



Testimony  
of  
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on  
Enhancing the Private Role for “Public Goods”

before the  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
United States House of Representatives  
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Good afternoon Chairman Calvert, Ranking Member McCollum, and members of the Appropriations Subcommittee on Interior, Environment, and Related Agencies. I’m pleased to discuss ways in which your goals of protecting a wide array of significant concerns – the environment, our cultural and historical heritage, forests and wildlife, water, and the arts – might better be achieved by encouraging private action. In particular, programs overseen by the Department of the Interior and the Environmental Protection Agency could be improved through such strategies.

Note that, while your issues are disparate, they fall into a category that some economists classify as “public goods.” Many have accepted, without much thought, that markets fail in the public goods area and that government must “do more.” But, of course, many ostensible “public goods” are in fact provided privately, and we can learn much from those alternatives to government provision. Private schools, for example, often provide insight on what might be done to improve government schools.

To address the goals of your constituents, while also controlling spending and easing the burdens of regulation, you should consider supporting a larger role for market-based solutions. And since markets without property rights are an illusion, you should support measures to extend property rights to a wide variety of environmental resources.

I now direct the Center for Advancing Capitalism of the Competitive Enterprise Institute. CEI has long focused on ways in which an unfettered market can best advance the interests of the

public. Thus, I recommend that you challenge the premise that private parties cannot do more and that the federal government with its regulations and spending is the best way to protect and advance such goals. Certainly, we should rethink policies that inhibit private contributions, and weaken private property rights. Owners are far less likely to make their properties more wildlife friendly if that might trigger an Endangered Species Act response. Our nation is wealthy and our bureaucracies are relatively free from corruption; thus, to a certain extent, we have the luxury of relying on complex and costly regulations. But, your committee should investigate the troubling trend of regulatory imperialism, in which such rules are forced, via treaty or trade sanctions, on poor nations with weak governance.

John Kenneth Galbraith once noted that in America, our gardens and yards are beautiful, while our streets and parks are disasters. Galbraith saw this as requiring a larger government role, but free market advocates suggest instead that we find ways of making more of America part of someone's yard, that more of our flora and fauna be protected as part of someone's "garden", as someone's "pet." Our laws should permit, indeed encourage, individuals to act privately to address public concerns. We should always include a path for those seeking an alternative to the "government knows best" policy.

In a dynamic capitalist economy, one would expect the institutions of liberty – specifically, property rights – to evolve and expand as innovations and taste changes and other factors expand the sphere of human action. And, in the past, they did. As animals were domesticated, property ownership rights evolved with rules regarding fencing, monitoring techniques (such as branding cattle) and so forth. Private ownership, as the Good Shepherd parable relates, produces a powerful link between man and nature and a powerful and creative stewardship system. As the Industrial Revolution made minerals more valuable, property rights (in the form of subsurface mineral rights) also evolved to encourage their discovery and development. That evolution encouraged people to contract with surface owners to seek minerals and led to the development of seismology and other techniques which have more than resolved many resource depletion fears. Absent property rights, technologies like seismology would likely never have advanced.

This co-evolution process, whereby new concepts of private property evolved along with the discovery of new resources, worked well until the late 19<sup>th</sup> Century. Then, however, the Progressive movement came to dominate national policy. They believed in scientific management of resources, technical centralized solutions devised by the Best and Brightest. They saw government ownership as superior to private property. They sought to regulate private property where it existed; to block any extension of property rights to new areas. The prior tendency to transfer newly acquired lands to private hands stopped; efforts to homestead the newly discovered electromagnetic spectrum were preempted (we're still suffering from the resulting mismanagement of this valued resource). And, of course, no steps were taken to integrate environmental resources into our market economy. The result? Resources that were in government hands in 1890 remain so today. Very little has moved into the private sector since.

The scientist Garrett Hardin, in his famous essay “The Tragedy of the Commons,” explained the unfortunate but predictable fate of property resources without private owners. Commons, he argued, must necessarily be managed either privately or politically. Environmental policies up until now have relied almost totally on the political option. Our wild flora and fauna, our rivers and lakes and airsheds – all under the stewardship of Environmental Protection Agency. We have plenty of real world examples, however, of why this can be a dangerous system. After all, when the Iron Curtain fell, it revealed no Garden of Eden but rather a landscape akin to Mordor. The Soviet Union’s ecological central planning and protection goals (an element of their constitution) worked no better than did its economic central planning system.

Perhaps the most evident area where private property might ease the burden of environmental regulation is the Endangered Species Act. The ESA requires that we protect all species – a rather massive requirement given that there are perhaps ten million species on this planet. Doing this politically when there are only a few hundred national governments, a few tens of thousands of local governments – many of which are doing an inadequate job of protecting their human populations – seems bizarre. Moreover, many of these species are in nations where corruption is rampant and where there is little discretionary wealth. Yet we have pushed treaties which restrict trade in these species – trade that, if allowed to go forward, will allow the wealth of our world to benefit the poor of the world and creating incentives for ensuring the survival of these species. Elephants in Africa and tigers in India are at risk and could readily be raised privately and command high market prices by safari hunters or for their coats or tusks. Yet trade bans make it impossible for the poor to benefit from the survival of these species. Policies which ignore the self-interests of the people directly affected and that benefit wealthy elites at the expense of the poor are both immoral and foolish. They should be repealed.

What policy suggestions flow from this property rights perspective?

- Environmental laws should always permit private sector opt-out solutions. As noted, educational policy has benefited from the freedom to create private schools; expanding the scope for private conservation and ownership would create similar benefits.
- Specifically, Congress should request that the Department of the Interior craft an ecological adoption policy and develop criteria under which private parties could “adopt” (gain property rights in) some environmental resources. The economist Kenneth Boulding noted many years ago that things that survive in a human dominated world must in some way be “domesticated.” It is time to implement that suggestion and give wildlife the opportunity to enjoy the creative stewardship arrangements long given our domesticated plants and animals. Such private sector options could also help Interior manage assets requiring specialized expertise (caves, for example). Why shouldn’t those be transferred, on a selective basis, to qualified private groups that specialize in cave exploration?

- Zero out appropriations by the Department of the Interior and the Environmental Protection Agency to support any of the environmental treaties restricting trade in species. Denying the poor of the developed world the opportunity to benefit from owning and sustainably developing these resources is both ineffective and immoral.
- The federal estate is too vast and Washington is too distant to achieve the quality of stewardship that current federal lands deserve. Members of this subcommittee should explore returning to the land transfer policies followed during the Northwest Territory era and begin moving government lands into private hands. When states are willing to take ownership responsibility, DOI should be directed to work toward that goal. Specifically, therefore, the subcommittee should urge DOI to respond positively to the Utah Public Lands Initiative.

There are also many areas where cultural and historic artifact preservation would be benefited also by allowing private ownership – both in the United States and around the world. There are many regulatory reform options in that vein that merit attention, and can be accessed via the citations below. The overall message of these comments, however, is that Congress can and should challenge the idea that only government agencies can advance the preservation and protection goals under the oversight of this subcommittee.

## References

[“The Progressive Era’s Derailment of Classical Liberal Evolution,”](#) Fred L. Smith, Jr. (2010)

[“A Vision for Environmental Policy,”](#) Fred L. Smith, Jr. (2008)

[“The Bankruptcy of Collectivist Environmental Policy,”](#) Fred L. Smith, Jr. (2002)

[“Free Market Environmentalism: Protecting the Environment Via Private Property,”](#) Fred L. Smith, Jr. (2001)

[“Ecology, Liberty & Property: A Free Market Environmental Reader,”](#) Jonathan Adler, editor (2000)

[“The Tragedy of the Commons Revisited,”](#) Randy Simmons, Fred L. Smith, Jr. and Paul Georgia (1996)

[“Markets and the Environment: A Critical Reappraisal,”](#) Fred L. Smith, Jr. (1995)

[“The True State of the Planet: Ten of the World’s Premier Environmental Researchers in a Major Challenge to the Environmental Movement,”](#) Ronald Bailey, editor (1994)

[“The Market and Nature,”](#) Fred L. Smith, Jr. (1993)

*Environmental Politics: Public Costs, Private Rewards*, Michael S. Greve and Fred L. Smith, Jr,  
eds. (1992)