PROTECTING THE ENVIRONMENT FROM ORTHODOX ENVIRONMENTALISM

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For many people, including most environmentalists, free market environmentalism is an oxymoron.[1] A book on the subject will surely extol the virtues of other oxymoronic concepts like natural clearcuts, scenic subdivisions, majestic dams, optimal pollution, and private provision for future generations. *Free Market Environmentalism*, by Terry Anderson and Donald Leal,[2] will not disappoint those for whom these ideas are inherently self-contradictory. The book approves implicitly, if not explicitly, all of the foregoing concepts and many more that are not "environmentally correct."[3]

The idea of free market environmentalism is particularly distressing for orthodox environmentalists, because for them it is environmentally correct to believe that markets and the wealth they produce are the source of many, if not most, environmental problems.[4] They believe this is true despite the environmental destruction wrought by the centrally-managed economies of eastern Europe,[5] and in spite of the environmental mismanage-

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1. *See, e.g.*, James E. Krier, *The Tragedy of the Commons, Part Two*, 15 HARV. J.L. & PUB. POL'Y 325 (1992).

2. TERRY ANDERSON & DONALD LEAL, FREE MARKET ENVIRONMENTALISM (1991).

3. Much has been written recently about pressures, particularly in academia, for "politically correct" thinking and expression. *See, e.g.*, Richard Bernstein, *The Rising Hegemony of the Politically Correct*, N. Y. TIMES, Oct. 28, 1990, at 1. Insistence on adherence to a particular explanation for social ills and specific remedies for those ills is no doubt the product of many influences, not the least of which is an effort by the leaders of political movements to perpetuate their influence. The environmental movement has not been immune from these pressures.

4. *See, e.g.*, BARRY COMMONER, THE POVERTY OF POWER 2-3 (1976) ("The environmental crisis tells us that the ecosystem has been disastrously affected by the design of the modern production system .... In turn, the faulty design of the production system has been imposed upon it by the economic system, which invests in factories that promise increased profits rather than environmental compatibility or efficient use of resources."); KRISTEN SHRADER-FRECHETTE, ENVIRONMENTAL ETHICS 154 (1981) ("In fact, it might well be said that today our increasing material wealth has brought most of our spiritual and environmental problems.").

5. *See, e.g.*, Jon Thompson, *East Europe's Dark Dawn*, NAT'L GEOGRAPHIC, June, 1991 at 36.

ment of this country's public lands[6] by government agencies that spend a significant share of their resources defending against lawsuits that various public, that is to say "environmentally correct," interest groups, have filed.[7] The idea that private actors will voluntarily undertake environmentally beneficial actions for profit is simply not part of accepted orthodox environmental thinking and morality. As a result, for the orthodox environmentalists, the only acceptable remedy for public lands mismanagement and government-sponsored environmental harm is further government action—namely, reformed public management and increased regulation of the regulators.

To be sure, there are environmental organizations, like the Nature Conservancy and the Environmental Defense Fund,[8] which have embraced the market place with greater or lesser enthusiasm. Unfortunately most orthodox environmentalists view these flirtations with the market as suspect, if not an affront to environmentally correct thought and action. Of course, most environmentalists deny that there is any environmental orthodoxy. They point out that the environmental movement is diverse, ranging from the deep ecologists to the old-line conservationists.[9] There is no party line, they contend. Yet, once the turf battles and power struggles are put to one side, it is difficult to conceal fundamental agreement on a few essential

6. *See, e.g.*, ALSTON CHASE, PLAYING GOD IN YELLOWSTONE: THE DESTRUCTION OF AMERICA'S FIRST NATIONAL PARK (1987).

7. Any person having even a passing acquaintance with orthodox environmentalism will know that the Sierra Club, the Natural Resources Defense Council, Friends of the Earth, the Environmental Defense Fund, and the National Wildlife Federation are legitimate public interest groups while the Pacific Legal Foundation and the Mountain States Legal Foundation are fronts for special interests.

8. The Nature Conservancy purchases land that it seeks to protect as natural areas and wildlife habitats. To avoid the costs of management and thus extend their acquisition capacity, the Conservancy often transfers these lands, with appropriate covenants, to public agencies for management. It is a compromise with significant risks given the management failures and financial problems of many state and local governments.

The Environmental Defense Fund has pursued market solutions, particularly to water problems in the West, but not without controversy within the organization. A paper by one of its most effective environmental entrepreneurs, Zach Willey, appears in this volume. Zach Willey, *Behind Schedule and Over Budget: The Case of Markets, Water, and Environment*, 15 HARV. J.L. & PUB. POL'Y 391 (1992).

9. There is certainly little common ground between old-line conservationists like Gifford Pinchot (*see, e.g.*, GIFFORD PINCHOT, BREAKING NEW GROUND (1947)) and modern deep ecologists like Dave Foreman (*see, e.g.*, DAVE FOREMAN, ECODEFENSE: A FIELD GUIDE TO MONKEYWRENCHING (1987)), but neither would qualify for membership in orthodox environmentalism. Mainstream environmentalism is a lineal descendent of turn-of-the-century conservationists like Pinchot, and it has spawned late Twentieth-Century extremists like Foreman. Yet, like grandparents, parents, and children, these groups are not of one mind.

points. Central to this agreement is the belief that the principal cause of environmental deterioration is the self-interested pursuit of short-term economic gain.[10]

If free market environmentalism is to achieve even a few of the environmental benefits its proponents foresee, it must overcome this limiting vision of environmental orthodoxy. Environmentalists do not win all the battles they wage, but they are, nonetheless, a powerful political force. Politicians know who represents the environmental movement. Within that movement there is little doubt about what is environmentally correct and what is not. In this view, free market environmentalists are incorrect and are therefore thought hopelessly naive or dangerously subversive. Thus, in the language of lawyers, the burden of proof is on the free market environmentalists, and a jury well-schooled in environmental orthodoxy will render the verdict.

My goal in this paper is to unravel (or is the accepted term now deconstruct?[11]) environmental orthodoxy. Like every ideology, the strength of environmentalism depends upon its ability to explain the relevant universe in simple and unified language; there must be good and evil. According to environmental ideology, big business wears the black hats and big government wears the white hats. With global warming now firmly entrenched in their agenda,[12] orthodox environmentalists are desperately searching for international regulators to wear ever

10. *See* Kenneth E. Boulding, *The Economics of the Coming Spaceship Earth*, *in* ENVIRONMENTAL QUALITY IN A GROWING ECONOMY 11 (Henry Jarrett ed., 1966) ("It is always a little hard to find a convincing answer to the man who says, 'What has posterity ever done for me?,' and the conservationist has always had to fall back on rather vague ethical principles postulating identity of the individual with some human community or society which extends not only back into the past but forward into the future. Unless the individual identifies with some community of this kind, conservation is obviously 'irrational.' "). *Cf.* Richard L. Stroup & Sandra Goodman, *Property Rights, Environmental Resources, and the Future*, 15 HARV. J.L. & PUB. POL'Y 427 (1992) (discussing private and public incentives to provide for the future).

11. Although deconstruction has legitimate roots in the philosophy of Jacques Derrida, it is a term that has taken on political meaning in American academia. The term suggests that the thing to be deconstructed has been constructed, which in turn suggests purpose, design, or even conspiracy, usually by powerful interests. It is my intention to unravel rather than deconstruct orthodox environmentalism, which, like most orthodoxies, is the unconscious product of many random themes. For an attempt to explain the philosophical idea of deconstruction, see J. M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743 (1987).

12. *See, e.g.*, STEPHEN HENRY SCHNEIDER, GLOBAL WARMING: ARE WE ENTERING THE GREENHOUSE CENTURY? (1989); ALBERT D. BATES, CLIMATE IN CRISIS: THE GREENHOUSE EFFECT AND WHAT WE CAN DO (1990); JON ERICKSON, GREENHOUSE EARTH: TOMORROW'S DISASTER TODAY (1990).

larger white hats. Environmentalists see these international regulators as the world's only salvation.[13]

Of course, free marketeers themselves are not immune from the pressures for orthodoxy. There are true believers in the free market who will hear nothing of discouraging words, and will not compromise with the command-and-control regulators. Such market purists are as much an obstacle to the popular acceptance of their own ideas as are the orthodox environmentalists. Yet, we are doomed to a mixed economy at best,[14] and therefore free market environmentalists will be well advised to put forward their strongest arguments and capitalize on opportunities when they arise. Although they should be commended for applying their argument to the difficult cases of air pollution and global warming,[15] Anderson and Leal are clearly at their most persuasive where they have at least anecdotal evidence of free market success.[16] If free market environmentalists insist on all or nothing—on a global carbon emissions market as well as a local water market—they have little prospect of overcoming the inertial political influence of orthodox environmentalism. The principle of marginality is as important to politics as it is to economics. In politics it means compromise.

Both free market advocates and orthodox environmentalists

13. International environmentalism arose with the 1971 Stockholm Conference, which adopted a platitudinous Principle 21 declaring the importance of simultaneously respecting state sovereignty and protecting the global environment. During the succeeding two decades, occasional multilateral agreements on environmental protection were adopted. In 1987, the World Commission on Environment and Development created an international stir (except in the United States) with the publication of OUR COMMON FUTURE. *See* WORLD COMM'N ON ENV'T & DEV., OUR COMMON FUTURE (1987). That document, combined with growing concern about global warming, fueled an almost frantic effort, led by the United Nations Environment Program (UNEP), to achieve an international agreement on global warming by the 1992 United Nations Conference on the Environment to be held in Brazil. With few exceptions, the focus of this effort has been on international agreement and centralized regulation. Led by its director, Mostafa Tolba, UNEP has significantly expanded its influence in the hope of becoming the world's environmental regulator.

14. *See* FRANCES CAIRNCROSS, COSTING THE EARTH 17-19 (1991).

15. ANDERSON AND LEAL, *supra* note 2, at 154-167.

16. The book has been criticized for failing to offer evidence of free market environmentalism in action. *See* Krier, *supra* note 1, at 341 (criticizing the book as a series of vignettes). Anderson and Leal, however, face the same dilemma often faced by those who seek change. They claim that institutional obstacles have prevented market forces from producing environmental protection. It is therefore not surprising that they are able to offer only anecdotal evidence that the market works.

are often missionary in advocating their positions.[17] Orthodox environmentalism has a religious content that invites proselytizing. Free market environmentalism, with its philosophical link to classical liberalism, also has its impassioned adherents. Neither group, however, should permit its passions to obscure its objectives.

Free market environmentalism's recurrent link to classical liberalism contributes not only to the passion of some of its advocates, but also to its distance from orthodox environmentalism. Markets rely upon individual choices to allocate scarce resources. Free market environmentalists contend that left to choose, individuals will allocate significant resources to environmental protection. Indeed, they contend that we will get more environmental protection from the market than from command-and-control regulation. The goal is environmental protection, the means is the market. Classical liberalism prefers the market because of its reliance on individual choice, not because it will produce particular allocational results. The goal is individual autonomy, the means is the market. Orthodox environmentalists oppose free markets as the expression of classical liberalism because they see markets as the philosophical engine of environmental degradation. The orthodox environmentalists are unable to appreciate the environmentally favorable allocations that the market can produce. Meanwhile, classical liberals tend to be anti-environmental because of the command-and-control bias of orthodox environmentalism. The challenge for both interests is to recognize that the same market mechanisms may often serve both environmental and liberal objectives. One need not be a classical liberal to endorse the market as a producer of environmental protection, nor need one endorse command-and-control regulation to be an environmentalist.

Because the command-and-control methods of orthodox environmentalists have the upper hand politically, free market environmentalism bears the burden of proof. Classical liberal orthodoxy will not carry the day in a modern democratic state reliant on command-and-control regulation and public ownership. The successful implementation of free market solutions to environmental challenges is dependent upon a political willing-

17. *See* ROBERT H. NELSON, REACHING FOR HEAVEN ON EARTH: THE THEOLOGICAL MEANING OF ECONOMICS (1991).

ness to break from the accepted regulatory path. My objective in this paper is to examine those tenets of environmental orthodoxy that stand in the way of even modest experimentation with free market environmentalism.

I. CONFUSING THE "IS" WITH THE "OUGHT"

At least since David Hume penned *A Treatise of Human Nature*,[18] philosophers have understood the importance of distinguishing between assertions of what "is" and what "ought" to be. The former is a question of fact, while the latter is a question of value.[19] The danger of confusing the two is well illustrated by U.S. Supreme Court opinions of the Nineteenth and even Twentieth Century that justified differential treatment of blacks and women on the basis of empirical assertions about physical difference,[20] while scientists, or individuals acting in the name of science, permitted values to influence their empirical inquiries into sexual and racial difference.[21]

Hume would not be pleased with the solution to the Nineteenth Century confusion of truth and value in matters sexual and racial. Rather than insisting upon his distinction between "is" and "ought", society has insisted that relevant differences do not exist and has pilloried those who dare to pursue that

18. DAVID HUME, A TREATISE OF HUMAN NATURE 469 (Selby-Bigge ed. 1978) (1739-40).

19. *See* James Huffman, *Truth, Purpose and Public Policy: Science and Democracy in the Search for Safety*, 21 ENVTL. L. 1091 (1991).

20. *See, e.g.*, Muller v. Oregon, 208 U.S. 412 (1908) (holding that an Oregon statute limiting women to a ten-hour work week did not violate the Due Process or Equal Protection Clauses, as this action fell within the police powers of the state and was necessary to protect women's health); Dred Scott v. Sanford, 60 U.S. 393 (1856) (holding that freed slaves or decendents of slaves were not citizens).

21. On gender, see ELIZA GAMBLE, THE SEXES IN SCIENCE AND HISTORY: AN INQUIRY INTO THE DOGMA OF WOMAN'S INFERIORITY TO MAN (1916), in which she endorses the "gynocentric" theory espoused in LESTER FRANK WARD, PURE SOCIOLOGY: A TREATISE ON THE ORIGIN AND SPONTANEOUS DEVELOPMENT OF SOCIETY (1903), while being "critical of Darwin where she had to be in order to defend women's rights." Carl N. Degler, *Darwinians Confront Gender: or, There is More to It than History*, *in* THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE 33, 34 (Deborah L. Rhode ed., 1990) [hereinafter THEORETICAL PERSPECTIVES]. ON RACE, SEE ULRICH PHILLIPS, AMERICAN NEGRO SLAVERY (1918) (describing an inferior race), and ULRICH PHILLIPS, LIFE AND LABOR IN THE OLD SOUTH (1929) (describing an inferior culture). *See also* GUNNAR MYRDAL, THE POLITICAL ELEMENT IN THE DEVELOPMENT OF ECONOMIC THEORY at v-xvi (1954) (arguing that the influence of values on science is inevitable: "Facts do not organize themselves into concepts and theories just by being looked at; indeed, except within the framework of concepts and theories, there are no scientific facts but only chaos. There is an inescapable *a priori* element in all scientific work. Questions must be asked before answers can be given. The questions are an expression of our interest in the world, they are at bottom valuations." *Id.* at vii.).

empirical question.[22] We understand the potential for the misuse of empirical claims in the pursuit of human values, but we lack the discipline and legal processes to guard against such misuse. Better to stifle the pursuit of truth than to risk its purposeful or inadvertent confusion with value.

In environmental matters, we have not even reached this modest accommodation of the problem of confusing the "is" with the "ought." The boilerplate environmental policy argument takes the following form: The environment will be negatively affected if we do A or fail to do B; therefore, we should not do A or should do B. The first part of the statement purports to be empirical. It is not, of course, given the use (often implied rather than express) of the term "negatively." Yet, even if the statement takes the purely empirical form of asserting unevaluated environmental effects, the second part of the argument does not follow. Whether or not we should do A or B is a question of values. The preceding empirical statement is relevant to our evaluation—it helps us to understand the consequences of the choices we make—but it cannot be determinative of those choices.

Even if we accept the proposition common to deep ecology theory that it is morally imperative to preserve the earth's ecology as it existed prior to the industrial revolution (the moderate deep ecology position[23]), the moral conclusion does not follow from the empirical argument. The assertion that the earth ought to be preserved as it is (or was) is a value claim that can only be resolved through moral argument. If that value claim prevails in the moral debate, it is our coincidental good fortune if the earth conforms, and our misfortune if it does not.

22. With reference to sociobiological studies of gender difference, Ruth Hubbard asks: "Are we describing the natures of real people—you and me—or an abstraction or reification that biologists construct? 'Human nature' does not describe people. It is a normative concept that incarnates historically based beliefs about what human beings are and how they should behave." Ruth Hubbard, *The Political Nature of 'Human Nature'*, *in* THEORETICAL PERSPECTIVES, *supra* note 21, at 63. John Dupré says that Hubbard's remarks "on the study of the evolution of behavior should make clear, speculations about the history and determining processes of human evolution remain at this time very much at the level of origin myths. The lack of evidence favoring one such story over another has allowed feminist critiques to reveal such myths as paradigmatic examples of the 'scientific' elaboration of sexist ideology." John Dupré, *Global Versus Local Perspectives on Sexual Difference*, *in* THEORETICAL PERSPECTIVES at 47, 57.

23. *See* DEFENDING THE EARTH: A DIALOGUE BETWEEN MURRAY BOOKCHIN & DAVE FOREMAN 21 (Steven Chase ed., 1991) ("Foreman's occasional calls for a 'return to the Pleistocene' . . . suggest a wholesale and uncritical rejection of agriculture, technology, natural science, and humanist social philosophy.").

Deep ecologists and many orthodox environmentalists have sought to deny the human propensity for moral argument by calling for the abandonment of "anthropocentrism."[24] By linking traditional natural law theory with the empirical claims of natural science, they have jerry-built a "biocentric" philosophy that contends that human action is immoral if disruptive of the existing or some historic ecological condition. It is a philosophy with ironic parallels to late Nineteenth-Century Social Darwinism. The "ought" depends entirely upon the "is."

Environmental policy debates frequently confuse arguments about truth with arguments about value. Although it is an aspect of environmental regulation that has been discussed at some length,[25] we have done little to solve the problem through the modification of our legal procedures. In addition, the problem is not limited to confusing statements of fact about the environment with conclusions about what policy we should implement. Orthodox environmentalism also confuses empirical assertions with value assertions about social institutions. For example, the National Environmental Policy Act of 1969,[26] which orthodox environmentalism supported, reflects the following argument: A public decisionmaking process that requires the examination of alternatives, as well as agency comment, and public input will generate much information; therefore such a process will result in better environmental decisions. This may or may not be true. It depends upon what is meant by better decisions, and this is a question of value. In a legal culture with a strong commitment to process, it is difficult to accept that processes with particular characteristics will not necessarily lead to better decisions. Free market environmentalism suffers in the orthodox evaluation of resource allocation institutions because it has characteristics (for example,

24. Dave Foreman has observed that "the whole field of environmental ethics is exploding as more and more people try to flesh out an almost intuitive non-anthropocentric orientation into a well-reasoned, usable ethic to guide human interaction with the rest of the natural world." Dave Foreman, *Second Thoughts of an Eco-Warrior*, *in* THEORETICAL PERSPECTIVES at 107, 117. For discussions of the religious and philosophical roots of anthropocentrism, see ROBIN ATTFIELD, THE ETHICS OF ENVIRONMENTAL CONCERN 25-32, 51-63 (1983).

25. *See, e.g.*, William Ruckelshaus, *Risk and Public Policy*, 221 SCIENCE 1026 (1983); NATIONAL RESEARCH COUNCIL, NATIONAL ACADEMY OF SCIENCES, RISK ASSESSMENT IN THE FEDERAL GOVERNMENT: MANAGING THE PROCESS (1983); John Thibault & Laurens Walker, *A Theory of Procedure*, 66 CAL. L. REV. 541 (1978); Huffman, *supra* note 19, at 1091.

26. 42 U.S.C. §§ 4321, 4331-4335, 4341-4347 (1988).

individual choice and profits) that are assumed to result in detrimental environmental decisions. Orthodox environmentalism assumes that institutions with democratic and communitarian features will lead to better decisions, notwithstanding the many environmental failures of American government. Ironically, orthodox environmentalists have no hesitancy to resort to undemocratic courts when things do not work out as the orthodox environmentalists desire.

II. Environmental Puritanism

Orthodox environmentalists adhere to several fundamental truths that are not questioned in "environmentally correct" conversation. First and foremost is their belief that the environment must, at a minimum, remain as it is, or, preferably, be returned to some prior condition of ecological stability.[27] The doomsday forecasts of *The Limits to Growth* and its progeny[28] remain a central tenet of environmental orthodoxy. Despite the fact that all of these futures studies have been admittedly flawed in fundamental ways,[29] orthodox environmentalists insist that the only uncertainty, if we continue our profligate ways, is when, not whether, doomsday will arrive. Among environmentalists there is disagreement over the precise time when the environment was ecologically correct.[30] Presumably it was some time after continental drift; indeed, some time since the last ice age.[31] It is less certain whether ecological perfection

27. *See, e.g.*, Bill McKibben, The End of Nature (1989), which has been described as "a kind of song for the wild, a lament for its loss, and a plea for its restoration." *Paradise Lost*, N.Y. Rev. of Books, Dec. 21, 1989, at 32.

28. Donella H. Meadows et al., The Limits to Growth (1972). *See also* Council on Envtl. Quality & Dep't of State, The Global 2000 Report to the President (1980); World Comm'n on Env't and Dev., From One Earth to One World (1987).

29. *See, e.g.*, H.S.D. Cole et. al., Models of Doom: A Critique Of The Limits To Growth (1973); Ronald G. Ridker, *To Grow or Not To Grow: That's Not the Relevant Question*, 182 Science 1315 (1973); Julian Simon, The Ultimate Resource (1981); The Resourceful Earth: A Response to Global 2000 (Julian L. Simon & Herman Kahn eds., 1984).

30. *See* McKibben, *supra* note 27, at 59 ("If you travel by plane and dog team and snowshoe to the farthest corner of the Arctic and it is a mild summer day, you will not know whether the temperature is what it is 'supposed' to be, or whether, thanks to the extra carbon dioxide, you are standing in the equivalent of a heated room.").

31. If biodiversity is the environmental standard for ecological optimality, we have surely made progress since the ice ages. "Biodiversity is almost certainly higher now than it was in the ice ages, when the tropical forests, home to well over half the world's species, were less than half their present size." *Species Galore*, Economist, Sept. 14, 1991, at 17. Of course we cannot be sure that biodiversity was not much higher before and between the ice ages.

occurred before or after the eruption of Mount St. Helens.[32] But surely I have missed the point: It is not Nature's often catastrophic environmental changes that concern us,[33] although we invest significant resources in efforts to control the minor disturbances of an unstable planet. Rather, it is human disruptions of the environment that must be avoided if the planet is to survive in its environmentally correct condition. Or so say the environmental puritans.

This fundamental objective of environmental puritanism is rooted in three other tenets of environmental orthodoxy: (1) Human beings are external to the natural environment; (2) Human alterations of the natural environment are irreversible; and (3) Human alteration of the environment is immoral.

That human beings are external to the natural environment is a relatively modern, which is not necessarily to say sophisticated, idea. The notion seems to be rooted in the recognition that humans have developed, in a few generations, the capacity to impose global impacts on the environment.[34] If humans were not going about their environmentally destructive activities the planet would be left to its own evolutionary devices and would automatically achieve its proper ecological stability. It is as if the earth's human population, or at least the Western (and perhaps male) capitalists, arrived from some distant celestial homeland to colonize this pristine planet. Perhaps von

32. The eruption of Mount St. Helens devastated hundreds of square miles of beautiful forested terrain while sending ash around the globe. This natural event is of no concern to orthodox environmentalists, although they might be interested to note the rapidity of natural recovery from the disaster. *See* MOUNT ST. HELENS: FIVE YEARS LATER (S. Keller ed., 1986).

33. In the midst of a discussion of the effects of global warming on nature, Professor McKibben offers this quote from Thoreau: "I love to see that Nature is so rife with life that myriads can afford to be sacrificed and suffered to prey on one another, that tender organizations can be so serenely squashed out of existence like pulp . . . ." MCKIBBEN, *supra* note 27, at 103-104.

34. Barry Commoner asks: "Why, after millions of years of harmonious co-existence, have the relationships between living things and their earthly surroundings begun to collapse?" BARRY COMMONER, THE CLOSING CIRCLE: NATURE, MAN, AND TECHNOLOGY 11-12 (1971). His answer is that "[s]uch ecological cycles are hard to fit into human experience in the age of technology, where machine A always yields product B, and product B, once used, is cast away, having no further meaning for the machine, the product, or the user." *Id.* Jean Dorst points out that the human impact on the environment is not exclusively a product of the modern technological age. "It has sometimes been claimed that the destruction of nature really began with the expansion of the white man. His destructive economy and ravages are contrasted with the conservative methods of all races of natives, who are less harmful than Europeans because of their lack of technical equipment. This is a serious error." JEAN DORST, BEFORE NATURE DIES 33 (Constance D. Sherman trans., 1970).

Däniken's "Chariots of the Gods" did visit earth,[35] but I will put my money on Darwin.[36] Humans and their evolutionary predecessors have been a part of the earth's environment since time immemorial, and it is sheer folly to construct environmental policies on the absurd notion that the environment and its human participants can somehow be separated. That the preceding is a tenet of environmental orthodoxy will be denied by all but the most radical deep ecologists. Indeed, mainstream environmentalists contend that our environmental crisis is a product of humans acting as if they are not a part of the ecology.[37] The intellectual incoherence of asserting on the one hand that our environmental problems are the result of our failure to understand our place in the ecology, while urging solutions that neglect to account for our place in the ecology, is a central failing of orthodox environmentalism. It is one thing to acknowledge that humans are a part of the natural environment; it is another thing to analyze problems and propose solutions reflecting that recognition.

A second tenet of environmental orthodoxy that bolsters the general acceptance of the goal of environmental puritanism is that most human-induced environmental changes are irreversible. Some environmental changes are certainly irreversible, but we are often hard pressed to know which they are and whether they result from human or natural causes. The extinction of dinosaurs is irreversible, but it does not present a problem for environmentalism since Mother Nature apparently knows best. The loss of 1500 feet from the top of Mount St. Helens falls into the same category of acceptable, irreversible environmental change. The spotted owl and the chinook salmon, however, present a different matter altogether,[38] because their threatened demise is most assuredly due to human causes, or so we have concluded.

35. ERICH VON DÄNIKEN, CHARIOTS OF THE GODS? UNSOLVED MYSTERIES OF THE PAST (Michael Heron trans., 1969).

36. CHARLES DARWIN, ON THE ORIGIN OF SPECIES (E.P. Dutton ed., 1928) (1872).

37. *See, e.g.*, COMMONER, *supra note* 34; RACHEL CARSON, THE SILENT SPRING (1962).

38. The Fish and Wildlife Service has published a final rule listing the Northern Spotted Owl as a threatened species pursuant to the Endangered Species Act of 1973 § 7, 16 U.S.C. § 1536 (1988). Endangered and threatened wildlife, 50 C.F.R. § 17.11 (1991). The National Marine Fisheries Service has proposed rules designating the Snake River spring and summer Chinook Salmon, 56 Fed. Reg. 29,542 (1991) (to be codified at 50 C.F.R. pt. 227) (proposed June 27, 1991), and the Snake River fall Chinook Salmon, 56 Fed. Reg. 29,547 (1991) (to be codified at 50 C.F.R. pt. 227) (proposed June 27, 1991), as threatened pursuant to the Endangered Species Act, *supra*.

But the fact that some environmental changes are irreversible does not mean that all are. The chinook salmon are at risk in large part because of dams like those that have turned the once mighty Columbia River into a series of big ponds.[39] Indeed, the most promising solution to the salmon endangerment is the removal of some of these dams. The Bonneville Power Administration, however, shudders at even the whisper of such blasphemy, which could only come from the twisted minds of deep ecology "monkeywrenchers."[40] Yet, from an engineering point of view, it is a modest challenge and the riparian habitat would not take very long to recover. Whether the salmon are saved depends upon whether we have waited too long to take the necessary action. It is entirely a question of human priorities.

The ongoing debate in Oregon over so-called "secondary lands" is also rooted in the gospel of irreversibility.[41] The Oregon controversy is part of a national effort to preserve lands for agriculture and forestry. The effort is based on the belief that once agricultural and forest lands are developed for other uses, they are gone forever. Tell that to the Cretan olive growers whose lands were once the sites of Minoan and Roman cities. Or, if your vision is less distant, tell that to the many American farmers who now harvest crops from lands which once served as the foundations for homesteaders' houses and barns and chicken coops. Or, take a walk in the green grass of Portland's waterfront park where a freeway stood less than two decades ago. The environment is inevitably affected by human actions. The environment is altered in pursuit of perceived human benefits, and it often can be restored in pursuit of such benefits. It depends in large part on the priorities of those making the decisions.

A third buttressing tenet of environmental puritanism is the immorality of human alteration of the environment.[42] In philosophical terms, it is an idea vaguely rooted in an uncomfortable

39. *See* Michael C. Blumm, *Reexamining the Parity Promise: More Challenges than Successes to the Implementation of the Columbia Basin Fish and Wildlife Program*, 16 ENVTL. L. 461, 466 (1986).

40. In this context the term "monkeywrenching" comes from EDWARD ABBEY, THE MONKEY WRENCH GANG (1975).

41. *See* John Shurts, *Goal 4 and Nonforest Uses on Forest Lands*, 19 ENVTL. L. 59 (1988).

42. *See, e.g.*, John Rodman, *The Liberation of Nature*, 20 INQUIRY 83 (1977); J. Baird Callicott, *Animal Liberation: A Triangular Affair*, 2 ENVTL. ETHICS 311 (1980).

marriage of pre-Greek materialism[43] and classical natural law.[44] The flutter of a butterfly's wing (to borrow from an ancient Chinese proverb) affects the most distant reaches of spaceship earth (to borrow from Kenneth Boulding[45]). In the grand unity of things, the butterfly is supposed to flutter its wings, but, as Icarus learned, humans are not meant to fly. When humans do fly, drive, generate electricity, and make the deserts bloom, they are morally obliged to assure that they have not disturbed the essential unity of the universe. Nature is to be our ethical standard, and thanks to a coincidence in terminology, natural law will be our modern remedy. For the faithful, it is an easy philosophical step from natural rights for humans to the rights of nature. The irony is that traditional human rights are sacrificed to these emerging rights of nature.

III. The Ten Principles of Orthodox Environmentalism

The moral foundation of environmental puritanism makes the formulation of environmental policy a relatively simple matter. It is so simple that, like all orthodoxies, it can be readily reduced to a set of governing principles in which true believers can place their faith. Here follow ten principles of orthodox environmentalism as they were revealed to me while I was personally standing on the summit of Mineral King Mountain:[46]

1. Market failure is the cause of environmental degradation.
2. All human pollution must be eliminated.
3. All risks to humans and the environment must be eliminated.
4. Private resource management is inherently wasteful.

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43. In describing what he calls their "abstract materialism," Frederick Copleston says "the Ionian thinkers were convinced of the reign of law in the universe. In the life of the individual . . . the overstepping of what is right and proper for man, brings ruin in its train, the redressing of the balance; so, by extension to the universe, cosmic law reigns, the preservation of a balance and the prevention of chaos and anarchy." Frederick D. Copleston, 1 A History of Philosophy 37 (1962).

44. *See* A.P. d'Entrèves, Natural Law (1951).

45. Kenneth El Boulding, *The Economics of the Coming Spaceship Earth*, *in* The Environmental Handbook 96 (Garret de Bell ed., 1970).

46. Mineral King Mountain was the stage for one of the great dramas of environmental litigation. Walt Disney wanted to build a ski resort and the Sierra Club wanted to preserve the natural forests. For the details, see Sierra Club v. Morton, 405 U.S. 727 (1972). For an early proposal to wed biocentrism and individual rights litigation, see Christopher D. Stone, Should Trees Have Standing? Toward Legal Rights for Natural Objects (1974). Stone has subsequently reconsidered the subject in Christopher D. Stone, Should Trees Have Standing? *Revisited: How Far Will Law and Morals Reach? A Pluralist Perspective*, 59 S. Cal. L. Rev. 1 (1985).

5. Private resource managers are not concerned about the interests of future generations.
6. People should not have to pay for a healthy environment.
7. Environmental and economic values are incommensurable.
8. City workers should not live in the country, and libraries should not be within three blocks of medium industry.
9. Political conservatives are anti-environmental.
10. Affirmative governmental action evidences the existence of a public policy.

IV. The Ten Principles Elaborated and Considered

1. *Market failure is the cause of environmental degradation.*

The orthodox account of the environmental history of the United States is that big business, represented by mining companies, timber companies and the railroads, raped and pillaged their way across the continent without any regard for the environment.[47] Indeed they did, and they could not have done it without the willing and able assistance of the government. Free land,[48] free water,[49] free timber,[50] free minerals,[51] and all manner of favorable regulation assured that these capitalists would have no incentive to practice Leopoldian stewardship of the land and resources.[52] The modern farmer with price supports and subsidized water, the energy consumers of the Pacific Northwest with cheap electricity coming at the expense of anadromous fish, and the Montana milltowns with timber from

47. A 1972 Sierra Club book on wilderness preservation is introduced with these words: "Never before have public outcries against the would-be despoilers of the wilderness been louder or more fierce than they are today. Quite probably never in our country's history have so many people recognized the need to set aside wilderness in perpetuity—to remove it from the marketplace, and to protect it once and for all from the ravages of timbering, mining and recreational development." Action for Wilderness at i (Elizabeth R. Gillette ed., 1972).

48. *See, e.g.*, Preemption Act, ch. 208, 4 Stat. 420 (1830) (repealed 1891); Homestead Act of 1862, ch. 75, 12 Stat. 392 (1862) (repealed 1976); Desert Land Act, ch. 107, 19 Stat. 377 (1877) (codified as amended at 43 U.S.C. §§ 321-323 (1988)).

49. Section 8 of the Desert Land Act, *supra* note 48, provided that "nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any States or Territory relating to the control, appropriation, use or distribution of water used in irrigation, or any vested rights acquired thereunder . . . and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to or from any interstate stream or the waters thereof. . . ." *Id.*

50. *See, e.g.*, Timber and Stone Act, ch. 151, 20 Stat. 89 (1878) (repealed 1955); Timber Culture Act, ch. 277, 17 Stat. 605 (1873) (repealed 1891).

51. *See, e.g.*, Placer-Mining Act of 1870, ch. 235, 16 Stat. 217 (current version at 30 U.S.C. §§ 661, 766 (1982)); Mining Act of May 10, 1872, ch. 152, 17 Stat. 91.

52. Aldo Leopold, A Sand County Almanac 237-262 (1949).

below-cost public timber sales have all contributed to the destruction of the natural environment. Political resource management, not the market, has made most of this devastation possible.[53]

2. *All human pollution must be eliminated.*

The case for zero pollution is impossible to make even on moral grounds if one cares at all about human welfare. Human activity inevitably introduces pollutants into the air and water. The question, as William Baxter pointed out nearly two decades ago, is not whether to pollute, but how much to pollute.[54] This can only be determined with reference to human values. If we value the maintenance of a "correct" environment above all else, and assume, with the environmental puritans, that humans are not part of the ecology, then zero pollution should be our goal, and the costs to individual humans and human communities should be irrelevant. Otherwise, as a matter of morality, we must seek to optimize pollution.[55] Recent commentary on integrated pollution control[56] shows that at least some environmentalists are coming to acknowledge the impossibility and undesirability of zero pollution. The objective of zero pollution nevertheless remains a central premise of orthodox environmentalism.

3. *All risks to humans and the environment must be eliminated.*

The orthodox environmental postulate of eliminating risk has more complicated origins, but it is as implausible and immoral as the objective of zero pollution. The desire to eliminate risk is rooted partly in environmental puritanism and

53. For a discussion of the influence of special interests on public lands legislation and management, see James L. Huffman, *Public Lands Management in an Age of Deregulation and Privatization*, 10 PUB. LAND L. REV. 29, 34-46 (1989).

54. WILLIAM F. BAXTER, PEOPLE OR PENGUINS: THE CASE FOR OPTIMAL POLLUTION (1974).

55. Whether or not zero pollution is morally defensible is a legitimate and serious question. Any effort to achieve or even approach zero pollution will impose significant constraints on human activities including those directed toward "moral" objectives like providing food and shelter for the poor. Moral claims, like consumer claims, have opportunity costs. Indeed, it is not clear that the distinction between moral values and consumer values is meaningful. For an argument that the distinction is meaningful, see MARK SAGOFF, THE ECONOMY OF THE EARTH: PHILOSOPHY, LAW, AND THE ENVIRONMENT (1988).

56. Integrated pollution control seeks to respond to the interconnections among environmental pollutions. It seeks to "solve pollution problems rather than transferring them to other parts of the environment," and to "allow the risks from different pollution problems and the possibilities and costs of control to be compared with each other." INTEGRATED POLLUTION CONTROL IN EUROPE AND NORTH AMERICA 7, 8 (Nigel Haigh & Frances Irwin eds., 1990).

partly in the belief that human life has infinite value. Environmentalists share the latter belief with many special interest orthodoxies in this country, notwithstanding that virtually all of us take baths, drive automobiles, and relieve our aches and pains with Sudafed or Tylenol. There is no small difficulty with a philosophy that places infinite value on both the "correct" environment and human life,[57] but then again coherence is seldom the mark of any orthodoxy.

The objective of eliminating human-induced risks to human life or to the natural environment is impossible and undesirable. The history of human civilization is one of taking risks in order to avoid greater risks. Judging by all the evidence on human health and longevity,[58] civilization has progressed on the human side of this agenda. That the environment has suffered in the process is unarguable, but if we care about human welfare, the proposition that we can eliminate all risk to the environment or to humans is indefensible.

4. *Private resource management is inherently wasteful.*

Waste is a rhetorically powerful and conceptually elusive concept. The standard illustrations of historic waste are legendary in orthodox environmentalism: Loggers once cut down and left behind smaller trees to get at larger ones; lumber mills burned in tepee burners tons of material that now is processed into useful products; farmers transported water in leaky ditches and used irrigation methods that applied more water than necessary to crops; miners discarded low grade ore to get at more valuable deposits; and fishermen threw tons of fish overboard while keeping only the most desirable varieties. But waste is a relative matter. Yesterday's waste (meaning material that had

57. As guides to environmental protection, the dual assertions that humans are external to the environment and that human life is of infinite value are puzzling at best. And even if the objectives are philosophically compatible, it is not possible to maximize them simultaneously using two interrelated variables. A failure to understand this fundamental principle of mathematics has led generations of public land managers to agonize over the fulfillment of Secretary of Agriculture James Wilson's admonition to manage the public lands for the "greatest good for the greatest number in the long run." JENKS CAMERON, THE DEVELOPMENT OF GOVERNMENTAL FOREST CONTROL IN THE UNITED STATES 239 (1972) (quoting James Wilson). It cannot be done.

58. "In the forty years since 1950 . . . [l]ife expectancy has grown by one-third—the average person can now expect to live to be sixty years old (seventy-four in the developed countries). In fact, mortality dropped by half in the developing countries, from 180 deaths per thousand births, to eighty-two, and by three-quarters in the industrialized countries, from fifty-six to fifteen." Jessica T. Matthews, *Introduction and Overview*, *in* PRESERVING THE GLOBAL ENVIRONMENT: THE CHALLENGE OF SHARED LEADERSHIP 15, 25 (Jessica T. Matthews ed., 1991).

insufficient value to justify utilization) becomes today's valued resource. When we disparage past users for their wasteful actions, we have changed both the point of reference and the meaning of the word waste. What constitutes waste, in the sense of low economic value, is a function of supply and demand, technology, *and* institutional arrangements. Much of what environmentalists call waste in the disparaging sense would not have been waste in the economic sense if the institutional arrangements had provided incentives for resource users to steward the resources. Only true believers will use every last stick of an endless, rent-free forest. And if they do, they will soon be out of business.

5. *Private resource managers are not concerned about the interests of future generations.*

The future generations problem is both morally and practically complex. It is rarely clear what will serve the interests of future generations, because we cannot know what future generations will prefer, nor can we anticipate with any precision the future consequences of our actions. Even if we had the answers to these questions, the orthodox environmental conviction that private resource managers are not concerned about the interests of future generations can only be assessed relative to the impacts of alternative institutional arrangements. It is certainly true that individual actors seldom, if ever, act with sole concern for future generations. However, private actors do have important familial ties to the future, and they have the incentive to compare future values to present values in the management of their resources[59] (except when legal prohibitions on speculation remove those incentives).[60] In contrast, public resource managers, particularly in a democracy with frequent, periodic

59. On the theory of discounting to present value, see ARMEN A. ALCHIAN & WILLIAM R. ALLEN, UNIVERSITY ECONOMICS: ELEMENTS OF INQUIRY 179-180 (1972).

60. Much of our Nineteenth-Century and early Twentieth-Century law reflected a widespread bias against speculation. The public land laws were designed to limit accumulations of land and future transfers. *See* Homestead Act of 1862, ch. 75, 12 Stat. 392 (1862) (repealed 1976) (limiting individuals to 160 acres and requiring five years occupancy before patenting). Western water law still requires that water rights holders put water to use or forfeit the rights. *See, e.g.*, N.M. STAT. ANN. § 75-11-2 (Michie 1953); State Ex. Rel. Reynolds v. South Springs Co., 452 P.2d 478 (N.M. 1969). Although there may be legitimate wealth-distribution reasons for limiting speculation, many of these laws were based on the mistaken assumption that speculation has a detrimental effect on resource development. Notwithstanding that the historic bias against speculation was rooted in a concern about constraining current resource development, orthodox environmentalists fail to comprehend that speculative holding of resources is to the advantage of future generations.

elections, are likely to have a much shorter time horizon than are private managers.[61]

6. *People should not have to pay for a healthy environment.*

There is no small irony in the orthodox principle that people should not have to pay for a healthy environment. It is ironic in light of the common environmentalist refrain of the early 1970s that there is no such thing as a free lunch. The point, of course, is that everything we do has environmental costs that someone must pay.[62] If we choose not to suffer the environmental costs, we must bear the opportunity costs of foregoing environmentally destructive activities. Yet concepts like transferable pollution permits are unacceptable to orthodox environmentalists because they imply that polluters have a right to pollute and that we must therefore pay them not to pollute. This violates the purist principle that people have a right to an environmentally correct planet.[63] The bottom line seems to be that there is, for moral reasons, a free lunch if the menu is environmentally correct values, but not otherwise.[64]

7. *Environmental and economic values are incommensurable.*

A favorite principle of orthodox environmentalists is that environmental and economic values are incommensurable.[65] It is the old apples and oranges argument that is closely linked to the first market failure principle. It is really a two stage argument that works like this: Anderson and Leal assert that private owners of timber lands will market wildlife values to hunters,

61. *See* Stroup & Goodman, *supra* note 10, at 430.

62. *See* CAIRNCROSS, *supra* note 14, at 17.

63. Frances Cairncross suggests that the idea that environmental amenities should be free is rooted in both history and culture. "To demand that this generation should undertake repairs means making people pay for something which they have previously regarded as free." She also notes that for some peoples, for example Muslims, it is contrary to their religion to pay for what God has granted. *Id.* at 16, 18. Although Muslims have not influenced orthodox environmentalism, there is a similar religious aspect to the prevalent idea that people should not have to pay for a clean environment. *See* NELSON, *supra* note 17.

64. An alternative orthodox justification of a free environmental lunch is that people and the environment have been wronged by past environmental depredations and that the environmental predators therefore owe compensation in the form of subsidized environmental amenities.

65. The Oregon Court of Appeals was persuaded to adopt this principle in *American Can Co. v. Oregon Liquor Control Comm'n*, 15 Or. App. 618 (1973). The Court stated that "[t]he blight of the landscape, the appropriation of lands for solid waste disposal, and the injury to children's feet caused by pull tops discarded in the sands of our ocean shores are concerns not divisible by the same units of measurement as is economic loss to elements of the beverage industry and we are unable to weigh them, one against the other." *Id.* at 630.

birdwatchers, and fishermen if they are willing to pay at least as much as the opportunity costs of foregone alternative uses (that is, timber harvests). The market failure principle states that transaction costs will prevent the wildlife consumers from competing in the market. We must therefore resort to public management. The public manager is now faced with deciding whether to supply wildlife or timber. If the public manager proposes to engage in a cost-benefit analysis, the seventh principle states that it cannot be done because wildlife (non-market) values are not commensurable with timber (market) values. So what does the public manager do? Sooner or later he or she will make a decision. If the public manager decides to supply wildlife values, it can only mean that the wildlife uses are more valuable. Even if the manager asserts that the decision was the morally right thing to do, as might be said about the provision of a spotted owl habitat, it can only be because someone values preserving endangered species over supplying timber. The claim of incommensurability is simply an artifice for the assertion that environmentally correct allocations are always more valuable than other allocations.

8. *City workers should not live in the country and libraries should not be within three blocks of moderate industry.*

This principle takes many forms, but the essential meaning is constant. The principles that city workers should not live in the country, and libraries should not be located within three blocks of moderate industry are representative of a wide array of environmentally correct resource allocations known only to orthodox environmental planners.[66] These allocational rules are discovered through an understanding of the nature of an environmentally correct planet.

A variation on this theme is that recycling is always preferable to the use of raw materials in manufacturing. The national campaign for recycling has been formidable in recent years, with various laws adopted to ban certain types of containers[67] and create markets for recycled materials.[68] Taxpayers are be-

66. *See* ARNOLD W. REITZE, JR., ENVIRONMENTAL PLANNING: LAW OF LAND AND RESOURCES 1-1 (1974) ("In simple terms, land-use planning is deciding *what* should be *where*.").

67. *See, e.g.*, 32 ME. REV. STAT. ANN. tit. 32, § 1868 (West. Supp. 1990) (banning containers composed of aseptic packaging).

68. *See, e.g.*, 1991 Or. Laws 385 (mandating minimum recycling levels to "encourage utilization of the capabilities and expertise of private industry").

ing required to bear significant collection and storage costs for materials that will not be recycled because there is no market. Ironically, in some cases where the recyclable (but not recycled) product is more voluminous than the nonrecyclable product, the result is an increased demand for land fill space. Thus, the policy that environmental orthodoxy dictates creates or exacerbates environmental problems.

9. *Political conservatives are anti-environmental.*

The principle that political conservatives are anti-environmental is an inevitable corollary of the belief that the market is the source of all environmental difficulties. Everyone has his own definition of political conservatism, including many conservatives who claim to be the true liberals, but the point is that one should be suspect of any Republican president or congressman who claims to be an environmentalist. Although these people often sound sincere about their commitment to environmental protection, they have a tendency to propose environmentally incorrect solutions. It is the political conservatives who propose such things as user fees,[69] transferable pollution permits,[70] private ownership of instream flow rights,[71] and taxes to cope with ozone depletion.[72] People like this simply cannot be trusted.

Political liberals, on the other hand, can be trusted because of their commitment to the processes of democratic and communitarian government.[73] The problem for orthodox environmentalists is that these liberal politicians seem to have other constituencies whose notions of the public interest are different from and often in conflict with the environmental agenda. Indeed, all politicians face these conflicting assertions of the public interest, and this should lead orthodox environmentalists to distrust all politicians, liberal and conservative. By abandoning their progressivist roots[74] and accepting the more time-

69. *See* ANDERSON & LEAL, *supra* note 2, at 76.

70. *Id.* at 158.

71. *See, e.g.*, James Huffman, *Instream Water Use: Public and Private Alternatives*, *in* TERRY ANDERSON, WATER RIGHTS: SCARCE RESOURCE ALLOCATION, BUREAUCRACY, AND THE ENVIRONMENT 249 (1983).

72. *See, e.g.*, TAXES IMPOSED WITH RESPECT TO OZONE DEPLETING, 26 CFR § 52 (1990).

73. *See, e.g.*, Michael C. Blumm, *Liberty, the New Property, and Environmental Law*, 24 U.S.F.L. REV. 385 (1990); Michael C. Blumm, *Public Property and the Democratization of Western Water Law: Modern View of the Public Trust Doctrine*, 19 ENVTL. L. 573 (1989).

74. For a discussion of the relationship between progressivism and orthodox environmentalism, see NELSON, *supra* note 17.

honored American political tradition of distrust, orthodox environmentalists would be more inclined to consider the possibilities of free market environmentalism.

10. *Affirmative governmental action evidences the existence of a public policy.*

Finally, an essential principle of orthodox environmentalism is that the existence of a public policy is evidenced by affirmative governmental action. The import of this commandment is most often evident in discussions of United States energy policy (or the lack of such a policy, if one is engaged in environmentally correct conversation).[75] It would be unacceptable, for example, to argue that an aspect of United States energy policy is deregulation of the oil and gas industry. A policy only exists if there is affirmative action by government in the form of planning and regulation.

Of course, this last principle of orthodox environmentalism represents the nail in the coffin for free market environmentalism. The point of free market environmentalism is that individuals acting in the context of property rights and private agreements with the support of something like Nozick's minimal state can and will supply environmental benefits to society.[76] It is an idea that requires the undoing of much of the existing regulatory and public management apparatus, a process that would violate the basic premise that policy requires action by government.

The belief that a policy requires affirmative action by government is rooted in a rejection of invisible hand theories like Adam Smith's or Robert Nozick's. Mainstream environmentalists, like the followers of other progressivist orthodoxies, see around them an abundance of problems deriving from the chaos of the market. They can imagine only carefully planned remedies. Yet orthodox environmentalists would have their planners mimic the invisible hand of nature. With humans removed, it is a morally pure system. The task for the orthodox environmental planner is to produce what nature would have produced if humans had not intruded.

75. *See, e.g., Running on Empty—No Leadership to Forge a National Energy Policy*, SEATTLE TIMES, Sept. 5, 1991, at A12.

76. *See* ROBERT NOZICK, ANARCHY, STATE AND UTOPIA (1974).

IV. Conclusion

I suspect that orthodox environmentalists will disagree with most of what I have written. I suspect that they will also reject any claims I might make to being an environmentalist. If I am right in both of these suspicions, then I believe my basic argument will have been validated. It will be asserted that there is no orthodox environmental position; no environmentally correct dogma. But the free market environmentalists will not be admitted to membership as real environmentalists.

There is a tendency for all interests to develop orthodox approaches to the things they care about. Such orthodoxy no doubt plays a role in group identification and the sense of purpose necessary for success in a political world, but it is unfortunate when the pressures of orthodoxy preclude an interest from considering institutional alternatives that may serve the ends the interest seeks to achieve. Orthodox environmentalists would do well to lower their guard, as a few have,[77] and give serious consideration to the views of the free market environmentalists. To the extent that the idea of orthodox environmentalism is honestly rejected, the first step in lowering the guard will have occurred.

Sometimes it is possible to alter by minor adjustment one's perspective toward an accepted principle. Environmentalists have been enamored of the phrase "think globally, act locally." I believe that the essential message of free market environmentalism is that this simple idea should be turned on its head. The theme of environmentalism should be "think locally, act globally." We cannot comprehend the global economy, not to mention the global ecology. Even if we have the capacity for such comprehension, we do not have the incentive for action. We have both the comprehension and the incentives for governing our personal lives and the affairs of our local communities. It is in every individual's self-interest, not in the interest of a mythical global community, to protect the environment. If we think globally, we have no idea how to act locally. If we think locally, we will act to optimize the prospects for the global environment. Markets permit these incentives to work. Even if it is an invisible hand argument, it is worth a try in this rapidly deteriorating environment.

77. *See* Willey, *supra* note 8, at 392-95.