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Either You're With Us or against Us: No Room for the Skeptical Environmentalist

James L. Huffman

EITHER YOU'RE WITH US OR AGAINST US:

NO ROOM FOR THE SKEPTICAL ENVIRONMENTALIST

James L. Huffman[†]

Is Bjørn Lomborg the David Horowitz of environmental politics? Is he an Uncle Tom who has turned his back on the cause of environmental protection and joined forces with those bent on environmental destruction? Silly questions to be sure (does anyone really believe there are people bent on destroying the environment?), but the reaction to Lomborg's *The Skeptical Environmentalist*[1] from both environmentalists and scientists makes clear that the environmental debate is more about loyalty to a cause than the pursuit of scientific truth. In the world of modern environmental politics, there must be right and wrong - good and evil - those who seek to protect the environment and those who seek to destroy it.

Without suggesting, as others have, that radical environmentalism is more about religion than science,[2] we should not be surprised at the reaction among mainstream environmentalists to Lomborg's book. Environmental politics is precisely that: it is politics. It does not so much matter what the truth is, but rather what people perceive the truth to be. Challenges to accepted truths, which *The Skeptical Environmentalist* is, are inevitably up-

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[†] Dean and Erskine Wood Sr. Professor of Law, Lewis & Clark Law School; BS, Montana State University; MA, Fletcher School of Law and Diplomacy, Tufts University; JD, University of Chicago.

[1] BJØRN LOMBORG, THE SKEPTICAL ENVIRONMENTALIST: MEASURING THE REAL STATE OF THE WORLD (Cambridge University Press 2001) (1998). Lomborg's statement that "[w]e all care for the environment" is surely true, but, as I suggest at the outset, environmental politics requires that we draw lines in the sand between those who really care and those who just claim to care - those who embrace the litany and those who do not. *Id.* at 333.

[2] *See* Robert H. Nelson, *Bruce Babbitt, Pipeline to the Almighty*, WEEKLY STANDARD, June 24, 1996 (arguing that the environmental movement resonates with cultural Protestantism, that Judeo-Christian themes are at the base of the movements values, and that environmentalism is a substitute for religious institutions).

setting to those whose political agendas have been well served by those accepted truths.

Notwithstanding these realities of environmental politics, we might reasonably hope for the intervention of a modicum of reason in response to *The Skeptical Environmentalist* because of the remarkable care with which Lomborg has done his work. He has provided extensive references in support of his conclusions and, more importantly, has relied heavily on the same sources used by those whose conclusions he has challenged. Lomborg's book will either influence the direction of environmental policy, or it will be ignored to the detriment of sustainable environmental protection.

Lomborg's indictment of mainstream environmentalism centers around what he calls the "litany."[3] The litany is the collection of factual assertions about the condition of the environment that Lomborg demonstrates are often exaggerated if not completely false.[4] The use of the term litany might imply religion, but for Lomborg it suggests only that many of the central facts of environmental advocacy are second, third and fourth hand repetitions of ultimately unsupported claims; taken as if on faith not because they promise redemption, but because they promise political victory.[5]

While Lomborg does not speculate about the interesting question of why these assertions of truth persist in the face of contrary evidence, he is more than persuasive in demonstrating that they do. From Silent Spring to Love Canal to Frankenfoods, the litany of accepted truths has little to do with the facts as best we know them. It seems that early hypotheses about the causes of environmental harm become persistent facts without regard to the evidence that emerges from subsequent tests of the hypotheses.

But it is not just a question of which claim about the environment is first out of the box. Human psychology seems to give long life to claims that catastrophe looms, while short to no life to claims that the future is bright. As Lomborg notes, "environmental organizations hav[e] . . . an interest in portraying the world as gloom and doom."[6] He quotes Greenpeace in support: "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

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[3] LOMBORG, *supra* note 1, at 3. Lomborg's Litany is that: (1) the environment is in poor shape; (2) the earth's resources are running out; (3) population growth is leaving less and less to eat; and (4) the air and water are becoming ever more polluted. *See id.* at 4.

[4] *Id.* at 4-5.

[5] *Id.* at 38.

[6] *Id.* at 39.

assumption that 'everything is going to hell.'"[7] We have seen the same phenomena in the politics of civil rights where Blacks and others have made enormous strides, yet every instance of disparate impact is assumed to be the result of rampant and pervasive discrimination. In the politics of crisis response, there is little room for progress.

Policies in most areas of government concern will benefit significantly if we come to better understand the phenomena of persistent "truths." If the litany of environmental truths could somehow be made to reflect our changing knowledge about the source and nature of environmental harms, environmental politics would permit the enactment of more effective environmental policies, and thus popular perceptions of truth would more closely correspond to the facts as best we know them. Although Lomborg does not concern himself with why people are quick to accept these "truths" and slow to let them go, he does suggest several reasons why environmental politics sustains the litany.

I. LITTLE WHITE LIES

To some degree, the continued assertion of doubtful or refuted claims of fact is purposeful. Particularly in the wake of the Clinton Administration, it is generally thought acceptable to tell little white lies, if the telling advances a greater good. It may not be true that acid rain has devastating impacts on forests, as Lomborg asserts,[8] but continued restrictions on sulfur emissions does mean less pollution, and that is good. There may be absolutely no basis for the repeated assertion that 40 thousand species go extinct each year,[9] but greater protection of natural habitat means less development, and that is a good.

As Lomborg points out, it is commonplace for environmental advocates to focus on a very particular issue having popular appeal for the purpose of achieving much broader and more controversial ends.[10] Illustrative is the experience with the Northern Spotted Owl in the Pacific Northwest. Early research suggested that Spotted Owls require old growth forests for survival.[11] Although most

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[7] *Id.* at 18.

[8] *See id.* at 178-81 (arguing the impact of acid rain is much less than initially thought).

[9] *See id.* at 252 (arguing that the assertion is based on speculation and circular reasoning).

[10] *See id.* at 322 (arguing that funds spent to mitigate global warming are basically a political project to enrich future inhabitants of the Third World).

[11] *See, e.g.*, Mark Bonnett & Kurt Zimmerman, *Politics and Preservation: The Endangered Species Act and the Northern Spotted Owl*, 18 ECOLOGY L.Q. 105, 111 (1991) (finding that most studies demonstrate a close connection between the Northern Spotted Owl and old-growth forests).

environmentalists had never seen a Spotted Owl, they were quick to recognize that protection of the species would require preservation of the old growth forests, long an objective of many environmental groups.[12] When subsequent research indicated that Spotted Owls seemed to be thriving in second growth forests, the accepted truth remained that the species would become extinct if existing old growth habitat was not preserved.[13] Because the Endangered Species Act has provided frequent surrogates for ends unrelated to species protection, there are added incentives to ignore evidence that challenges the litany.

The purposeful manipulation of facts is made easy by the nature and complexity of environmental relationships and the human tendency to focus on immediate experience. Much environmental science seeks to determine the relationship between a particular substance or action and the environment. Such studies are critical to expanding our understanding, but they seldom provide sufficient evidence to reach conclusions about causation. The complex multitude of factors affecting the environment makes it very difficult to determine what is causing what.[14] In most cases it will be a combination of factors, the manipulation of any one of which may yield unexpected and difficult to predict results. The popular tendency to conclude that unusually hot weather proves that human activity has caused global warming is illustrative of the problem.[15] It is a popular tendency easily exploited by those who would advocate the regulation of greenhouse gas emissions for reasons unrelated to a concern for global climate change.[16]

As Lomborg demonstrates on several occasions, trend data is easily manipulated by one's choice of the time span and starting and ending dates for study.[17] By tracking the height of my son from birth to seven years of age I might conclude that he will be seven feet six inches tall when he is sixteen. Of course he will not, and I will have difficulty persuading colleges that they should recruit him now to play center on the basketball team ten years from now. The basketball coach has sufficient experience to know that

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[12] *Id.* at 107.

[13] *See, e.g., Sighting in Second-Growth Forest Stirs Debate*, GREENWIRE, June 7, 1995 (quoting Jack Cox, press secretary for Rep. Charles Taylor (R-NC), who claimed that more and more spotted owls were being found in second-growth areas); Bruce Barcott, *From Tree-Hugger to Terrorist*, N.Y. TIMES, Apr. 7, 2002, § 6 (Magazine) at 56 (arguing that old-growth forests are essential to the survival of the spotted owl).

[14] LOMBORG, *supra* note 1, at 331.

[15] *See id.* at 292.

[16] *See id.* at 305.

[17] *Id.* at 27 ("One of the main rhetorical figures of the environmental movement is to pass off a temporary truism as an important indicator of decline.").

children do not continue to grow at the same rate or indefinitely. But most people, including most policy makers, do not have sufficient experience or knowledge to know when they are being hoodwinked about environmental trends.

Lomborg observes that there is fear where there should be optimism.[18] Although there is a wide variation among individuals in their tolerance for risk, people in general seem to be fairly risk averse. One of the classics of environmental literature warned against crying wolf about wolves,[19] but because it is a lesson hard to learn, crying wolf has been an effective strategy for environmentalists. A recent and costly example of crying wolf is the European reaction to genetically modified foods which is not only driving biotech companies and scientists out of Europe,[20] but is also depriving millions of starving and hungry people of healthy and safe foods. When such hysteria spills over into nations like Zambia, where millions starve while genetically modified foods are forbidden, the consequences of irrational fear are tragic.[21]

But fear has proven to be a very effective political tool, difficult for environmentalists to resist even when they know that the risks are negligible. A related political strategy is the tendency to simplify environmental issues in a way to make political adversaries either pro- or anti-environmental.[22] As Lomborg points out, everyone cares about the environment,[23] but one would not know it from the tenor of environmental policy debates. Those who challenge the litany of truths or suggest alternative approaches to environmental protection are labeled anti-environmentalists to significant political effect.[24]

II. LAW & POLITICS

While there are incentives in the political process for little white lies, and worse lies about the state of the environment, the nature of our political and legal processes also contribute to the exaggeration and distortion of environmental truth. Notwithstanding the growth of alternative dispute resolution over the past two

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[18] *Id.* at 331.

[19] *See* FARLEY MOWAT, NEVER CRY WOLF (1963).

[20] *See* LOMBORG, *supra* note 1, at 343.

[21] *Africa's Hungry Aren't Picky*, CHRISTIAN SCIENCE MONITOR, Editorial, Sept. 17, 2002, at 8 (arguing that in Zambia, the people facing famine do not care about the theoretical risks of genetically modified foods).

[22] *Evans, Novak, Hunt & Shields* (CNN television broadcast, Apr. 28, 2001) (interviewing Karen Hughes on the perception of Pres. George W. Bush as being anti-environment).

[23] LOMBORG, *supra* note 1, at 333.

[24] *See, e.g., id.* at 32 ("Not only are we familiar with the Litany, and *know* it to be true. We also *know* that anyone who claims anything else must have disturbingly evil intentions.").

decades, our legal system remains one in which there are winners and losers. Either a defendant is liable or not, and the answer to that question depends on findings of fact. In the civil justice system the standard is low - more probable than not. It is little wonder that every side in virtually every dispute can secure expert testimony in support of their version of the truth. The finder of fact will determine one version of the truth to be more probable than the others, but this probability will be understood and articulated as virtual certainty. The parallels between scientific truth and legal findings of fact is underscored by recurrent proposals for science courts,[25] as if the uncertainties inherent in scientific study can somehow be eliminated by legal process.

There is some irony in the fact that advocates of a science court have sought to use the legal process to resolve questions of scientific uncertainty, while environmentalists and advocates of many other causes have appealed to science to resolve questions of political uncertainty.[26] Of course we cannot have it both ways, or for that matter, either way. The law cannot get us closer to scientific certainty, and science cannot resolve political disagreements. Lomborg is quite correctly at pains to make clear that science is one thing; politics another.[27] Science is often critical to informing political decisions, but neither science nor the personal preferences of scientists should have anything in particular to contribute to political choices.

Although very different from the legal system, the political process also encourages the over-simplification of complicated questions of science. Special interests tend to have narrow agendas, which give little if any consideration to other interests.[28] The measure of the politician is his or her position on these special interests rather than a capacity for an integrated analysis of the multitude of agendas that combine in our heterogeneous politics.[29] The politician who says that things are complicated and will require more research and thought is not likely to prevail over the

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[25] *See generally* Jon R. Cavicchi, *The Science Court: A Bibliography*, 4 RISK: ISSUES IN HEALTH & SAFETY 171 (1993) (presenting a list of references primarily focused on the science court).

[26] *See, e.g.*, Thomas G. Field, Jr., *Pursuing Transparency Through Science Courts*, 11 RISK: HEALTH, SAFETY AND ENVIRONMENT 209, 212-13 (2000) (highlighting the key features of the science court and how it would fit in with public policy).

[27] LOMBORG, *supra* note 1, at 328.

[28] *See id.* at 38 (expressing the idea that political organizations base their decisions on a desire to benefit their members).

[29] *See* Jonathan R. Macey, *A Symposium Commemorating the Bicentennial of the United States Constitution: Competing Economic Views of the Constitution*, 56 GEO. WASH. L. REV. 50 (1987) (describing the relationship between political success and special interests).

politician willing to take a position notwithstanding uncertainty: either there is climate change or there is not climate change;[30] either drilling in the Alaska National Wildlife Refuge will threaten the Arctic ecosystem or it will only impact on a few hundred acres;[31] special interest politics leaves little room for waffling on the facts.

Lomborg notes that we often regulate small risks while ignoring much larger risks.[32] Although this is partly a function of the psychological "tendency to underestimate large risks and to overestimate small ones,"[33] it is also a product of the political pressure to take clear and simple positions on complicated questions. Because the political process takes one issue at a time, with "big bang" events having priority without regard to real risks, the focus is inevitably on the political consequences of action rather than on maximizing net social welfare and safety.[34] With these political incentives, knowing the truth is less important than claiming to know the truth.

III. COMPLEXITY & UNCERTAINTY

Even without the purposeful distortions of fact and the pressures of the legal and political systems to simplify facts, we find it difficult to resist the litany because of the enormous complexity of the questions we face. Life goes on and decisions must be made. As has often been said, inaction is action. On issues like climate change and biotechnology, uncertainties abound and will for the foreseeable future. But even our neighborhood ecosystem is complex, if not beyond our understanding, certainly beyond our ability to manage. Seldom have human beings evidenced greater hubris than in proposing to engage in ecosystem management on a large scale. Perhaps there will be a time when the combination of our understanding and computers capable of processing vast quantities of data about countless variables will permit ecosystem management, but for the present we deceive ourselves in claiming that we know and can process the necessary facts.

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[30] *Id.*

[31] *See generally* http://www.anwr.org (2002) (providing information about the effects of drilling in the Alaska National Wildlife Refuge).

[32] LOMBORG, *supra* note 1, at 337.

[33] *Id.* at 336.

[34] The "big bang" phenomenon has been described in the context of such things as natural disasters and airplane crashes. Although loss of life per mile traveled is far less from plane crashes than from auto accidents, it is much easier to get political response in the wake of hundreds of deaths than in the wake of one or two deaths. Earthquakes cause far fewer deaths than winter storms, for example, but the big bang nature of an earthquake elicits more political attention and public resources than do winter storms. *See id.* at 336-38.

Not only is the environment complex beyond our understanding, but it is constantly changing, as are our human circumstances. And as environmentalists have long pointed out, everything seems to be connected to everything else.[35] It is like a waterbed. You push down here and it pops up there, but there is no way to predict where there is. The law of unintended consequences affects not only human actions that impact on the environment, but also human efforts to mitigate those impacts. For instance, we can regulate DDT in the interest of protecting avian reproduction, while simultaneously causing a catastrophic impact on the battle against malaria.[36] We can regulate greenhouse gas emissions, while simultaneously making energy too costly for the poor to afford.[37]

This is not to argue against environmental regulation, but to argue in favor of humility as we pursue that regulation. The litany that Lomborg describes gives us false confidence in our actions. The history of science proves that we know a lot more today than we did in the past, but also that much of what we know today will be proven wrong tomorrow.[38] In most cases we are not so wrong that we have been going 180 degrees in the wrong direction, but wrong enough that we need always to be open to modifications of our approach.

But even if we have the understanding and the capacity to process the data, we do not have the governmental institutions to accomplish the sophisticated prioritizations that Lomborg says are necessary. As in our individual lives, constant adjustment to improving knowledge, changing circumstances, and evolving values requires us to be nimble and flexible. But the political process is ponderous, particularly in the United States where it has been made cumbersome by design.[39] So we are easily tempted to embrace the litany as reassurance that we are doing the right thing.

Whatever the reasons for the widespread acceptance of the litany, it is difficult to argue that it does not exist in the face of Lomborg's comprehensive and careful analysis. It is also difficult to challenge Lomborg's prescriptions for what needs to be done beyond questioning the many truths of the litany.

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[35] *See* MILTON RUSSELL, EVALUATING ECOLOGICAL IMPACTS: A CONCEPTUAL FRAMEWORK 31-40 (1990) *available at* http://www.nap.edu/books/0309042933/html/31.html (explaining the environmentalist theory of connection).

[36] *See, e.g.*, JOSEPH L. BAST, ET AL., ECO-SANITY: A COMMON SENSE GUIDE TO ENVIRONMENTALISM 91 (Madison Books 1994).

[37] *See, e.g.*, John Peterson, *Global Warming Policies Could Unfairly Harm Minorities and the Poor*, National Policy Analysis, *at* http://nationalcenter.org/NPA357.htm (Sept. 2001).

[38] LOMBORG, *supra* note 1, at 330.

[39] *See generally* Cass R. Sunstein, *Still the Framers' Constitution?*, *at* http://www.common-place.org (July 2002).

IV. BETTER ENVIRONMENTAL POLICY

We should base our environmental policies on the facts rather than fear, says Lomborg.[40] This seems self-evident, but recent actions in the courts have promoted the conflicting idea that regulation and liability are warranted in response to fear, even when there is no factual basis for that fear.[41] While it is surely true that people suffer real harm from fear, the regulation of nonhazardous activity to reduce fear, or the awarding of damages for irrational fear, will have disastrous consequences for intelligent environmental regulation. It will magnify the political returns of fear mongering and will greatly reduce incentives for objective research and the communication of reliable and accurate information.[42]

We should learn to prioritize better not only our environmental objectives, but also all of the many things we ask government to do. Some environmentalists still urge zero pollution or its equivalent as a policy objective,[43] but it is difficult to imagine any circumstance in which zero pollution is a defensible objective for human societies. We might aspire to zero pollution (from human activities) in nature preserves from which humans will be excluded, but such preserves are not the stuff of human subsidence, not to mention prosperity. Wherever humans live, work and play, some amount of pollution is unavoidable. Indeed, the better way to think about the problem, as William Baxter explained many years ago, is that some level of pollution is optimal.[44] Only by understanding and implementing our priorities will we determine that optimal level, but we can rest assured that it will never be zero.Those who argue that we should protect the environment without regard to cost are not only insisting that environmental values should trump all others, but also that the particular environmental objective on which they propose to spend is more important than other environmental objectives on which the resources might be spent. "Such an understanding," says Lomborg, ". . . prevents prioritizing between environmental problems, . . . [and]

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[40] LOMBORG, *supra* note 1, at 327.

[41] For example, the many pending asbestos cases include plaintiffs without any symptoms of asbestosis but who seek to recover for the harm they suffer from the fear they might contract the malady.

[42] *See id.* at 331.

[43] James L. Huffman, *Protecting the Environment from Orthodox Environmentalism*, HARV. J. L. & PUB. POL'Y 349, 363 (1992).

[44] WILLIAM BAXTER, PEOPLE OR PENGUINS: THE CASE FOR OPTIMAL POLLUTION 11-12 (1974).

hinders prioritizing between the environment and all other essential areas of society . . . ."[45]

Lomborg is undeniably correct when he says "[a]ll decisions are in reality a trade-off of various risks."[46] The challenge is in creating the institutional structure and processes to best accomplish the prioritization implicit in evaluating such trade-offs. On this point, Lomborg offers little in the way of help, although he does not purport to have any particular expertise on either law or government.[47] He does embrace democracy and urges the importance of good information to democratic decision-making, but the challenge of prioritization, at least in the United States, may be as much a result of too much democracy, as of too little reliable information.

V. THE OPTIMISTIC DEMOCRAT

Democracy, whether the special interest variety practiced at the national and state levels or the more direct variety sometimes practiced at the local level, creates incentives for information distortion as suggested above. Special interests exaggerate their claims in hopes of favorable compromise, while individuals faced with particular policy questions will have no basis to assess their real priorities. Even if individuals are presented with a menu of abstract alternatives purporting to be the universe of trade-offs, their decisions will be equally abstract absent the relatively immediate prospect of real costs and benefits to the individual.[48] And even if we know the full range of trade-offs, which we seldom if ever do, it is never practical to present all of them to the individual voter.[49] Voters vote on particular measures in the form of initiatives and referenda, or they elect representatives based either on a single position a candidate supports or on the candidate's general approach to government.[50]

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[45] LOMBORG, *supra* note 1, at 331.

[46] *Id.* at 336.

[47] Early on Lomborg does indicate that he understands the apparently not so obvious truth about public resource allocation: "If we want to improve one thing, such as Third World access to clean drinking water, we need to take the resources from others areas where we would also like to make things better. Naturally, this is the essence of politics – we have to prioritize resources and choose some projects over many others." *Id.* at 6. Lomborg's only mistake is in assuming that with better information we will easily accomplish this political prioritization through democratic institutions.

[48] *See id.* at 336.

[49] *See generally* KIM EZRA SHEINBAUM, BEYOND THE ELECTORAL CONNECTION: A REASSESSMENT OF THE ROLE OF VOTING IN CONTEMPORARY AMERICAN POLITICS 33 (1984).

[50] *See, e.g., id.* at 22.

If Lomborg takes the view that better information and less litany will permit democracies to make optimal environmental decisions, I believe he is overly optimistic. If his claim is only that democratic decision-making will be better with better information than it is with the litany, he is surely correct.[51] But the improvement will be marginal at best.

The problem of prioritization among environmental objectives, not to mention the challenge of prioritization among all public concerns, is that the institutions of government regulation and management are better suited to wealth redistribution than to efficient resource allocation. The recurrent complaint that politics has been allowed to intervene in the pursuit of the public good[52] (it is usually one side accusing the other of politicizing an issue) is transparent nonsense. Government is politics. That is the point of public, as opposed to private, decision-making. It might be claimed, for example, that an existing level of pollution is inefficient and therefore should be regulated,[53] but the political contest over the proposed regulation will be largely about wealth distribution – that is, will the polluters pay the cost of cleanup or will others continue to bear the cost of exposure to pollution.[54] There is little in the governmental process that will help society get closer to determining what level of pollution is best for society.

That is why it is often argued that many environmental questions should be left to science. But as Lomborg points out, science cannot resolve the public policy question. Scientists can provide their best predictions about the consequences of alternative courses of action, but the choice among courses has nothing to do with science.[55] It has to do with human preferences. When we resort to government to choose among the competing preferences of a large and diverse society, the special interest politics of wealth redistribution cannot be avoided. Some governments will be more effective than others at expanding the range of preferences that are heard and listened to, but widespread public participation does not change the fact that politics, whether democratic or autocratic, is largely about the distribution and redistribution of wealth.[56]

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[51] LOMBORG, *supra* note 1, at 5.
[52] *Cf. id.* at 336.
[53] Huffman, *supra* note 43, at 363.
[54] *See generally* LOMBORG, *supra* note 1, at 6.
[55] *Id.* at 5.
[56] *Id.* at 6.

VI. MARKETS & THE RULE OF LAW

So if we are interested in prioritization in the sense of maximizing net social welfare, and if Lomborg is too optimistic about democracy, what is the alternative? One alternative is greater reliance on private institutions, particularly property and contract. Of course property and contract depend upon government to set and enforce the rules. But government must do so without second-guessing the choices made by individuals, in order to minimize the opportunities for wealth redistribution (rent-seeking). Politics, however, will invite second-guessing, which is why we have constitutional protections like due process, equal protection, and prohibitions on impairment of contracts and takings of property.

Lomborg does not have much to say about these institutional questions (which are not really the subject of his book), but he does suggest on occasion that property rights and the rule of law are important.[57] Indeed the rule of law is important if we are interested in some alternative to the politics of public regulation and management. The rule of law is what requires adherence to due process and restrains second-guessing of existing rules of property and contract.

The obvious alternative to regulation and public management is private decision-making in the context of markets. Although part of the litany of environmentalism has long been that private, self-interested, decision-making is a major cause of environmental harm, free market environmentalists have made some headway over the past decade.[58] The idea that market transactions can improve environmental conditions, even if the market is dependent upon regulation to establish the available supply of particular resources, has gained adherents even among some mainline environmental groups.[59] Where this has occurred it does not reflect a sudden conversion to free market ideology (some would say religion), rather it reflects the pragmatic judgment that environmental objectives can sometimes be better achieved, or realized at less cost, through private transactions than through regulation. The willingness of some mainstream environmental groups to advocate market solutions in the face of a strong environmentalist bias against markets underscores the principle contribution of markets to maximizing net social welfare.[60] When one is required to pay the costs of one's choices with the recognition that there are

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[57] *See id.* at 107 (property rights), 330 (rule of law).

[58] Huffman, *supra* note 43, at 351.

[59] *Id.* at 353.

[60] *Id.*

opoportunity costs to every choice, there is an incentive to get the best information possible on the benefits to be realized.[61]

Although personal experience, and the sometimes vicious reaction to Lomborg's book,[62] suggest that it will make little difference, I hasten to say that markets are not the be all and end all for environmental protection. Nor does Lomborg make any such claim.[63] Free marketeers have their own litany that also skews thoughtful evaluation of alternative institutional arrangements for the allocation of scarce resources.[64] That litany is driven by the persistent need to engage in politics, by way of assuring that government provides the institutional arrangements necessary for the creation and enforcement of contract and property rights.[65] As a result, politics promotes litanies on both sides of the environmental regulation debate.

It is reading between the lines (and beyond) to suggest that Lomborg's book is at heart a total rejection of environmental regulation.[66] Whether or not regulation in the abstract is an appropriate method for the pursuit of environmental protection is not a central theme of the book. Lomborg is critical of specific regulations because they are founded on not very good or accurate information, but this is a far cry from an overarching, ideological opposition to regulation.[67]

VII. KILLING THE MESSENGER

Much of the criticism of Lomborg's book seems to take the view that rather than being a committed environmentalist in search of better and more defensible environmental policies, he is a sort of ideological convert, if not a traitor.[68] It is argued that his book is not balanced in the sense that he does not adequately acknowl-

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[61] *See id.* at 356.

[62] *See generally* David Schoenbrod, *The Mau-Mauing of Bjørn Lomborg*, 114 COMMENTARY, Sept. 2002 at 51, 52-53.

[63] Indeed, Lomborg resorts to italics to emphasize that, for example, the low risk of cancer from pesticide use "*does not mean that we can just ignore pollution or should dismiss political action, but it does indicate the degree of worry we should attach to pollution.*" LOMBORG, *supra* note 1, at 335-36.

[64] *See generally* Huffman, *supra* note 43, at 336-37 (stating that free market environmentalism suffers in the evaluation of resource allocation institutions because it has characteristics, such as individual choice and profits, that are assumed to result in detrimental environmental decisions).

[65] *See id.* at 357.

[66] *Cf.* Schoenbrod, *supra* note 62, at 52 (noting that Lomborg does not assert that the environment is in perfect shape; rather, he acknowledges the need for improvement in certain areas).

[67] *See, e.g.*, LOMBORG, *supra* note 1, at 348 (acknowledging risk of GM technology and the need for a "strong regulation system" based on sound science).

[68] *See generally* Schoenbrod, *supra* note 62, at 53.

edge the contributions environmental regulation have made to the positive trends he describes.[69] Perhaps this is fair, although most of the trends he catalogues predate by decades if not centuries the era of environmental regulation.[70] Even within the last three or four decades of aggressive environmental regulation it is by no means clear how much of the progress has been the result of regulation and how much would have occurred in any event. Indeed, there are plausibly some measures of environmental progress that have been retarded by environmental regulation.[71] But assuming that modern environmental regulation gets some or even most of the credit for the positive trends on which Lomborg reports, his central point that we need to better prioritize remains.[72] We may have made environmental progress through regulation, but if we could have made greater progress through better informed regulation or through nonregulatory means, Lomborg's critique remains compelling.

It is argued that Lomborg's litany is long dead and that modern environmentalists are much more sophisticated in their approach.[73] No doubt some are, but John Erhlich, Rachel Carson, Barry Commoner and even Thomas Malthus remain patron saints of environmentalism notwithstanding that their predictions have been proven wrong again and again.[74] And it is not just the deceased and gray beards whose ideas constitute the litany. Few have been more apocalyptic than former Vice President Al Gore in his *Earth in the Balance*,[75] yet his ideas have been widely and enthusiastically embraced by environmentalists. Lomborg demonstrates that an environmental apocalypse is about as likely as environmentalists agreeing that Julian Simon had it right, after all. Regrettably, Lomborg's fate with environmentalists is almost sure to be the same as Simon's fate. Lomborg naively suggests that his

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[69] *See* Michael Grubb, *Relying on Manna from Heaven?*, 294 SCIENCE 1285, 1285-86 (2001) (book review).

[70] *See, e.g.*, LOMBORG, *supra* note 1, at 50-51 (higher life expectancy), 54-59 (less illness), 60 (more food), 70-71 (increased prosperity).

[71] *See, e.g.*, Jonathan H. Adler, *Free & Green: A New Approach to Environmental Protection*, 24 HARV. J. L. & PUB. POL'Y 653, 654-55 (2001) (noting that the federal Superfund program and the Clean Air and Endangered Species Acts stand as "the greatest obstacles to continued cleanup and conservation").

[72] LOMBORG, *supra* note 1, at 350.

[73] *See* Grubb, *supra* note 69, at 1285.

[74] *See, e.g.*, John Bongaarts, *Misleading Math About the Earth: Population: Ignoring its Impact*, SCI. AM., Jan. 2001, at 68 (noting that the population expanded more rapidly than Malthus predicted); Grubb, *supra* note 69, at 1285 (commenting that Paul Ehrlich has exaggerated the problem of food supply).

[75] AL GORE, EARTH IN THE BALANCE (1992).

dismantling of the litany is "impossible to ignore,"[76] but anyone who receives solicitations for support from mainline environmental groups knows that the litany is alive and well, notwithstanding the facts.

The most surprising and disheartening reactions to Lomborg's book have come from scientists and leading scientific publications. Both *Science* and *Scientific American* have taken him to task.[77] In a recent article in *Commentary*, David Schoenbrod describes the attack on Lomborg's book (and on Lomborg) as "the very opposite of the free give-and-take that is supposed to characterize responsible scientific discourse."[78] "In choosing to treat *The Skeptical Environmentalist* as an attack on environmental science," says Schoenbrod, "Lomborg's scientific critics inadvertently revealed the degree of their own complicity with the misrepresentations and propagandistic distortions he so skillfully exposed."[79] No doubt scientists will object that they are not complicit in sustaining the litany, but what else explains their vicious reaction to a book that is largely a recounting of the facts reported by scientists?

Environmentalists of the deep ecology sort will object that Lomborg's book is anthropocentric. But that is not a telling critique. Lomborg is no more anthropocentric than the next guy, even when the next guy is a deep ecologist. The claim that we, or some of us, can think about the environment from the perspective of nonhuman organisms is hubris even beyond that of the ecosystem managers. As Lomborg observes, "the extent to which penguins and pine trees are considered depends in the final instance on some (in democracies more than half of all) individuals being prepared to act on their behalf. . . . [I]t depends on the assessment by *people*."[80]

VIII. MORE BANG FOR THE BUCK IS HARD TO DO

Central to Lomborg's argument is the claim that resources expended on solving some environmental problems would yield far greater returns if spent on other public needs, both environmental

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[76] LOMBORG, *supra* note 1, at 341.

[77] *See, e.g.*, Grubb, *supra* note 69, at 1285-86; John Rennie, Editorial, *Misleading Math About the Earth*, SCI. AM., Jan. 2001, at 61; Stephen Schneider, *Misleading Math About the Earth; Global Warming: Neglecting the Complexities*, SCI. AM., Jan. 2001, at 62; John P. Holdren, *Misleading Math About the Earth; Energy: Asking the Wrong Question*, SCI. AM., Jan. 2001, at 65; Bongaarts, *supra* note 74, at 67; Thomas Lovejoy, *Misleading Math About the Earth; Biodiversity: Dismissing Scientific Process*, SCI. AM., Jan. 2001, at 69.

[78] Schoenbrod, *supra* note 62, at 53.

[79] *Id.* at 54.

[80] LOMBORG, *supra* note 1, at 12.

and nonenvironmental.[81] He discusses the oft-cited study by the Harvard University Center for Risk Analysis of a wide array of public interventions to save lives.[82] The core conclusion of the study was that there is little correlation between the amount we spend on intervention and the number of lives we can expect to save.[83] We invest far more in the mitigation of some relatively low risks than we do in the avoidance of much higher risks.[84] Lomborg builds on this analysis to argue that we should redirect resources invested in regulating smaller environmental risks to interventions that will yield higher returns, like worldwide health and nutrition programs.[85]

Lomborg's argument is persuasive, but a bit misleading. While it is accurate to say we could yield higher public returns by redirecting some of our resources to other problems, the redirection of those resources is not a simple matter. The computations of resources invested in environmental regulation should and do include far more than the direct governmental costs of regulation. Included are the costs of compliance, both direct and indirect. These costs are not easily recouped for alternative public programs. Money spent to comply with government regulation will not magically appear in the public coffers to be spent on public programs that yield higher returns. As Lomborg has demonstrated, there are not many certainties in our lives, but a near certainty must be that we will not recover the costs of regulatory compliance through taxation.[86]

Although I am confident Lomborg does not intend to mislead, it should be acknowledged that the argument for redirecting resources to public actions yielding higher returns has become part of the litany of the anti-regulators. This is not to say that Lomborg's point is incorrect, but only that accomplishing the reallocation of resources is not a simple matter. Indeed it is a reallocation that government can, at best, only affect indirectly. To suggest that current expenditures on regulatory compliance can dollar for dollar be reallocated to saving lives and feeding people is misleading, to say the least.

A reallocation of resources from avoiding relatively small environmental risks to providing food and health care to millions of hungry and sick people will only happen through economic devel-

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[81] *Id.* at 327.
[82] *Id.* at 338-42.
[83] *Id.* at 339.
[84] *Id.* at 339-41.
[85] *Id.* at 341-42.
[86] *Id.* at 350-52.

opment across the globe. The connection between such economic development and the reduction in expenditures on low return environmental regulations is distant, but potentially real. If companies are able to reduce expenses of environmental compliance, they will spend little if any of the savings on food and medicine for the poor, but they will invest in economic growth which might benefit the poor. Governments around the world can have significant influence on whether or not new investment does benefit the poor by encouraging free trade and local economic development. This does, however, involve politics, so there are no guarantees.

CONCLUSION

Rather than advance our understanding of the many challenging issues of environmental policy, it seems *The Skeptical Environmentalist* has become part of the debate, and Lomborg is on the side of the black hats. This is so notwithstanding the fact that Lomborg has convincingly demonstrated that in virtually every respect there has been enormous progress in the human condition, even in the most undeveloped corners of the world. Furthermore, it is so notwithstanding that he relied entirely on the same sources of data employed by those who see nothing but doom and gloom.

No doubt Lomborg has made a few errors of fact, although David Schoenbrod was able to cite only a handful,[87] and none of any consequence. And no doubt Lomborg has his personal biases and preferences, but few if any of his critics know anything about what those might be. What we know is that he was once a Greenpeace member,[88] the mention of which irritates his former collaborators, and that he purports to have an interest in learning the facts about the environmental state of the world.[89] Because he has done a far more comprehensive and thorough job of researching the facts than almost anyone, he deserves, at least, the respect of civil discourse. If some or many of his conclusions are in error, he should be proven wrong in the great tradition of scholarly exchange. But even then, he should be praised for advancing the exchange and thus improving our understanding.

But that is not the way of environmental politics. It would be a shame, but not surprising, if Bjørn Lomborg returns to Denmark in pursuit of less controversial pursuits. If he does, he can do so with the knowledge that he has made an important contribution to

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[87] *See* Schoenbrod, *supra* note 62, at 54.

[88] LOMBORG, *supra* note 1, at xix.

[89] *Id.* at xix-xx.

our understanding of the state of the world's environment, whether or not we are smart enough to pay attention.