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Dan Tarlock

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ENVIRONMENTALISM: POSTMODERN EVANGELISM OR UNITARIANISM?

Dan Tarlock[†]

Professor Robert Nelson's scholarship has always been distinguished by his ability to analyze important natural resources, urban policy, and a wide range of other issues by approaching them through the triple lenses of neo-welfare economics, history, and culture. His erudite analyses and policy prescriptions are always insightful and provocative. His 2001 book, *Economics as Religion: From Samuelson to Chicago and Beyond*, set new personal standards for both insight and provocativeness. In brief, he argues that neo-welfare economics offers a vision of secular salvation as an alternative to competing visions of earthly and heavenly paradises offered by the world's major religions, though he draws mainly from Protestant Christian theologies. Welfare economics replaced the Miltonic struggle between good and evil through the dichotomy between efficiency and inefficiency, but is now stressed by the collapse of the progressive faith in progress.¹ Toward the end of the book, he extends his analysis of religion to other modern "secular" movements and suggests that environmentalism is a new form of fundamentalist religion that leads to a dead-end, Calvinist conclusion: humans must exit the earth to save "pure nature."² He subsequently elaborated this idea at greater length in a law review article arguing that environmental fundamentalism has the potential to erode the Enlightenment gains of scientific—social and physical—rationality, as well as the benefits of pragmatic policy-making.³

[†] A.B. 1962, LL.B. 1965, Stanford University. Distinguished Professor of Law, Chicago-Kent College of Law.

¹ ROBERT H. NELSON, *ECONOMICS AS RELIGION: FROM SAMUELSON TO CHICAGO AND BEYOND* 76 (2001).

² *Id.* at 316 ("In the original Calvinism, the presence of God could always give meaning to the current depravity of human existence When the Calvinist outlook takes a secular form, however, there is no god to rescue human beings.").

³ Robert H. Nelson, *Environmental Religion: A Theological Critique*, 55 CASE W. RES. L. REV. 51, 78 (2004) (attributing "many of our environmental policy failures to the teachings of environmental religion and the behavior of the 'environmental churches'").

Many might be surprised as to this characterization because the Judeo-Christian, or more accurately the Greco-Christian, tradition was initially blamed for environmental degradation.⁴ Environmentalists have shown little interest in western religion, though this is changing as it greens itself, and instead flirted with either eastern religions or a return to forms of paganism. However, I agree with the argument that economics is not a science but a theology heavily influenced by progressive and Christian idealism, as well as with many other aspects of Professor's Nelson's analysis. Ideas matter. History teaches that fundamentalism, especially religious, is never good for the prosperity and security of the societies in which it flourishes. However, I think his characterization of environmentalism as a variant of a Calvinist-based fundamental religion suffers from the problem of creating an easy strawman to attack. In many respects, Nelson's view of fundamentalist environmentalism is more of an academic construct of how environmental policy is made and implemented rather than the dominant view.

At its base, modern environmentalism is not so much a theological struggle between the evil forces of environmental fundamentalism (which enlists martyrs to restore the Garden of Eden) and the good as represented by economists and other proponents of science-based decision-making (who remind us of the economic costs and the terrible social inequities that such an undertaking will produce).⁵ Rather, it is a messy and increasingly contested effort to find legitimate ways to make rational decisions about how we wish to use the earth in the face of the inevitable limits of modern science and economics to provide answers to the questions that we put to it.

This said, Professor Nelson has focused on an important and somewhat troubling strain of modern environmentalism. The characterization of both economics and environmentalism as religion is useful to illuminate the basic characteristics of modern "secular" movements so that their claims to the betterment of humankind can be better evaluated and the laws that support them better understood. Economics and environmentalism share at least six common characteristics with religion, questions of the existence of a higher, supreme being aside. First, they both seek to better the human condition if we adhere to a set of basic principles that ultimately must be taken on faith. Second, they both require a large, educated priesthood to interpret and apply the principles. Third, they both have

⁴ JOHN PASSMORE, *MAN'S RESPONSIBILITY FOR NATURE* (1974) remains the best treatment of the subject.

⁵ *Id.* at 78.

well-developed concepts of sin. To economics, it is the failure to respect the market; to environmentalism, it is the desecration of nature from the draining of wetlands to greenhouse gas emissions. Fourth, they both require that believers have faith in a state of affairs that has not been verified and perhaps never can be. For economics the equivalent of heaven is Pareto optimality, although this state has never been experienced by any living human. Environmentalism has several visions of heaven, namely “pure nature” preserved or what some call statistical lives saved in the generations to come. Finally, in the modern world, religion is posed as a superior way of thinking and acting to the enticements of Enlightenment rationality. According to Professor Nelson, many environmentalists believe that a preserved and restored Garden of Eden, like efficiency, is not an illusion; instead, science and rational decision-making, or worse yet, pragmatic solutions, are the real illusions that hinder society from transcending its sinful state.

Professor Nelson ultimately concludes that righteous zeal was necessary to propel the environmental movement onto the political agenda between 1968–1972, but that there is “a significant negative side to power of environmental religion.”⁶ Environmentalism prefers apocalyptic visions to more nuanced messages. For example, the vision of large parts of the green earth as a desert is much more appealing than the message that there will be regional winners as well as losers from global climate change. And, the vision of nature as the image of God has a much more powerful emotional appeal than the dynamic and messy picture that deconstructive ecology has painted of nature endlessly evolving and adapting to both natural and anthropocentric change. In the end, faith crowds out all forms of scientific rationality.

This is indeed a grim prospect, but I do not think that it is an accurate picture of the world of environmental law and policy. A theologian-law professor, Christopher H. Schroeder of Duke, has a different religious categorization of modern environmentalism that better captures the diversity of environmental “theology.” Professor Nelson’s fundamentalists are Schroeder’s Old Testament prophets calling us to redeem ourselves by acknowledging that there are limits to growth and duties toward nonhumans.⁷ However, like the Old Testament prophets, they are more honored in the breach. Prophetic messages and successes have been tempered by priests—expert policy wonks

⁶ *Id.*

⁷ Christopher H. Schroeder, *Prophets, Priests, and Pragmatists*, 87 MINN. L. REV. 1065, 1066 (2003).

who live in the world of the applied and pragmatic. Just as the Cardinal Archbishop of Chicago recently suspended any prohibition against the consumption of meat so that Saint Patrick's Day could be properly celebrated with corned beef and cabbage, priests try to adapt a cumbersome regulatory structure to changing conditions and advances in our understanding of environmental problems.

My major quibble with Professor Nelson's analysis is that the major problem that environmentalism has to face is not fundamentalism but the limits of science and the need to develop fair and effective sustainability strategies. Environmentalism could not exist without the teachings of modern science, and it is fated to remain science-based.⁸ The project to create a viable set of nonanthropogenic ethics has been a failure.⁹ But, environmentalism could benefit from two attributes of religion: adherence to a value structure and the alignment of individual behavior with this structure. I will concentrate on the hard sciences and leave to others the issue of how much economics actually has to say about environmental policy.

The root of environmental problems is that society wants to know the answer to bottom-line questions about causal relationships between anthropocentric change and adverse impacts that remain a maddening mix of positive and normative questions. We want to know the answers to questions such as is a river healthy, is an artificial wetland viable, how much pollution can an ecosystem tolerate, is a given level of exposure to a pollutant or toxic substance safe for humans, or what will a warmer climate do to an ecosystem? These are legitimate questions, but science seldom can provide satisfactory answers to them because scientists are uncomfortable with these questions as they partially collapse the fact-value dichotomy that science has maintained to differentiate itself from the softer humanities and social sciences and to establish its legitimacy and authority. These questions are not traditional scientific questions because each is freighted with a value judgment when the bridge between what science can demonstrate and the final decision is constructed.¹⁰ For ex-

⁸ Professor Nelson might disagree. He concludes *Economics as Religion* with the observation that "[t]he cutting edge of social thought today, probably the best indicator of future trends, can be found in the libertarian and environmental movements. Both have the advantage that they define themselves in significant part by a rejection of the scientific management aspirations that have been at the heart of the progressive gospel." NELSON, *supra* note 1, at 336.

⁹ See Andrew Light & Eric Katz, *Environmental Pragmatism and Environmental Ethics as Contested Terrain*, in ENVIRONMENTAL PRAGMATISM 1 (Andrew Light & Eric Katz eds., 1996) (arguing that environmental ethics have had almost no influence on environmental policy).

¹⁰ See, e.g., Lisa Heinzerling, *Environmental Law and the Present Future*, 87 GEO. L.J. 2025, 2026 (1999) ("[I]n reality, the beneficial consequences of environmental regulation do not occur within a single time frame, either the present or the future, one to the exclusion of the

ample, the great legal innovation of environmental law has been to substitute the concept of risk for proof of immediate harmful impact as a basis for regulation.¹¹ Risk perception is fundamentally a product of value choices about the end state that we want and the risks of over- and under-protection that society is willing to assume. The problem modern environmentalism faces is to develop principles and procedures to assess and manage risks that allow for policy adjustment over time¹² so that the invocation of values does not become an excuse for recognizing necessity to ground decisions in science to the maximum extent possible.¹³

Many environmentalists have drawn the conclusion that science should be subordinated either to transcendent ethical norms, of which precaution would be a rule of always erring on the side of caution, or to democratic decisions arrived at through fair and open political processes. However, this fundamentalism cannot save environmentalism from the constraints of the scientific method. The search for scientific truth is too ingrained in modern society. Environmentalism pushes the limits of current scientific understanding because it is tolerant of the necessity of making important decisions under extreme conditions of scientific uncertainty. To some, this is fundamentally unfair and inefficient. This constraint is taken as a given in modern probabilistic science, but uncertainty presents major problems when science is used to impose limits on individual choice.

The problem of working within the limits of science is intractable enough, but perhaps the biggest challenge that environmentalism faces is the lack of internalization of individual actions that will reduce the stresses on the planet's waste assimilative capacity and biodiversity base. This project could use a little religious help. From this perspective, the argument that environmentalism is a new fundamen-

other. Instead, life-saving environmental regulation produces benefits from the very moment it takes effect, until the moment that the last person helped by the regulation would otherwise have drawn her last breath.”)

¹¹ See Richard J. Lazarus, *Restoring What's Environmental About Environmental Law in the Supreme Court*, 47 UCLA L. REV. 703, 744-49 (2000) (“The inevitable upshot [of the uncertainty associated with environmental injury] is that environmental laws that seek to prevent harm are directed to risk rather than to actual impact.”).

¹² This is a call for an adaptive precautionary principle. The current debates center on the dangers that precautionary fundamentalism will lead to excess risk prevention. See, e.g., CASS R. SUNSTEIN, *LAWS OF FEAR* (2005); Dan M. Kahan et al., *Fear of Democracy: A Cultural Evaluation of Sunstein on Risk*, 119 HARV. L. REV. 1071 (2006) (reviewing Sunstein's work on risk).

¹³ See Holly Doremus, *Science Plays Defense: Natural Resource Management in the Bush Administration*, 32 ECOLOGY L.Q. 249, 252 (2005) (arguing that the Bush administration “does not need to falsify or misrepresent scientific evidence in order to effectively fly the banner of science over its anti-conservation agenda”).

tal religion with the power to undermine secular society breaks down because environmentalism fails the major test for a vibrant religion: the ability to influence how people act on a daily basis. Religious environmentalism has without a doubt changed the perceptions of millions toward the planet, but it has had, at best, limited impacts on behavior, although there is some progress in this direction. At present, there are few practicing religious environmentalists when it comes to sustainability. It is still acceptable to drive an SUV with a "Save the Whales" sticker on it for blocks to pick up a latte. We do not have to convert to deep ecology and return to the land, but as markets and information disclosure provide more options to practice restraint in the use of resources and waste sinks, they could be reinforced by acts of humility and charity underlain with an appreciation for the wonder of nature.¹⁴

Professor Nelson has done environmentalism a major service by casting a cold, clear eye on some of the cultural weaknesses of modern environmentalism. Despite its success and pervasiveness, the objectives of environmental protection remain surprisingly inchoate because the idea of environmental protection achieved rapid political legitimacy before the philosophical and scientific underpinnings of the project were fully debated. Environmentalism is both a break from the entire western tradition and a continuation of the Enlightenment legacy. How these two incompatible strains are integrated will be crucial to its future. The question is: will environmentalism take the form of a new secular religion with the power to excite but not to change the status quo, or can it adapt the Enlightenment legacy of scientific rationality to correct the real abuses of unrestrained material progress that thrived until the beginning of the twentieth century?

¹⁴ See Holly Doremus, *The Rhetoric and Reality of Nature Protection: Toward A New Discourse*, 57 WASH. & LEE L. REV. 11, 65 (2000) (suggesting that debate over the "nature problem" address "how people can fit into nature and fit nature into their lives").