clean air and schools of fish are best managed by centralized authority

That progressives would call for a global regulatory state should come as no surprise. The creation of a global regulatory system, after all, would merely replicate (at a global level) the progressives' earlier success in shifting economic-planning power from the private sector and local authorities to national or federal authorities. Since a primary factor behind the resurgence of classical liberal ideals and ideas has been globalization, any success in implementing global progressivism would be a far more serious threat to classical liberal hopes. Such a global regime would eliminate a sort of competition between sovereign states on regulatory and tax policy.

As George Yeo, the Trade Minister of Singapore, noted: "The pressure on government now is either you compete or you are out. Yes, you still have powers of monopoly, you have powers of legal violence over your citizens…But eventually the smart ones say, 'Why must I put up with all this hassle?'… At least, the trend is that direction. Governments are being forced by external competitive pressure to change and

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economic, societal, and technological changes he feels necessary. A more critical view is discussed by Curtis A. Pendergraft, "Managing Planet Earth: Adaptation and Cosmology," *Cato Journal***,** Volume 19, No. 1, pp. 69-83.

reform." [6] A global progressive regulatory state would weaken that exit freedom. A Malthusian Progressive world government might well be a dangerously stable one, leaving freedom without allies.[7] That freedom of "exit" disciplines national tax and regulatory policy. A world without borders, one of my colleagues has noted, can easily become a world without choice, a world without escape.[8] "Exit freedom" has become ever more important as the world has become ever more interconnected.

Our modern progressives realize that fact; they seek to weaken the pro-freedom aspects of globalization. David Vogel, a specialist in trade policy at the University of California at Berkeley, has noted: "[M]ore liberalized trade policies threaten to undermine the power and influence of American regulatory agencies and their supporters in Congress. This, in turn, reduces the political influence of American public interest groups over American regulatory policy."[9] We must ensure that this liberalization pressure is not suppressed.

Some may concede all this and still be dubious that environmental policy could ever pose a serious threat to liberty. After all, what can be so wrong with the goal of "perfecting markets" – that is, of correcting the "public goods" and "externality" market failures that sometimes exist? Such a *limited* case for political intervention, they argue, is acceptable. But in fact, there is nothing limited about this agenda. Accepting the market failure rationale for intervention has always posed the danger of removing all effective restraints from government; when the rationale is cast in environmental terms, however, that danger mushrooms.

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[5] Jonathan Adler, *Environmentalism at the Crossroads: Green Activism in America* (Capital Research Center, 1997)**,** and Jim Sheehan, *Global Greens* (Capital Research Center, 1998)**. ADD SUBTITLE**

[6] Interview with George Yeo. *Wall Street Journal*, January 1, 2000. PAGE???

[7] Examples of authoritarian and stable regimes are not uncommon in history. Japan and China both were vigorous societies undergoing major institutional and technological change when reactionary forces came into power and created a stable, stagnant society. They were able to do so, because neither society faced any external competitor at the time. It was only the appearance centuries later of the Europeans and the Americans that forced open these closed societies. A global steady state economy would face no external competitive forces; why would it ever fall?

[8] Greve, Michael. *Real Federalism: Why It Matters, How It Could Happen*. Washington, DC: AEI Press, 1999. See also, Jeremy Rabkin, CEI Adjunct Fellow, *Sovereignty: Why It's Important*. AEI Studies on Global Environmental Policy, December 1998.

[9] David Vogel, "The Public Interest Movement and American Trade Policy," in Greve and Smith, *Environmental Politics.*

All economic activity involves some external effects. Externalities are pervasive; there are always costs that cannot be taken into account. Thus, under the market failure rationale, government intervention must also be pervasive[10]. An Environmental Protection Agency (EPA) empowered to "perfect" the market will have few checks on its powers. And, indeed, that ambitious scope characterizes the U.S. EPA which seeks to manage all energy and material flows in our economy.[11] Under the guise of protecting the environment, EPA has become the most powerful progressive economic planning agency in U.S. history.

Having escaped socialism, we find ourselves facing the even more destructive assault of eco-socialism. Mont Pelerin members will certainly recognize all this as an all-too-familiar example of the "fatal conceit."

Goals and Outline of Paper

A primary goal of this paper is to persuade the classical liberal community of the seriousness of the threat to political and social freedom presented by the forces of authoritarian environmentalism.

Another goal is equally important: To speak to those who value the environment, but are at the same time unsettled by the stridency and reductionism of the "environmental movement," and cooperate with it only because they believe that such means are necessary to achieving environmental protection. To them, my message is that the authoritarian command and control measures are *not* necessary to advancement of ecological ends. Quite the reverse. It is economic liberty that is essential, because the classical liberal framework of voluntary exchange, voluntary agreement, and private initiative provides the most effective possible framework for pursuit of these ends.

The remainder of this paper consists of four sections. Section II: *The Environmental Problems Created by Economic Progressivism* argues that the progressive era weakened society's ability to address environmental concerns. Progressives not only

[10] Coase, Ronald. "The Firm, the Market, and the Law," *The Firm, the Market and the Law*. Chicago: University of Chicago Press, 1988. p.27.

crippled the existing institutional arrangements for addressing environmental concerns, they also blocked the expansion of classical liberal institutions (private property and contracts) into the ecological field. Thus, when environmental values came to the fore in the latter half of the 20th century, few had any awareness that voluntary arrangements had ever dealt with these questions. Environmental policy was thought naturally to be political policy, to be beyond the scope of voluntary arrangements.

Section III*: Malthusian Progressivism,* describes how the progressives shaped modern environmental policy in the United States. In effect, EPA is the last and most powerful of the progressive political institutions. Having crippled the institutions which might have slowly resolved environmental concerns and forced the economy to take account of the increased valuation placed on environmental values, they resurrected their *market failure* arguments to advance their preferred political approaches.

Section IV: *The Failure of Eco-Socialism* argues that U.S. environmental policy is already in disarray, creating the opportunity for reform. The reasons for eco-socialism's failure are the same as those which caused socialism to fail. Government lacks the knowledge to manage the environment just as it lacks the knowledge needed to manage the economy. Moreover, government has no means of motivating the populace to act efficiently to implement any plan that it might devise. Finally, government is prone to special-interest pleadings which distort any plan which might emerge in any event.

The final section, Section V: *Toward a Classical Liberal Environmentalism,* outlines the way in which environmental issues might better be resolved. The paper's premise is that environmental problems pose no unique challenges to economic theory: environmental questions are simply economic questions. Classical liberal institutions better advance economic goals for the same reasons that classical liberal institutions will better advance ecological goals. Only a system of dispersed power and freedom (made possible by dispersed private property and the right to engage in binding agreements) allows society to use the dispersed knowledge and concerns of the peoples of the world.

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[11] A useful overview of the U.S. EPA and its problems is "The Environmental Protection Agency: Asking the Wrong Questions," by Marc K. Landy, Marc J. Roberts and Stephens R. Thomas. (New York: Oxford UP, 1990).

The battle against eco-socialism is but a replay of the battles against socialism itself. The challenge is to ensure that this battle is waged as effectively as the earlier one.

My hope is that this paper will trigger the effort needed to ensure that the ground gained in the battle against economic collectivism is not lost in this environmental century.[12]

[12] Readers should be aware that this paper covers a very complex issue and does so with (admittedly) a very broad brush. This paper is based on my understanding of the research on the progressive era by Robert Nelson, CEI Senior Fellow; on the work of the late Aaron Wildavsky on cultural theory; law and economics research (especially that by Ronald Coase); and the extensive work conducted by the Political Economy Research Center and CEI over the last decade. Obviously, none of these groups or individuals are responsible for my interpretation of their views expressed here. Comments already received suggest that in many particulars this picture deserves elaboration. I can only hope that the scope of this paper justifies the remaining errors.

Section Two: The Environmental Problems Created by Economic Progressivism

This section provides a brief outline of the American progressive era and its impact on environmental policy. Progressives believed that directed economic development would advance more rapidly than spontaneous economic growth. Individualism, constitutional restraints, private property – all came to be viewed as outmoded impediments to a better future. That viewpoint led them to champion economic and technological advances at the expense of ecological values. Existing protections were weakened; efforts to extend classical liberal institutions such as private property to resources as they became more valuable were thwarted. Thus, economic progressivism weakened existing institutional arrangements that had existed (and were evolving) for addressing environmental concerns. As a result, economic decisions throughout the 19th and 20th century neglected environmental impacts. Progress came to be positively associated with environmental degradation. When, therefore, environmental values forced their way into the national consciousness, most were unaware that rather than markets failing, we had failed to allow markets to evolve. To reform current policy, this legacy must be understood.

The Triumph of the "Fatal Conceit"

The 19th century saw a steady erosion of classical liberal institutions that grew out of the enlightenment era – faith in spontaneous order flagged, belief in centralized planning grew. The intellectual and cultural attitudes in both Europe and America moved against classical liberal society.[13] Why? My explanation accepts the Schumpeterian argument that the success of markets (classical liberal institutions, more broadly) would

[13] This paper focuses on the American experience, although some of the examples are taken from the United Kingdom. In Europe, the success of the "Fatal Conceit" perspective led to socialism; in the United States, it led to the progressive regulatory state with federal ownership of all resources not already owned privately. The differences between Europe and the United States are great. However, the US approach has been used as a model of environmental regulatory protection in a large part of the world, so it is highly relevant.

create a powerful intellectual class that would undermine the moral and intellectual foundation for economic liberalism. [14]

Schumpeter's argument was straightforward. Capitalism would create great wealth; that wealth would make possible the emergence of an increasingly powerful middle class. Some of these would become entrepreneurs who created even more wealth, others would become "intellectuals." Intellectuals, envious of the economic rewards to their entrepreneurial brethren, would legitimize their resentment by devising and promoting theories of exploitation that would undermine the moral/intellectual case for the classical liberal order. Convinced by their own arguments, they would then call for political intervention to bring about "social justice." Their hubris ("fatal conceit") would persuade them that they would be the logical managers of that interventionist state. An expanded state would also provide attractive employment opportunities for intellectuals. Schumpeter believed the blend of psychological and economic incentives would lead most intellectuals to champion statism. History suggests he was right.[15]

This loss of intellectual support for classical liberal ideas is significant. Intellectuals play an extremely powerful role in modern society. They write the stories and plays, teach college and university classes, and they even advise corporate leaders. As mandarin advisors they define the terms of the policy debates; their power in the war of ideas is great. Moreover, in the broader political world, their power is perhaps even greater. Politics, we should recognize, is the realm of the "rationally ignorant." Citizens, recognizing they can do little to influence policy, will spend little time educating themselves on civic matters.

Public opinion at best reflects weak linkages between values held, and the way issues are perceived. Since these stories will be told by intellectuals who are antagonistic to classical liberal ideas, most people will see policy in terms that are unfavorable to the market. Most people in the modern world see policy issues through *pink colored glasses.* Increasingly, citizens will come to view classical liberal society as inadequate, as not

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[14] Joseph A. Schumpeter, *Capitalism, Socialism and Democracy*. New York: Harper and Row, 1976.
[15] I discuss this thesis at greater length in an essay published in *Liberty* magazine, "Traitors to Our Class," November, 1998.

capable of fully mobilizing the forces of society to advance the "public interest." The result is a movement towards some form of a welfare/regulatory state.

The turmoil of the Industrial Revolution vastly expanded the intellectual class, and gave it the opportunity to advance its interests by advancing the welfare/regulatory state. Like any frontier era, the industrial era saw massive rates of change and, thus, many mishaps, mistakes and misdemeanors. In that new economy, there were few precedents, and many mistakes were made as buyers and sellers gradually evolved the rules of the national economy.

One final point is relevant: the progressives were not soulless technocrats. They imbued their intellectual and cultural message with an element of religion. However, theirs was not the traditional "gospel" but rather the "Gospel of Efficiency" (and in some cases, both). Waste was sinful, efficiency was virtuous. Scientific management was their creed; their faith was that an economy planned and managed by wise technocratic priests would best advance the human condition. As a result, progressivism fit well within the American tradition where hard work (especially efficient hard work) was seen as virtuous, where wealth and consumption had long been viewed as morally suspect. The parallels with today's environmental movement are obvious.

Progressives mounted a cultural and intellectual assault on the classical liberal order. Their efforts were largely successful. Today, "everyone" knows that the late 19th century laissez-faire period was disastrous, an era when consumers, workers and the citizenry were subject to the tyranny of the marketplace. Spontaneous order, the "invisible hand," had failed – only a creative planning effort could bring about a well-ordered, just society.

The progressives demonized business, and neutralized much of the traditional skepticism of Americans toward government. Indeed, in the 20th century, the federal government was transformed from Hobbes' "Leviathan" to "Uncle Sam" – the kindly father figure eager to help the common man.

Progressives overcome American resistance to big government

That weakening of traditional property rights and the expansion of federal government was not easy. It required overcoming America's institutional and cultural resistance to the expansion of central government. One of the leading Progressives, Herbert Croly, stated:

> [The reluctance to move toward national control of the economy] is defended, not on the ground that [local political power] has been well exercised, not even plausibly on the ground that it can be well exercised. It is defended almost exclusively on the ground that any increase in the authority of the Federal government is dangerous to the American people. But the Federal government belongs to the American people even more completely that do the state governments, because a general current opinion can act much more effectively on the single Federal authority than it can upon the many separate state authorities. [16]

Croly was aware that Americans favored the institutional arrangements that checked centralization, the Constitution in particular, and worked hard to find a way around it. He noted:

> Yet, at the present time, there is a strong, almost a dominant, tendency to regard the existing Constitution with superstitious awe, and to shrink with horror from modifying it even in the smallest detail, and it is the superstitious fear of changing the most trivial parts of the fundamental legal fabric which brings to pass the great bondage of the American spirit. [17]

The progressives were largely successful in influencing political decision-making. By the end of the 19th century, the course of America's political economy was set. Resources that had not yet found their way into private hands (or that were held insecurely, such as portions of the electromagnetic spectrum) would be politically owned and managed. Government would embark on a major program to meet the need for "public goods" – those services that the private sector was viewed as incapable of providing. The common law rules for addressing trespass, nuisance and other disputes would give way to the utilitarian concept of "balancing the interests." And, of course, all economic activities remaining in the private sector would be politically controlled via regulation to address

[16] Croly, Herbert. *The Promise of American Life*, page 278. Boston: Northeastern UP, 1989.
[17] ibid, 278-89.

the numerous "market failures." Transportation, communication, banking, insurance and a host of other economic areas came under increasingly heavy regulatory scrutiny.

The Impact of Progressivism on Environmental Policy

The triumph of the progressives during the early twentieth century created the framework for current environmental policy. First, as discussed later, much of the impetus behind the economic progressive movement was the belief that private parties were using natural resources unwisely. Second, the intellectual case against the market often relied upon examples based on pollution of common property resources (the fisheries or rangelands, for example). Finally, key leaders of the progressive movement were themselves heavily influenced environmental values. A key progressive figure, Gifford Pinchot, was first a forester and only later the head of the US Forest Service.

As America developed in this era, many resources became increasingly valuable – fisheries, land,, water, wildlife even the electromagnetic. Like most resources, these resources had generally existed outside any system of formal management – they were viewed as common property resources to be had for the taking. And, as long as demand was low and supply high, this situation was acceptable – there is no need to incur the costs of managing a resource that is not scarce.

However, as resources become more valuable, this system soon breaks down – society experiences the "tragedy of the commons." This tragedy results from the fact that a common property resource can be "owned" only by capture – cutting the tree, catching the fish, pumping the water, killing the deer. No one owns the resource until it is removed from the commons. As the resource become more valuable, increasing numbers of people will capture such resources leading to its increasing scarcity. There is a positive incentive not to conserve, since one individual's forbearance is only likely to benefit his less concerned neighbor. The fish that I don't net today, the pasture that my cattle don't

graze today, may be gone tomorrow as one of my less caring fellow citizens rushes to exploit the last blade of grass, the last fish, the last drop of water.[18]

The progressive success in limiting the role of private property is important for many reasons. As noted, the first wave of progressives championed economic and technological growth. To these progressives, the classical liberal institutions were barriers to the better world that might be. They saw private property, voluntary agreements and other classical liberal institutions as obsolete, since they permitted the lone individual to act "foolishly," to block the plans of the "best and the brightest." Rampant individualism to them was an impediment to progress. They thus moved to curb traditional property rights protections. Government funding of mills and railroads, dams and industrial facilities were important became progressive goals. The claims and fears of the *individual* must not be allowed to block progress for society.

Investment in competitive capitalism was wasteful – it was far more efficient to simply have everyone do the right thing. That government might find it difficult to determine the "right thing" seems never to have concerned the progressives.

A.C.Pigou was among the economists who understood some of the difficulties inherent in political decision-making.[19] Pigou realized that the correct response to an externality depends upon many factors including the costs of addressing that issue, which will depend upon technology and the institutional setting. In the real world, government action will often be "ignorant, subject to pressure and corruption."

He believed past interventions had failed because such policies had been formulated and managed by local general purpose governmental entities – town councils, for example. He saw such bodies as having several disadvantages. First, being general government bodies, they were selected on political criteria, rather than their technical expertise at "intervening in the economy." Second, elections would change management, making long term planning impossible. Finally, he noted that electoral pressures might

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[18] The tragedy of the commons literature was first highly publicized by Garrett Hardin in a famous article in *Science* magazine, "The Tragedy of the Commons," 1968. An extensive literature applying that paradigm to a host of environmental and other situations has since emerged. See, for example, "Resolving the Tragedy of the Commons by Creating Private Property Rights in Wildlife," by CEI scholar R.J. Smith.

[19] As discussed by Ronald Coase, The Firm, the Market and the Law, p. 20. *****

weaken the attentiveness of political managers to their economic management responsibilities.

However, Pigou was convinced that the prospects for successful intervention had increased in his day (the late 19th and early 20th centuries), especially in England and the US. He was convinced that the growth of the modern bureaucracy, with a professional civil service, convinced those skeptics that efficient planning could still be performed. Pigou claimed that progressive institutional innovations had largely resolved those problems and now made it possible to efficiently manage the economy politically. He referred to the newly created commissions proliferating in America around the turn of the century. The advantages of such commissions, he believed, were obvious:

> The members can be specially chosen for their fitness for their task, their appointment can be for long periods, the area allotted to them can be suitably adjusted, and their terms of appointment can be such as to free them, in the main, from electoral pressures.[20]

In effect, Pigou (and the progressives) believed they had created a political regime free from politics. The actual agency that Pigou had in mind, ironically, was the Interstate Commerce Commission. As later discussed, that agency later became an exemplar of the case for deregulation.

These progressive cultural and intellectual shifts greatly facilitated the growth in government. Henceforth, every crisis would be met by vigorous cries from the intellectuals, politicians and often business to "do something." Since that "something" was always political, the rights of individuals and property owners steadily eroded. Those who owned property faced increasing difficulties in having their nuisance or trespass claims considered – at least when the alleged incursion resulted from the actions of an otherwise meritorious and socially desired economic activity. Those suffering nuisance from neighbors creating noise, odors, vibration, fire risks and other "external" effects found that the courts (influenced by the same intellectual and cultural shifts) were increasingly unsympathetic. In areas where the courts continued to protect property, the

[20] Op cit, p. 21.

legislatures often granted economic development activities immunity from nuisance claims.

The "fatal conceit" meant that economic projects faced fewer queries and fewer checks on their legitimacy. Since economic development was determined to be good prima facie and since private owners would often disagree about the need or the price offered for a specific project or site (thus delaying economic activity), private interests had to give way to the public interest. Had private property rules remained fully in effect, economic growth would, of course, have continued. There are vast gains from growth and these would have encouraged many, if not all, parties involved to reach the voluntary arrangements that would have permitted the gains actually realized during the progressive era. However, almost certainly the innovative process (both technological and institutional) would have been far different. The "soft path" that might have emerged – one increasingly sensitive to the growing value placed on the environment – was never explored.

Thus, the progressive era moved the economy along a very different path than that which might have been followed had classical liberal institutions retained their strength. For example, railroads which disturbed (and sometimes endangered) neighborhoods likely would have negotiated for easement rights, sought larger buffer zones around their rights-of-way, and pushed earlier for spark suppressors and other nuisance-abatement technology. Economic growth in a narrow sense might have slowed, but environmental values would have fared better. Certainly, the criteria used by business to site facilities and select technologies would have been very different.

There is a growing literature which develops this story in some detail.[21] Ronald Coase, as is so often the case, was the first to effectively note the discrepancies in the progressive story. Coase, critiquing one of the intellectual progressive leaders, pointed out that many of the "externality" problems used by Pigou to demonstrate the pervasive

[21] See both "The Problem of Social Cost" and "The Problem of Social Cost Revisited" both in *The Firm, The Market and the Law*. See also his article in the same volume: "The Lighthouse in Economics:" and "The Marginal Cost Controversy." . Over the last decade, under the leadership of Bruce Yandle and Roger Meiners, scholars at the Political Economy Research Center in Montana, have conducted and published a series of studies also on these topics.Elizabeth Brubaker, *Property Rights in Defense of Nature*, and Roger Bate's essay,

nature of "market failures" were the result – not of market failure – but rather of court or legislative action. [22]

The Industrial Revolution would undoubtedly have created major stresses on traditional private property rights in any event. The resource demands of the Industrial Revolution were unprecedented[23] and the techniques for extracting minerals, for harvesting trees, for producing goods and services – all were in rapid change.

Malthusian concerns arose about resource depletion – especially, wood and later coal. And timber use increased massively during this era. President Theodore Roosevelt observed: "If the present rate of forest destruction is allowed to continue, with nothing to offset it, a timber famine in the future is inevitable." And Gifford Pinchot, a fellow progressive and the father of the U.S. Forest Service, worried that: "The United States has already crossed the verge of a timber famine so severe that its blighting effects will be felt by every household in the land."[24]

The rapid depletion of European and American forests reflected the insatiable demand for both charcoal for iron and steel manufacture and rail ties for the expanding rail systems.. There should be no mistake that such concerns had an element of rationality; had there been no innovation, no stabilizing of demand, then these depletion fears might actually have materialized. Certainly, the introduction of novel technologies did lead to some horrible industrial tragedies, such as the mercury poisoning of hatters and the radium poisoning of those painting watch dials.

Change is always disruptive. By definition, a "frontier" sector or era is characterized by ignorance. In such situations, decisions are always exploratory and risky – errors are unavoidable. Moreover, almost certainly, the institutions and arrangements

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[23] Iron and steel production, for example, required massive amounts of "clean" fuel which for almost a century could be met only by charcoal. The techniques for "purifying" coal were only slowly worked out in the 19th century. The landscapes of England reflect this fact, as the grassed hillsides (hillsides that in the United States would be wooded) illustrate the stress placed on England's forests. In contrast, the United States came later to the Industrial Revolution and benefited from the invention of coke, a clean coal, which made it possible to move away from charcoal. That story and other interesting facts about the relation of technology to resource requirements can be found in Nathan Rosenberg's """

[24] These statements are quoted in Jonathan Adler's "Poplar Front: The Rebirth of America's Forests," page. 65, of the collection, *Ecology, Liberty and Property*, edited by Jonathan Adler. The forest essay first appeared in *Policy Review.*

relied on in the past will prove unsuitable for the novel challenges posed by these newer innovations. But, all this means that the classical liberal view of the market as a *discovery process* is more rather than less important. As the late Aaron Wildavsky noted, there can be no trial without error, no change without the likelihood of mistakes being made. The challenge to society is to ensure that its institutions ensure that such errors will encourage solutions to be developed. The progressives ignored this wisdom; their weakening of private property and common law remedies merely meant that more mistakes would be made and that less attention would be placed on institutional arrangements and technological solutions. Problems festered or were pushed aside which might have been resolved. Minimally, a range of experiments would have occurred which could then have been adapted to later periods (when environmental values became more valuable) or other regions (as similar conditions emerged). In effect, the progressives crippled the classical liberal feedback mechanisms that allowed society to address emerging problems.

Along with these utilitarian concerns, many were also upset about the stresses growth placed on traditional ways of life – the smokes, smells, noises, and vibrations produced by the Satanic Mills of the era. The threat posed by modernization to traditional and aesthetic values was a theme of the romantic poets in England and the United States.[25] And it was true that the pace of economic development seemed unsustainable. Forests were being cut, rivers dammed, wildlife numbers dropping rapidly as an unconstrained entrepreneurial class moved to exploit the commons.

A Foreshadowing of the Modern Environmental Movement

To most progressives, however, the threats that growth posed to aesthetics and traditions were secondary. Economic Progressives were pro-growth and pro-technology – indeed, fanatically so. They saw no threat to resources – *as long as they were scientifically managed.* Still, it is important to note that even at the dawn of the American progressive movement, some favored preservation over development. The two sides were represented by Gifford Pinchot and John Muir. Pinchot was a pro-growth

[25] See, for example, Oliver Goldsmith's "The Deserted Village," a poem critiquing the enclosure movement in England.

progressive. His view was that resources should be used efficiently – and attaining efficiency required scientific management. That would best be achieved by central political control over such resources. Pinchot embarked on a skillful political and educational campaign to gain that control.[26]

Pinchot met John Muir during his surveys of western forests and spent much time with him traversing the Sierra forests. Both were horrified that giant sequoias were converted into stakes for the expanding California agricultural business. Muir, however, saw in nature more than mere utilitarian value – he saw it as a sacred thing. Pinchot mentions that on a hike, they encountered a tarantula that Muir persuaded him not to kill on the basis that all life was sacred. Muir was a preservationist – his view was that aesthetics, rather than science and economics, would be the better guide for the management of the nation's resources. The problem of overuse would best be addressed by curbing man's appetite. In contrast, Pinchot saw no reason to put Americans on short rations. Rather than this Malthusian view, he was optimistic about the issue. Scarcities were a real risk, but that risk emerged not from increased demand but rather from the wastes entailed in allowing these resources to be managed by careless non-scientific private managers. The Forest Service (and, by extension, a cadre of well-trained technicians in other specialized resource management agencies) could readily produce adequate resources for America's future. Pinchot, to use modern parlance, was a supply-sider.

That difference between those who valued nature instrumentally (as an economic resource) versus those who viewed it intrinsically (as having value in and of itself) led to a break between Muir and Pinchot. They agreed that the "public" should manage the resources of America for the good of all. They disagreed about the goals of that endeavor. To Pinchot, resources were to be used for houses and other high-value uses (not to stake vegetables); rivers should generate power and not be restricted to boating or fishing. To Muir this utilitarian bias made the Forest Service simply another destructive force. The two men took very different paths: Gifford Pinchot worked with Teddy Roosevelt to create the U.S. Forest Service; John Muir established the Sierra Club.

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[26] Marlo Lewis, "" Forthcoming

From today's perspective, we can better sympathize with Muir because scientific management destroys the right of property owners to use or preserve resources equally. Weakening private property owners' ability to fend off damage also weakened the discovery process by which newer technologies might be "housebroken" and integrated into the overall classical liberal order. In practice, economic progressives advanced policies that were anti-environmental. However, neither wing of the progressive movement championed or even considered seriously the role of classical liberal institutions in integrating economic and ecological values.

The progressives ignored the nascent voluntary environmental organizations – groups that were already working to protect wildlife or scenic areas. These groups held values largely unappreciated at the time, but they were already illustrating the ways in which ecological values might be advanced absent the government. And, indeed, although the attack of progressives on economic classical liberal institutions is critical; in some ways, the more serious attack (from the perspective of public policy) is the progressives' disdain for voluntary action. The concept that the individual or small group might play a significant role in addressing environmental or poverty problems was dismissed almost without question. The Tocquevillian perspective – that many of the most important societal tasks are best handled outside both the market and government – received little attention. That neglect has meant that a significant area of the American polity has been left out of the modern environmental debate. That neglect is completely consistent with the progressive mindset.

Section Three: Malthusian Progressives – The Modern Environmental Movement

This section deals with the modern environmental movement. I see this movement as an effort to shore up the declining prospects of the Chattering Class by giving them a new mission – no longer to seek Heaven here on Earth, rather now to fend off Earth from becoming hell. That strategy led them to adopt the Malthusian paradigm in its more negative version – and to design policies accordingly.

Faith in Economic Progressivism Fades

Although still continuing in many important ways, the economic progressive era spanned almost a century. Like all social eras, its beginning and ends are imprecise but a useful starting and ending point are provided by the dates of the creation and abolition of the Interstate Commerce Commission (ICC). The decline had begun in the 1930s with leading socialist economists, Oscar Lange and Abba Lerner, accepting many of the criticisms of Ludwig von Mises. In the 1940s, years before he wrote about the retreat of the regulatory state, Frederick Hayek wrote *The Road to Serfdom*.

Ironically, the progressives had championed economic and technological change thinking change beneficial both to society – and themselves. The societal benefits were real, however, these changes undermined the case for the regulatory state and the need for a class of central planners.

Many factors explain that gradual erosion of the faith in central planning.[27] A prime factor was that the rents that some realized from regulation decreased over time, as the economy grew and evolved. Technological and institutional changes destabilized many of the rent-seeking alliances, which had provided the support for the regulatory state. Another factor was federalism, which allowed competing regulatory schemes, particularly noteworthy in the field of transportation. Many noted that intrastate airline

[27] See "Learning from the Past, Freeing Up the Future" (Institute for Economic Affairs, May 1994) where I detail my survey of the factors that led rail and other transportation modes to be regulated in the late 19th century and then (largely) deregulated in the 1980s. Economic regulation, and government ownership of western resources and land, was the dominant progressive policy instrument and, thus, I believe this review has lessons for the overall decline of economic progressivism in the United States.

flights were cheaper than comparable length interstate flights. This finding undermined the moral as well as the intellectual case for regulation, creating pressures for deregulation.

The Interstate Commerce Commission was the first agency which Pigou saw as the exemplar of scientific management.[28] Pigou's hopes that the ICC would avoid politics or special interest pleadings proved naïve. Transportation was one of the first sectors of the economy regulated in the 19th century and one of the first deregulated in the late 20th century as economic progressivism faded.

The Progressives Go Negative

The economic progressives saw change as favorable to their cause. Yet, in fact, economic and technological change seemed actually to make their efforts unnecessary. The future was leaving them behind, turning against them. This forced them into a difficult choice –to relinquish power and play a more modest role in society, or to find a new rationale for power. Not surprisingly, many became environmentalists, abandoning the effort to bring about Heaven on Earth, they now justified themselves as protectors of planet earth.

Since hope was no longer a viable platform for retaining power, the environmental aspects of the progressive movement became more pronounced, . While the economic progressives goal had been an aggressive vision of man mastering nature, that vision was now discredited. Man was too destructive for that close embrace; rather we must create ecological apartheid zones ("natural areas") from which man (the only "unnatural" species) would be excluded. The "national park" – an area set aside for mankind's varied recreational needs (including roads and hotels, restaurants, paths for horses and later snowmobiles, concession stands, etc.) – was replaced by the new ideal of the "wilderness area," an area set aside solely for "nature." The goal shifted from integration to segregation.

I label this new progressive variant "Malthusian progressivism" – it is progressive in its continued belief that the "best and the brightest" should lead society, that markets

and classical liberal institutions cannot adequately address society's needs. However, this new phase of progressivism has become reactionary, seeing economic and technological change as threatening. It has become profoundly pessimistic about man's ability to make the world a better place; it now hopes simply for survival. David Suzuki, a Canadian environmentalist, argued that "the notion that we must work towards, not zero growth, but negative growth." Mankind's new goal, the Malthusian progressives assert, is simply to ensure the stability of our eco-sphere, to prevent things from getting worse - to fend off "hell on earth."

Nonetheless, fear is at least as powerful a motivator as hope. Therefore, eco-socialism remains a serious threat. And, indeed, under this new banner, some luster has already been restored to the central planning vision, rekindling the collectivist passions (although now in dystopian, rather than utopian guise) that did so much harm over the last century. Moreover, by suggesting that economic growth give way to ecological preservation, eco-socialism poses an even greater threat to the developing world than did socialism. After all, the socialists did envision the poorer nations sharing in global prosperity – the new green views the world as threatened by such prosperity and seeks instead to preserve these regions as ecological museums, the citizenry as museum attendants or zookeepers.

The Economic Progressive movement also had its Malthusian concerns. Both Theodore Roosevelt and Gifford Pinchot, as noted earlier, were concerned over a looming timber "famine." The concern, however, was supply. Their answer was scientific management of the earth to ensure adequate supplies. They were optimistic about their ability to do exactly that. The modern Malthusian movement is more a demand-side response to these imagined ills. More pessimistic than its predecessor, its task is no longer to expand supply but rather to restrain man's insatiable demands.

Ronald Bailey[29] has suggested a "pat" equation to clarify how our modern progressives feel about this planet :

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[28] Institute of Economic Affairs, "Lessons from the Past," ??? Date

[29] See the two CEI volumes edited by Ronald Bailey: *The True State of the Planet* (Free Press, 1995) and *Earth Report 2000* (McGraw-Hill, 1999). These volumes of collected essays by experts on various resource and environmental issues address the realities of topical "shortage" and "risk" concerns. These

I= PAT

Where I –man's *Impact* on our planet – is the result of three factors: *Population (P)*; *Affluence (A)*; and *Technology (T)*. The problem is one of *too* many people, *too* much consumption, and *too* great a reliance on technology (which, of course, we understand *too* poorly). The "solutions" to the problem so posed are straightforward: population control, consumption controls, and technology controls. Suppress man's numbers, his consumption, and his reliance on innovative technologies and we might yet survive. Such policies can easily become calls for death, poverty and ignorance. The policies devised to translate this idea into policy were sustainable development and the precautionary principle.

Sustainable development

Sustainable development was formally introduced into the policy debate at the first major global conference on environmental matters – the Stockholm Conference in 1972. Gro Bruntland, then Prime Minister of Norway, provided the following definition:

> Sustainable development is a notion of discipline. It means humanity must ensure that meeting present needs does not compromise the ability of future generations to meet their own needs.[30]

In this sense, sustainability requires that, as resources are consumed, one of three things must occur: new resources must be discovered or developed, demands must be shifted to more plentiful resources, or new knowledge must permit us to meet such needs from the smaller resource base. That is, as resources are depleted, they must be renewed.

As actually used in the environmental policy debate, the sustainable development term is extremely vague, often little more than a platitude. Who, after all, favors non-sustainable development? Proponents deny the evident fact that in market economies,

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volumes also indicate the institutional framework within which decisions about each of these resources arise, noting that mankind's problems reflect more a weakness of institutions than excessive demands.

[30] Gro Harlem Brundtland, Prime Minister of Norway, "The Test of Our Civilization", *New Perspectives Quarterly*, 6, No. I (Spring 1989), p. 5-7.

incentive structures exist that encourage the renewal and replacement of consumed resources, and the increasing efficiency of resource use. The presumption is that this "progress" is illusory, that only reduced demand will suffice to bring Earth into balance.

For a while, the Malthusian progressives continued to focus on natural resource issues, building on the concerns of the older economic progressives. Yet, our steady improvement of man's material condition despite such gloomy predictions has led environmentalists to shift their focus away from those resources already integrated into the market economy (minerals, wood, energy) toward those resources that have been systematically denied a market presence (water, fisheries, the air itself). Focusing on areas lacking the institutional framework critical to harnessing man's creative talents provides them a better story. Their neglect of the institutional (and thus incentive) framework within which some resource or amenity is managed leaves them with no explanation for why a certain resource (groundwater, for instance) encounters serious problems, while other resources (oil and gas) are becoming ever more abundant.

Yet, even in most of these cases, their argument falls short – air and water quality are improving despite massive growth in both population and wealth – at least, in the United States and Europe. Wealthier turns out to be cleaner – as well as healthier. Though environmental progressives argue that population growth means depletion of resources and environmental degradation. It is true that poverty creates serious environmental problems – water pollution, desertification, the slaughter of endangered species. Wealth allows people to live longer, healthier lives. Wealth also provides the ability to appreciate environmental aesthetics.

Precautionary Principle

The sustainable development guideline focuses on the demand-side, encouraging reduced use of resources. The second pillar focuses on technology, the force which has allowed us to surmount the Malthusian dilemma. The precautionary principle is an argument that, even when one is uncertain of the risks of an innovation, one may still be justified in delaying or blocking its introduction. That is, one should not leap until

one has looked. All true, but in practice, this policy presumes that all risks are associated with change, that the risks of technological stagnation can always be neglected.

Interpreted rationally, the precautionary principle would hold that one should compare the risks of innovation against the risks of stagnation; the risks of going too fast vs. the risks of going too slow. There are risks of allowing the use of any product or technology—but there are also risks of blocking or delaying the use of any new product or technology. The choice is not between freedom and safety, or even safety and danger, but rather between alternative paths, one of which may be less dangerous. The challenge of our world is that safety must be sought out – it can't be guaranteed in advance. As the late Aaron Wildavsky noted: allowing dangerous products to be produced and used may well be the best way to make the world a safer place – the new product need only be safer than the one it replaced. The search for a "safe" product or technology is dangerous; the search for a safer product or technology is essential.[31]

In practice, the precautionary principle (like the sustainable development policy) is interpreted in a highly selective way. Environmental officials elected early on to enhance the popularity of the agency by emphasizing the risks of pollution and the public health value of environmental protection. Yet as Marc Landy (et al) notes in The EPA: Asking the Wrong Questions:

> Even when properly formulated, health question should not form the central strategic focus for EPA. Continuing its "public health" orientation would condemn EPA – and environmental concerns in general – to the role of bit players in the grand drama of pursuing improved health status. Pollution control is a much less important lever for improving public health than the control of smoking, drinking, diet, drug use, highway safety, and crime, all of which are beyond EPA's control.[32]

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[31] A classic illustration of this point was made by Aeschylus in his prophetic play "Prometheus Bound." The gods sought to deny mankind fire, in part because of the potential risk this dangerous technology might create. There was expanded choice (more freedom was valuable) but not at the expense of human safety. But for fire, as for most technologies, the comparison is properly not between freedom and risk, but rather between the massive risks faced by mankind in a fire-less world and the smaller risks faced by man with fire. The challenge for society is to encourage the evolution of institutional arrangements which encourage better choices over time – choices that gradually make the work not safe, but safer. That requires a sensible policy of trial and error – not policies mandating trial without error.

[32] Marc Landy, Marc Roberts, Stephen Thomas. New York: Oxford UP, 1990. P.292.

Objective studies have rarely found much substance to either of these concerns, for example, but public opinion polls suggests that EPA has been very successful in persuading people that modern society has created great risks. The policies are used to suppress economic development, to slow or block technology, to promote population growth controls.

The two policies – sustainable development and the precautionary principle – work together to provide environmentalists great control over the economy. Such policies also buttress the power of the intellectual elite and their political supporters. In America and other developed nations, such policies restrict choice and reduce living standards. However, our nations are rich. The costs of reducing economic and technological growth are far more severe in the developed world. Without continued economic and technological growth, there can be no better future for the billions in the world who now lack mobility, indoor plumbing, heating and cooling, labor saving technologies. And such growth is impossible if technologies are assessed only by their negative impacts, and if resource use is curtailed dramatically.

The creation of the EPA in the United States and the enactment over the next few decades of dozens of laws addressing issues ranging from wildlife to global warming has made the EPA and its sister environmental organization, the Department of Interior, the most powerful economic agency in the United States.[33] Moreover, its operating philosophy provides it no ready stopping rule – there cannot be too much regulation. Any risk of any sort anywhere merits the agencies attention. The agency's goals are utopian; its budget and powers are large and growing. Only rarely has any attempt been made to reign it in – that during the first Reagan Administration – and that experience was disastrous. Yet, as we shall see, the classical liberal criticisms of socialism still apply – the fatal conceit remains fatal even in this sphere.

[33] A valuable survey of the EPA, its origins and its difficulties, is *The Environmental Protection Agency: Asking the Wrong Questions* by Marc K. Landy, Marc J. Roberts, and Stephen R. Thomas. (New York: Oxford UP, 1990).

Section Four: The Failure of Modern Environmental Policy

This section details the growing problems arising from the almost total reliance on political means to protect our planet. Several specific problems are discussed. First, the lack of any means (such as prices) to establish environmental priorities. Next, the pressures to weigh the environmental responsibilities by their political prominence, and the risks that environmental laws can become a means of restricting competition and thus increasing profits at consumer expense. Two American examples of the resulting failures, Superfund and Endangered Species Act, illustrate all of these problems. Finally, a discussion of problems emerging as our economies become more globally-oriented and integrated.

It should surprise no classical liberal that the Environmental Protection Agency, a body designed to manage the complex of environmental issues from Washington, might fail. Fatal conceit problems don't disappear when one turns from the economy to the ecology; ecological central planning is no more likely to succeed than economic central planning. Indeed, given the lack of any metric to integrate ecological impacts, ecological central planning is perhaps even more problematic.

The creation of the federal Environmental Protection Agency in 1970 marks the first major success of this new progressivism.[34] Certainly, EPA is one of the most ambitious and most utopian agencies ever established. As described in a contemporary *Life* magazine account of the newly established agency,[35] the agency was to control the flows of all energy and material used in the economy. Nothing that ambitious had ever been dreamed of during the economic progressive era.

EPA seeks to manage this system via the same centralized, hierarchic, politicized planning approach used by socialist economic planners. It seeks to impose a standard template on a varied reality and the experience has not been a happy one. EPA's command-and-control policies have no way to set priorities even among environmental

[34] Note that EPA was created during the administration of President Richard Nixon. And, in fact, almost all the environmental statutes were created during Republican presidencies. This is perhaps not surprising given that President Theodore Roosevelt, also a Republican, was one of the progressive champions earlier in the century.

[35] The article appeared in November 1971 (??). The cartoon accompanying the article portrayed the EPA as a gigantic machine channeling energy and materials around the economy.

goods. Its policies fail because they do not and cannot capture the information embodied in market prices and they do not develop institutions which allow individuals to address environmental problems. EPA's policies are based largely on utopian hopes, but not on reality. The classical liberal insight that a society works if and only if its institutions allow and encourage the use of dispersed knowledge (the values of the individual, the specific circumstances facing that individual) has played little role in environmental policy to date.

Economic efficiency without economic freedom is impossible. Yet the progressives ignore that fact or simply claim that it is irrelevant for modern environmental policy discussions. The economic progressives argued that efficiency was impossible in a free market; modern Malthusian progressives argue that we must sacrifice freedom to save Planet Earth. The error is similar, for indeed, today, we do seek clean air and water in much the same way as economic planners once sought to produce wheat and bread. Political experts determine "desired" output levels, bureaucrats develop implementation plans, and mandates are promulgated.

And indeed, planned economies did produce *some* wheat, just as environmental regulators have achieved *some* environmental gains. However, their policies have failed to enlist the creative genius and energies of the peoples of the world in this task, because they have created no institutional framework for such contribution. The tasks assigned the individual in both worlds are similar: pay taxes, support expanded government intervention, and obey orders.

As classical liberals know well, this approach means that we cannot use the dispersed knowledge of the populace. Modern progressives have not suggested a means to advance environmental objectives individually, nor are they provided any incentive to do so with their policies. The regulatory state enervates rather than motivates, whether the problem is economic or ecological.

Lack of prioritization mechanism

The lack of any exchange framework means that we have no indication of how highly any environmental objective should be valued. We lack the information needed to

decide what it is that we should do. In the ecological sphere, as in the economic sphere, the problem of central planning is the same – *there is no price information in the absence of a system of exchange.* The classical liberal insight that the role of exchange is to *create* information, not to manipulate information that already exists, has yet to be understood by the environmental establishment. Is the next environmental priority the cleaning of the rivers, the expansion of some endangered species numbers, the reduction of trace contaminants in Ohio wells, or possibly steps to curtail the use of carbon-based fuels? Absent a system of exchange, we have no way to know the answers to such questions. One of the problems that this creates is a tendency to allow political factors to set day-to-day priorities.

Command-and-control policies also mean that the enforcement authorities are distant in time and space from alleged pollution incidents. As a result, regulators have simplified their control efforts to apply to the least number of sites possible. Typically, this means that regulations are often imposed upstream of the place where the alleged damage is incurred. Such upstream control often goes afield – the activity may have little or no relation to the actual environmental problem that triggered the law. Acid rain controls, for example, treat sulfur emissions from plants throughout Ohio as if their impacts were similar, even though the regions affected by such emissions are far apart.

Cooperation from citizens – incentives and knowledge

EPA's second generic problem was how to encourage the citizenry to obey its directives. EPA had addressed this problem by reducing the number of control points (focusing on large point sources of pollution) and by enacting draconian enforcement laws. Nonetheless, the enforcement problem was increasingly difficult, and EPA was widely criticized for its enforcement laxity. Like any central control agency, EPA found it extremely hard to solve the information and incentive problems.

However, the central-control approach to the environment raised several additional problems peculiar to EPA's task. Environmental laws provide many opportunities for special interests to gain power. These special interests include both businesses and environmental ideologues. Businesses have found the environmental laws

useful devices to restrict competition. The laws make it far harder to build a new plant, introduce a new product, or even use an old product in a new way. Such competitive innovations are inhibited by environmental laws. The new, the novel must demonstrate its virtue; the old, the familiar is accepted, warts and all.

This capture of environmental policy by business groups, however, is overshadowed by the success of environmental ideologues. Groups that call for "zero pollution" and "untouched nature" now largely dictate environmental policy. Their power is enhanced by the fact that many environmental laws include language which encourages EPA to finance public participation. Most of the citizenry, however, have other demands on their time. Environmental issues are far too complex and demanding to capture the attention of the average citizen; thus calls for public participation are answered only by committed activists. The values and goals of such individuals may (and in fact do) differ from those of most Americans.

When such individuals operate in the private arena, they can play an important role in educating their fellow citizens on the value of prudent conservation. When environmentalists must persuade, they play a positive role. When these same individuals operate in the political world, where coercion often replaces persuasion, there is no guarantee that their actions will advance the public interest. Thus, the special power effectively made available to committed ideologues politicizes the policy debate.

No individual responsibility: policies are indirect

Effective environmental policy is also made difficult by a tendency not to place responsibility on individuals. We seem to believe that pollution results from a willful technology, rather than its use (or even misuse) by people. Indeed, current environmental policy seems to regard individuals as irrelevant. Their only assigned role seems to be to lobby Congress for ever larger EPA budgets and ever more comprehensive EPA powers. This failure to enlist the individual in the pollution-reduction effort creates many problems. Since control is not required at the point where the pollution occurs, we are forced into costly attempts at remote-control pollution at some upstream point.

As the precision of the control effort declines, costs increase. Consider air-pollution control, for instance. Regions differ substantially in their sensitivity to air pollution, and variations among vehicles in the amount of pollution created are also great. Thus, a rational control strategy would encourage a decreased use of the most polluting cars. Instead we seek to force universal pollution reduction on all new cars. The result is much higher costs for newer cars because the total burden of cleanup is placed on this control point. The fact that older cars driven more miles may be far more significant polluters is ignored. The focus on technology rather than the use of the technology forces us to spend ever larger sums to produce the "nonpolluting" (and increasingly unaffordable) car.

Our environmental laws would reduce far more pollution if they addressed this problem and sought to control pollution at the point where it is produced, rather than upstream. Had the environmental laws focused on controlling pollution rather than controlling technology and sought therefore to enlist the individual, we would be much further along the path to a cleaner environment.

The indirect nature of current control strategies increases the overall costs of cleanup. This is not surprising. Although vast sums have been spent over the last several decades to reduce pollution, we still find that environmental quality gains are modest. Air quality has improved, but at the same time, oil and natural gas (cleaner fuels) have been substituted for coal. As for water quality, the quality of our lakes and streams has changed very little despite these increased expenditures. Some waters are improving, others deteriorating. The reasons for this lack of progress are unclear, but certainly include the clumsiness of the policies used to translate goals into reality.

Utopian schemes

A third reason why the command-and-control approach doesn't work results from a particularly pernicious defect in the current environmental laws: the inclusion in such acts of idealistic goals representing more pious hopes than attainable realities. Such utopian mandates do little more than provide environmentalists with a means of gaining power over policy. As political scientist Michael Greve argues:

> The EPA's inevitable failure to meet statutory goals and deadlines strengthens the environmental movement's ability to sustain its momentum…. It is very easy for the public to understand the environmentalists' point: once again, the government has failed to keep its promises. It is much harder for the other side to explain that the government could not possibly have kept these promises even under the most favorable of circumstances and the assertion that the government is meant to fail at every twist and turn seems virtually unbelievable.[36]

Greve suggests that environmentalists use those failures to undermine the credibility of the bureaucracy and to shift power over EPA to themselves.

Increasing complexity of environmental laws

Furthermore, the command-and-control approach fails because of the increasing complexity of the environmental laws. When these laws focused on the simple issue of removing the bulk of contaminants that fouled the air and water, their success or failure was observable, at least in principle. When the emphasis later shifted to the control of airborne and waterborne trace elements, however, extremely sophisticated analytical techniques were required to even detect such pollutants. Thus, individuals could no longer perceive the effects of actions taken by EPA and state agencies. Instead, they had to depend on media reports – reports that were, and are, selective in coverage and not always objective in analysis.

Environmental policy has also become more difficult in another sense. After addressing the relatively easy, first-generation problems associated with removing bulk air and water pollutants – the "haystack" problems – environmental regulators' new problem was to find the "needle in the haystack" problems.

With this focus on trace elements came a shift of emphasis from the control of discharges to the regulations designed to restrict, even ban, any process that might increase environmental risk. This shift now places a new form of risk – political risk – squarely on the shoulders of each regulating agency. If the agency approves a process or economic action, any subsequent "disaster" (a term itself subject to manipulation by environmental and media groups) will lead to a minute scrutiny of the agency's personnel and procedures. Congressional hearings are likely in which the professional competence

[36] Michael Greve, "Environmentalism and the Rule of Law," Ph.D. dissertation, Cornell University, 1987.

of the regulators will be attacked (data can always be found after the fact to suggest that a different decision was warranted) and their honesty questioned (major economic gains often result from the approval of a new product or process, and the regulators will certainly have talked to members of the firm promoting that innovation).

In contrast, the risks to the regulating agency that denies or delays the introduction of a new product or process are minor. It is society that may lose far more if a new product or process is mistakenly rejected.[37] After all, most safety gains result from the introduction of a product or process that, while still unsafe, is safer than the product or process it replaces. Yet the losses associated with such errors of omission are less likely to be voiced in the political process. Few people are aware of the safer, cleaner world that might have been, and the anonymous victims of technological stagnation are not likely to appear on the nightly news. The only party likely to raise these arguments is the entrepreneur promoting the product, and his comments have little credibility. The result is a strong bias toward the familiar risks of the status quo and against innovation.

Environmentalists have sometimes seemed to recognize this fact, as suggested by their slogan "Think globally, act locally!" But in practice, modern progressives have had no more sympathy for decentralization than did their predecessors.[38] Like their economic predecessors, environmental progressives seek to manage the environment centrally. Since a world of pervasive "externalities" and "public goods" requires pervasive regulation and extensive land acquisition programs, EPA seeks to do almost everything from that centralized location.

This overreach creates many problems. By trying to do everything, we do little very well. The problem in the environmental arena is not that we are doing the right things foolishly, but that we are doing far too many foolish things.

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[37] See Aaron Wildavsky, *Searching for Safety* (New Brunswick, N.J.: Transaction Books, 1988).

[38] See David Schoenbrod, *Power Without Responsibility: How Congress Abuses the People Through Delegation* (Yale UP, 1993) and *Environmental Federalism,* edited Terry Anderson and P.J. Hill (Rowman and Littlefield, 1997).

TWO FAILING PROGRAMS: Superfund and the Endangered Species Act

Two major American environmental policies, Superfund and the Endangered Species Act (ESA), illustrate how current environmental policies are failing. Superfund is a program created to address the supposed risk of "hazardous" wastes; the ESA is a law enacted to minimize the alleged risks of the loss of biodiversity associated with economic development. Neither program has achieved its objectives, but both have worked to the detriment of the environment and the economy.

Superfund[39]

Superfund might best be described as a subsidy to lawyers and environmental consultants, disguised as an environmental program In theory, the program handles the wasteful practices of the pre-EPA era, an era characterized by "midnight dumping" and complete disregard for the health of the American citizen. The presumption was that America was littered with industrial waste graveyards that imposed major public health risks. EPA mounted an effective (if disingenuous) public misinformation program to alarm the American people. The bill was passed to "clean up" these "orphan" sites.

The Superfund Act provides very little guidance on how serious threats are to be distinguished from mere nuisances. Under Superfund, hazardous wastes include any substance that the EPA chooses to designate as "hazardous," including materials that are common household products such as lighter fluid, insecticides, Clorox bleach or oven cleaner. Moreover, the legislation suggests and the EPA has adopted a definition of "hazardous" that gives considerable weight to extremely unlikely situations. If something *might* happen, Superfund assumes it *will* happen.

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[39] There is an extensive literature on Superfund; indeed, it has become the poster child of bad environmental policy. See, for example, Marc Landy and Mary , *in Environmental Politics: Private Costs, Public Goods,* Greve and Smith., "Superfund: A Hazardous Waste of Taxpayer Money," by Fred Smith in *Ecology, Liberty and Property (*Jonathan H. Adler, Ed., CEI 2000). See Kent Jeffreys' *Reinventing Superfund: The Clinton Reform Proposal and an Alternative* (CEI Monograph, 1994) See also "What Environmental Revolution?" in *Assessing the Reagan Years* by Fred Smith.

Superfund did not establish any criteria as to what constitutes a "hazard." EPA defined them as any site which contained any material on any of its various "hazardous" material lists. There was no need to decide whether the existing quantity or transmission possibilities created a real risk to the public. Funds were appropriated to "clean up" some 400 sites (a number suspiciously close to the number of congressional districts in the United States).

Although the sites were supposedly "orphan" sites, the Superfund program required that they seek to apportion blame to someone, so the concept of "strict, joint and several" liability was defined. Anyone who might have had any linkage to the site at any time could be held completely responsible for the clean-up costs. Long lists of "potentially responsible parties" (PRPs) were developed for each site and lawyers on both sides soon became embroiled in complex "yes you did, no I didn't" fights. The formal name of Superfund – the Comprehensive Environmental Response, Compensation and Liability Act – was soon relabeled the Comprehensive Emergency Relief Act for Lawyers.

With no criteria for clean-up and free money to those communities that found a "dangerous" site, it was not surprising that this translated into an open hunting license for anyone with funds that might be seized. All of this meant that the Superfund program spent most of its time and energies on apportioning blame rather than on cleaning up anything, whether it needed it or not. Moreover, the failure to address the "how clean is clean" issue meant that fortunes would be spent digging up dirt from areas remote from anyone, "sanitizing" the dirt at high costs, and then reburying it in "safe sites."

Superfund has been amended and renewed several times, and each time a worse piece of legislation results . No one has seriously challenged the idiocy of the law nor have they called for the sensible strategies that might be expected from a serious effort to prioritize risk. In most cases, the logical act for low risk areas would be simply to fence the area and put up warning signs.

Moreover, since many of the communities that hosted such industrial sites were older industrial areas of the nation, and since no one would come near one of these legal liability time bombs, the sites became "never to be developed" sites or "brownfields."

Communities desperate for renewed economic activity found their most desirable and least costly locations placed off limits. This created a form of eco-racism that has finally penetrated the debate, and some reform seems at last possible.

Yet, the environmental establishment refuses to rethink Superfund in terms of incentives, knowledge, and special interest; rather, it has allowed Superfund to grow. Reforms seem limited to exempting politically preferred real estate from the entanglements of this perverse law. No one has the courage to bell the cat and repeal the bill.

The Endangered Species Act

The ESA is administered by the Fish and Wildlife Service of the Interior Department. The law is intended to protect those species that have been "listed" – that is, species which are believed to be at risk of extinction. The law presumes that the best way to protect such a species is to prevent any harmful act that might be taken against it. That is interpreted to mean that one is not permitted to modify his property, if such modification might (in the judgment of a government official) make the species' survival less likely. The result is that the listing of any species immediately results in certain properties being at risk – areas suitable for the nesting of a Spotted owl, for example, cannot be logged or developed.

The creates a major risk for landowners. Individuals come to fear the presence of such species and seek to manage their habitat to discourage anything which might make their lands more attractive to such endangered species. The ESA law actually makes the property owner an enemy of the very species the law was designed to protect. The result is the perverse "3-S" incentive – if someone finds an endangered species on their property, the landowner is advised to "shoot, shovel, and shut up!"

The perversities of such a law again have not prompted any willingness to reconsider the statute, to modify it, to repeal it. Why? There are millions of species in the world. Very little research has been done on the numbers or range of any of these. Thus, it is easy to research one species, find that in some areas it is rare, and then seek to

have that species listed as endangered. Those seeking to restrict land use find such a law a very useful tool.

The Social Consequences of Modern Environmentalism

A prime reason for policy reappraisal is the growing realization that the current approach has serious social consequences. Environmental values are income elastic – the wealthier place far higher value on clean air and water and on biodiversity than do the poor. Politicization of environmental goals has meant that other values (employment, affordable housing, economic development, health) have been downgraded in a hierarchy of public goods. The bulk of the costs are borne by small business owners and land owners. Superfund made it too costly to rescue brownfields, forcing economic development into previously undeveloped "greenfield" sites, thereby despoiling previously undeveloped land areas. The abandonment of city-center industrial parks thus worsened economic prospects for the urban poor.

Emerging Global Concerns --Trade And Environment

Still another growing area of conflict facing today's environmental leadership is the problems which arise in our increasingly global economy, where regulatory costs have global implications. A firm cannot simply "pass on" costs to consumers in a world where other firms face possibly lower regulatory burdens.

Thus, while a firm might oppose a regulation domestically, it may be advantageous overseas for the firm to collaborate with regulators, to push for such rules to be adopted abroad. Persuasion was rarely successful in such cases – the firm's foreign operations might follow quality standards similar to those imposed in domestic markets, but that tendency simply made any cost penalty even more serious.

National environmental rules have similar impacts on global competitiveness. A domestic firm competes with foreign producers who face less oppressive regulatory regimes, and lose customers, profits or both. Domestic firms affected by such costs argue for a "level playing field" in which regulatory costs will be uniform. One method is to sanction goods from nations whose regulations do not adequately protect environmental

values. Another is to levy a tariff against such goods in order to "eliminate the advantage of ecological dumping."

Needless to say, both actions are illegal under the GATT rules, which limit trade restrictions to the good itself – the production method used to produce that product is irrelevant. Since most environmental laws affect the process and not the final product, there is no free-trade permissible way of exporting such regulatory costs.

Environmental regulatory costs in the United States alone are now approaching $200 billion annually. As such cost pressures have become more significant, pressures on regulatory agencies to "do something" has become stronger. Along with their environmental activist supporters, these agencies increasingly argue that it would be immoral to deny environmental protection to the peoples of the developing world. That effort by regulators to regain control over the freedoms made possible by innovation is exactly the course followed (successfully) by the progressives in the United States almost a century ago.

The result is a powerful, growing and unholy green protectionist alliance which now seeks to create a set of green protectionist barriers to trade around the world. The resulting tensions were evident in the last WTO meeting in Seattle. Evidence of this movement's effectiveness is given by the 180-plus Multilateral Environmental Agreements (MEAs) dealing with everything from bans on developing nations entering the waste disposal business (the Basel Treaty) to efforts to limit energy use around the world (the Kyoto Protocol).

Another example of this tension is environmentalists' opposition to biotechnology, which offers the best hope of improving nutritional standards around the world, as well as environmental standards. They are also opposed to extractive industries such as forestry, fishing and mining – major sources of revenue for developing nations, and industries that are the first step towards more efficient and productive economic development. Among many other causes and issues, environmentalists have created an image of eco-imperialism around the world. Siding with abstractions rather than human realities, green policies often ignore the decidedly human costs of their policies.

The global greens seek a global regulatory state, one in which all nations, and thus all people, would be subject to a uniform set of rules. The greens have powerful allies in that quest. Regulations suppress output and thus create the potential for monopoly profits, so businesses recognize this cartel-potential and thus sometimes favor greater regulation. Since larger multi-national corporations often find it advisable to operate their plants in developing world countries as if they were based in the highly regulated developed world, they also tend to favor harmonized or global regulations. Thus, global regulatory mandates will affect smaller, national firms more heavily.

A set of harmonized regulatory policies would not only hurt small businesses, but would replace competition between governments. A nation with a costly regulatory or tax structure must offer offsetting benefits (better quality of life, improved public health) if they are not to find that their local industries have relocated to nations with more rational regulatory policies. A uniform global regulatory state would eliminate such competitive pressures, weakening the discipline on domestic regulators to consider the risks created as well as reduced by their rules.

The final element of the pro-global regulatory alliance is, of course, the various environmental groups operating under the so-called non-governmental organization (NGO) banner. The leaders of these groups provide the moral and intellectual arguments for global harmonization. Sadly, classical liberal voices in these deliberations, especially at the international level, are almost nonexistent.[40]

Thus, in both the domestic and international arenas, the environmentalists – the progressives – are promoting their static worldview. Technology must be held back; the climate must not change; indigenous animals and people must remain in their "natural" state. The future to them is a continuous downward spiral. The progressives' distrust of the future means that they are the only ones holding it back.

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[40] CEI and a handful of other classical liberal organizations have begun to attend these meetings and to learn how to "play these international games" but we're a tiny minority at present. Social conservatives focused mostly on population and family issues have been far more successful – although their spokesmen are also outnumbered by the statist NGO movement. One promising development has been the creation of an umbrella NGO, International Consumers for a Civil Society (ICCS), by Consumer Alert. That organization provides a means whereby other groups can attend specific international meetings at which their specialized knowledge might be useful, without themselves going having to register for NGO status

Section V: Toward a Classical Liberal Environmentalism.

The classical liberal framework for addressing environmental problems was evolving prior to the progressive age. Progressivism cut short that discovery process leaving the task of addressing emerging environmental concerns to the political process. The failures of politicized environmental policy and the threat it poses to economic liberty make it critical that we revisit this history and reignite the creative flames that were extinguished in the progressive era. Classical liberals have for too long neglected this area.[41] *This section outlines the steps needed to integrate environmental issues into the classical liberal framework.*

The First Step: Putting Our Own House in Order

Most analysts including many classical liberals have viewed the environment as "different." Social security, education, fire protection, even public health – all should swiftly be privatized. Yet few suggest that the EPA be abolished and that Yellowstone Park be transferred to the Disney corporation.

The first step then is to get our own house in order. Before persuading others, we must ourselves realize that the environmental challenge is no different than that of any other policy area. We must determine what it is we wish to do and how our goals might be achieved, devise ways to encourage others to help us attain those goals, and free the discovery/evolutionary process so that our abilities to advance our ecological goals improves over time.

What, after all, is meant by protecting the environment? We want no air pollution, no water pollution, no net loss of wetlands, no net loss of species, no global warming, no acid rain, no ozone depletion, and no risk. We want to live in a beautiful, pristine, and safe environment.

But resources are limited; we cannot satisfy all ecological demands. How do we decide which demands should receive priority? What is more important, African elephants or the ozone layer, recycling or population control, reducing carcinogens or

[41] This overstates the case – analysts at CEI, the Political Economy Research Center, Reason, the Institute of Economic Affairs, Cato, and various academic centers have, of course, devoted much effort to this topic.

increasing fuel efficiency? And how (and should?) "we" decide for others? Priorities vary widely among individuals in the economic area; why should we expect them to be consistent in the ecological realm? Yet many act as if the goals of environmental policy were obvious and universal – leaving merely the challenge of determining an appropriate "market mechanism" to achieve the result.

As Hayek and others observed long ago, the economic problem is not to allocate resources of known value but rather to create an institutional framework to permit those values to be determined. Classical liberal realize (or should) that such information cannot be developed absent a system in which an individual selects one good over another. Obviously people care about the environment; but until that concern is observed in action, we have very little information about their priorities. The environmental challenge is to create the institutions that would permit people to express their choices in the ecological sphere as well as they now do in the economic sphere.

Creating environmental stewardship arrangements would also address the incentive problem. An individual would have every reason to consider carefully, whether to allow or deny some use of their resource. Environmental values would become real in the process.

For example, the Audubon Society owned a bird refuge in Louisiana (the Rainey Wildlife Refuge) adjacent to an oil field. An oil firm sought the right to drill on the property. Since the land was private, the decision was also a private one. The Audubon Society might have rejected this request (as they have long urged Congress to reject any permission to drill in Alaska) but that would have lost them royalties. An exchange framework forced both sides to consider the values of the other; in this case, they reached agreement. Audubon gained additional resources for its other environmental programs; the oil firm gained additional reserves. Ownership encouraged cooperation rather than conflict, leading both sides to consider how each could better reconcile its values with the other side.

However, the focus of most classical liberals has been on economic affairs – ecological issues have been treated as secondary. This paper argues that this neglect is serious and should be corrected.

Classical liberals must also recognize that the goal is not to attain some reasonable allocation of resources today, but rather to create an evolving system which builds on the institutions of today and encourages improvements over time. The costs of reaching agreement today (today's transaction costs) are best viewed as the entrepreneurial incentives to innovate so as to reduce these costs tomorrow. Policies that reify current arrangements, that reduce the incentive to reduce transaction costs over time, should be rejected.

Classical Liberals Aren't There Yet

Classical liberals are fully aware of this, yet their discussions often focus on "market mechanisms" such as taxes or quotas rather than property rights.[42] Such politically designed interventions do little to resolve the knowledge problem which defines environmental concerns. They focus only on the "efficient" attainment of existing politically determined environmental goals. That such goals may be irrational and irrelevant has received little attention.

Consider, for example, the policy direction suggested by Milton and Rose Friedman in their brief review of environmental policy in *Free to Choose*:

> Most economists agree that a far better way to control pollution than the present method of specific regulation and supervision is to introduce market discipline by imposing effluent charges…a tax of a specified amount per unit of effluent discharged.[43]

And the Friedmans are right. Most economists hold exactly these views, but shouldn't we expect more from those familiar with classical liberal thinking? How do taxes help one discover which emissions should be reduced and by how much? Now to be fair, the Friedmans aren't necessarily endorsing green taxes. They note:

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[42] The blindness of even classical liberals in this area was noted by Hans F. Sennholz almost 30 years ago, "Controlling Pollution," **The Freeman**, February 1973, Vol 32, No. 2. Still, few classical liberals have reexamined their stance.

[43] Friedman, Milton and Rose, *Free to Choose: A Personal Statement.* New York: Avon Books, 1979. p.207

> …the difficulties that have plagued government regulation in areas where government has no [role] whatsoever … also arise in areas where government *has a role to play*.[44]

And they note that government intervention may be worse than allowing the market to operate:

> The imperfect market *may*, after all, do as well or better than the imperfect government.[45]

Nonetheless, the thrust of Friedman and many other free market analysts is that we must concede the role of politics in setting environmental goals and that our focus should be on implementation. They are very skeptical over the wisdom of political interventions of the command-and-control variety, yet they seem to suggest that well designed tax and quota schemes ("market mechanisms") might work reasonably well.[46]

Indeed, some conservative/libertarian thinkers concede far more. Peter Huber, a senior fellow at the Manhattan Institute, calls for federal government ownership of environmentally sensitive lands, arguing that only government can preserve the beauty and diversity of our planet. "The wonder of wilderness is something that no market can create," he says.[47] "Private fences cannot always conserve the value of wilderness…Government can and should advance these objectives, where private ownership cannot."[48] Huber is well aware that government can't do many things right, but he views the ecological management task as one of them.

Of course, other classical liberals have taken a much more critical approach to such ideas and the whole "market failure" rationale for political intervention. The

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[44] Op cit, p. 208, emphasis added
[45] Op cit, p. 208, emphasis added.
[46] The case against such "market socialism" policies has received some attention in recent years. See Paul Georgia "" and Fred Smith "" Such interventionist strategies presume that one is "doing the right thing" (yet, without some form of institutional exchange framework, the knowledge to argue that point does not exist). They also neglect the risk that creating markets in government created scarcities, one is also strengthening the forces to maintain those scarcities. Taxi cab medallions in New York City, for example, are transferable; however, their value would drop if New York were to deregulate. This "market mechanism" therefore creates a powerful political force against economic liberalization.
[47] Huber, Peter. Hard Green: Saving the Environment from Environmentalists, p. 100. NY: Basic Books, 1999.
[48] Ibid, p. 202.

introductory quote by Ludwig von Mises parallels the approach developed in this paper. Moreover, Ronald Coase's view that "externality" and "public goods" concerns are better viewed from the transaction cost perspective than from any "market failure" perspective is gaining increasing respect in the policy world.

Still, with so many leading free market analysts conceding a lead role for government, we should not be surprised that eco-socialism has gained such a dominant position. The first step toward a classical liberal environmental policy is thus to take seriously both the environment and classical liberal principles.

Overcoming the Path Dependency Problem

As noted earlier, the progressive era weakened the discovery forces that would (as these newer values came into prominence) have explored ways of integrating environmental values into a broader exchange framework. There are major costs of that past societal choice. We find today that environmental resources and aesthetics are highly valued –but we have neither the experience or even the awareness that such values might have been better advanced via classical liberal institutions. Yet classical liberal teachings argue strongly against the presumption that we can readily recreate the institutions that might have evolved. What can be done?

Let us review again the consequences of the progressive choice. The first was the cessation of resources into the private sphere. The "public" lands in the east had largely been privatized; the "public" lands in the west remained under political control.[49] Mineral rights including oil were privatized; groundwater which slowly increased in value during the 20th century almost everywhere remains a politically controlled commons. Wildlife which had been plentiful became increasingly scarce during this era;

[49] The full story here has not been told. The progressive mindset was biased against private ownership; powerful economic interests believed that continued political ownership would benefit them; population and resource pressures lessened; and changed in the privatization process (an expansion of the unit size permitted to be purchased) would have been necessary. In any event, the result is dramatic – over one third of the United States remains in government hands and, while the relative percentage of that land controlled by federal as opposed to state agencies has changed somewhat, the absolute amount of land under federal control has gradually increased.

but that trend led to further restrictions on use – not any institutional reforms.[50] Offshore lands for a while became more accessible – probably the result of the favorable treatment given economic development by progressives – but by the 1970s even those areas were reverting to reserve status.

In effect, the institutional arrangements, specifically property rights, which might have allowed the decentralized evolution of management techniques were short-circuited. America in the environmental field is thus much like Russia in the economic field: we have woefully underdeveloped societal institutions for managing environmental resources. Russia, indeed, has the easier task, since they can look abroad for alternative private management experiences and adopt them to their circumstances. How much more difficult is the task faced by free market environmentalists, who have only fragmentary examples (mostly remote in time and space or custom) from the modern economic scene?

The progressive era did not merely limit the expansion of classical liberal institutions; it weakened them. Private property protections gradually eroded away as the progressive bias toward economic growth came into play. The erosion of common law defenses is one of the most significant examples of this factor. Had these protections stayed in place, economic development would have taken a different course. Nuisance reducing technologies would have been encouraged earlier in time; location decisions would have taken more account of the impacts their operations might have on adjoining property owners; and (one would have anticipated) a rich array of contractual risk sharing arrangements would now exist, allowing better coordination between those involved in economic activities and those with ecological concerns.

Perhaps most importantly, had the progressives not dismissed as trivial and unimportant the early voluntary efforts at conservation, we might well have a much richer tradition of voluntary conservation. Over time, the progressive mindset even seduced existing conservation groups away from their voluntarist tradition. Rather than use their time, their moneys, and their energies to protect and enhance those environmental resources they valued, they began to lobby for laws and regulations that placed these

[50] Also, such "exotic" resources becoming ever more valuable such as the electromagnetic spectrum (radio and later TV spectrum) and later geosynchronous orbital slots were held as "public trusts."

burdens on the general public. That shift from direct to political involvement has been costly – not least the curtailment of the creative experimentation that would have been necessary for private groups to play a significant role in this area.

Initial Steps: How to "Jump Start" Free Market Environmentalism

Sadly, little of this exploration and experimentation have occurred. Most of the public now believes that environmental policy must be political policy – that the market will inevitably "fail" in this arena, that regulations and government ownership are essential. How might we begin to extend classical liberal thinking into the ecological field?

Good Economic Policy is Good Ecological Policy

First, classical liberals must themselves take environmental policy seriously either as a resource valuable in its own right or because to do otherwise is to risk economic losses. Consider the latter point: Environmental policies (Sustainable Development and the Precautionary Principle) are becoming keystones of global economic policy, threatening trade abroad and economic and technological growth domestically. Countering these policies will require a much deeper understanding of the concerns on which they are based and analysis of realistic alternatives.

We do have a positive story to tell in this area. The prophets of sustainability have consistently predicted a *possible* end to the world's abundant resources, while defenders of the free market can point to the *realities* of growing resource abundance. Consider the agricultural experience. Since 1950, improved plant and animal breeds, expanded availability and types of agri-chemicals, innovative agricultural techniques, expanded irrigation and better pharmaceutical products have all combined to spur a massive and unexpected expansion of world food supplies. In his 1974 Malthusian publication *By Bread Alone*, Lester Brown suggested that no further crop yield increases could be expected. Since that date, Asian rice yields have risen nearly 40 percent, an approximate increase of 2.4 percent per year. This rate is similar to that of wheat and other grains.

Man's greater understanding and ability to work with nature has made it possible to achieve a vast improvement in world food supplies, to improve greatly the nutritional levels of a majority of people throughout the world, in spite of rapid population growth. Moreover, this has been achieved while reducing the stress to the environment. To feed the current world population at current nutritional levels using 1950 yields would require plowing under an additional 10 to 11 million square miles, almost tripling the world's agricultural land demands (now at 5.8 million square miles). This would surely come at the expense of land being used for wildlife habitat and other applications.

Economic and ecological policy are complementary. Resources that are owned are more respectfully treated, benefit more from man's innovative skills, and become ever more abundant. Resources managed politically (outside the institutional framework which integrates economic self-interest with management) are often at risk. Economic inefficiencies produce less wealth and greater harm to the environment, but more efficient use of land materials and energy lightens man's footprint on the planet. And here the record is clear – the freer the market, the more dramatic these improvements.[51] And, of course, environmental tastes are highly income elastic. Thus, a wealthier world also results in expanded interest in the environment.[52]

Also, standard classical liberal reforms such as the elimination of public work and subsidy programs would advance environmental goals. Non-efficient pork barrel projects are political, not private, problems. Agricultural subsidies encourage intensive agriculture (excessive use of water, fertilizers, pesticides and herbicides); government "flood" insurance encourages non-economic development in environmentally sensitive areas; and trade subsidies encourage inefficient economic production.

Classical liberals must also insist on reasonable environmental goals. Environmentalists often view pollution as an evil that must be eliminated. That waste is

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[51] See **True State of the Planet** and **Earth Report 2000** for a series of essays documenting this story. Julian Simon pioneered this work in a series of pathbreaking books including **The Ultimate Resource.**

[52] The World Bank has found that as the wealth of a nation increases, it soon becomes "cleaner." The pollutants focused on in the developed world – sewerage and industrial water pollutants, combustion related air pollution, and loss of habitat and wildlife – all moderate as per capita wealth moves beyond the $5000 level.

an inevitable by-product of human existence is of secondary concern to them – nothing short of zero emissions will suffice to protect the earth.

Free market environmentalists view residuals and emissions differently. Only that waste which is transferred to the properties of another without his consent is "pollution." Thus, dumping your wastes in your neighbor's backyard is pollution, but stockpiling the wastes on one's own property is not. Thus, the contractual transfer of waste from one firm to a landfill or recycling facility is not pollution—such residual transfers are merely another market transaction. Managing material flows intelligently is a sensible strategy, as is insisting on their being voluntary. Seeking to eliminate all energy and material residuals is foolish.

No Regulation Without Representation

A second classical liberal environmental policy reform would be to constrain the criteria by which government interventions are authorized. Regulation is the preferred tool of environmental policy in the United States. Yet the American regulatory process is inherently flawed: it allows the legislative branch to pass "feel good" laws while escaping accountability for the costs these rules entail. By delegating these decisions to the executive branch, the Congress can reasonably evade all responsibility for any problems or costs of the regulation.

A typical environmental regulation will call for some utopian environmental goal – "swimmable and fishable" waters, for example. Yet that same law might well prohibit costs to be considered in setting standards, while also demanding that no economic dislocations occur. Incompatible legislative mandates are common in environmental law, but the regulator, not the legislator, is held responsible for the confusion. Classical liberals should call for subjecting any regulatory action to legislative approval – bad rules might still be the case, but now the legislator would be held accountable for his vote.[53]

Devolution

[53] See Wayne Crews, **Ten Thousand Commandments**, where this reform idea is discussed. See also David Schoenbrod, REFERENCE

One of the most important steps that might be taken to advance a classical liberal ecological agenda would be to shift authority from the global to the national, form the national to the state, and from the state to the locality and private sector. Economic progressivism declined, in part, because state variation in regulation made it obvious that regulation was not advancing the public interest. Environmental regulation has been almost completely federal; there is very little flexibility at the state level and thus much less experimentation. Reopening the "laboratory" of the states is a critical step in advancing environmental policy reform. The recent surge in support for federalism in the United States bodes well for this step. Lawsuits challenging the rigidity of current environmental laws seem promising and many are now under consideration.

A similar subsidiary principle should hold among the nation states. Efforts to "harmonize" global environmental policies threaten to eliminate the comparative value of different approaches by nations to achieve similar goals. Such efforts should be resisted. Globalization should not become a coercive cartel which allows political authorities to more readily impose irrational rules and costs on their citizens, all in the name of "saving the planet."

Expanding the Scope of Private Property – Toward An Extended Concept of Environmental Stewardship

John Kenneth Galbraith, an avowed proponent of statist economic policies, inadvertently suggested an ecological privatization approach. In an oft-quoted speech he noted that the U.S. was a nation in which the yards and homes were beautiful and in which the streets and parks were filthy. Galbraith then went on to suggest that we effectively nationalize the yards and homes.

For those of us who believe in property rights and economic liberty, the obvious lesson is quite the opposite. That is, more of planet earth should be someone's backyard. More of the flora and fauna should be in someone's garden or be someone's pet. As Kenneth Boulding (1966, p. 23) suggested long ago, if the world is to survive, it must in a very general sense become *domesticated*, and people must become *gardeners*. Trees cannot have standing, but behind every tree must stand a private owner.

We should move expeditiously to open up again the discovery process by which property rights are gradually extended to "common property" resources. For many of these resources, the task is straightforward: underground liquids and gases (oil and natural gas, for example) are owned, why has there been no move to allow the privatization of aquifers? Exotic wildlife can be owned and raised commercially on game ranches throughout the world, yet in many nations, "domestic" species are the inalienable property of the state. Why?

Work to apply existing legal and economic rules for resource management to economic resources to analogous ecological resources is overdue. One idea might be *ecological adoption.* The goal would be to allow people to directly act on their concern for biodiversity. This strategy has already shown to be highly valuable – dozens of ungulates endangered in their home nations are flourishing on Texas game ranches. Note that this approach would not mandate that an individual incur costs to preserve a species (the fallacy of the US's Endangered Species Act) but would rather empower individuals to play this role if they so desired. Similar laws to allow extended leases or fee simple ownership in offshore reefs (perhaps created by the leaseholder) or fishing rights in rivers are other ways of jump-starting the stalled classical liberal environmental agenda.

There are numerous cases where private property rights have been used to complement and supplement political environmental strategies. One excellent example in England in the 1950s involves a fishing club, the Pride of Derby, who sued upstream polluters for trespassing against private property. The private club prevailed against even an upstream municipality. This ability to go against politically preferred polluters is rare in the political realm.

The Pride of Darby also illustrates the value of even partial ownership in larger commons and addresses the concern that resources as vast as airsheds, aquifers, or the oceans could never be protected privately. Total ownership is rarely necessary to provide major protection to the resource. Even partial property rights over a commons may provide great protection. Ownership of the periphery of a commons acts like a "fence" reducing damage to the regions beyond. The local owner of an oyster or fishing lease by protecting her property offers protection to the broader resource – a type of positive

externality! Moreover, the experimentation and conflict resolution, the Coasian bargaining process, that takes place at this periphery will encourage the evolution of institutions and technologies likely to reduce the costs of expanding ownership rights elsewhere.

A recent Center for Private Conservation Study on oyster beds in the state of Washington illustrates this point.[54] In Washington, oystermen can enjoin pollution from discharges onto their oyster beds. Since pollution is somewhere before it is everywhere and damages are small before they become large, the oystermen act to reduce pollution throughout the bay.

Owning the Unownable

The case for free market environmentalism is rather simple for those resources in which property rights are easily defined and exchanged. However, there are more difficult environmental areas, where defining property rights appears to be impossible. As one critic, Robert Stavins, asked, "Does anyone really believe that acid rain can be efficiently controlled by assigning private property rights for the U.S. airshed and then effecting negotiations among all affected parties?"[55] Certainly it is one thing to fence one's land, or to patrol it to deter poachers, polluters, and other undesirables. It is quite another to keep unauthorized fishing boats out of one's stretch of ocean or to identify the source of pollution that damages one's orchard (or lungs).

How do we "fence" the airshed, ground water or the oceans? This feat appears as difficult to us now as the fencing of the Western frontier in the 19th century. In those windswept arid plains, substantial acreage was needed to sustain a family, and building wooden fences or stonewalls to "privatize" land was prohibitively expensive. An 1850s Stavins would have argued that in such a situation no property rights solution was feasible, just as the real Stavins does today with regard to air and water. Yet the problem of property rights in the West was resolved through voluntary actions. Institutions

[54] Michael DeAlessi, "Oysters and Willapa Bay," Center for Private Conservation case study. March 1996.
[55](Stavins, 1989)

evolved which defined and protected property rights. The incentive to reduce fencing costs ultimately produced the technological innovation of barbed wire.

Technologies now exist that make it possible to determine the quantity and types of air pollution entering a region. Lasimetrics, for example, can map atmospheric chemical concentrations from orbit. In time, that science might provide a sophisticated means of tracking cross-boundary pollution flows. A region might require large installations such as power plants to add an isotopic "label" to their emissions to facilitate tracking. Such chemical "labeling" has been used to trace explosives used in crime or terrorism.

There are several points to make here. First, the problem of monitoring, protecting and fencing a resource one wishes to protect occurs regardless of whether that resource is managed privately or politically. Political control does not eliminate the transaction cost problem, and it may indeed worsen it. Moreover, technology is not an autonomous force; it responds to market incentives. By making improvements that ease the task of property management and thus offer efficiency gains, private property encourages technological innovation. Barbed wire might never have developed had there been no private grazing lands. Even when technology evolves independently, it may make possible refinements in the property management regime.[56]

Even if rights can be defined, some opponents to property rights argue that it would be too costly for the thousands of people affected by pollution to negotiate with thousands of car drivers, for instance. Reaching consensus among large numbers would simply be too costly. This framing of the issue fails to consider the creative ways in which many problems are routinely solved in the real world. Malls, industrial parks, planned residential areas and a range of other collective voluntary arrangements compete against one another to provide a collective service. Managers have every reason to seek out and assess the values placed by the populace on air quality (will the mall be air conditioned or not?). On environmental amenities (“How closely spaced will the homes

56 Technology, for example, developed at the University of Denver allows automobile emissions to be measured remotely. If the emissions levels exceed the authorized amount for that vehicle, then the license plate might be noted and the car owner fined.

be? What view lines will be protected?") Individuals express their preferences by selecting where they will do business, where they will live.

Analogously, the highway manager, rather than the individual driver, might be the responsible party, reducing the complexity of the bargaining process. With the highway manager on one side of the table and a handful of homeowner associations on the other, the bargaining problem becomes more manageable. Homeowner associations could address these types of environmental concerns just as they have addressed crime and a whole range of other landowner interests. Moreover, since they would represent those living in their communities, they would consider not only the value of pristine air but also the value of mobility (and the threats posed to that mobility by anti-car policies).

Addressing Global Problems

There are many resources that could readily be privatized and that would be better protected. However, many environmentalists dislike private property and thus evade discussions of ecological privatization, shifting discussions immediately to complex alleged global concerns such as climate change or ozone depletion. Since private property cannot do everything in today's world, they argue, why allow it to do anything?

One cannot deny that such global risks are impossible. The world might indeed warm disastrously or the ozone shield might collapse leaving our planet and ourselves at great risk. Of course, it might not, and there are many equally (or more likely) threats that might also materialize. We might face an asteroid collision or an increased level of plate tectonic activity or an ice age or any of a number of horrors that we've not even yet considered. Certainly tomorrow is a risky place. How do we decide which risks merit our attention?[57]

Precautions taken to address risks that do not occur weaken our ability to address those risks that do materialize. Given this uncertainty, society's best option may be to simply advance the classical liberal agenda, repealing all laws which slow economic and

[57] This topic is discussed at length in *The Costs of Kyoto* edited by Jonathan Adler (Competitive Enteprise Institute, 1997). See especially, Fred L. Smith, Jr. "The Role of Opportunity Costs in the Global Warming Debate." My analysis presents a decision theory framework for examining risk making under uncertainty

technological growth. A smarter, wealthier world will find it vastly easier to deal with whatever disasters or opportunities tomorrow may bring. Unless the costs of prevention are low and the certainty of the risk is high, an Adaptation/Resiliency strategy is likely to prove superior to a Prevention strategy.[58]

Risk Management: Address trespass, not potential trespass

The state of liability law in the United States is not good. Almost anyone who suffers any injury (or, indeed, any claimed injury) may sue almost anyone even remotely linked to the incident and may prevail. The voluntary agreements of classical liberalism – warnings, contract limitations, prior agreements – may or may not be respected by the courts. There have been some partial reforms in this area, so-called "good Samaritan" laws which shield the provider from such claims, but today the greatest risk of business is liability risk. Restoring the right of voluntary risk assumption remains a critical goal – and there is very little written on how this might be achieved.

The very existence of a potential risk is presumed under current environmental law to justify denying the right to act in certain ways. Environmentalists operating under the Precautionary Principle mandate act as if every private action were ultra-hazardous and thus should be subject to political review. The concept grows out of the common law doctrine that some private activities may be forbidden because their risks to the adjoining property owners is too great. A dynamite factory in the midst of an urban area is such an example.[59]

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and suggests that there are few cases where an international political response is likely to prove the best option.

[58] That the private sector would find it very difficult to resolve such global concerns does not, of course, mean that a political approach would be more viable. Throughout the 20th century there were numerous political approaches to peace and armaments control. The goal of course was to limit warfare; however as Thomas Sowell notes in his latest book , The Tragedy of the Cosmic Vision, these agreements certainly did not prevent (and may have made more likely) the horrors of the subsequent world wars. To the utopians it was the symbolic agreement (the "Peace in our Times" message) that was significant; the real actions that might have made these agreements meaningful received little emphasis. The parallel with current Multilateral Environmental Agreements (MEAs) is obvious.

[59] Although note that in highly regulated Holland, a fireworks plant located in the midst of a residential neigborhood exploded killing many individuals and devastating the town. This again suggests that granting

The U.S. Welfare Reform Model for Environmental Reform

Reform ideas such as these seem feasible but how can they prevail, given the strength of the environmental establishment, the lack of awareness of any alternative to political means, and the lack of flexibility which limits experimentation (and thus empirical data on the value of classical liberal alternatives). There is no easy answer to this question – the fight for economic liberty is never easy, and this battlefield is among the most difficult.

Yet, there are grounds for optimism and the threat of a global regulatory state make it essential that we seize upon them. Note that equally intractable policy issues, for example, poverty, education, social security, have been the pretexts at various times for the expansion of the state. Yet today, in all these areas, the state is in retreat. The concerns have not disappeared but the view of the central government as the most appropriate venue for solution has faded.

These changes were the result of both extensive research and a series of reforms that re-opened the laboratory of the state. There might be a role for federal welfare programs, but the primary hope would be the revitalization of America's decentralized system of state and voluntary institutions. America's creative private poverty efforts had been neglected and hampered, but they provided wonderful examples of what could be.

That paradigm shift made it possible first to re-open the laboratory of the states, the empirical data provided by these decentralized experiments suggested areas where the federal program might be reformed. Like environmental policy, federal welfare programs had been highly centralized and inflexible. In the new regime, some states (most noticeably Wisconsin and Michigan) explored a wide array of welfare alternatives. Some of these initiatives worked well, encouraging further reform. One result was the recent federal welfare reform bill.

Like environmental policy, welfare policy had been heavily influenced by the progressive era view of the superiority of political means, the view that federal action was superior to state action. America traversed an increasingly statist path as a result. Yet,

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government the power to regulate ultrahazardous activities does not mean that power will be used intelligently.

today we're proceeding along a very different path. Today we seek less to make government work more efficiently than to remove the various impediments that inhibit private philanthropy. We recognize not only that government does not work very well, but also that it too often suppresses the very forces that have, and might again, better address the problems of the poor or the environment.

One should not read too much into this story, welfare is still a mess. Dismantling any federal program of this magnitude is an effort of decades. Still, the reforms have started and future reforms seem likely. And, the course is toward devolution, not further centralization. There is little enthusiasm for a global welfare program managed by the UN or anyone else.

Environmental reform must, I believe, follow this same course. And we're further along the path than some might think. This paper has only touched upon the growing body of analysis which documents the inherent problems of central ecological planning, the waste associated with current policy, and the rent-seeking problems that it is encountering. What has been lacking has been the exploration of private alternatives. CEI and others are beginning to address that through our newly created Center for Private Conservation (CPC). The CPC has already documented dozens of private conservation stories and is publicizing them widely. As the inspiring record of this "underground" private environmental world becomes more widely understood, the prospects for reform improve.

States have had little flexibility under current environmental law. And that small realm of freedom has been closely scrutinized by the federal agencies. State governments are not happy with the EPA. But a renewed interest in federalism (both the Commerce Clause and the Delegation Doctrine) offer hope for some form of environmental waiver. That would reopen the discovery process in the environmental area.

One final point: Entrusting environmentalists with the power to decide how resources should be used globally is questionable on many grounds. As classical liberals should know: they lack the knowledge for that task; they cannot readily prevent the capture of these powers by economic and ideological interest groups; and they cannot readily adjust to the changes brought about by economic and technological developments.

Moreover, environmentalists are largely western and wealthy. Those who argue that this is the best of all possible worlds, and should therefore be left unchanged, are paternalistic.

Environmental policy risks becoming eco-racist domestically, and eco-imperialist abroad. Some years ago, a returning Peace Corps volunteer noted that the wildlife parks in the nation in which he had been serving, the Central African Republic, were known in the local dialect as "white man's lands." This nomenclature bodes ill for the long-term survival of wildlife in a world of starving people. To reduce environmentalism to a rich-man's game is foolish.

And that suggests a tremendous role for Mont Pelerin members, especially those from developing countries. The debate over environmental policy has occurred almost totally in the developed world. Developing world participants have largely been second tier bureaucrats and indigenous green elites, allied more with the global environmental establishment than with the interests of their fellow citizens. Unchallenged, however, these non-representative third world voices have received undue attention in Europe and the United States. Their calls for bans on biotechnology, mandatory energy reductions across the board, and restrictions on trade suggest a policy agenda which is greatly at odds with the interests of the peoples of the world. Classical liberal voices might well weigh into that debate: both the economy and the ecology of the world would benefit.