

# Environmental “Rights”: Special Rights or No Rights at all?\*

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In the United States, environmental rights often trump all. When builders propose to build new housing to provide homes for people, environmentalists argue that the development will destroy critical plant and animal habitat. When forests are logged to provide building materials for furniture, homes, and many other important products, environmentalists argue that the logging is “unsustainable” and impairs “biodiversity.” When farmers alter the terrain of their land to improve crop production, environmentalists argue the gamut from endangered species protection to wetlands preservation.

The rise of so-called “environmental rights” has created endless controversy and conflict in the United States. In this simply preserve basic institutions centered on voluntary exchange, individual rights, and free markets, we establish a solid framework for enhancing both environmental rights and human rights.

## **The Modern Environmental Movement**

In the early 1970s, the modern U.S. environmental movement brought an entirely new

way of viewing the world and the resources around us. We no longer live in a world where it is acceptable to dump toxics in rivers, throw litter on the streets, or drive highly-polluting vehicles. We have experienced tremendous change in a relatively short time with respect for the environment.

Most of these changes have been very, very positive, yielding tremendous benefits in terms of cleaner air, water, and land. Yet, one thing has greatly hindered our vision of environmentalism, and that is our tendency to elevate environmental concerns above most others. In many discussions, environmental issues are given some sort of special status, or special rights. Within the realm of the new “environmental rights,” we typically hear comments like “We need to protect the environment, whatever the cost” or “How can we put a price tag on the environment?”

The realm of environmentalism has been largely shielded from the broader body of literature and thinking regarding property rights and human action. When we argue that we can’t put a price on the environment, or that we must pursue an action regardless of its cost, we are pulling that area of concern outside the realm choices that are an integral part of the institution called the “market.” The

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market simply refers to voluntary transactions -the exchange of goods and services-between people as they conduct their daily business. In this article, I discuss why I think this way of thinking - the development of so-called "environmental rights" -poses great obstacles to environmental protection. I'll focus on how property rights and markets can, and need to, be applied to environmental and natural resource issues.

### **The US Environmental Policy Model**

The U.S. model of environmental policy has largely been the command and control regulatory approach. Basically, laws and regulations are adopted to prohibit or discourage certain environmental behavior or actions. Current laws govern virtually every natural and environmental resource imaginable: The Clean Air Act, Clean Water Act, Forest Planning Act, hazardous wastes acts, endangered species acts, wild horses and burros acts, and so on. The seminal acts of the early 1970s have been quite impressive in altering perceptions and behavior towards environmental resources. But in the past two decades, the regulations have taken on a variety of new dimensions, growing tremendously in complexity, control and scope. The results are often sheer folly. Consider the following example.

In 1991, Congress ruled all sewage treatment plants to remove at least 30% of the organic waste from incoming sewage. This across-the board inflexibility is obviously costly, but it is particularly so for those cities which have very little organic matter in the first place. Anchorage, Alaska is one such city. It's sewage inflow is often cleaner than the federal government's prescribed levels of outflow. Nonetheless, the government told the city that it *must* meet its 30% standard. A new sewage treatment plant that met the standard would cost the city \$ 135 million, so it opted for a cheaper, innovative solution: It invited

two local fish-processing plants to dump 5,000 pounds of fish wastes into the sewer system. By turning around and the removing the wastes, the city met its 30% clean up limit. Surely, the impact on both the environment and the city's budget were not as intended, but they serve as an example of how the regulatory mindset can go wrong. Clearly, there are limits to the effectiveness of regulatory control approach. Strict regulations leave people little choice regarding the best way to care for environmental resources. As in this situation, the authoritarian state enhanced the degradation of the environment.

Beyond the problems of inflexibility and regulatory control, the proliferation of federal, state, and local environmental regulations are on the verge of becoming unreasonable. In the process of expanding environmental rights, human rights have been grossly violated. For example:

\* A Maryland landowner paid more than \$2 million in criminal fines for two misdemeanor violations of federal wetlands regulations occurring on his own land.

\* A small repair show in Los Angeles operated by a national corporation has been the target of governmental claims of more than \$50 M for damages to natural resources allegedly occurring between 1958 and 1962. At the time the actions occurred, however, such acts were perfectly legal and acceptable.

\* A major chemical company in Texas is being threatened with a lawsuit that could impose millions of dollars in penalties under the Clean Air Act. The suit stems from the company's compliance with a 1984 interpretation of a regulation issued by the state's Air Control Board and communicated to EPA at that time. Now, ten years later, the EPA says it disagrees with the state's interpretation, and wants to be aid up to \$25,000 per day in finds, going all the way back to 1984<sup>1</sup>. Some other

interesting examples :

\* In 1994, a Taiwanese immigrant living in Kern County, CA was arrested for running over five rats with a plow. Some 20 armed federal and state regulators charged his land, seized his tractor, and charged him with criminal conduct. The farmer plowed his land to raise Chinese vegetables, but in the process killed Tipton kangaroo rates, a creature protected under the ESA. He was threatened with a three-year prison sentence and a \$300,000 fine. In 1995, the government gave up the suit, accepting a \$5000 "donation" to a local habitat conservation fund from the farmer, as well as his pledge to get a permit before farming the land. (After dropping personal criminal charges against Mr. Lin, regulators launched a lawsuit against Lin's corporation).

\* The Vaca family ranch in Arizona lost 200 acres from its grazing permit thanks to a state and federal project to protect the Mexican duck. It turned out, however, that there is no such thing as a Mexican duck: It is nothing more than the common mallard, and has been taken off the Endangered Species List<sup>2</sup>.

\* The City of San Diego used the Clean Water Act in 1995 to put an end to high school car washes, arguing that "car water wash, even if it does not contain soaps or detergents, must not be allowed to enter curb drain inlets, parking lot drains, or other entrance points to the storm drain systems." The City Attorney's office, after student protests, eventually determined that most student car washes qualified for an exemption covering "non-commercial washing of vehicles."<sup>3</sup>

These examples to illustrate a key point: Environmental regulations have become complex and far reaching, often going beyond recognizable benefit. At the same time, they trample individual rights to the use of property and labor.

While environmental concerns should be vitally important to us, we can not adopt policies that maximize one environmental concern at the cost of everything else. We also should not be adopting policies that isolate people from participating in environmental protection.

Our goal should not be to spend the most money possible on environmental protection, or to have the world's strictest regulations. Rather, we need to consider how we can get the most environmental protection for each dollar spent. That's how we typically look at most other decisions, and the environment should be no exception. We can not care for our natural heritage by ignoring trade-offs involved in pursuing alternative courses of action. We must look at the impact of environmental policy on other sectors of the economy, on the human condition, and surprisingly, on the negative affects imposed on the environment. In essence, we need to refocus on trade-offs. In so doing, we must consider markets and property rights.

### Why Markets?

Perhaps the most important thing we derive from a market economy with regard to environmental resources is *information*. Simply by allowing the pricing of natural and environmental resources, we gain tremendous amounts of valuable information about resource abundance or scarcity. This in turn, greatly affects how we use our natural resources.

Thomas Sowell, in his timeless classic, *Knowledge and Decisions* (Basic Books, 1980) gives the following example. Consider the market for office furniture. In this simplified example, people can basically choose between wood furniture and metal furniture. Suppose new deposits of iron ore are discovered when there is a growing demand for office furniture and a declining supply of trees. From the perspective of the furniture store, the whole-

sale price of steel desks and cabinets is falling relative to the wholesale price of the same items made in wood. They, in turn, will adjust their retail prices to reflect these changes. Now what about the consumer level? Some people have strong preferences for wood or metal furniture, and those people might not be swayed by the changes in price. But some people, who are either more flexible, or more pressed for cash, will face the incentive to substitute the material that is getting cheaper for the material that is growing more expensive. "The net result is that the economy as a whole incrementally substitutes the material that is becoming more abundant for the material that is becoming more scarce, without either the consumers, the retailers, or even the wholesalers necessarily understanding why prices are changing the way they are." In other words, people begin conserving scarcer resources.

In short, nobody needs to know the whole story in order for the economy to convey the relevant information through prices. Someone far back in the production process undoubtedly knows why iron ore is becoming more abundant, but he may or may not know the relative scarcity of wood, and it is doubtful if he cares a whole bunch about the market for office furniture. Yet his knowledge is transmitted through prices to people with whom he has no direct contact.

That, in essence, is the beauty of market pricing. Prices convey information in an efficient, unincumbered manner.

On the other hand, consider the impact of government regulations or other policies which mask the price of natural resources. Suppose federal policy ends up subsidizing the production of timber, but not the mining of ore. The price of timber will go down and if we follow our previous example, consumers might find the price of metal and wood desks to be about the same. Or

they might find the wood desks to be cheaper, even though timber is relatively more scarce than the ore. In the absence of information about relative scarcity, consumers will not put the natural conservation process into motion. There is no incentive to substitute the material that is getting cheaper, i.e. the more abundant material, for the material that is getting more expensive, i.e. the more scarce material. The additional purchases of wood desks will put more pressure on already declining timber supplies. In other words, the allocation of natural and environmental resources is being distorted. People are consuming more of the scarcer resource and less of the more abundant resource.

Broadly speaking, we can consider a dichotomy between a market economy, in which prices reflect the value of resources, and a centrally-planned economy in which governmentally-appointed bureaucrats allocate and care for resources. Property rights comprise another element that is vital to understanding this dichotomy.

To achieve meaningful environmental protection, we need to give people a reason to care about their environment. Property rights provides that reason. There are everyday examples that demonstrate how people take better care of their own property than they do of communally-owned property, or other people's property. In the suburban neighborhood, everyone walks their dog at the neighborhood park, the communal area owned by all of us, rather than "exercising" dogs on their own front lawns, or on the lawns of their neighbors, who are likely to come out screaming. Kids spray graffiti on public bathroom walls, but would never consider doing so on the bathroom walls of their own homes. Theater go-ers leave popcorn, spilled drinks and other messes on the theater floor, in a way they would never consider in their own homes.

People tend to take care of their own property. So how can we make this tendency

work towards environmental protection? If we agree that people tend to take care of their backyard pool better than they take care of the commonly-owned neighborhood lake, and they tend to take care of the trees and plants in their backyard, but not those that grow wild along the highway, the question becomes: How can we enlarge everyone's so-called "backyard" in order to get people to care about bigger and bigger pieces of the environment? I would argue that property rights of many different types, can help enlarge each person's perspective of what they regard as their backyard.

Let's look at alternative institutional arrangements through the example of endangered species.

### **Endangered Species**

The protection of endangered species illustrates the range of approaches available to address environmental concerns.

The current US regulatory strategy consists of the Endangered Species Act which lists plants and animals that are endangered or threatened. In reality, it does little to provide for recovery of the species, largely because it fails to encourage landowners to provide habitat for plants and animals. Of the over 770 species listed domestically, only 18 species have been delisted. Seven were delisted due to extinction, five through data error, and six are classified as recovered (really instances in which populations later found proved that the species were never endangered).

The act was designed to protect the nation's threatened and endangered plant and animal species by highly regulating activities that are believed to interfere with critical habitat. Once a threatened or endangered species is found on your property, it is illegal to use your property in any way that may impact the species. Federal regulators are the ones who

determine whether your actions will impact the critters.

Consider the case of one landowner owner in South Carolina, and in particular, the positive and negative incentives that are in effect here. Ben Cone is a woodland owner who highly prizes wildlife. Although his source of income is derived from timbering, he managed his properties to maximize both timber income and the amenity value from providing choice habitat for plant and animal species. This changed, however, after authorities discovered the endangered Red-cockaded Woodpecker nesting on some of Ben Cone's property. He has since lost the right to grow timber on 2,000 of his 8,000 acres. While this has certainly been a financial loss to Cone, it also poses a loss for the plants and animals that he had previously provided habitat for on his 8,000 acres. Cone has declared that he will do everything he can to discourage woodpecker and other habitat on the remaining lands that he can still use. He fears, of course, losing the right to use the remaining portions of his land, so he must ensure that woodpecker habitat is kept at a minimum. This includes cutting trees at a younger age and otherwise reducing the diversity of his stand. By taking away his rights as a landowner, Cone and others like him, no longer face the incentive to care for endangered species and their habitats. Unfortunately, the perverse incentives end up negatively impacting the environment.

Despite the ineffectiveness of the regulatory approach, private action has been met with tremendous resistance. Yet, as long as people are not allowed to own some sort of property rights to species, there will be major conflicts among special interest groups. Without private action, the political process determines resource allocations.

All of this is needless considering the property rights approach, particularly since land in

particular, is so easily privatized. Unlike some of the more difficult problems, like global warming and ozone depletion, there are easy solutions to endangered species controversy. Consider, for example, the famous spotted owl case.

The spotted owl controversy started when environmental groups claimed that the northern spotted owl is dependent upon old growth forests for its survival. Consequently, they have lobbying extensively for federal protection of both public and private old growth forests. Entire timber towns have been shut down as forest after forest has been declared off-limits to tree cutting as a result of spotted owl protections.

Unfortunately, the individual rights of forest owners, foresters and others that depend upon tree cutting for a livelihood, have been trumped by environmental rights. Yet, such rights, conflicts are needless since it would be simple enough to have a rights-based solution. Those who feel strongly that spotted owl habitat should be preserved could pool their resources together and simply purchase the land in question. If there is such an infinite value on the owls, surely the groups should be able to raise the money from its members to make such land purchases. If there is insufficient financial interest, I would argue that it simply isn't an important enough issue for people—they don't value spotted owls or other environmental symbols to the extent that the activists groups allege. In these cases, it doesn't make sense to coerce the general taxpayer to support spotted owl habitat, and it certainly doesn't seem fair to trample others rights for the so-called "environmental rights."

There is already a precedent of sorts for this type of activity. The nature Conservancy shares the concern of many environmental groups that much of the western lands are being destroyed by overgrazing. It is currently in the process of purchasing federal grazing

rights and retiring the lands.

All of this, of course, ties into the bigger problem of having a federal government with the extensive land holdings that ours has. As long as we have public forests, national parks, national historic sites, etc. there will be special interest domination of the resources. Again, these are areas where there are few problems of assigning property rights. I've already mentioned some of the problems with below cost timber sales on public forests. The special interest battles on these lands are incredible, since the Forest Service is charged to provide multiple uses ranging from logging to recreation. Contrast this with the incentives operating on private forests.

International Paper Company employs 12 full-time biologist to oversee fish, game and timber, Streamside Management Zones are established where logging is not permitted. Underbrush is cleared through the practice of prescribed burns to stimulate forage for wildlife. Zones of different age stands are created to encourage habitat diversity. The company faces the incentive for multiple use because of profits from recreational and hunting uses as well as benefits to timber from ecosystem management.

Unfortunately, since markets can not allocate the resources in these public forest counterparts, politics and conflict are more likely to occur, rather than integrated management.

Fortunately, some environmental groups recognize the importance of private rights. A spokesman for the Defenders of Wildlife, for example, said "we will fail (to protect endangered species) unless we address private lands." He said statistics suggest 50% of the 700+ species now listed as threatened or endangered are found on private lands. Another 20% have at least half of their known occurrences on private lands<sup>4</sup>. The group, which supports the reintroduction of the wolf in the Yellowstone areas, has established a fund

to compensate ranchers for livestock losses due to wolf attacks. Additionally, the group will pay ranchers \$ 5000 if the landowner can show that a litter of wolf pups has been successfully reared on his property. Such actions can go a long way to defusing battles over endangered species and actually addressing the problem of habitat loss.

Nonetheless, the regulatory approach of the Endangered Species Act, which creates enemies, rather than supporters of the very plants and animals that need our help, continues to prevail in the US.

### **Property Rights**

Property rights comprise the essential cornerstone to market approaches to environmental problems. Regardless of whether property rights are held by individuals, corporations, non-profit environmental groups, or communal groups, a discipline is imposed on resource users because the wealth of the owner of the right is at stake if bad decisions are made.

Clearly established property rights, contrary to widespread public perception, generate the incentive for environmental stewardship. It simply does not make sense for resource stakeholders to exploit and destroy their own property. Careless destruction, however, does make sense for those who are only loosely held accountable for their actions. Politicians, bureaucrats, or others who may be short-term managers, face the incentive to maximize immediate returns, even if this means long-term devastation.

Contrast this with the incentives facing the private forester. The private who cuts at an unsustainable rate will eventually go out of business. Being unable to produce competitive products at a competitive price, the market will automatically extend its invisible hand and weed out the inferior producers. Through these interactions, private property owners are held accountable for their actions. Good stewardship

yields maximum returns and preserves property values. Bad stewardship leads to eroding property values and fewer returns.

In contrast, there are no such tangible signs of good and bad management with government stewards. Programs that fail are assumed to be underfunded. And so we have the perverse situation with regulatory control in which the worst managers are often given the greatest budgets.

### **Incentives Matter**

In other words, incentives matter. Private property rights and market processes provide an entirely different set of incentives for the management of environmental goods than public management does. Incentives, particularly in the form of prices, can make a tremendous difference in environmental stewardship.

Prices have long been blasted as consequences of greedy, capitalist exploiter types. Yet, contrary to conventional wisdom, prices apply to environmental good in the very same way they work for other goods and services.

1. They provide clear signals about resource availability.

2. Secondly, prices, via profits, link self-interest with good resource management by attracting entrepreneurs to open niches. If bad decisions are being made, then a niche will be open. Whether an entrepreneur sees the opportunity and act on it will depend on his ability to assess time-and place-specific information and act on his assessment.

History is full of examples in which resource scarcity and accompanying price increases led to the discovery of new substitutes. In fact, headline news stories that tell of apocalyptic predictions about dwindling supplies, typically ignore this innovation process and human adaptability. They portray a static picture of the world.

In 17th century England, for example, people feared an impending shortage of energy due to the deforestation of firewood. Yet, this scarcity is credited with leading to the development of coal. In the mid-1800s, the English began to worry about an impending coal crisis, which was predicted to bring the country's industry to a standstill by 1900. This scarcity triggered the development of oil. And to this day, we are continually plagued with concerns about oil crises.

Human innovation, however, is a vitally important aspect of resource use that is greatly minimized by many environmental activists. Throughout history, the supply of natural resources has been a cause of concern, even though every forecast of the doomsayers has turned out to be absolutely wrong. Metals, foods, and other natural resources have become more available rather than more scarce throughout the centuries. Historical data show that natural resource scarcity—as measured by the economically-meaningful indicator of cost or price—has been decreasing rather than increasing in the long run for all raw materials, with only temporary exceptions from time to time: That is, availability has been increasing<sup>5</sup>. The supply of resources has consistently increased relative to the demand for them.

Consider that most things in nature are only raw materials which become resources when we figure out ways to transport, refine, transform, or organize them to make them useful. When we do that, we multiply both resources and their productivity, sometimes a million fold or more. Consider the case of agriculture<sup>6</sup>.

As recently as 1850, slightly over half the American population was involved in growing food. In the 140 years since then, agricultural productivity has increased so dramatically that by the year 2000 only about 2.2% of all Americans are expected to be employed in all agriculture—including forestry, fisheries, and farms. In the

mere 26 years from 1960 to 1986, agricultural yields per unit of both labor and land increased phenomenally. For example, corn yield increased 76% per acre and 73% per unit of labor.

Sand is another example of one of the most important resources in the world today. Consider how glass has transformed our lives through fiber optics. Fiber optics have been used in health care, enabling doctors to view, on a video screen, the condition of practically any part of the circulatory system and to conduct microsurgery with instruments so small that large, dangerous incisions are unnecessary.

But another use of sand, in the form of silicon, is equally or even more impressive. With silicon, we've made microchips that multiply the rate at which we increase knowledge through the many applications of the computer.

In other words, in this modern day of rapidly changing technology, property rights are constantly changing. As new technologies are developed, the realm of definable rights changes. We must avoid falling into the trap of adopting a static picture of why markets can not be applied.

### Summary

In summary, there is no need to develop an entirely new area of rights called "environmental rights." The key to encouraging stewardship of the environment is to find ways to create markets in its resources, based on private property rights and voluntary exchange. Ownership creates an interest in preserving and protecting property, and markets provide the incentive for owners to maintain the value of their goods. Such institutions provide the key to challenging human nature to care for and protect the environment. For the most part, markets in natural resources and the environment have not emerged, not because it is impossible to have markets, but because it has not been



cost effective to have property rights in these areas.

Imagination and vision is crucial to the development and application of markets to the environment. It is precisely in the areas in which PRs are evolving that resource allocation problems occur. Where environmental entrepreneurs can devise ways of marketing environmental values, market incentives can have dramatic results.

If we gradually develop a system in which environmental resources are valued and exchanged through the institutions of property rights and market processes, we achieve many benefits simultaneously, 1) We target more resources directly to effective environmental problem solving, 2) We free up resources currently wasted on legal and administrative and other costs to focus greater time and money on other pressing problems, and 3) We bring individuals back into the nutare equation, giving people both greater choices and greater freedoms.

## NOTES

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\* Submitted to *Universal Human Rights*, March 1998.

## Politik İktisat ve Akıl

E. Alper Güvel

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