

Environmentalism and Economic Freedom: The Case for Private Property Rights¹

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I. Introduction

This paper shall attempt to reconcile environmentalism and economic freedom.

Before making this seemingly quixotic endeavor, we must be sure we are clear on both concepts. Environmentalism may be non-controversially defined as a philosophy which sees great benefit in clean air and water, and to a lowered rate of species extinction. Environmentalists are particularly concerned with the survival and enhancement of endangered species such as trees, elephants, rhinos and whales, and with noise and dust pollution, oil spills, greenhouse effects and the dissipation of the ozone layer. Note, this version of environmentalism is a very moderate one. Moreover, it is purely goal directed. It implies no means to these ends whatsoever. In this perspective, environmentalism is, in principle, as much compatible with free enterprise as it is with its polar opposite, centralized governmental command and control.

Economic freedom also admits of a straightforward definition. It is the idea that people legitimately own themselves and the property they “capture” from nature by homesteading,² as well as the additional property they attain, further, by trading either their labor or their legitimately owned possessions.³ Sometimes called libertarianism, in this view the only improper human activity is the initiation of threat or force against another or his property. This, too, is the only legitimate reason for law. To prevent murder, theft, rape, trespass, fraud, arson, etc., and all other such invasions is the only proper function of legal enactments.

At first glance the relationship between environmentalism and freedom would appear direct

and straightforward: an increase in the one leads to a decrease in the other, and vice versa. And, indeed, there is strong evidence for an inverse relationship between the two.

For example, there is the Marxist and even communist background of some advocates of environmental concerns.⁴ People like these come to the ecological movement with an axe to grind. Their real interest is with power: running the lives of others, whether for their own good, for the good of society, or for the good of the unstoppable “forces of history.” They were doing pretty well on this score for decades in Russia and Eastern Europe. Thanks to them, this vast part of the globe was marching in lock step toward the Marxist vision of all power to the “proletarians.” But then, in 1989, thanks to the inner contradictions of communism (Mises, 1969), their world turned topsy turvy. Some shifted their allegiances to the only fully communist systems remaining: Cuba, North Korea. As for the others, nothing daunted, they just switched horses on the same old wagon: instead of formal socialism, these people adopted environmentalism as a better means toward their unchanged ends. They can best be characterized as “watermelons,” in that while they are green on the outside they are still red on the inside.

Then, there are the real greens. They see environmentalism not as a means toward an end, but as the very goal itself. The most radical of them are very forthright. They see man as the enemy of nature, and would, if they could, destroy the former to save the latter. States Graber (1989, p. 9), who is a U.S. National Park Service research biologist: “Until such time as Homo sapiens should decide to rejoin nature, some of us can only hope for the right virus to

come along.” In the view of Foreman (1990, p. 48), who is co-founder of Earth First!⁵ and former lobbyist for the Wilderness Society, “We are a cancer on nature.” And here is how Mills (1989, p. 106) describes the other members of her own species: “Debased human protoplasm.”⁶

Some are only slightly less radical. They do not yearn for virtually the end of the human race. Instead, they merely hold that animals have rights, that trees have rights, that microscopic organisms have rights. It is reputed that Gandhi, for instance, sometimes went around wearing a surgical mask, so that he would not inadvertently kill a micro organism by inhaling it. If so, that practice would certainly be in keeping with this philosophy.

Stepping down a peg in the extremism of the ecologically concerned, there are those who merely blame markets, free enterprise, capitalism, for the ruination of the planet. In their view, what is needed is to curb these vicious appetites, and to return to a “kinder, gentler” version of governmental interventionism. For example, with regard to contaminated New York City beaches, the Commissioner of Health from the Big Apple stated on Canadian Public Television (30 July 1988):

I think the motivation is greed, you know, non-caring about the planet, non-caring about the ocean, and not caring about the people who live on the planet and want to use the ocean – greed.

In the view of environmentalist Renate Kroisa regarding pulp mill operators (CTV Report, 15 March 1989):

They would rather rape the environment and make a lot of money for themselves than not rape the environment, clean up, and later on . . . stay competitive. The mills are here to make a lot of profit, and they’re making a lot of profit at the cost of our environment.⁷

And states Commoner,⁸

The origin of the environmental crisis can be traced back to the capitalist precept that the choice of production technology is to be governed solely by private interest in profit maximization.

Other statements of this ilk include Porritt and Winner (1988, p. 11): “The danger lies not in the odd maverick polluting factory, industry or technology, but in . . . industrialism itself”; Bookchin (1970, p. 14): “The plundering of the human spirit by the marketplace is paralleled by the plundering of the earth by capital”; and free markets “take the sacredness out of life, because there can be nothing sacred in something that has a price” (Schumacher, 1973, p. 45).⁹

Then there are those who oppose not only market competition in general, but also want to ban particular products made possible by this system. For instance, there are calls to prohibit 747 airplanes (Rifkin, 1980, p. 216), automobiles (Sale, 1989, p. 33), eyeglasses (Mills, 1989, p. 106), private washing machines (Bookchin, 1989, p. 22), tailored clothing (Schumacher, 1973, pp. 57–58), toilet paper (Mills, 1989, pp. 167–168).

Paradoxically, there is a very limited but possible sense in which it is rational to prefer the reds to the greens. True, the former, not the latter, killed millions upon millions of people (Conquest, 1986, 1990). But at least their goal, their purpose, their aim, their end, was to *help* human beings. Yes, they picked a tragically erroneous way of going about this, a philosophy from which the entire world’s peoples are still reeling. However, it must be conceded, they were not traitors to their species.¹⁰ This, unfortunately, cannot be said of some of the greens, particularly the more radical ones. Nor can it be denied, that at least so far, with the exception of a few unfortunate loggers, the greens have not killed nor hurt very many people. But if their own publicly articulated intentions are to be believed, given the power they might be a greater danger to the human race than even the communists.¹¹

This, in short, is the case for believing there to be an inverse relationship between environmentalism and freedom. However, it is not a direct and straightforward one: an increase in the one does not always lead to a decrease in the other, and vice versa.

What are the exceptions? How can environmentalism and economic freedom be reconciled?¹² Simple. By showing that free enterprise is the best means toward the end of environmental protection. This appears a daunting task

at the outset, given the emphasis placed by most environmentalists on socialism, and their hatred for capitalism. But a hint of the solution may be garnered by the fact that *laissez-faire* capitalism, as adumbrated above, strenuously opposes invasions, or border crossings, and that many environmental tragedies, from air pollution to oil spills, may be reasonably be interpreted in just such a manner. The reason for environmental damage, then, is the failure of government to protect property rights (omissions) and other state activity which either regulates private property, or which forbids it outright (commissions). Let us consider a few test cases.

II. Air pollution

According to the mainstream economic analysis, libertarianism is wrong. The problem of airborne pollutants is not due to a failure of government to protect private property rights. Instead, this comes about because of "market failure," a basic flaw in free enterprise. Pigou (1912, p. 159) gives the classic statement of this view:

Smoke in large towns which inflicts a heavy loss on the community . . . comes about because there is no way to force private polluters to bear the social cost of their operations.

Samuelson (1956, 1970) conveys the same sentiment in terms of the divergence between private and social costs. Lange and Taylor (1938, p. 103) are yet additional socialists who make a complementary point:

A feature which distinguishes a socialist economy from one based on private enterprise is the comprehensiveness of the items entering into the socialist price system.

In other words, for some strange dark mysterious reason, capitalists, under *laissez faire*, are excused from even considering the physical harm they do to the property of others through the emissions of their smoke particles. Under socialism, in contrast, the central planner of course takes this into account, nipping the problem of pollution in the bud.

There is so much wrong with this scenario it is hard to know where to begin a refutation. Perhaps we may best start with an empirical observation. If this criticism of the market were true, one would expect that, even if the Soviets couldn't successfully run an economy, they could at least be trusted as far as the environment is concerned. In actual point of fact, nothing could be further from the truth.

Exhibit "A" is perhaps the disappearance of the Aral and Caspian Seas, due to massive and unchecked pollution, over cutting of trees, and consequent desertification. Then there is Chernobyl, which caused hundreds, if not thousands of deaths.¹³ For ferry boats in the Volga River, it is forbidden to smoke cigarettes. This is not for intrusive paternalistic health reasons as in the west, but because this river is so polluted with oil and other flammable materials that there is a great fear that if a cigarette is tossed overboard, it will set the entire body of water on fire. Further, under Communism, there was little or no waste treatment of sewage in Poland, the gold roof in Cracow's Sigismund Chapel dissolved due to acid rain, there was a dark brown haze over much of East Germany, and the sulfur dioxide concentrations in Czechoslovakia were eight times levels common in the U.S. (DiLorenzo, 1990).

Nor was it a matter merely of the absence of democracy in the U.S.S.R. The ecological record of the U.S. government, where democracy is the order of the day, is none too savory. The Department of Defence has dumped 400,000 tons of hazardous waste, more than the five largest chemical corporations combined. The Rocky Mountain Arsenal carelessly disposed of nerve gas, mustard shells, the anti crop spray TX, and incendiary devices. And this is to say nothing of the infamous Yellowstone Park forest fire, which the authorities refused to put out, citing ecological considerations;¹⁴ nor the TVA's 59 coal fired power plants; nor the underpricing and overuse of land administered by the Bureau of Land Management; nor that fact that the government subsidizes forest over cutting by building logging roads.

These are not examples of market failure. Rather, they are instances of government failure:

direct controls and inability or unwillingness to uphold private property rights.

But what of Pigou and Samuelson's charge of the misallocative effect of negative externalities, or external diseconomies? This, too, is erroneous.

Up to the 1820s and 1830s, the legal jurisprudence in Great Britain and the U.S. was more or less predicated upon the libertarian vision of non-invasiveness (Coase, 1960, Horwitz, 1977). Typically, a farmer would complain that a railroad engine had emitted sparks which set ablaze his haystacks or other crops. Or a woman would accuse a factory of sending airborne pollutants to her property, which would dirty her clean laundry hanging on a clothesline. Or someone would object to the foreign matter imposed in one's lungs without permission. Almost invariably, the courts would take cognizance of this violation of plaintiff's rights.¹⁵ The usual result during this epoch was injunctive relief, plus an award of damages.

Contrary to Pigou and Samuelson, manufacturers, foundries, railroads, etc., could *not* act in a vacuum, as if the costs they imposed on others were of no moment. There *was* a "way to force private polluters to bear the social cost of their operations": sue them, make them pay for their past transgressions, and get a court order prohibiting them from such invasions in future.

Upholding property rights in this manner had several salutary effects. First of all, there was an incentive to use clean burning, but slightly more expensive anthracite coal rather than the cheaper but dirtier high sulfur content variety; less risk of lawsuits. Second, it paid to install scrubbers, and other techniques for reducing pollution output. Third there was an impetus to engage in research and development of new and better methods for the internalization of externalities: keeping one's pollutants to oneself. Fourth, there was a movement toward the use better chimneys and other smoke prevention devices. Fifth, an incipient forensic pollution industry was in the process of being developed.¹⁶ Sixth, the locational decisions of manufacturing firms was intimately effected. The law implied that it would be more profitable to establish a plant in an area with very few people, or none at all; setting up shop in a

residential area, for example, would subject the firm to debilitating lawsuits.¹⁷

But then in the 1840s and 1850s a new legal philosophy took hold. No longer were private property rights upheld. Now, there was an even more important consideration: the public good. And of what did the public good consist in this new dispensation? The growth and progress of the U.S. economy. Toward this end it was decided that the jurisprudence of the 1820s and 1830s was a needless indulgence. Accordingly, when an environmental plaintiff came to court under this new system, he was given short shrift. He was told, in effect, that of course his private property rights were being violated; but that this was entirely proper, since there is something even more important than selfish, individualistic property rights. And this was the "public good" of encouraging manufacturing.¹⁸

Under this legal convention, all the economic incentives of the previous regime were turned around 180 degrees. Why use clean burning, but slightly more expensive anthracite coal rather than the cheaper but dirtier high sulfur content variety? Why install scrubbers, and other techniques for reducing pollution output, or engage in environmental research and development, or use better chimneys and other smoke prevention devices, or make locational decisions so as to negatively impact as few people as possible? Needless to say, the incipient forensic pollution industry was rendered stillborn.

And what of the "green" manufacturer, who didn't want to foul the planet's atmosphere, or the libertarian, who refused to do this on the grounds that it was an unjustified invasion of other people's property? There is a name for such people, and it is called "bankrupt."¹⁹ For to engage in environmentally sound business practices under a legal regime which no longer requires this is to impose on oneself a competitive disadvantage. Other things equal, this will guarantee bankruptcy.

From roughly 1850 to 1970, firms were able to pollute without penalty. *This* is why "there is no way to force private polluters to bear the social cost of their operations" a la Pigou; *this* is why there was a Samuelsonian "divergence of social and private costs." This was no failure of

the market. It was a failure of the government to uphold free enterprise with a legal system protective of private property rights.

In the 1970s a “discovery” was made: the air quality was dangerous to human beings and other living creatures. Having caused the problem itself, the government now set out to cure it, with a whole host of regulations which only made things worse. There were demands for electric cars, for minimal mileage per gallon for gasoline, for subsidies to wind, water, solar and nuclear²⁰ power, for taxes on coal, oil, gas and other such fuels, for arbitrary cutbacks in the amount of pollutants into the air. The nation wide 55 mile per hour speed limit was not initially motivated by safety considerations, but rather by ecological ones. “Rent seeking” played a role in the scramble, as eastern (dirty burning sulfur) coal interests prevailed over their western (clean burning anthracite) counterparts. The former wanted compulsory scrubbers, the latter wanted the mandated substitution of their own coal for that of their competitors.

And what was the view of the supposedly free market oriented Chicago School? Instead of harking back to a system of private property rights, they urged the “more efficient” statist regulations. Instead of a command and control system, they urged the adoption of tradeable emissions rights (TERs). In this system (Hahn, 1989, Hahn and Stavins, 1990, Hahn and Hester, 1989), instead of forcing each and every polluter to cut back by, say, one third, they would demand of all of them together that this goal be attained. Why is this beneficial? It might be difficult and expensive for some firms to reduce pollution from 150 to 100 tons, and easy and cheap for others. Under TERs, some could reduce the pollution levels by less than 1/3 (or even increase them), while they would in effect pay others to reduce theirs by more than this amount. The means through which this would be accomplished would be a system of “rights to pollute,” and an organized market through which these could be bought and sold.

The implications of this scheme for freedom are clear. States Anderson (1990):

Fortunately, there is a simple, effective approach

available – long appreciated but under used. An approach based solidly on . . . private property rights.

At its root all pollution is garbage disposal in one form or another. The essence of the problem is that our laws and the administration of justice have not kept up with the refuse produced by the exploding growth of industry, technology and science.

If you took a bag of garbage and dropped it on your neighbor’s lawn, we all know what would happen. Your neighbor would call the police and you would soon find out that the disposal of your garbage is your responsibility, and that it must be done in a way that does not violate anyone else’s property rights.

But if you took that same bag of garbage and burned it in a backyard incinerator, letting the sooty ash drift over the neighborhood, the problem gets more complicated. The violation of property rights is clear, but protecting them is more difficult. And when the garbage is invisible to the naked eye, as much air and water pollution is, the problem often seems insurmountable.

We have tried many remedies in the past. We have tried to dissuade polluters with fines, with government programs whereby all pay to clean up the garbage produced by the few, with a myriad of detailed regulations to control the degree of pollution. Now some even seriously propose that we should have economic incentives, to charge polluters a fee for polluting – and the more they pollute the more they pay. But that is just like taxing burglars as an economic incentive to deter people from stealing your property, and just as unconscionable.

The only effective way to eliminate serious pollution is to treat it exactly for what it is – garbage. Just as one does not have the right to drop a bag of garbage on his neighbor’s lawn, so does one not have the right to place any garbage in the air or the water or the earth, if it in any way violates the property rights of others.

What we need are tougher clearer environmental laws that are enforced – not with economic incentives – but with jail terms.

What the strict application of the idea of private property rights will do is to increase the cost of garbage disposal. That increased cost will be reflected in a higher cost for the products and services that resulted from the process that produced the garbage. And that is how it should be. Much of the cost of disposing of waste material is already incorporated in the price of the goods

and services produced. All of it should be. Then only those who benefit from the garbage made will pay for its disposal.”²¹

Economic freedom thus implies a movement back to the legal status of pollution in the earlier epoch. Nor need we fear undue economic hardship and dislocation because of adjustment problems. For apart from obvious and blatant pollution, which has already been curtailed through command and control regulations, it will take at least a few years for environmental forensics to develop to the point where industry will have to make more basic changes.

There are of course objections to “turning the clock back” to the 1820s. For one thing, there is the fear that if we allow anyone to sue anyone else for pollution, that will mean the end of industry altogether. And not only of industry and other accoutrements of modern civilized life. This would also bring the curtain down on life itself, as, strictly speaking, even exhaling (carbon dioxide) could be seen as a pollutant, and thus forbidden. Fortunately, this scenario is not tenable. First of all, although industry up to the 1830s was no great shakes compared to the modern era, it was not as non-existent as implied by this objection either. Secondly, there is a reason for this: the burden of proof is on the plaintiff, so only the more egregious cases of pollution were in effect actionable, and *de minimis* was in operation, so that frivolous law suits, or ones alleging only tiny amounts of pollution were disregarded.²²

Another objection, a more reasonable one, is that if allowing pollution lawsuits again will not bring industry to a screeching halt, it will at least greatly disorganize it. Perhaps it might be better to allow for a 10 year waiting or warning period, so that industry could adjust, before imposing so draconian a set of measures.

This option does indeed sound more pragmatic, but there are problems with it. We have said that pollution amounts to an invasion. Suppose that someone had the authority to immediately end an invasion, say, for example, slavery, and refused to do so for 10 years on the grounds that this would be too “disruptive” or “impractical.” Say what you will about such a

decision on pragmatic grounds, it cannot be maintained that it enhances freedom.

Fortunately, we can have our cake and eat it too in the present context. That is, we can allow environmental lawsuits immediately, but also have a “waiting period” of perhaps 10 years or so in any case. This can be accomplished because of the 150 year gap, from approximately 1845 to 1995, when environmental forensics could have developed, but did not, thanks to a legal regime which was not conducive to it.²³ The point is, had environmental forensics been developing over these last 150 years, but for some reason not implemented, and we were to suddenly allow environmental lawsuits for the first time at present, this would indeed drive industry to an abrupt halt. For the plaintiff’s burden of proof would be easy to satisfy, under these assumptions. Moreover, there would be plenty of invasive pollution around to find people guilty of perpetrating.

For with emissions strictly controlled (in the early period), development would have proceeded along non-pollution intensive lines. In contrast, with *carte blanche* on emissions (the later period), industry would have developed in a pollution intensive manner. Moving from a system where pollution was all but legal (1845–1970), to one where it was strictly controlled (as it was before 1845), would thus have called for a basic restructuring of industry.

Let me try to make this point in another way. There is a difficulty which the private property rights theory of environmental protection must wrestle with: if we institute such a system abruptly, especially if we did so, say, in the 1960s before these concerns had captured the public imagination, we ran the risk of halting industry dead in its tracks, something to be resisted at the very least on pragmatic grounds. On the other hand, if we offered, for example, a ten year waiting period before environmental lawsuits could be undertaken, then we are complicit in violations of the libertarian code during this decade. Happily we can avoid this dilemma. First, we allow lawsuits as soon as we have the power to do so, thus escaping from the second (disrupting industry) horn of the dilemma. We escape from the first, too, because of the fact that for the plaintiff to be successful in his lawsuit he

must prove beyond a reasonable doubt that a specific particular polluter is responsible for invading his person or property. But to do so, given the sad sorry state of environmental forensics at least at the time of this writing, will take time, plausibly, as much time as it will take for industry to end the error of its ways without any great disruption. That is, suppose it takes 10 years for industry to adjust to the legal dispensation of the 1830s. This will not be as harmful to the economy as might be supposed because it might take a similar amount of time to figure out precisely who is polluting whom.²⁵

III. Waste disposal

The brou-ha-ha over paper vs plastic and styrofoam wrappers also has implications for economic freedom.

In the late 1980s, a McDonald's restaurant opened its doors in Moscow. In some ways, this was no great shakes. Ray Kroc's burger emporia had by that time been doing business in hundreds of other countries. But in other ways, this was a very big deal indeed. For at that time Russia was still under the control of Communism. Allowing a private firm to do business in the heart of the beast thus showed a weakness in the totalitarianism of the U.S.S.R. What could be a greater chink in the armor than a popular restaurant intimately tied to western capitalism.

McDonald's is a reasonable example of a capitalist enterprise. It employs thousands of people, particularly young persons, minority members, immigrants. It brings joy to millions of customers, and has sold, almost unbelievably, in the billions of burgers. It is an indication of quality. You can travel practically the world over, and be assured of the same kind of meal they serve in "Kansas." This chain (and other imitators) has been a boon to the poor. Before its birth, it was difficult for the poor to enjoy a restaurant meal; thanks to this initiative, away from home dining has become a commonplace for those with modest means. All in all, McDonald's was not a poor choice as a chip in the high stakes gambling with the Communists over the future of the world's political economy.

But at about the same time that Ronald McDonald was taking up residence behind the Iron Curtain, back at home, in "the land of the free and the home of the brave," he was running into entry restrictions and other barriers. Dozens of town councils, all across this great land of ours, were refusing to give McDonald's permission to open up new stores. Why? A takeover of Soviet fifth columnists? A communist revolution in the good old U.S. of A? Not a bit of it. Instead, it was all due to left wing environmentalism.

Why were the local greens so bitterly opposed to more quarter pounder outlets? Because they came wrapped in styrofoam and other plastic packaging, and if there is one thing practically guaranteed to drive an environmentalist to apoplexy, it is precisely these materials.

Let us assume, merely for the sake of argument, that everything any ecologist has ever said about plastic and styrofoam is true. That compared to paper, these substances are not environmentally friendly, they are not biodegradable, they are not recyclable, they are not reusable, they cannot be returned to nature. On the contrary, when buried in the ground, they come back to haunt us in the future as hazardous wastes. And that as a result, anyone foolish enough to dispose of them ruins his land for subsequent farming, housing, factories, shopping malls, etc.

Under these conditions, let us enquire into the ability of the market place to transmit this knowledge (paper, good; plastic, bad) so that it is taken into account by the economy. After all, this is precisely what the price system is presumably designed to do. Prices, after all, are like street signs. Just as the latter guide us around geographical space,²⁶ the former are supposed to impose direction on the economy.

At first glance it would appear that while prices might accomplish their task in the general economy, they are a dismal failure when it comes to environmental concerns. Picture yourself at the supermarket check out counter. You have just selected your groceries, and the clerk has charged you for them. After paying, you are asked that inevitable, fateful \$64,000 question: paper or plastic bag?

Under these circumstances, the only reason for

picking the environmentally sound paper, and eschewing the toxic plastic, is benevolence. For let us assume that the cost to you is \$0.01 for each. In some cases, this is explicit. You pay a penny for either one. In other cases, it is only implicit: you don't pay for the bag, paper or plastic; rather, it is included in the price of the groceries, in much the same manner as the lighting, or cleaning, or advertising of the store. Benevolence for the planet, or for your fellow creatures is your only possible motivation for choosing the paper; for by stipulation the economic considerations are equal. One penny for each.

But we all know what Smith (1776) said about benevolence. It is not from benevolence, but rather from a keen appreciation of self interest, that the butcher, the baker and the candlestick maker share with us their wares. Given the evils of plastic, benevolence is a weak reed indeed upon which to base our hopes for its elimination. Nor is it a question of benevolence versus selfishness. Given the importance of ridding the planet of these noxious substances, it behooves us to mobilize *both* motivations, not just one of them.

Benevolence is far from sufficient. For suppose that half of all industrialists had the personality of a liberarian Mother Teresa, and refused to pollute, even though allowed to do so by law. What would happen to them? They would go bankrupt, for they would give themselves a competitive disadvantage. If all industrialists are roughly of equal ability, but some pollute and others spend money on smoke prevention devices, it is clear that the invisible hand will be choking us, not helping us. No, the only solution is to change the law to one which upholds property rights, so that trespassers do not continue to be privileged.

Why has the price system seemingly failed? Is this intrinsic to capitalism, one of the "market failures" that socialist economists are always prattling on about? Not at all. The failure stems not from *laissez faire*, but from state prohibition. Specifically, the government has nationalized, or municipalized, the industry of solid waste management.

Right now, we do not pay a red cent for

garbage disposal. Instead, we are forced by government to disburse tax money for this purpose, and are then given these services for "free." In other words, this service is run along the lines of socialized medicine. There, too, services are provided for "free," courtesy of our tax dollars.

These systems have several disadvantages.²⁷ For one thing, there is the phenomenon of "moral hazard." Charge people a very low or zero price, and they will buy much more than at normal prices. Further, they will "waste" the good or service.²⁸ This is seen in the fact that socialized medicine is a hypochondriac's dream come true, and that consumers purchase items which are promiscuously wrapped. Given that the housewife doesn't have to pay to dispose of package coverings, it is no wonder that the manufacturer has little incentive to economize on containers.²⁹

How would a private market in garbage disposal function? Everything would be privatized. The trucks which make pickups from the homeowner as well as the dump sites themselves. There would be no mandatory recycling nor bottle deposit requirements;³⁰ there would only be laws against trespassing: disgorging waste material onto other people's private property.

How would prices be established? Assume that burying inoffensive paper costs only a penny per bag, but that the plastic variety is so harmful that each one does \$5.00 worth of damage³¹ to the land in which it is placed. Given competition, no dump site owner will be able to charge more than \$5.00 for burying a plastic bag, lest the additional profits earned thereby attract new entrants into the industry. In like manner the price cannot fall below this amount, since if it does, it will bankrupt all who agree to it. For example, if a private dump site owner were to accept \$4.00 compensation for agreeing to permanently store a plastic bag on his land, he would lose \$1.00 on that transaction. Multiply this by a few truckloads of this substance, and he will no longer be able to continue in business.³²

Now let us return to our supermarket checkout scenario. Only this time, under full privatization, we make an entirely different economic calculation than before.

	Purchase cost	Disposal cost	Total
Paper	\$0.01	\$0.01	\$0.02
Plastic	\$0.01	\$5.00	\$5.01

Previously, there was no impetus to choose either paper or plastic. Each cost \$0.01, and that was the end of it. Now, however, matters are very different. For we are called upon not merely to purchase the bag material, but also to dispose of it later on at our own expense. Given disposal costs of one penny for paper and five dollars for plastic, our total costs are readily calculated: two cents for paper, and five dollars and one cent for plastic.

Is there any doubt that the whole problem would disappear in one fell swoop under these economic conditions? Virtually no consumer in his right mind would choose environmentally unfriendly plastic. The costs would simply be prohibitive. Everyone would “do the right environmental thing” and select paper.

This does not mean, of course, that plastic bags would be totally banned by economics. They would still be utilized, but only when their value to the user was greater than \$5.01. For example, blood, intravenous solution and other medical fluids might still employ plastic containers.

Thus, thanks to the “magic of the market,” we can again have our cake and eat it too. Under a full private property rights regime, there is no reason to legislatively ban McDonald’s. If plastic and styrofoam are truly hazardous to the health of the planet, they will impose tremendous costs on dump site owners. These will be passed on to consumers. If McDonald’s continued to insist upon use of plastic and styrofoam, this firm would lose out to other competitors (Burger King, Wendy’s, Pizza Hut, Taco Bell, A&W, etc.) who were more greatly concerned for their customer’s pocketbooks. Under present assumptions, there is simply no need to reduce freedom in order to protect the planet. The two work in tandem.

But it is now time to question our assumptions about the relative harm to the planet of plastic and styrofoam. According to “garbologist”³³ Rathje (1989), plastic is not so much a hazard to the globe as it is inert. If there is

anything dangerous to the planet it is paper; not in the form of bags, but rather telephone books. After many years of burial, these release methane gas, and other dangerous substances. If so, perhaps paper and plastic will be able to compete with one another on a somewhat more equal footing.

This is an empirical question, which cannot be decided on the basis of armchair economic theorizing. It may safely be left in the hands of the private dump site owning industry, for these entrepreneurs, unlike environmental bureaucrats, stand to lose their own personal fortunes if their prices are not consonant with actual harm to their property, and hence to the environment in general.

IV. Conclusion

I have tried to show that in at least two cases, air pollution and waste disposal, the concerns of environmentalists and those who favor economic freedom can be reconciled. However, there might appear to be what one anonymous referee called a “basic structural flaw in the development of (my) argument” in that the public policy conclusions in each of these two cases appear to be very different. “On the one hand,” continues this referee, “(I) applaud . . . the existence of a pre-1850 legal system which enforced private property rights. But in (my) final argument for letting the market control waste disposal there is no clear indication of what *if any* role environmental law would play.”

I am tremendously grateful to this referee in that he has given me an opportunity to further explicate libertarian environmentalist theory. The seeming contradiction in how I handle the two ecological issues can be reconciled in this way. In the case of air pollution, the violation of economic freedom and private property rights was that polluters were allowed by law to in effect trespass on other people’s land, to say nothing of their lungs. In the case of waste disposal, the breach of economic freedom and private property rights is no less apparant, although it takes an altogether different form. Here, the infraction consists of the nationaliza-

tion (e.g., municipalization) of what would otherwise be private dumpsites. But in both cases there is a transgression of the free enterprise ethic. Therefore, in each, the capitalist oriented environmentalist will advocate a return to market principles. In the one case this consists of an end to legal trespass, in the other of privatization of garbage dumping. Thus, there is no “structural flaw,” or indeed, any inconsistency whatever, in this analysis.

Let me make this point in a different way. Egalitarian socialists oppose both income disparities and private medicine. For the former they advocate wealth redistribution; for the latter, socialized medicine. Now these are two very distinct things. Seemingly, they are incompatible with one another. But not really, since both are aspects of an underlying vision.

It is the same in the present case. Laws prohibiting trespass of smoke particles, and privatizing dumpsites are superficially very different. In actual point of fact they are but opposite sides of the same coin, in that they both emanate from the same philosophical principle.

One last point. The typical way of treating pollution in the literature is as an “externality.” By now it should be clear that I totally reject this approach. An external diseconomy is defined as a harm perpetrated by A on B, one for which B can neither collect damages nor halt through injunction. But *why* is B so powerless? It is my contention that the victim of pollution finds himself in this precarious position solely because of inadequacies in the law. Previous to 1850, for example, *there was no* pollution externality. This came about due to a “government failure” to uphold the law against trespass, not because of any alleged “market failure” such as externalities.

Notes

¹ The author wishes to thank Jonathan Adler of CEI, Dianna Reinhart, Jane Shaw and Rick Stroup of PERC, P. J. Hill of Wheaton College and Jan Leek of NCPA for bibliographical and other help. None are responsible for the content of this paper. The author wishes also to thank two anonymous referees for very substantive help in the rewriting of this essay.

Without their assistance this article would have been a far less cogent one.

² For a critique of homesteading, see Stroup (1988). For a rejoinder, see Block (1990b); for another defense of homesteading, see Hoppe (1993).

³ For a general explication of the private property based free enterprise system, see Rothbard (1973), Hoppe (1989). For political economic perspectives that are sometimes confused with this vision, see Hayek (1973), Nozick (1974). For a rebuttal of these, see Rothbard (1982b).

⁴ Names which come to mind in this regard include Tom Hayden, Jane Fonda, Helen Caldicott, Jeremy Rifkin, Kirkpatrick Sale and E. F. Schumacher. For discussions of this phenomenon, see Horowitz (1991), Bramwell (1989), Rubin (1994) and Kaufman (1994).

⁵ This is the group that urges tree spiking; placing a metal spike in trees so that when the chain saw of the lumberman encounters it, his injury or even death will result. Their rallying cry slogan is “Back to the Pleistocene.”

⁶ These views were cited in Goodman, Stroup et. al. (1991, p. 3).

⁷ Reported in “On Balance,” Vol. II, No. 9, 1989, p. 5.

⁸ Cited in DiLorenzo (1990).

⁹ Cited in Goodman, Stroup et. al., 1991, p. 4.

¹⁰ It is on this ground that the Communists may be preferred to the Nazis. For apart from members of the Aryan nations, the Nazis actually did intend to, and actually succeed in, killing massive numbers of people. In terms of actual numbers of people killed, however, the reverse is the case.

¹¹ Of course, actions speak louder than words, and on this basis the greens do not even deserve to be mentioned in the same breath. On the other hand, even though intentions are less important than actual deeds, the former are not morally irrelevant.

¹² For a book that attempts to do just this, see Block, 1990a.

¹³ True, there is the U.S. counterpart nuclear meltdown at Three Mile Island. But a popular bumper sticker puts this into some sort of perspective. It stated: “More people died at Chappaquidick than at Three Mile Island.” (“Chappaquidick” refers to the death of a single individual, Mary Jo Kopechne, while being driven by Senator Ted Kennedy.) The point is, of course, that no one, not a single solitary individual, lost his life at Three Mile Island.

¹⁴ Forest fires, it turns out, are “natural,” and nothing must be done which interferes with nature.

¹⁵ Called at the time “nuisance suits,” we can with hindsight see them as environmental complaints.

¹⁶ It is only because murder and rape were illegal that there was a call for a forensic industry, capable of determining guilt based on semen, blood, hair follicles, DNA, etc. If these activities were legal, these capabilities would not have developed. Similarly, when one can sue for pollution, it is of the utmost importance to determine guilt or innocence; hence, the establishment of environmental forensics.

¹⁷ Of course, “coming to the nuisance” was not deemed acceptable. That is, one could not build a residential abode in an area first homesteaded by pollution emitters, and then sue for pollution. On this see Rothbard (1982a, 1990)

¹⁸ As a sop to the plaintiffs, the law and judicial practice was altered so as to require very high minimum heights for smokestacks. In this way the local perpetrator of invasive pollution no longer negatively impacted the local plaintiff. But of course this did no more than sweep the problem under the rug, or, rather, into the clouds. For if polluter A no longer affected complainant A, he affected others. And polluters B, C, D, . . . , who previously did not harm A, now began to do so.

¹⁹ This is the exact opposite of Adam Smith’s (1776) “invisible hand.” Ordinarily, in laissez faire capitalism, selfish seeking of profit leads to the public good. For example, one invests in a good which is in very short supply, and hence most needed by the populace, and earns the greatest possible profit. Here, instead, if a person acts in an environmentally responsible manner, he goes broke.

²⁰ The Price Anderson Act – protecting firms from legal responsibility for accidents – is the most egregious case of the latter.

²¹ For another critique of tradeable emissions rights, see McGee and Block, 1994.

²² On this see Rothbard, 1982a (1990).

²³ From 1845 to 1970, approximately, polluters had a free run of the atmosphere, other people’s property and their lungs. From roughly 1970 to 1995, and counting, there was concern for invasive air and water borne pollutants, but only command and control (and in the last few years tradeable emissions rights schemes) regulations. Provision for environmental lawsuits is still, as of this 1995 writing, virtually nonexistent. See Horwitz (1977), Block (1990, pp. 282–285).

²⁴ If a legal theory is to be a robust one, it must not rely on the accidents of time or place. That is, it must be applicable at any epoch in history. Since I claim that libertarianism fits this bill, it is incumbent upon me to show how it would apply not only when

environmental concerns have been incorporated into the law, but also when they were not.

²⁵ I am grateful to an anonymous referee for forcing me to clarify my presentation of this point.

²⁶ In the days of yore when a city was faced with a besieging army, one of the defensive measures they would take was to tear down the street signs. They did so on the ground that this would hardly much disaccommodate long time citizens, but would play havoc with the invader’s ability to travel around town.

²⁷ Apart, that is, from the immorality of forcing people, whether by democratic vote or no (Spooner, 1870, 1966), to pay for things they have no desire to purchase.

²⁸ If we ran a socialized milk program as we do garbage disposal and medical care, people would probably have “milk gun” (instead of water gun) fights, wash their cars with milk, and take milk baths.

²⁹ In addition to excessive amounts of wrappings, our zero price policy has also led to the combination of different materials in them, such as paper, plastic, tin and other metals, cardboard, etc. All of this makes it more expensive to recycle.

³⁰ Which are but further infringements upon economic freedom.

³¹ Science can not at present precisely determine the amount of damage that might be caused. (I owe this point to an anonymous referee). However, this presents no philosophical challenge to entrepreneurship. Those dumpsite owners whose predictions are the closest to reality will prosper, at least compared to their colleagues furthest away, given ceteris paribus conditions. But make no mistake about it; given the assumptions on the basis of which we are now operating, storing paper most certainly *will* harm the dumpsite itself, at the very least in terms of economics. For, to reiterate, we are presuming that buried plastic and styrofoam has much the same effect as a toxic waste. Those dumpsite owners who allow storage of these items under their land will reduce its economic value after the landfill is complete, and alternative uses (housing, farms, etc.) are contemplated.

³² I am here implicitly assuming that the present discounted (dis)value of burying a single plastic bag is \$5.00. Obviously, to charge only \$4.00 for this service would be to lose money on the deal.

³³ A garbologist is to mounds of waste material as is an archeologist to ancient ruins. Each yearns to “get to the bottom” of their respective subject matters. Each analyses them from their own perspective.

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