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CHANGING THE FACE OF ENVIRONMENTALISM

*Ronald J. Rychlak**

When asked to consider the biggest environmental challenges facing the world in the next century, one is immediately tempted to jump into the quagmire of weighing nuclear waste against landfill problems or polluted waters against the clearing of the rain forests. However, I see the real challenge of the next century as being a matter of changing the face of environmentalism and bringing a politically diverse population into the environmental fold. By this I mean that we already have convinced most well-educated Americans to have greater respect for the environment, but not all of them have felt welcome in the environmental movement. Those in the movement are at least partially responsible for this situation.

A few years ago I was at a conference in New Orleans at which Tulane Law Professor Oliver Houck suggested that the environmental movement was perhaps not always as honest as it could be. If I remember Professor Houck's example correctly, he pointed out that the battle in *TVA v. Hill*[1] was not really over love of the snail darter,[2] but a general concern about the earth. The issue in that case, like many others, was misstated by those in the environmental community in order to dramatize their message and gain popular support.[3] They pointed to an endangered animal, hoping that this would motivate people to join the cause.

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1. 437 U.S. 153 (1978).
2. *Id.* at 159 n.6.
3. While I feel obliged to credit Professor Houck for the genesis of this idea, I accept full responsibility for any errors in its development.

Unfortunately, such moves can have (and, I submit, have had) a negative impact on the environmental movement.

Overstating a case is a common mistake made by students, politicians, and advocates of all types, and it usually comes back to haunt the person who did it. In the environmental arena this happened with the greatly overstated Alar scare.[4] In other cases, the environmental movement has been inconsistent, such as when it first cautioned about global cooling and later about global warming. In yet a third category of cases, such as the exultation of native peoples to almost mystical proportions, it has caused thinking people to step back from the chorus.[5]

If the environment is as important as most of us think it is, why not just be honest? One answer, I suppose, is that good environmental practices can pack a sting. In the early 1970's one popular bumper sticker read: "If you are cold, hungry, and out of work, eat an environmentalist." Environmentalists took the rap for much of the economic hardship that befell the nation during that time. Naturally, this made them feel uncomfortable, and in response they argued that there was little or no economic cost (and maybe even an economic benefit) from environmental regulations. The argument, however, does not hold up.

The bill for pollution control in the United States in 1990 was about $115 billion.[6] That same year clean air and water regulations reduced the Gross National Product by about six percent, or $333 billion.[7] Figures like this are not hard to find, and sometimes the cost is not only monetary. Lighter cars, required in order to meet emission standards under the Clean Air Act,[8] lead to many more deaths on the highway each year.[9] The environmental community's

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4. Alar, a chemical used by apple farmers, was thought to pose a high cancer risk, especially to children. *See Alar Apple Scare Not Based on Scientific Evidence, Panel of Scientists Say*, Chem. Reg. Daily (BNA) (Feb. 27, 1992).

5. *See, e.g.*, Ronald J. Rychlak, *People as Part of Nature: Reviewing the Law of the Mother*, 13 STAN. ENVTL. L.J. 451 (1994) (reviewing LAW OF THE MOTHER: PROTECTING INDIGENOUS PEOPLE IN PROTECTED AREAS (Elizabeth Kemp ed., 1993)).

6. P.J. O'ROURKE, ALL THE TROUBLE IN THE WORLD 194 (1994).

7. *Id.* at 201.

8. 42 U.S.C. §§ 7401-7671(q) (1993) ("CAA").

9. *See* William G. Laffer III, *Auto CAFE Standards: Unsafe and Unwise at*

reluctance to debate such issues was reflected when Janet Hathaway, attorney for the Natural Resources Defense Council, said: "Allowing the EPA to condone continued use of a chemical *whenever the benefits outweigh the risks* is absolutely anathema to the environmental community."[10]

The mere fact that costs are higher than sometimes admitted does not mean that environmental care should be ignored. The costs can often be justified. Those costs must, however, be acknowledged. An advocate for a cause, like a lawyer in court, has to guard his or her credibility in order to remain persuasive. By overstating environmental dangers and understating the cost of regulation, the green movement has put its credibility at risk and lost the support of potential allies. Thus, environmentalists are often depicted as Chicken Littles, running around proclaiming that the sky is falling, or as little yapping dogs.

The environmental movement has also alienated potential allies by permitting the environment to become a political football. As one who has attended several local and state environmental meetings, it is clear that they often turn into discussions about how to get Democrats elected to political office. This can have the effect of driving Republicans and independents who care about the environment out of the environmental arena.

The typical affiliation of environmentalism with Democrats establishes environmental issues as a focus of debate. Instead, effort should be directed to cutting across party lines. Conservatives have offered many solutions to environmental problems, even if not all have yet been embraced by the environmental community. These conservative proposals are not anti-environmental; they are alternative routes to the same desired end. They must be seriously debated, considered, and explored.

It falls to the environmental community to remove the politics from environmental discussions. It is not surprising that a political party would play its advantage and accuse another party of not caring about an important issue. Thus, one cannot blame Democrats for accusing Republicans of not caring about the environment, but

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any Level, The Heritage Foundation Backgrounder, (Apr. 19, 1991).

10. *Review & Outlook (Editorial): "Absolutely Anathema"*, WALL ST. J., Nov. 14, 1989, at 22.

environmentalists should not permit this issue to be so politicized. Even if conservative ideas are not ultimately accepted, the people who set them forth must be welcomed into the environmental fold. Fortunately, this is not the daunting task that it is sometimes made out to be.

The environmental movement in the United States started with Republican President Theodore Roosevelt.[11] From the turn of the century until the 1960's, most environmentalists (then called conservationists) were politically conservative. It was Republican President Richard Nixon who signed the National Environmental Policy Act,[12] the Clean Air Act, and the Clean Water Act[13] into law. He also created the EPA by an executive order.[14] Even today, many of the strongest defenders of the environment are politically conservative hunters and fishermen.

Environmentalists and fiscal conservatives have recently been coming together on several issues, the most prominent ones being opposition to agricultural subsidies and corporate welfare. This new alliance has been dubbed the Green Scissors coalition, and there are other signs of agreement between these forces which are often at odds with one another.

The Political Economy Research Center is a Montana-based conservative think tank run by avid environmentalists.[15] They work on conservative, market based solutions to environmental problems. The selling of marketable emission allowances, which was authorized in the 1990 amendments to the Clean Air Act (and which permit environmental organizations to buy and retire some pollution rights), is one example of their brand of thinking. Individual tradable quotas for fishing rights are a similar solution to

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11. *See, e.g.*, Zygmunt J.B. Plater, *From the Beginning, A Fundamental Shift of Paradigm: A Theory and Short History of Environmental Law*, 27 LOY. L.A. L. REV. 981, 996 (1994).

12. National Environmental Policy Act, 42 U.S.C. §§ 4321-4370(d) (1994) ("NEPA"). *See generally*, Joseph C. Sweeney, *Protection of the Environment in the United States*, 1 FORDHAM ENVTL. L. REP. 1, 14 (1989).

13. 33 U.S.C. §§ 1251-1357 (1994).

14. Exec. Order No. 11,514, 3 C.F.R. 531 (1971), *reprinted as amended in* 42 U.S.C. § 4321 (1995).

15. Mike Ivey, *Can Private Interests Be Trusted with Environment?*, THE CAPITAL TIMES, Sept. 14, 1996, at 1C.

another environmental problem. This market trading approach protects the environment while minimizing the role of government, which pleases conservatives.

Gordon Durnil, a Republican activist and President Bush political appointee, recently wrote a book entitled *The Making of a Conservative Environmentalist.*[16] In a case of environmentalism making strange bedfellows, it was endorsed by both former Vice President Dan Quayle and Greenpeace. In his book, Durnil suggests that toxic pollution may be to blame for declining learning performance, disobedience in schools, and the breakdown of traditional values such as two-parent homes and monogamous relationships.[17] All of these matters are close to the hearts of conservatives.

Why are conservative leaders joining the green movement? Perhaps, as the conservative Heritage Foundation has concluded, environmentalists have the moral high-ground.[18] Protecting the environment is the right thing to do. The environmental community must seize this opportunity to reach out to conservatives and diversify its base if it is to be successful in the next century, and the time to do it is now.

Several environmentalists, including Vice President Gore, have recognized that the green movement must involve the churches if it is to be successful in the future. Unfortunately, too often environmentalists have formed alliances with political groups who tend to drive away religious people that the green movement needs to attract.

Some people were driven out of the Sierra Club in 1993, when on the 20th anniversary of *Roe v. Wade*,[19] President Clinton lifted the so-called gag rule[20] that prevented doctors in federally funded facilities from counseling women about abortion.[21] Carl Pope, the

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16. GORDON DURNIL, THE MAKING OF A CONSERVATIVE ENVIRONMENTALIST (1995).

17. *Id.*

18. John Shanahan, *The Conservative as Environmentalist*, The Heritage Lectures, no. 358, Nov. 19, 1991; *How to Talk About the Environment*, Heritage Talking Points, no. 16, Sept. 16, 1996.

19. 410 U.S. 113 (1973).

20. 58 F.R. 7455 (Jan. 22, 1993).

21. *See*, Carl Pope, *The Battle to Slow Population Growth*, ORLANDO SENTINEL TRIB., Mar. 21, 1993, at G3.

President of the Sierra Club, said, apparently on behalf of the Club, "this is a great gesture of hope for women, children, families and the environment."[22] It turns out that the Sierra Club has an official policy supporting abortion rights,[23] and therefore, Mr. Pope had the authority to speak on behalf of the Club on this issue. I remember being greatly surprised as I looked at my Sierra Club calendar, which had a poem about the beauty (and the need to protect) a seed planted in the earth.

There actually are many questions about the environmental concerns of over-population.[24] Accepting, however, that over-population might be a serious environmental concern in some countries, the environmental community is ill advised to support abortion as a means of birth control. There are many potential allies, such as the Catholic Church, who will always have problems with that procedure, even though they want to embrace environmentalism.

Finally, environmentalism needs to put on a happier face.[25] Rachel Carson's *Silent Spring* was the first book to bring the topic of environmental pollution to the public forefront.[26] It dramatized the danger of pesticides and heightened public awareness about the environment. The first chapter, entitled "A Fable for Tomorrow," told of a once thriving American town where plants, animals, and people were now dying. The culprit, of course, was modern pesticides. In what she called "the other road," Carson argued for the development of pesticide policies based on the biological understanding of pests as living organisms. The then-current approach, she argued, was "Stone Age" science, "born of the Neanderthal age of biology and philosophy" and it was "our alarming misfortune" that these terrible weapons had been turned

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22. *See id.*; *Population: Clinton Overturns Reagan-Bush Policy*, Greenwire, Jan. 25, 1993.

23. The Sierra Club has even joined in litigation to support abortion rights. *See Abortion Case from Illinois may be Settled*, ST. LOUIS POST-DISPATCH, Oct. 17, 1989, at 1A.

24. *See generally* O'ROURKE, *supra* note 6, at 63-95.

25. *See* Ronald J. Rychlak, *The Humorous Origins of the Green Movement: The Three Stooges as Early Environmentalists*, 48 OKLA. L. REV. 35 (1995).

26. RACHEL CARSON, SILENT SPRING (1962).

against the earth itself."[27]

The picture painted by Carson was bleak and set the tone for the environmental movement of the future. *Silent Spring* was effective because it scared people into action. Subsequent generations of environmentalists learned this lesson and continued to offer frightening scenarios. Thus, it is not surprising to find a recent publication referring to "Carson's assertion[s] and those of her doom-saying environmentalist prodigy."[28] About one year ago I took my children (then aged between one and six) to the Museum of Natural History in Jackson, Mississippi. As is common in modern museums and zoos, the displays focussed not only on animals and nature, but also on pollution, threatened habitat, and extinction or threatened extinction. At the end of the museum there was one display that asked the children how they felt after having observed the museum. The three options given were sad, angry, or guilty. This does not seem to be the way to attract a new generation into the environmental community of the 21st century.

Rachel Carson may have needed to shock us to get our attention, but the environmental news of today is generally positive. People of all political persuasions do care, and the environment is improving. The polar ice caps are increasing, not melting; acid rain is not the threat we once thought it was; food production is growing much faster than population; the air and water are cleaner than they were 25 years ago; the United States has more forest land than it did in 1920; and there is no evidence of increased ultraviolet rays reaching the earth.[29] There are problems, but what separates mankind from other life forms is our ability to recognize situations and act accordingly.

If environmentalism is to succeed in the next century, it must win over the hearts of a much larger following. Importantly, changes must come not only in the hearts of those who have not yet embraced the movement, but also in the hearts of those who have.

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27. *Id.* at 297.

28. Michael Fumento, *DDT's Cancer Connection*, CEI UpDate, Oct. 1994, at 3.

29. *See generally*, GREGG EASTERBROOK, A MOMENT ON THE EARTH: THE COMING OF AGE OF ENVIRONMENTAL OPTIMISM (1995); *see also*, RONALD BAILEY, THE TRUE STATE OF THE PLANET (1996).

By diversifying the face of environmentalism — by debating, considering, and (at least occasionally) trying out different solutions — we can solve most of our environmental problems. This will never happen, however, as long as we trivialize and dismiss those with whom we disagree.