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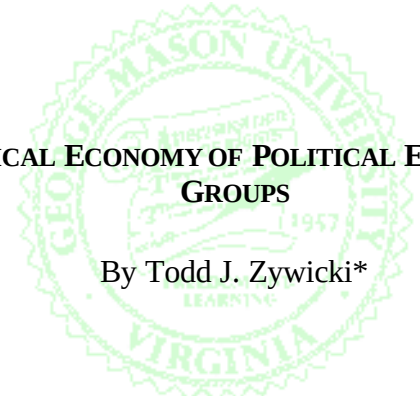

BAPTISTS? THE POLITICAL ECONOMY OF POLITICAL ENVIRONMENTAL INTEREST GROUPS

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02-23

Law and Economics Working Paper Series

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Abstract: It has been argued that environmental regulation can be best understood as the product of an unlikely alliance of "Baptists and Bootleggers"—public-interested environmental activist groups and private-interested firms and industries seeking to use regulation for competitive advantage. It is now well-understood how special-interests can manipulate regulation for competitive advantage. Moreover, economics has provided models of the results of private self-interest in markets and in politics. But, until now, economists have not provided a workable model of private self-interest by environmental non-profit organizations, nor have there been efforts to test a private interest model versus the predictions of public interest models of environmental activists. Some have gone so far as to suggest that environmental activists are motivated by a spirit of "civic republicanism" that causes them to subordinate their self-interest to the pursuit of the public good.

This article provides a first effort at testing the implications of public interest versus private interest models of environmental interest groups. In particular, it specifies three testable implications of a public interest model of the activities of environmental interest groups: (1) a desire to base policy on the best-available science; (2) a willingness to engage in deliberation and compromise to balance environmental protection against other compelling social and economic interests; and, (3) a willingness to consider alternative regulatory strategies that can deliver environmental protection at lower-cost than traditional command-and-control regulation. On all three counts, it is found that the public-interest or "civic republican" explanation for the activities of environmental interest groups fails to convincingly describe their behavior. On the other hand, the evidence on each of these three tests is consistent with a self-interested model of the behavior of environmental interest-groups. Their activities can be understood as being identical to those of any other interest group—namely, the desire to use the coercive power of government to subsidize their personal desires for greater environmental protection and to redistribute wealth and power to themselves.

Keywords: Environmental Economics, Public Choice, Economics of Non-Profit Organizations
JEL Codes: D72, K19, K23, K32

Baptists?
The Political Economy of Environmental Interest Groups

By Todd J. Zywicki*

I. Introduction

In a famous article some years ago, Bruce Yandle postulated that the politics of environmental regulation (and other many other regulations) could best be understood through the model of "Baptists and Bootleggers"—the product of an unlikely coincidence of interest between environmentalists and self-interested economic interests.[1] Yandle illustrates the idea with the parable of "Sunday Blue Laws" in southern states that prohibited the sale of alcohol on Sundays. Southern Baptists favored the prohibition on religious and moral grounds. At the same time, sellers of illegal moonshine whiskey—"Bootleggers"—favored the prohibition as well, because it gave them a monopoly on the market for one full day a week. As a result, both of these parties favored the political perpetuation of the ban, albeit for very different reasons. Thus, somewhat anomalously, these ardent philosophical opponents can be political allies in practice.

Yandle argues that environmental regulation functions similarly, with environmental interest groups playing the role of the "Baptists" and industry (or some firms within a given industry) playing the role of "Bootleggers."[2] It is now well-understood how industry Bootleggers can use regulation strategically to gain an advantage over its rivals, such as by raising rivals' relative cost, expanding one's market through subsidies and regulation, or by using regulation to impose barriers to entry by competitors.[3] What is less understood is the nature of the organizations that represent themselves to be the Baptists, those who purportedly lobby and influence policy-makers from supposed "civic republican values" or "the public interest" rather than narrow self-interest.

The failure to examine the political economy of environmental interest groups is striking, especially as the influence of environmental activists have grown both domestically and globally. They have proven especially influential as the proliferation of international bureaucracies, unelected and unaccountable to any voters, have increasingly assumed control over the implementation of environmental policies.[4] With respect to the activities of firms and individuals operating in the private market, the study of self-

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[1] *See* Bruce Yandle, *Bootleggers and Baptists: The Education of a Regulatory Economist*, REGULATION, May-June 1983, at 12.

[2] *See* BRUCE YANDLE, THE POLITICAL LIMITS OF ENVIRONMENTAL REGULATION: TRACKING THE UNICORN (1989); *see also* BRUCE YANDLE, COMMON SENSE AND COMMON LAW FOR THE ENVIRONMENT: CREATING WEALTH IN HUMMINGBIRD ECONOMIES (1997) (describing Baptists and Bootleggers model and contrasting with other models of regulation, including public interest model).

[3] An extensive discussion of these models, and empirical evidence and case studies in support, is presented in Todd J. Zywicki, *Environmental Externalities and Political Externalities: The Political Economy of Environmental Regulation and Reform*, 73 TULANE L. REV. 845, 856-74 (1999); *see also* James M. Buchanan and Gordon Tullock, *Polluters' Profits and Political Response: Direct Controls Versus Taxes*, 65 AM. ECON. REV. 139 (1975).

[4] *See* JEREMY RABKIN AND JAMES SHEEHAN, GLOBAL GREENS, GLOBAL GOVERNANCE (1999).

interest behavior in the private markets has comprised the core of economics at least since Adam Smith. Similarly, the public choice revolution has successfully applied the assumptions and tools of economics to explain much of the process and output of governmental activity. Little has been done, however, to apply economics to the study of the institutions that comprise civil society, "Non-Governmental Organizations" (more popularly, NGO's) that are neither private profit-maximizing entities nor public vote-maximizing entities. In general, it implicitly has been assumed that environmental interest groups are exceptions to the self-interest models that economists have applied to market and political behavior, apparent islands of selflessness in a sea of selfishness. This essay will undertake the task of laying out an economic model of environmental interest-groups with the goal of developing a positive economic and political model of environmental interests groups, and comparing the predictions of this model with a "public interest" model of government. In keeping with the theme of this symposium, the goal of the article will be to explain a peculiarity that resides at the core of Bjorn Lomborg's book, *The Skeptical Environmentalist*—namely, the striking tendency of environmental groups to dramatically and consistently misrepresent scientific and economic evidence so as to mislead and "scare" the public.[5] As the analysis will suggest, the "Baptist" moniker ascribed to environmental interest groups is of questionable validity. Instead, it will be shown that the behavior of environmental activist groups is better explained by a model of private advantage, rather than a "public interest" motivation. In particular, it will be argued that much of the activity of environmental interest groups, although not necessarily all, results the pursuit of wealth, power, and the personal gratification of environmental activist groups and their leaders.

In short, like any other rent-seeking interest group, the behavior of environmental interest groups can be best explained by the desire to use the coercive power of government to allow some individuals to pursue utility and wealth and to force other individuals to subsidize these preferences, a process that I have elsewhere dubbed a "political externality."[6] Like more commonly-recognized definitions, a political externality describes the situation where one individual gains the benefit of a given activity but is not forced to bear the full cost of the activity. Instead, some of the cost is borne by others who do not receive the corresponding benefit. Where transaction costs are positive, the failure of the beneficiary to also consider the costs of his activity will lead to inefficient results for the economy and inequitable results for those harmed by the activity. For instance, if my neighbor raises and slaughters hogs in his backyard, he gains the full economic benefit of the activity. I on the other hand, am forced to bear the stench, sound, and unsanitariness of the operation as well, even though I receive none of the benefit. Thus, even though my neighbor will be distressed by these same costs, he will only consider his private costs, not the costs to me. In short, his ability to "use" my land and air to dump his stench and run-off functionally operates as an involuntary subsidy from me to him. The only sure way to alleviate the efficiency and equitable problems is for my neighbor to compensate me for the harm he has caused me, preferably through consensual transfer of rights. If he is unable to offer an amount adequate to compensate me for my loss and to still make a profit, or to acquire my land and thereby

[5] BJORN LOMBORG, THE SKEPTICAL ENVIRONMENTALIST : MEASURING THE REAL STATE OF THE WORLD (2001).

[6] Zywicki, *Environmental Externalities*, *supra* note at 850.

to eliminate the externality, then the economically efficient result is for him to cease his hog-farming operations or to move them elsewhere, out of a residential neighborhood.[7] If my neighbor can continue to operate his farm without my consent or providing compensation, then he has succeeded in imposing an external cost on me, and there is no guarantee that the total economic benefits of his activity are greater than the total economic costs, including the harm I suffer.

It is generally not recognized that political decision-making operates analogously. Where transaction costs are zero and unanimous consent is required for any collective decision, then the results of collective decision-making will follow those of the Coase Theorem as it operates in private exchange.[8] But as soon as transaction costs become positive or unanimous consent is no longer required for collective action, then allocative inefficiencies and inequity can occur. At that point, members of the winning coalition can compel political losers to contribute to the cost of providing the policy preferred by the winners. As Buchanan and Tullock wrote in *The Calculus of Consent*:

> [T]he discussion about externality in the literature of welfare economics has been centered on the external costs expected to result from *private* action of individuals or firms. To our knowledge little or nothing has been said about the *external* costs imposed on the individual by *collective* action. Yet the existence of such external costs is inherent in the operation of any collective decision-making rule other than that of unanimity. Indeed, the essence of the collective-choice process under majority voting rules in the fact that the minority of voters are forced to accede to actions which they cannot prevent and for which they cannot claim compensation for damages resulting. *Note that this is precisely the definition previously given for externality* (emphasis added).[9]

The point to recognize, therefore, is that externalities are present in *every* situation where there is the opportunity for certain individuals to acquire certain benefits and to force others to bear some or all of the costs. This is true of both market activity as well as collective decision-making through politics. The problem is generally alleviated in market activity through the specification of property rights and the opportunity to make consensual transfers of property. By contrast, the presence of these externalities is the very definition of political decision-making. The ability of some individuals to gain benefits and to force other groups to pay for it is *inherent* in political decision-making. When the locus of decision-making authority rests with consensual decision-making through private market exchanges or voluntary governance,[10] the threat of externalities

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[7] *See* Todd J. Zywicki, *A Unanimity-Reinforcing Model of Efficiency in the Common Law: An Institutional Comparison of Common Law and Legislative Solutions to Large-Number Externality Problems*, 46 CASE WESTERN RESERVE L. REV. 961, 966-81 (1996) (describing importance of consensual transactions in light of subjective nature of costs and preferences).

[8] *See* James M. Buchanan, *The Coase Theorem and the Theory of the State*, 13 NAT. RESOURCES J. 579 (1973).

[9] JAMES M. BUCHANAN AND GORDON TULLOCK, THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF A CONSTITUTIONAL DEMOCRACY 89-90 (1962).

[10] Such as described by Eleanor Ostrom. *See* ELEANOR OSTROM, GOVERNING THE COMMONS (1990).

can be minimized through institutions designed to reduce transaction costs and maximize consent. By contrast, once the locus of decision-making authority moves from these consent-based institutions to political decision-making these rent-seeking costs cannot be avoided—they are an *inherent* part of collective decision-making by non-unanimous voting rules. Moreover, under a regime of majority voting, these costs simply cannot be reduced below a certain level because the consent of the losers is simply irrelevant to the process. In the economy, uncompensated externalities is seen as a form of market failure.[11] By contrast, uncompensated political externalities is the *definition* of political decision-making. This is what makes rent-seeking possible—the ability of some groups to use the power of government to transfer benefits to themselves without being forced to pay compensation to the losers.[12]

Given that the primary activity of environmental activist groups is to influence policy through legislation, regulation, and litigation, it may thus be fruitful to pose the question of what would be the implications of examining the activities of environmental interest groups as economic entities. As the analysis will demonstrate, on close examination it is not clear that the operation of these organizations and their members is really so different from other private actors seeking to influence government policy. In particular, these groups and their leaders seek to use political power to transfer benefits to themselves without being forced to pay the full costs they impose. The consistent tendency for these groups to distort and sensationalize environmental data will serve as a case study for examining the behavior of these organizations.

The remainder of the essay will proceed as follows. Part II will review Lomborg's discussion of the manner in which environmental interest groups distort the findings of science in order to make environmental conditions appear worse than they actually are. Part III will then discuss whether Lomborg's findings can be explained through public interest motives, i.e., that the behavior of environmental interest groups is can be best explained by a desire to maximize human welfare subject to scarcity. Part IV provides a private interest model of environmental interest groups as rent-seeking organizations seeking to provide private benefits to themselves and their members at the expense of the dispersed public. Part V provides concluding thoughts.

II. Science or Scare Tactics?

Dating back to the dawn of the environmental movement, much of the strength of the environmentalist movement has resulted from their claim that their arguments are grounded in science. Lomborg identifies himself as "an old left-wing Greenpeace member" and long-time environmentalist[13] who undertook the research project that became *The Skeptical Environmentalist* expecting to rebut the optimism of the late economist Julian Simon. Simon believed, contrary to the conventional wisdom, that the world was getting better and better over time, as reflected in improvements in the conditions necessary for human flourishing. Poverty was falling, material conditions

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[11] *See* MARK SEIDENFELD, MICROECONOMIC PREDICATES TO LAW & ECONOMICS (2000) (discussing externalities as a "market failure").

[12] Of course, they will likely have to pay politicians through campaign contributions and the like to influence them to provide the transfers, so some of the value of the transfer will be lost through these transaction costs. *See* Gordon Tullock, *The Welfare Costs of Tariffs, Monopoly, and Theft*, 5 W. ECON. J. 224 (1967).

[13] LOMBORG, *supra* note, at xix.

were improving, and yes, environmental quality was improving around the world. Lomborg, weaned on "The Litany of our ever deteriorating environment," believed that Simon must be misguided.[14]

Instead, Lomborg discovered that it was the Litany itself, not Simon, who was wrong. And, in fact, many of the claims of the Litany were appallingly wrong, in many cases defying even common sense. Lomborg focuses primarily on the role of the media in spreading the Litany, organizations such as schools, zoos, parks, and aquariums appear to be zealous promulgators of the worst myths of the Litany.[15] Lomborg's analysis of high-profile environmental interest groups probably only scratches the surface of the ways in which the myths of the Litany are promulgated by supposed "authorities" to an unsuspecting public. As the Litany trickles down from environmental activists, to second-hand popularizers (such as zoos and schools), to the public, the Litany becomes increasingly influential. Given their popularly-oriented constituency, these intermediary groups lack incentives to question the conventional wisdom of the Litany, and indeed, face many of the same incentives to distort the truth as the activist groups examined by Lomborg, so as to raise money and the like. Personal experience suggests that second-hand consumers of the Litany, such as zoos and schools, that popularize the Litany and pass it onto the public are at least as guilty as the media in biting on the claims of environmental activists.[16]

As economist Bryan Caplan has demonstrated, where an individual gains utility from holding a particular irrational belief (such as about religion, the economy, or a sports team) and the personal costs that result from holding such a belief are negligible, then it can be predicted that individuals will consume a greater amount of the irrational belief than otherwise.[17] Thus, to the extent that belief in the Litany provides groups and individuals with utility, it would be expected that many people would tend to believe in the Litany, unless there are incentives for believing otherwise. For zoos and their patrons, the *personal* cost of being misinformed about the Litany is essentially zero. One individual's efforts to inform himself for purposes of correcting public opinion or political policy will be useless because of the irrelevance of one single vote to the political process. In short, whether a single individual American believes the Litany regarding the vanishing rain forests in Brazil will have no effect on global environmental policy. Whether one individual is correct or incorrect about the reality, extent, causes, and solutions to the vanishing rain forest, whatever that person decides will be, at maximum, equally influential as the opinions of the world's other 6 billion citizens. Moreover, this particular American will gain the psychological benefit of believing in the Litany of vanishing rain forests, whereas Brazilians will bear the entire cost of global policies taken to effectuate the Litany. As Caplan predicts, therefore, where there are

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[14] *Id.* at 3.

[15] Based on personal observation. For instance, the *Zoogoer* magazine published by the National Zoo in Washington, D.C. is riddled with bad science (and even worse economics).

[16] For instance, *Zoogoer* magazine, published the National Zoo in Washington, DC is riddled with bad science (and even worse economics).

[17] *See* Bryan Caplan, *Rational Ignorance vs. Rational Irrationality*, 54 KYKLOS 3 (2001); Bryan Caplan, *Rational Irrationality and the Microfoundations of Political Failure*, 107 PUBLIC CHOICE 311 (June 2001); Bryan Caplan, *The Logic of Collective Belief*, __ RATIONALITY AND SOCIETY (forthcoming 2003); *see also* Bryan Caplan, *What Makes People Think Like Economists? Evidence on Economic Cognition from the "Survey of Americans and Economists on the Economy"*, 44 J. L. & ECON.395 (2001).

feedback incentives in place for individuals to correct the errors of conventional wisdom, then it is possible for people to do so. But where no such incentives are in place, one would expect individuals to act in accordance with "rational irrationality," believing the irrational belief if gives him utility. This utility can take many forms, psychological, social (conforming to "sophisticated opinion" and peer pressure), or spiritual. Caplan demonstrates the phenomenon through surveys of economic opinion. He finds, for instance, that while the public does not understand the economic effects of the minimum wage or free trade, economists uniformly understand the effects of these policies. The difference, Caplan argues, is that economists have an incentive to reach the correct conclusions about the effect of these policies because the failure or success of their personal careers depend on correctly understanding these sorts of facts. Individual members of the public, by contrast, lack such an incentive, as their opinion matters only when it comes time to vote. As one voter in one hundred million possible voters, there is little reason for an individual to inform himself of the effects of the minimum wage or free trade and no penalty if he is wrong because the effect of bad policies on his personal life are likely to be infinitesimable. Moreover, it is likely that these popular groups are much more influential in influencing public opinion than "professional" environmental organizations such as Greenpeace, both because their popular orientation enables them to reach many more people and also because of the experiential nature of the experience, which likely heightens the emotional impact of the message. One suspects for instance, that many people are more receptive to the myths of "vanishing forests" and species extinctions of the world when packaged with the experience of cute monkeys, panda bears, and elephants. Although Lomborg focuses on the media as a purveyor of these myths, it is likely that a similar analysis applies to these many popular environmentally-oriented groups.

Many of the myths of the Litany emanate from environmental activist groups. This Section will briefly summarize Lomborg's analysis of some of the notable myths that some environmental interest groups have advanced through the years. Consider just a few of his examples:

The Worldwatch Institute: The Worldwatch Institute comes in for especially tough criticism by Lomborg, in part because of its high profile and in part because of the boldness of its claims.[18] Since 1984, the Worldwatch Institute has published its *State of the World* report, which purports to be a summary of global environmental trends and statistics. "The key environmental indicators are increasingly negative. Forests are shrinking, water tables are falling, soils are eroding, wetlands are disappearing, fisheries are collapsing, range-lands are disappearing, rivers are running dry, temperatures are rising, coral reefs are dying, and plant and animal species are disappearing."[19] As Lomborg notes, almost none of this is correct, and many of the assertions are exactly the opposite of the real facts. Indeed, Worldwatch even refers to reliable factual reports—then states the opposite of the facts actually reported there. For instance, Lomborg observes that while Worldwatch reports that "Canada is losing some 200,000 hectares of forest a year," citing the FAO's *State of the World's Forests 1997*. But the FAO reports that in fact Canada did not lose forests, but instead grew 174,600 *more* hectares of forest

[18] LOMBORG, *supra* note, at 13-16.
[19] Quoted in LOMBORG, *supra* note, at 13.

each year.[20] Worldwatch is similarly wrong in its reportage of the effects of acid rain, oil prices, and population growth. As Lomborg concludes, "Blatant errors are . . . made with unfortunate frequency."[21] He adds:

> [I]n its shorthand appraisal of the state of the world since 1984, Worldwatch Institute sets out a list of problems, *all* of which have improved since then, and all but one of which have improved immensely, and one of which is just plain wrong. . . . The problem, of course, is not lack of data—Worldwatch Institute publishes fine data collections, which are also used in this book [i.e., *The Skeptical Environmentalist*]—but merely a carelessness that comes with the ingrained belief in the Litany. [22]

World Wide Fund for Nature (WWF): WWF exhibits the degree to which environmental activist groups are not only wrong about the technical scientific evidence, but the extent to which some of the assertions that comprise the Litany are not even plausible and don't even comport with common sense. Lomborg reports that in 1997, WWF issued a press release entitled, "Two-thirds of the world's forests lost forever" and added in a larger report, "new research by WWF shows that almost two-thirds of the world's original forest cover has been lost."[23] As Lomborg observes, most sources estimate about 20 percent deforestation. But what is notable here is not whether the real number is 20 percent or 30 percent or even half—the figure of *two-thirds* is not even *plausible*, nonetheless WWF loudly proclaimed it. As Lomborg quickly ascertained, no WWF report actually existed and the methodology used was, quite simply, ridiculous. But the real question the episode raises may not be the methodological errors used in constructing the figure of two-thirds, but that WWF could even promulgate such a preposterous figure.[24] Was there really no one at WWF who had the common sense, learning, and integrity to say, "Wait, this number is utterly implausible"? Moreover, did WWF believe that the public would be so gullible and the media so lazy as to accept these figures? Apparently so—which raises important questions about both the suppliers of the information (WWF) as well as its consumers (the media and the public) when it comes to information regarding environmental issues.

Greenpeace: Greenpeace has asserted that "half the Earth's species are likely to disappear within the next seventy-five years."[25] Again, this figure is both factually wrong and facially ridiculous. Given that the actual species extinction rate is expected to be 0.7 percent during the next fifty years, "half" of the Earth's species certainly falls outside of the margin of error for such estimates. But again note that it is not a question of mere judgment—losing half of the world's species in fifty years is not a serious

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[20] LOMBORG, *supra* note, at 13.
[21] LOMBORG, *supra* note, at 13.
[22] LOMBORG, *supra* note, at 14.
[23] *Id.* at 16.
[24] Since that time, WWF has scaled down its estimate of lost forests to 49.8%--still incorrect, but only credulity-straining, not absurd. *Id.* at 17.
[25] *Id.* at 17.

number. Nonetheless, the estimate (or similar estimates) are reported with remarkable frequency in the media.[26]

As these examples illustrate, as well as others described by Lomborg throughout *The Skeptical Environmentalist*, environmental interest groups have proven themselves dramatically wrong on almost every environmental and economic trend since their inception in the 1970s. Moreover, many of these errors are not "close calls" or "judgment calls" on disputed scientific evidence, rather they represent a simple misreading of unambiguous facts to the contrary (as with Worldwatch's statement of Canadian deforestation) or whoppers that simply defy common sense and credulity.[27]

Given the tendency of environmental interest groups to misrepresent the true state of the planet, therefore, the question to be addressed in the rest of this essay is, "Why?"

III. Public Interest Model

Environmentalists often claim that environmental activist groups and environmental regulation is animated by the "public interest," i.e., an outpouring of "civic republicanism" that causes individuals to overcome their narrow self-interest and to support wide-ranging environmental regulatory policies.[28] Moreover, it is usually added that this spirit of public interest is usually effectuated through a process of public, deliberative democracy, where all parties debate in order to reach consensus about the ideal public policy that advances the common good rather than private gain.

The public interest view of the contribution of environmental interest groups to democratic decision-making is subject to empirical testing. Several testable implications suggest themselves. First, it would be predicted that environmental interest groups would strive to base environmental policy on the best available science and to provide balanced and accurate information to the public about environmental improvements as well as environmental needs so that the public can be fully and accurately informed about the needs of environmental policy. Second, to the extent that environmentalists are supposedly participating in deliberative democratic process, it would be expected that they would be willing and able to be persuaded by the arguments of others that other social, economic, and health and safety goals are more pressing than environmental goals. Third, they would be willing to endorse regulatory mechanisms that rest on

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[26] Moreover, "species extinction" is usually illustrated with exotic and charismatic creatures, such as manatees, elephants, and tigers. In reality, of the some 1.5 million named species on Earth, approximately 260,000 are varieties of beetles that dwell in the Amazonian rain forest and another 90,000 or so species are varieties of nematode worms. Personal communication with Daniel Botkin, Professor of Ecology. One suspects that "Save the Nematode Worms" makes a less-compelling bumper sticker than "Save the Whales."

[27] For instance, the UNEP *Global Environmental Outlook Report 2000* claims that worldwide "polluted water is estimated to . . . contribute to the death of about 15 million children under five each year." This casualty toll is indeed large, especially because WHO estimates that the *total* number of deaths annually from *all* causes for children under 5 is estimated at 10 million. *See* LOMBORG, *supra* note, at 18. A similar lack of common sense manifests itself in David Pimentel's extraordinary claim that infectious diseases have dramatically increased and will continue to increase, notwithstanding uniform global improvements in life expectancy. As Lomborg asks incredulously, "We must, however, wonder how life expectancy can be going up and up I we keep getting more and more sick?" *Id.* at 26.

[28] *See* Christopher H. Schroeder, *Rational Choice Versus Republican Moment—Explanations for Environmental Laws, 1969-73*, 9 DUKE ENVTL. L. & POLY FORUM 29, 31-32 (1998) (describing "republican" arguments for environmental regulation).

private-ordering solutions, such as market mechanisms, common law mechanisms, and decentralization of regulatory authority through federalism. A rigorous application of these tests is outside of the scope of this short essay; nonetheless, a brief review of the evidence suggests that the public interest model has little descriptive accuracy with respect to the behavior of environmental interest groups.

A. Errors or Bias?

First, a public interest model would predict that environmental activists would seek to base environmental policy-making on the best available science. As noted above, it is evident that this is not always true. At least some of the scientific analysis of some of the most high-profile environmental groups is simply laughable. Thus, at least some of the information disseminated by some environmental groups certainly does not pass the test of best-available science.

Of course, it may just be that environmental groups make errors, just like everyone else, such that a few errors here or there does not rebut the belief that environmental activists are doing the best that they can to sift through the technical and difficult scientific evidence involving complex environmental issues. If so, then routine errors are to be expected and are not inconsistent with a public interest story.[29] But the evidence rebuts this argument as well. If it were true that these were just innocent errors, then it would be expected that the errors would be randomly-distributed around the truth. This would mean that it would be just as likely that environmental activists to *underestimate* the seriousness of a problem as to *overestimate* it. Of course, this is not the case. Instead, the errors of environmental groups are *systematically biased* toward *overestimating* environmental risks and *underestimating* improvements in environmental quality. This systematic bias suggests that environmental groups are not dispassionately seeking to collect and offer information on environmental quality to the public and policy-makers. Instead, they are advocates for a particular view and are manipulating information flows to advance their agenda.

B. Priorities and Trade-Offs

Second, if environmental activists were truly motivated by concern for the public good rather than narrow self-interest, then they would be willing to listen, be persuaded, and to allow other priorities, such as safety, health, and economic well-being to occasionally take precedence over their particular environmental priorities. In practice, however, this is not the case. Indeed, much of the most damning part of Lomborg's argument is the callous disregard with which environmentalists implicitly dismiss other pressing social priorities in favor of single-minded pursuit of environmental objectives.

Oceans of law review ink have been spilled defending the notion that environmental activists are animated by civic republican virtues and the public good. In this model, citizens come to the public square to debate social goals and the most effective means to obtain them. But in practice, environmentalist activists appear to be the one constituency that simply will not shut up and will not listen. Whereas all other citizens are expected to listen to one another and to persuade and be persuaded as to why their self-interest and priorities should yield to environmental goals, there seems to be no issue on which environmental goals are supposed to yield to other goals. Environmentalism supposedly illustrates civic republican virtues of deliberation and compromise; in practice, environmentalists never deliberate and never compromise.

[29] Although the really big "whoppers" described above would still fall outside of this zone of error.

Instead, they lecture and dictate terms. Whatever this is, it is most definitely not deliberation. In short, when environmental goals triumph this is characterized as the public benefit winning out; when education, safety, or recreation win, this is believed to be the result of selfishness and short-sightedness. In their unwillingness to compromise or deliberate, the environmental movement hardly makes a persuasive poster child for civic republicanism.

Two episodes will serve to illustrate the unwillingness of environmental interests to compromise in the political arena. First, consider the recent attacks by Defenders of Wildlife (DW) and the National Resources Defense Council (NRDC) against the American Legislative Exchange Council (ALEC).[30] ALEC is a bipartisan group or business leaders and state legislators to develop local and private sector solutions to public issues, such as welfare, economic development, and the environment. In response to ALEC's consensus-building efforts on environmental issues, NRDC and DW have launched an all-out war against the legitimacy of ALEC's efforts, including a web site and a media campaign. So much for consensus-building through rational deliberation.

The so-called "Quincy Library Affair" also illustrates the opposition of environmental interest groups to compromise and accommodation of competing views. The Quincy Library Group was an informal group formed by local environmentalists in Quincy, California, a northern California logging area.[31] After a fractious fifteen-year debate over logging, all of the interested parties finally reached a mutually agreeable compromise, only to see it vetoed by national interest groups. The national interest groups attempted to strong-arm the local group to make changes to their plan before the national environmental groups would support it. Then, when members of the Quincy Library Group proposed legislation implementing the agreement, the "national groups stepped up their attacks," to try to kill the compromise legislation. Little wonder then that, "Many local groups regard national organizations as more interested in protecting [the national lobbyists'] turf than in achieving solutions that advance conservation."[32]

Economic scarcity is a simple fact of life, necessitating priorities and trade-offs. If a society spends more on pursuing environmental goals, then it will have fewer resources available for other goals, such as education, safety, medicine, police, and military protection. These trade-offs are inherent in life and cannot be wished away, as much as some would like to do so.[33] Nonetheless, there are few examples of environmentalists compromising for other goals. Even following the terrorist attacks of September 11, environmental activists have refused to allow environmental goals to yield to military preparedness. Consider the ongoing case of *Center for Biological Diversity v. Pirie*, a case involving the efforts of an environmental interest group to enjoin the military exercises on the island of Farallon de Medinilla, an uninhabited island "located approximately 45 nautical miles northeast of Saipan in the Common wealth of the Northern Marianas Islands."[34] The island is approximately 1.7 miles long and 0.3 miles

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[30] *See* Doug Bandow, *Environmental Jihads*, WASH. TIMES, p. A14 (Aug. 7, 2002).

[31] *See* Charles C. Mann & Mark L. Plummer, *Grass-Roots Seeds of Compromise*, WASH. POST, Oct. 11, 1998, at C3.

[32] *Id.*; *see also* Tim Fitzgerald, *The Quincy Library Affair*, 16 PERC REP. 1 (Mar. 1998); *available at* http://www.perc.org.

[33] *See* THOMAS SOWELL, A CONFLICT OF VISIONS (comparing the "constrained" vision of the world which recognizes trade-offs with the "unconstrained" vision which does not).

[34] *See* Center for Biological Diversity v. Pirie, 191 F. Supp. 2d 161 (D. D.C. 2002).

wide, with a total area of about 206 acres. Although uninhabited, it is home to many species of birds and animal life.

But because of its location in the Western Pacific, it is also a uniquely valuable location for the military to conduct certain training exercises, and in fact, it has been used for military exercises since 1971. Farallon de Medinilla is necessary to practice bombing exercises, as it is the only air-to-ground target range under the control of the United States in the Western Pacific.[35] It is also the only locale that can be used for practicing large scale amphibious landings, as well as the only U.S. controlled target ranger in the Western Pacific Theater for practicing sea-to-land artillery and coordinated actions between the Navy and Marines for naval-supported amphibious landings.[36] In fact, since September 11, 2001, the importance and use of Farallon de Medinilla for military training has increased.[37]

Thus, Farallon de Medinilla is uniquely valuable for military exercises, and has become moreso in the post-September 11 period. Nonetheless, Center for Biological Diversity brought an action under the Migratory Bird Treat Act to enjoin the continued use of the island for military exercises, winning an injunction earlier this year that immediately enjoined the military's continued use of the island.[38] In short, the ruling by the District Court for the District of Columbia amounts to little less than a judicially-mandated "cease fire" order affecting military actions thousands of miles away on an uninhabited atol in the Western Pacific. It is difficult to understand how this lawsuit reflects "civic republican" values.

The implications of this tunnel vision are striking. Consider the Kyoto Protocol on global warming. To the extent that global warming is in fact occurring and is irreversible (and not just a short-term anomaly related to sunspots, global cloud cover, or simply measurement errors), it is now generally acknowledged that the temperate climates that prevail in the developed world will be unaffected or even improved by moderate warming, whereas tropical third-world countries will be almost certainly harmed, perhaps substantially. Lomborg observes that to implement the Kyoto Protocol will likely cost at least $150 million a year, and possibly much more. At the same time, "UNICEF estimates that just $70-80 billion a year could give all Third World inhabitants access to the basics like health, education, water and sanitation."[39] Thus, for one-half of the annual cost of Kyoto, the world could supply the entire water, health, sanitation, and education needs of the Third World instead. "More important still," Lomborg observes, "is the fact that if we could muster such a massive investment in the present-day developing countries this would also give them a much better future position in terms of resources and infrastructure from which to manage a future global warming."[40] It is estimated that if we could provide clean drinking water and sanitation to the entire world, "this would avoid several million deaths each year and prevent half a billion people

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[35] *Id.* at 168. Absent Farallon de Medinilla, the Navy would have to request permission from other countries to use their territories for bombing practice, leaving the military "at the mercy of host governments for [their] readiness and training." *Id.* at 170 (quoting Declaration of Vice Admiral James W. Metzger).

[36] *Id.* at 168-69.

[37] *Id.* at 169.

[38] Center for Biological Diversity v. Pirie, 201 F. Supp. 2d 113 (D. D.C. 2002).

[39] LOMBORG, *supra* note, at 322.

[40] *Id.*

becoming seriously ill each year."[41] Given the choice between averting a minor amount of the effects of possible global warming 100 years from now through the Kyoto Treaty and having clean water and sanitation today that would save millions of lives, the latter seems far more pressing. Stated more bluntly, how many people are environmentalists willing to kill in order to slow (not even reverse) anthropocentric global-warming, even assuming that it is real and important?

Lomborg also notes that in Peru, the authorities refrained from chlorinating the drinking water because they were afraid of the risk of cancer.[42] Today, that decision is considered to have been a major reason for the cholera epidemic that broke out in 1991. Given the tiny cancer risk associated with chlorinating water, a massive cholera epidemic is a stunning price to pay for junk science.

But it is not merely on global issues that the lack of perspective arises. Investments in environmental regulations are far more costly in terms of lives saved than almost any other form of regulation. In comparison to investments in health care, transportation (e.g., safer highways), and occupational protection, environmental regulations are vastly more expensive.[43] To the extent that pursuing esoteric environmental concerns distracts public attention and resources from more practical and realistic concerns, the end result is to ensure that more people will die than would be the case if more rational priorities were pursued.

Ignoring the need for trade-offs also means that many of these environmental scares are simply counterproductive to public safety and welfare. For instance, many environmental activists have adopted the goal of completely eliminating pesticide use or sharply curtailing its use, purportedly with the goal of eliminating a cancer risk from water runoff. On the other hand, reducing pesticide use will substantially increase the price of fruits and vegetables because of their vulnerability to disease. As the price rises, people will consume fewer of them. Because eating fruit and vegetables are a key to reducing the risk of cancer, consuming fewer fruits and vegetables actually will lead to a *higher* incidence of cancer. In contrast, the risk of cancer from pesticides is very, very small.[44] Thus, once again the human casualty toll of misplaced environmental hysteria will be large.

A final tradeoff is between environmental protection and economic growth. In general, greater economic growth leads to a cleaner environment over time. To be sure, it may be that early in an economy's development, the environment gets worse as a result of more intense industrialization. But over time, greater wealth expands the opportunity set of a country, permitting the accomplishment of a myriad of social goals that were previously unattainable, including great environmental amenities. Lomborg observes, "In general we need to confront our myth of the economy undercutting the environment. We have grown to believe that we are faced with an inescapable choice between higher economic welfare and a greener environment. But surprisingly, and as will be documented throughout this book, environmental development often stems from economic development—only when we get sufficiently rich can we afford the relative

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[41] *Id.* at 20.
[42] *See* LOMBORG, *supra* note, at 350.
[43] *Id.* at 340-42.
[44] *Id.* at 10.

luxury of caring about the environment."[45] Similarly, early in the life cycle of environmental regulation, it is easy to identify and implement environmental policies that are economically efficient, in that the net social benefits outweigh the costs that are imposed. But to the extent that regulation persists past the point of optimality, it will become a drain on the economy, dampening economic growth.[46] Adopting inefficient regulatory policies today will make a country poorer, which limits its flexibility to pursue environmental and other policies in the future.

Moreover, adopting inefficient policies today means that society will be poorer *forever*. Much is made of the "precautionary principle," which requires added scrutiny for any action or inaction whose results will be potentially irreversible, such as habitat for endangered species or filling a swamp.[47] The problem with the argument is that almost *every* human activity is either completely irreversible or irreversible only at large cost. If money is spent on compliance with Kyoto instead of providing water and sanitation to the Third World, the result will be that millions of people will die, an irreversible result. Perhaps more dramatically, economic growth is cumulative, meaning that a country's GDP next year is in large part a function of its GDP this year. Thus, once a country is made poorer than it would have been but for the inefficient regulation, that country will *always* be poorer. Its growth path is irreversibly altered because of inefficient regulation. Not only will a society's opportunity set be constricted, but it will constrict a whole host of other life amenities such as leisure from reduced work, the opportunity to retire, and the opportunity to live a full and healthful life. Because the country will be poorer in the future than it otherwise would have been, this limits its future choices—irreversibly.

Lomborg observes that the effect of economic growth on human welfare has been profound. In the course of the just the past 40 years, the entire world has become three times richer, developed and developing world alike.[48] Over the past 200 years, Americans have become *36 times richer*. This increasing wealth has made available clean water, cars, computers, air transportation, and telephones. Not to mention the environmental improvements caused by the automobile—considering that prior to the invention of the internal combustion engine the streets and rivers of New York City literally ran with horse manure, concerns about the possibility of global warming and drilling in the remote Arctic seem somewhat attenuated. Illiteracy has fallen dramatically throughout the world; expected lifespans have risen dramatically and childhood mortality has fallen dramatically.[49] The death of children under age 14 has fallen by *95 percent* since 1900, and has been halved in just the past 20 years in India, Egypt, Indonesia,

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[45] LOMBORG, *supra* note, at 32-33.

[46] *See* David B. Spence, *Paradox lost: Logic, Morality, and the Foundations of Environmental Law in the 21st Century*, 20 COLUM. J. ENVTL. L. 145, 176-77 (1995) ("Most of the many attempts to measure the costs of this inefficiency place the costs of command and control regulation anywhere from 50% to many times greater than market-based alternatives."); Robert W. Hahn, *United States Environmental Policy: Past, Present and Future*, 34 NAT. RESOURCES J. 305, 32` (1994) (noting that costs of 1990 Clean Air Act Amendments significantly exceeded benefits, as did Federal Water Pollution Control Act Amendments of 1977). For general discussions of the efficiency of regulatory alternatives to the current regime, *see* DAVID W. PEARCE & R. KERRY TURNER, ECONOMICS OF NATURAL RESOURCES AND THE ENVIRONMENT (1990); *see also* WILLIAM J. BAUMOL & WALLACE E. OATES, THE THEORY OF ENVIRONMENTAL POLICY (1975).

[47] *See* LOMBORG, *supra* note, at 348-49.

[48] *Id*. at 328.

[49] *Id*. at 4.

Brazil, Mexico, Chile, South Korea, Israel and many other nations.[50] In short, increased wealth is not an end in itself; rather, it is a necessary condition that makes possible the development of the entire range of human capabilities including health, education, environmental quality, and the ingredients of a rewarding life.[51]

Finally, focusing on the costs to the environment ignores the opportunity cost of *status quo* policies. It may be the case in a particular situation that destroying a habitat might lead to the extinction of a particular species. But, on the other hand, the creation of a new habitat will invariably lead to other species filling the new habitat niche, whether by adapting an old species to the new environment or through the creation of a brand new species. Preserving the *status quo* thus has the effect of foreclosing the emergence of new environmental niches and new species, a result which is ignored by the precautionary principle. Thus, the precautionary principle appears to be an incoherent slogan rather than a useful analytical tool. Any human action or inaction has some consequences that will be irreversible—there is some opportunity cost or unchosen path foreclosed by every decision or action.

If environmental activists were truly acting according to a public benefit model of government, then they would make some effort to try to prioritize environmental goals relative to other social goals (education, terrorism prevention, crime prevention, national defense), other health and safety goals, and economic growth. Instead, there appears to be no effort to justify the pursuit of environmental goals relative to these other goals.

C. Receptivity to Regulatory Alternatives

A final conundrum presents itself for those who would try to explain the behavior of environmental interest groups through a public interest model. This is the persistent resistance of most organizations to regulatory alternatives that deliver the same or better environmental quality at much-lower cost and greater flexibility than traditional command-and-control regulation. The inefficiency and cumbersome nature of extant environmental regulation has led to numerous proposals for its reform, including greater reliance on traditional concepts of property rights and common law,[52] tradable permit regimes, or decentralization of regulatory power through federalism.[53] Each of these approaches offers possibly huge increases in efficiency and environmental protection when compared to the centralized system of command-and-control regulation that prevails in most areas of environmental regulation today.[54] Nonetheless, they have been

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[50] Stephen Moore, *Surer Way to Sustain the Planet*, WASH. TIMES at p. A21 (Aug. 30, 2002).

[51] *See* Peter Boettke and John R. Subrick, *The Rule of Law and Human Capabilities*, 10 S. CT. ECON. REV. ___ (Forthcoming 2003); *see also* LOMBORG, *supra* note, at 4 ("Mankind's lot has actually improved in terms of practically every measurable indicator.").

[52] *See* Zywicki, *Unanimity-Reinforcing*, *supra* note; YANDLE, COMMON SENSE, *supra* note; *see also* MURRAY ROTHBARD, FOR A NEW LIBERTY.

[53] *See* Jonathan R. Macey and Henry N. Butler, *Federalism and the Environment*, *in* THE COMMON LAW AND THE ENVIRONMENT, *supra* note, at 158; Richard Revesz, *Rehabilitating Interstate Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environmental Regulation*, 67 NYU L. REV. 1210 (1992).

[54] The American environmental law system has been referred to as one of the largest centralized, command-and-control systems still in existence. *See* Richard B. Stewart, *Controlling Environmental Risks Through Economic Incentives*, 13 COLUM. J. ENVTL. L. 153, 154 (1988) ("[T]he system [of federal control over environmental policy] has grown to the point where it amounts to nothing less than a massive effort at Soviet-style central planning of the economy to achieve environmental goals.").

almost uniformly rejected by environmental activists as useful mechanisms for environmental regulation.[55]

Again, the position of environmental interest groups largely speaks for itself. Comparable environmental protection is available for much lower cost than under the current regime. Again, a reduction in regulatory cost leaves greater resources available today and tomorrow to solve other pressing social needs. Nonetheless, environmental activists almost uniformly oppose these innovations, a position that is difficult to square with a public interest model of regulation.

D. Summary

Many scholars have contented that the behavior of environmental interest groups can be best-explained through the public interest model of regulation. This section has evaluated the behavior of environmental interest groups in order to test the public interest model in explaining the behavior of environmental interest groups. Although more impressionistic than scientific, the model has not fared well. The public interest model suggests at least three tests of its validity in this context: (1) basing policy on the best-available science, (2) engaging in good-faith public deliberation over social and economic priorities, and (3) willingness to consider alternative means to accomplish desired environmental goals. The actual behavior of environmental interest groups is not consistent with any of these tests, casting doubt on the validity of the public interest model as a valid explanation of the behavior of environmental activist groups. This suggests that it might be fruitful to look elsewhere for an explanation.

IV. Public Choice Model

This section will proffer an alternative model to explain the behavior of environmental interest groups—a public choice model.[56] By contrasting this model with the public interest model just described, it will become apparent that the traditional portrayal of environmental interest groups as selfless "Baptists" seeking to advance the public interest is short-sighted. Instead, the behavior of environmental interest groups can be best predicted through a public choice model that views their behavior as the result of the self-interest of the organizations and their leaders. Like any other lobbying organization, they are seeking to maximize their wealth, power, and private gain through the political lobbying process.[57] Moreover, like other interest groups, environmental interest groups use the political process to secure benefits for themselves and their members and to force other members of the public to pay for them.

The environmental lobby has a strong stake in the current regulatory system, in that the command-and-control regime gives it massive control over the creation, implementation, and enforcement of environmental laws and regulation.[58] Environmental interest groups play a controlling role under the current regulatory system, from controlling information flows to politicians and regulators to generating legislative

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[55] The most notable exception was the support of the NRDC for the permit-trading scheme created under the Clean Air Act. Other exceptions appear to be rare.

[56] A more detailed specification of the model can be found in Zywicki, *Environmental Externalities*, *supra* note.

[57] *See* R. Shep Melnick, *Strange Bedfellows Make Normal Politics: An Essay*, 9 DUKE ENVTL. L. & POLY FORUM 75, 82 (1998) ("They may not be rent-seeking, but they certainly are power-seeking.").

[58] *See* Daniel A. Farber, *Politics and Procedure in Environmental Law*, 8 J. L. ECON. & ORG. 59, 70-73 (1992).

proposals and drafting statutory language. They are also exercise primary responsibility for implementation of the law through their many lawsuits to enforce various statutory and regulatory provisions. Indeed, they have the power to effectively stop any regulatory reform with which they disagree, even preventing them reaching the floor of Congress.[59] Indeed, through strategic use of litigation and lobbying pressure they can frustrate and effectively override the policy decisions of the democratically-elected branches of government.[60]

In large part, the stranglehold that environmental lobbyists exercise over environmental policy-making is the result of the public perception that these groups are, in fact, acting according to the public interest. Lomborg notes that polls show that people have much more trust in the environmental groups to protect the environment than in business (78 percent versus 38 percent) or even the EPA (72 percent).[61] As shown in Part III, however, the public interest model of regulation does not persuasively explain the behavior of environmental interest groups. What about a public choice model?

A. Errors or Bias?

It would not be accurate to charge that environmental interest groups always distort scientific evidence. But it is accurate to observe that they frequently distort the scientific evidence that they receive and they *uniformly* bias their errors toward making environmental conditions and trends seem worse than they actually are. This systematic bias provides powerful evidence against the public interest model of their behavior.

But this bias toward "bad news" and distortion of fact is squarely consistent with a public choice model of their behavior. Environmental interest groups are substantial organizations, with tens of thousands of members, multi-million dollar budgets, and substantial litigation and lobbying expenses.[62] By the early 1990s, there were approximately seven *thousand* environmental groups.[63] From the early 1970s to 1990, the NRDC's membership tripled, the Environmental Defense Fund's quintupled, the Sierra Club's septupled, and the National Audobon Society's octupled. Today, Defenders of Wildlife has an annual budget of $16 million and NRDC has a budget of $39 million.[64] In 1997, the National Wildlife Federation has over 4 million members and $80 million in revenues; its president earns more that $300,000 per year in pay in benefits.[65] Running such an operation requires a constant flow of funds. In seeking to raise money to fund their myriad activities, it appears that "bad news" about the environment sells better than "good news." Lomborg suggests that the message of environmental destruction "taps deeply into our doomsday beliefs" which scares people into supporting the efforts of environmental interest groups.[66] Just as fears of the Judgment Day induce individuals to open their wallets at church, fears of a coming

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[59] *See* JONATHAN ADLER, ENVIRONMENTALISM AT THE CROSSROADS: GREEN ACTIVISM IN AMERICA, at xvi-xvii (describing efforts by environmental lobbyists to kill regulatory reforms following the 1994 elections that resulted in Republican control of Congress and the Senate).

[60] *See* Farber, *supra* note, at 73 (describing use of strategic litigation and lobbying by environmentalists to obstruct policies of James Watt, former Secretary of the Interior Department).

[61] LOMBORG, *supra* note, at 360 n. 273.

[62] *See* Melnick, *Strange Bedfellows*, *supra* note at 93-94 (Appendix summarizing members, budget, and staff of major environmental interest groups).

[63] JONATHAN RAUCH, GOVERNMENT'S END: WHY WASHINGTON STOPPED WORKING 47 (rev. ed. 1999).

[64] *See* Doug Bandow, *Environmental Jihads*, WASH. TIMES p. A14 (Aug. 7, 2002).

[65] RAUCH, *supra* note, at 48.

[66] LOMBORG, *supra* note, at 12.

environmental apocalypse motivate individuals to believe the myths of environmental evangelists and to take action. Because bigger scares lead to bigger contributions, scaring the public is an effective mechanism for environmental activists to build their war chests and to sustain their organizations. When given the choice between factual accuracy and a gripping fund-raising letter, there is strong evidence that the latter prevails. As Greenpeace admits, "The truth is that many environmental issues we fought for ten years back are as good as solved. Even so, the strategy continues to focus on the assumption that 'everything is going to hell.'"[67]

Because the perception of environmental crisis is necessary for their existence, environmental interest groups also face an inherent conflict of interest with respect to making accurate and truthful representations of the environmental record. As Lomborg observes, the Danish president of WWF stated, "we in the WWF are greatly looking forward to seeing [Lomborg's] 'facts' about how the species are not being wiped out and that the global warming worries can be cancelled. We will jump for joy if he is right."[68] But as Lomborg remarks, "But really, we can decode this writing—it is not obvious that the WWF would jump for joy, because after all, then what would be the *raison d'etre* of the organization?"[69] And this really reaches the core issue—without the constant perception of environmental crisis, it would be impossible to sustain the activities of the numerous environmental organizations out there. The simple fact is that those who work at these establishments like their jobs, and clearly prefer them over any alternative employment. It gives them power, prestige, and in many cases, substantial income. It allows them to pursue their ideological passions full-time. Thus, environmental problems are never declared "solved" or "improved"—there is always some dramatic problem that needs the further involvement of environmental activist groups and their battery of lobbyists and lawyers.[70]

Professor David Schoenbrod has recently observed that the political power of the environmentalist movement rests on many factors, from widespread (albeit often misplaced) fears about pollution "to the wholly laudable conservationist instincts of ordinary people. But," he adds, "the *authority* of the movement rests above all on its claim to speak for, and in the name of, science."[71] As the use of science becomes increasingly intertwined with politics, it is becoming increasingly evident that environmental interest groups are not interested in science for its truth value, but rather as a means for policy advancement. Indeed, it may not be long until the scientific claims of environmental interest groups are treated with the same mix of amusement and incredulity that greet the pronouncements by tobacco companies that smoking does not cause cancer.

Further contributing to the bias in science is the nature of much scientific funding. Neutral readers are rightly skeptical of research sponsored by particular industries that support the policy positions of those same industries. But similar pressures exist throughout the world of scientific funding. Aksel Wiin-Nielsen, former Secretary-General of the UN World Meteorological Organization poses the problem, in this case in

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[67] Quoted in *id*. at 18.
[68] Quoted in LOMBORG, *supra* note, at 360 n.274.
[69] LOMBORG, *supra* note, at 360 n. 274.
[70] *Id*. at 11.
[71] David Schoenbrod, *The Mau-Mauing of Bjorn Lomborg*, COMMENTARY 51 (Sept. 2002).

the context of research on global warming, "The most important explanation as to why so much extensive theoretical work in the development of climate models has been done during the last ten years is that the development of models sustains funding and secures jobs at research institutions."[72] Or, as has been remarked more colloquially elsewhere, if a Congressman offers you $1 million to study the "problem" of global warming and its possible solutions, it is awfully difficult to turn down the money on the ground that there is no problem requiring a solution. In fact, it has been argued that "it was actually the climate researchers, together with for example the windmill manufacturers and environment bureaucracies, who were the primary political initators of the climate negotiations."[73]

Roger A. Pielke, Jr., has recently identified in *Nature* why science has become political.[74] Pielke attributes the problem to an "iron triangle" of mutually reinforcing interests that consists of politicians, scientists, and environmental activists. Politicians seek to avoid the consequences of having to make a decision, and so are eager to pass to scientists the responsibility of not only providing scientific results, but also proffering policy recommendations. Next is the scientist, "being offered resources to perform research not only to expand knowledge in the field, but to resolve important policy issues. Two birds with one stone!"[75] The scientist accepts the research funds, but also the obligation to provide policy answers as well. But scientists have no particular expertise in recommending public policy, which often requires consideration of a host of factors for which scientists have no particular expertise, such as economics, philosophy, and politics. Nonetheless, accepting public funding has obligated, and empowered, him to provide "answers." On the third corner of the triangle is the advocate, sometimes from industry but often from environmental interest groups. As Pielke observes, the advocate is "looking for scientific data to provide a compelling justification for his political, societal, environmental or business goal."[76] Because science is used by politicians to try to resolve controversial public policy issues, and by advocates to influence those decisions, in the end this politicization sacrifices the very scientific impartiality that provided the impetus for scientific support in the first place. As Pielke grimaces, "Science is becoming yet another playing filed for power politics, complete with the trappings of media spin and a win-at-all-costs attitude. Sadly, much of what science can offer policy-makers, and hence society, is being lost."[77]

B. Priorities and Trade-Offs

Often the distortions are a purposeful attempt to frighten the public in order to raise funds for the organization. The early prototype for this strategy was the infamous "Alar Scare" of the late 1980s.[78] As NRDC's publicist David Fenton reported at the time, "A modest investment by NRDC re-paid itself many-fold in tremendous media

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[72] LOMBORG, *supra* note, at 37.
[73] LOMBORG, *supra* note, at 38 (citing article from journal *Energy Policy*).
[74] Roger A. Pielke, Jr., *Policy, Politics and Perspective: The Scientific Community Must Distinguish Analysis from Advocacy*, 416 NATURE 367, 367-68 (March 28, 2002).
[75] *Id.* at 368.
[76] *Id.*
[77] *Id.*
[78] *See How a PR Firm Executed the Alar Scare*, WALL ST. J. (Oct. 3, 1989), *available in* 1989 WL-WSJ 457313; CYNTHIA CROSSEN, TAINTED TRUTH: THE MANIPULATION OF FACT IN AMERICA 54-58 (1994).

exposure (and substantial, immediate revenue for future pesticide work). In this sense, we submit this campaign as a model for other non-profit organizations."[79]

More fundamentally, the science that underlay the NDRC's claims about Alar was unusually bad.[80] There was no evidence of its effect on humans and the single study that provided the basis for the attacks was a study done over a decade earlier, where laboratory animals were exposed to Alar levels some 266,000 times higher than humans would be exposed to. This dubious study about the carcinogenic effects of Alar was combined with an equally dubious study about the exposure of children to Alar on apples and in apple juice. When combined, however, these two studies set off a media feeding-frenzy and a public panic. Indeed, the scare campaign began to work too well—"Soon school systems began banning apples (which is not what NRDC intended or recommended)."[81] One subsequent study reported that in response to the scare 26 percent of people said they had reduced their consumption of fruit and vegetables because of fear of pesticides, which of course substantially *increased* their overall health risk.[82]

It was observed above and need not be belabored here that environmental activists are not willing to make trade-offs between environmental goals and other pressing policy goals, even goals that seem far more urgent by any rational analysis.

C. Receptivity to Regulatory Alternatives

In general, environmental interest groups are opposed to the adoption of regulatory alternatives to the command-and-control system that has been constructed over the past several decades. As note, this opposition is difficult to square with a public interest theory of regulation, as their obstinacy increases the cost of environmental regulation, reducing economic welfare and constricting the resources available to solve other pressing social problems. On the other hand, it may just be that this is inadvertent, and that their preference for command-and-control regulation is just an accident, and thus is not inconsistent with a public interest view. On closer inspection, however, this explanation also does not appear accurate. Instead, the preference for continued command-and-control regulation can be most persuasively explained as an outgrowth of their private interest. Under the command-and-control scheme of environmental regulation, environmental interest groups play an essential role. Indeed, they are crucially involved at every stage of the process, from the initiation of new legislation or regulation, through its drafting and enactment, and finally in its implementation. The pivotal role at every stage of the process maximizes the power and money that flows to these groups. By contrast, almost every alternative regulatory system, such as pollution taxes or tradeable permits, are systems that are basically self-regulating. They require no ongoing monitoring and tinkering, and minimal governmental intervention.

It has been suggested that the massive powers given to environmental interest groups is justified because environmental quality is a public good, and that environmental activist groups help to overcome the transaction costs and free-riders barriers to environmental legislation.[83] But this argument is far too facile. *Efficient* environmental policy is also a public good, as are many of the other goods that compete with

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[79] *Id.*
[80] CROSEEN, *supra* note, at 56-67.
[81] *How a PR Firm*, *supra* note.
[82] CROSSEN, *supra* note 57-58.
[83] *See* Farber, *supra* note, at 71-75; *see also* Daniel A. Farber & Philip P. Frickey, *Public Choice Revisited*, 96 MICH. L. REV. 1715, 1742 (1998).

environmental protection for scarce resources, such as health, transportation, education, etc. And, in fact, environmental interest groups face crippling conflicts of interest that historically have deterred efforts to improve the efficiency of the environmental regulatory system or to decentralize decision-making authority.

Lomborg observes that people naturally view the argument's of industry "with a certain skepticism because they know that the argument could also be a cover for ulterior motives." But he adds, "This considered, it seems amazing that many people are not equally aware that the environmental organizations also have an interest in environmental regulation. It may be that the environmental organizations have better arguments for regulation (but of course their arguments may also be poorer), but it ought to be obvious that they, too, have an interest in arguing towards a particular end."[84] He continues:

> Thus as the industry and farming organizations have an obvious interest in portraying the environment as just-fine and no-need-to-do-anything, the environmental organizations also have a clear interest in telling us that the environment is in a bad state, and that we need to act now. *And the worse they can make this state appear, the easier it is for them to convince us we need to spend money on the environment rather than on hospitals, kindergartens, etc.* Of course, if we were equally skeptical of both sorts of organization there would be less of a problem. But since we tend to treat environmental organizations with much less skepticism, this might cause a grave bias in our understanding of the state of the world.[85]

It does, in fact, seem obvious that the primary motivation for leaders and contributors to environmental interest groups is to provide *private* benefits for themselves, rather than public benefits. In this, they truly are just like any other interest group. It is the rare interest group that exists simply to provide undifferentiated public goods. National defense is also a public good (even moreso than the environment), yet "Pro-defense" organizations are generally understood to be stalking horses of military suppliers. Education is a public good, yet we recognize that the National Education Association is not simply interested in improving education, it is also interested in enriching its members. As Lomborg observes, industry lobbying organizations "have an interest in protecting their members and they work to promote decisions which are to the advantage of their members. In exactly the same way, environmental organizations base their activities on a desire to promote decisions which are good for their members. . . . The difference is that while the traditional organizations usually fight for traditional values such as the distribution of time and money, the environmental organizations fight for such things as bigger forests, diversity of species, restoration of natural environments and strict regulations of chemicals."[86] The fact is, environmentalists cars *privately* and *personally* about these goals—they are part of their personal preferences, not merely a public benefit. Individual preferences are often a black box—some like Britney, others

[84] LOMBORG, *supra* note, at 38.
[85] LOMBORG, *supra* note, at 38-39.
[86] LOMBORG, *supra* note, at 38.

prefer Beethoven. It is clear that members of these organizations gain some psychic benefit from their membership, both from a belief that they are doing the "right thing" as well as for the community that it makes them a part of.[87] To the extent that individuals pursue a religious preference, political preference, or preference for environmental protection over other social goals, it is still the case that they are pursuing their self-interest and self-gratification. In many cases, it is the act of sacrificing money or time in support of the cause that is an essential attribute of the expression of the preference. Whether these preferences are generated internally or through social pressures is beside the point; what matters is that once chosen, what appears to be publicly-motivated (and may in fact be partially publicly-motivated) may also be nothing more than an expression of private interest.[88]

Thus, it is true that many forms of environmental protection are public goods—but many other activities also have attributes of public goods. It is not simply enough to observe that those who favor environmental protection will find it hard to produce because of collective action problems and it will be difficult to organize a lobby on its behalf. The proper comparison is the *relative* ability of environmental lobbyists to organize *as compared to* other those who seek *other* public goods—better schools, better defense, and lower taxes. The analysis is comparative, not absolute. Even if it correct that environmental organizations have more difficulty organizing as compared to industry, environmental groups still have a huge comparative advantage relative to the mass of unorganized consumers who suffer from inefficient regulation. The collective action problems of environmental lobbying groups are trivial in comparison to those of the public.[89] "Among citizen groups," it has been noted, "taxpayer and consumer organizations may face greater free-riding problems than environmental groups: their lobbying actions are likely to have an even wider range of potential beneficiaries; they may be able to offer fewer material incentives; and they lack the compelling moral mission that may drive the purposive incentives motivating members of environmental groups."[90]

And, in fact, an examination of their record suggests that environmental interest do not in fact tend to claim credit for the public good of improved environmental quality. Instead, they "privatize" their accomplishments by seeking to claim credit for the enactment of certain laws, promulgation of identifiable regulations, or victories in specific litigation. It is only by producing these identifiable measurable outputs that enables environmental interest groups to shake the money tree for donations. This creates at least three distorting influences on the structure of environmental policy-making.

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[87] This latter factor should not be understated—casual observation suggests that members of environmental groups are more eager to proclaim their affiliations through display of bumper stickers, t-shirts, etc., than are others. For instance, people rarely proclaim their memberships in specific churches, suggesting that there is some social element associated with proclaiming oneself a supporter of a particular environmental organization.

[88] *See* Schroeder, *supra* note, at 39-41 (describing model of "thick self-interest," which includes these considerations).

[89] Zywicki, *Environmental Externalities*, *supra* note, at 850.

[90] Nathaniel O. Keohane et al., *The Choice of Regulatory Instruments in Environmental Policy*, 22 HARV. ENVTL. L. REV. 313, 331-32 (1998).

First, it creates an inherent bias toward command-and-control centralized policy-making. The traditional command-and-control structure of environmental regulation necessarily opens opportunities for environmental interest groups to play a highly influential role in the legislative and regulatory process. By contrast, decentralized systems of regulation such as common law or market-based innovations such as tradeable permits require little ongoing regulatory intervention. Once established, these systems largely run themselves, subject to nonpolitical measuring and monitoring of actual emissions. For instance, there is no federal regulatory agency that regulates the colors of cars, meaning that all transactions regarding the colors of cars are conducted by private interactions. By contrast, regulation does establish emissions regulations, and indeed, in some situations the precise technologies that are permitted or banned. Like the current system of choosing cars by private action, adopting a self-regulating system would completely eliminate the need for the continued input of environmental interest groups, substantially reducing their power and prestige, and with it their public need.

In addition, many of these regulations are enforced by private citizen-suit provisions, which gives environmental interest groups control not only the implementation of the regulations, but a valuable new pot of money to tap into to fund their operations. And indeed, there is compelling evidence that the litigation patterns of these organizations can be best explained by their desire to maximize revenues from the attorneys' fees provisions provided by the enabling legislation as well as the unique structure of litigation settlements in this area.[91] Environmental interest groups focus much of their litigation efforts on the provision of private goods to themselves and their members, rather than the public good of environmental quality. So, for instance, a substantial portion of litigation for environmental interest groups focuses on violations of technical violation of permit requirements and the like, rather than actual environmental harm. As Michael Greve notes, "the pattern and scope of private enforcement are determined *not*, as intended, by its expected public benefits, but rather by the enforcers' expected rewards, or, more precisely, the 'spread' between the costs and the benefits of enforcement *to the enforcer*."[92]

Moreover, the command-and-control nature of environmental controls creates a demand for *ongoing* amendments to prior laws. As new technologies develop or economic and environmental circumstances change, it is necessary for Congress and EPA to return to prior enactments to determine whether they should be updated, and if so, how they should be updated. Thus, as legislation and regulation expands, it does so exponentially. For not only are there new initiatives to push and defend, there is a rolling revisiting of earlier enactments. By tying regulation to articulated technologies or emissions, obsolescence is embedded in the regulation itself. Regulation is designed so that it will require constant political review and political tinkering by subsequent

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[91] *See* Zywicki, *Environmental Externalities*, *supra* note, at 883-86; *see also* Spence, *supra* note, at 168 (noting that citizen suits have "raised significant revenues" for environmental organizations).

[92] Michael S. Greve, *Private Enforcement, Private Rewards: How Environmental Suits Became an Entitlement Program*, *in* ENVIRONMENTAL POLITICS: PUBLIC COSTS, PRIVATE REWARDS 105, 110-11 (Michael S. Greve & Fred L. Smith, Jr., eds., 1990); *see also* A.H. Barnett and Timothy D. Terrell, *Economic Observations on Citizen-Suit Provisions of Environmental Legislation*, 12 DUKE ENVTL. L. & POLY FORUM 1 (2001). Under the Clean Water Act, for instance, attorney fees are generally awarded and set according to prevailing market rates for attorneys, rather than the actual cost of the environmental group's attorneys.

legislatures and regulators. This creates a constant demand for input from environmental interests.

Second, it leads them to downplay actual environmental improvements. The continued financial viability of environmental interest groups depends on the need for more legislation, more regulation, and more litigation. As a result, it is necessary for environmental lobbyists to create an atmosphere that constantly requires more intervention and "tougher regulations." Oddly, this combination seems persuasive to much of the public—tougher and tougher regulations are passed, yet somehow the environment supposedly gets worse and worse.

Third, its makes them a valuable coalition partner for Bootleggers. As noted, many of the benefits of environmental protection in fact can be explained through private benefit to environmental interest groups and the fact that although there are some collective action problems, environmental interest groups are *relatively* well-organized compared to those who bear the costs of the regulations. What is a public good, by contrast, is *economically efficient* environmental regulation. While the presence of environmental regulation is not overly puzzling, therefore, one would expect to see an underproduction of *efficient* environmental regulation. Because much of the cost of inefficient regulation is borne by unorganized consumers, there is no effective lobby for enactment of efficient regulation. By contrast, it is now well-understood that environmental regulation can be an effective means for transferring economic rents to particular firms and industries.

Environmental interest groups provide a uniquely valuable coalition partner for Bootleggers seeking to use environmental regulation to gain competitive advantage or to transfer wealth to themselves. In general, environmental interest-groups are concerned primarily with the *end-result* of environmental regulation, not the *means* used to secure it. Provided that all mechanisms generate comparable end-results, environmentalists will be indifferent between whether a more-efficient or less-efficient mechanism is adopted. There is simply nothing in their narrow charter that would lead them to care whether economic efficiency is aided or hindered between two different mechanisms. Because environmental interests care primarily about ends, not means, they can provide a useful coalition partner to industry Bootleggers who can use environmental regulation for comparative advantage. Bootleggers care primarily about means, and in particular, recognize that particular forms of regulation can aid them while other forms harm them.[93] Whereas environmentalists have no preference for efficient over inefficient regulations, industry lobbyists will certainly have a preference for wealth-enhancing over wealth-reducing regulation. And in fact, environmental groups will not actually be indifferent in the choice of means; as noted, they will have an inherent bias toward command-and-control regulation, notwithstanding the fact that these mechanisms almost invariably are less-efficient than alternatives. As such, their preferences ally well with those of industries and firms that also favor command-and-control regulation. This convergence of interests between industry and environmental groups may explain the otherwise puzzling financial support of some industry for certain environmental interest groups.[94]

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[93] *See* Scott Barett, *Environmental Regulation for Comparative Advantage*, 2 BUS. STRATEGY REV. 1 (1991).

[94] *See* JONATHAN ADLER, ENVIRONMENTALISM AT THE CROSSROADS: GREEN ACTIVISM IN AMERICA 85-107 (examining relationships between corporations and environmental interest groups); *see also* Todd J.

In fact, it is easy to overstate the public support for these organizations: One-third of their budget comes from foundation giving rather than individual donations.[95] Substantial portions are also generated by litigation fees, settlements, and government grants.[96]

It thus appears that it is neither helpful nor accurate to think of environmental protection as a purely public good. Because there are almost infinite claims for potential public goods, modeling all such goods as public goods is largely pointless. This problem is made manifest once it is recognized that the production of many goods are fundamentally incompatible with one another. For instance, individual health and safety is also a good, and in a welfare state, a public good. Driving larger and heavier cars tends to increase safety by reducing physical injury and the risk of death in the event of accident. But larger and heavier cars also tend to get worse gas mileage and emit more pollutants than smaller alternatives. Thus, environmental quality is maximized by driving smaller and lighter cars. *Both* health and environmental quality have attributes of public goods, and little is accomplished by describing both as public goods that can somehow both be "undersupplied," as an increase in one can come only by decreasing the other. Thus, the choice of environmental quality over safety (or vice-versa) cannot be anything *other* than one of pure private preference aggregation. Environmentalists who fight for higher gas mileage requirements for cars, therefore, are choosing to kill and maim more people in accidents. Calling environmental protection a "public good" does nothing to change the substance of this tragic tradeoff and provides no scientific or ethical basis for choosing between these competing goals. Thus, every choice is inherently a private one with offsetting tradeoffs—how much is one willing to surrender in terms of other public and private goods of society in order to obtain environmental goals. In other words the choice is clear—big cars v. little cars, safety v. environment. When environmentalists choose the pursuit of environmental goals over all others, they are satisfying their preferences rather than others'. And when they use the political process to do it, they are forcing the loser to subsidize their preferences, because once implemented, everyone is bound by the regulatory rule, regardless of whether they favored it or not.

Jonathan Rauch observes, "[T]hese groups are just as dedicated to transferring resources as any other group is. When they lobby, they want society to divert more resources to some activity they like and away from some activity they don't like. They are out to get something they value, and what they want will cost someone else time or money, or they wouldn't need a law to get it. . . . Environmental groups that advocate preserving spotted owls or old-growth forests value endangered species and ancient tress more than inexpensive timber, a preference that some home buyers and logging towns might not share."[97] This preference to force others to pay more for housing so one can save the spotted owl simply has nothing to do with the "public interest" or "civic

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Zywicki, *Industry and Environmental Lobbyists: Enemies or Allies? In* THE COMMON LAW AND THE ENVIRONMENT: RETHINKING THE STATUTORY BASIS FOR MODERN ENVIRONMENTAL LAW 185 (Roger E. Meiners and Andrew P. Morris eds. 2000) (describing overlapping interests of industry and environmentalists).

[95] *See* Michael S. Greve and James Keller, *Funding the Left: The Sources of Financial Support for 'Public Interest' Law Firms, in* CRITICAL LEGAL ISSUES: WORKING PAPER SERIES (Washington Legal Foundation ed., 1987).

[96] *See* RABKIN & SHEEHAN, *supra* note.

[97] RAUCH, *supra* note, at 48.

republican" values; it is simply old-fashioned power politics that those with the most votes can force those with fewer votes to subsidize their preferences. Rauch offers an especially telling example of the politics of environmental interest groups:

> In Tucson not long ago, an advocacy group called the Arizona Center for Law in the Public Interest announced the following antismog agenda: "We're going to take the position that the EPA cut off all funding to any capacity-enhancing roadway project." In its members' minds, this group was a crusader for the public good. But to people who didn't share the rather idiosyncratic belief that tying up traffic was a good way to fight smog, the center was a pressure group pursuing its agenda at considerable expense to the general public.[98]

Talk of "civic republicanism" simply obscures this fundamental tradeoff—there are winners and losers in politics and the "public interest" has little to do with it. There is no definable "correct" answer for whether people should drive big cars or small cars. The decision is a private one of the tradeoff between safety and environmental protection and it is not clear what the deliberative process supposedly adds to this. "Even in principle, the line between public-spiritedness and pursuit of private gain is subjective. One person's public-spirited crusader for environmental sanity or entrepreneurial freedom is another person's job-destroying Luddite or selfish tycoon."[99]

Wealth transfers to satisfy environmental preferences are largely regressive transfers. Joseph P. Kalt has observed, "The caricatures of environmentalists as well-educated and wealthy, and outdoor recreationalists as Winnebago owners and back-to-the-earth college-aged offspring of well-to-do families are inaccurate, but not terribly so."[100] The members of environmental groups tend to have above-average incomes. Readers of the Sierra Club's magazine *Sierra*, have household incomes *twice* as high as the average American.[101] As economist Terry Anderson observes, "Environmental magazines are more likely to feature Rolex and BMW than Timex and Volkswagen advertisements."[102]

By contrast, a disproportionate share of the cost of environmental regulation is borne disproportionately by lower-income families, and the benefits accrue to upper-income individuals. Demand for energy usage, for example, tends to be highly income elastic, meaning that it is very difficult for families in the short run to adjust their energy consumption.[103] As a result, when gas prices or electricity prices rise, it is very difficult to reduce consumption, meaning that energy and fuel bills take a larger chunk out of the family budget. If an individual has to drive 30 miles to work, he is not likely to sell his

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[98] RAUCH, *supra* note, at 49.
[99] RAUCH, *supra* note, at 49.
[100] Joseph P. Kalt, *The Costs and Benefits of Federal Regulation of Coal Strip Mining*, 23 NAT. RESOURCES J. 893, 909 (1983); *see also* WILLIAM TUCKER, PROGRESS AND PRIVILEGE: AMERICA IN THE AGE OF ENVIRONMENTALISM 48 (1982); William Tucker, *Environmentalism: The Newest Toryism*, 14 POL'Y REV. 141 (1980).
[101] RAUCH, *supra* note, at 63 (quoting economist Terry L. Anderson).
[102] Quoted in RAUCH, *supra* note, at 63.
[103] *See* Kalt, *supra* note, at 908.

house and move closer to work in response to an increase in gasoline prices—he will just have to bite the bullet and pay more gas. Moreover, poor people tend to drive older cars that get worse gas mileage than many new cars, meaning that they use more gasoline per trip. Finally, if gasoline prices rise too much, a wealth individual can easily sell his SUV and buy a more-efficient car; poor people are more constrained in such choices. Poor people are also more budget constrained from rapidly switching to alternative fuels, such as solar panels. In short, increasing the price of energy is regressive, falling on poor people the hardest. The greater the amount of their budget consumed by energy bills, the less that is available for food, clothing, shelter, and education. Writing in 1983, Kalt estimated that the effect of strip mining regulations was to transfer $288.6 million per year to upper-income land owners, stockholders, and coal miners, while imposing a loss of $399.1 million per year on individuals on the lower end of the income scale.[104] One would expect similar results from initiatives such as the Kyoto Protocol, which is predicted to result in large increases in energy prices if ratified. Overall, then, the benefits of environmental regulation accrue to upper-middle-class environmentalists while poor people are paying the subsidy.

V. Conclusion

Political environmentalism, then, can probably be most fruitfully understood as an effort for environmentalist to secure benefits for themselves and through the political process, and to force others to pay for them. There is thus little obvious difference between environmental activists who want more for their projects, and farmers, defense contractors, or thousands of others who use the political process to redistribute money from the public to the goals preferred by well-organized and influential interest groups. Surely farmers believe that the public benefits from subsidized cheese, defense contractors believe the public benefits from more missiles, and lawyers believe the public benefits from cartelized control over entry into the profession. Similarly, environmental activists presumably believe that the public benefits from ever-greater amounts of environmental protection—especially because they can force others to pay for it. The nature of an externality is that if you do not have to pay for your externality, they you will overproduce it, whether it is a political externality or an environmental externality. Non-political mechanisms, by contrast, would force them to foot the bill for their preferences—to compensate landowners for land taken for endangered species, to pay for emission restrictions that damage economic growth, or to pay full price for recreational amenities that they prefer. This use of public power for private ends is the nature of politics, of course, but it does imply that it is inaccurate to conceive of environmental interests as doing anything different from other interest groups. When forced to choose between science and the private pursuit of one's personal preferences, science is the loser.

It was implied above that the activities of environmental interest groups could be analogized to those of churches, selling salvation. The day of the Apocalypse is upon us, and only the worthy will be saved. Although environmentalism was once a science-based movement, it has increasingly abandoned its roots in science. As Lomborg documents,

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[104] Kalt, *supra* note, at 909. Because of the regressive nature of higher energy prices, this also means that minorities are hit especially hard by higher energy prices. *See* Bruce Yandle and Stuart Buck, *Bootleggers, Baptists, and the Global Warming Battle*, 26 HARV. ENVTL. L. REV. 177, 202 (2002).

much of the message of environmentalism today has little to do with scientific truth. Science has become a political tool to frighten people and to induce political action. In turn, it appears that what the public seeks is salvation from environmentalism, not sensible regulatory policy. Like the preacher who excites his congregation with doomsday messages, environmentalism metes out a similar message. Perhaps the "Baptists" metaphor is closer than previously suspected.[105]

Indeed, environmentalism increasingly has taken on the traits of an organized religion.[106] Not only has it taken on much of the dogma and symbolism of a traditional religion, it fills the individual spiritual void traditionally filled by religion. Indeed, it is increasingly the case that the core message of environmentalism is not one of humanity's relationship to the environment, but rather of individual self-sacrifice and penance. It is simply believed to be inherently *wrong* and sinful for individuals to live well and to consume environmental resources—even if those resources will never run out. Thus, Greenpeace announces that we are now in a "second oil crisis"—during the first, there was too little oil, now we have too much.[107] For an abundance of oil will delay the pressure to adopt "clean" fuel technologies and thereby exacerbate the problem of global warming. Self-denial in the midst of plenty is the new watchword of environmentalism.

There is a strong sense in which environmentalism now rejects science and hard-headed policy analysis in favor of mysticism and moral obligation. It has been said that arguing with someone that recycling is not economically efficient is like arguing that Communion wafers are not nutricious. Perhaps arguing about the scientific or economic evidence regarding environmental issues is to simply miss the point of modern environmental belief.

If this is the case, then so be it. But it is a strange and disappointing end to a movement that sought to revolutionize the world through the marriage of science with policy. Rachel Carson argued in *Silent Spring* that the only way to avoid catastrophe was to transfer decision-making authority from elected representatives to scientists. Today, the scientists have spoken—and the environmental activists are not listening.

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[105] *See* Melnick, *supra* note, at 80 (calling environmentalism a "formidable secular religion").

[106] *See* DEEPAK LAL, UNINTENDED CONSEQUENCES: THE IMPACT OF FACTOR ENDOWMENTS, CULTURE, AND POLITICS ON LONG-RUN ECONOMIC PERFORMANCE (1998).

[107] *See* LOMBORG, *supra* note, at 258.