

Environmentalism, Libertarianism, and Private Property Rights

Walter E. Block

Harold E. Wirth Eminent Scholar Endowed Chair and Professor of Economics
Loyola University New Orleans
wblock@loyno.edu

Abstract:

In the view of most commentators, academic and otherwise, “free market environmentalism” is a veritable contradiction in terms. It is widely thought that to the extent that one favors protecting the environment, or, even, studying it, to that extent one must reject free enterprise and private property rights. The only scholars who wish to save the fauna and flora, and ensure that we do not trash the planet, must eschew such right-wing considerations and pretty much embrace the polar opposite viewpoint. In the extreme, free market environmentalism is not only a logical contradiction, it reeks of fascism, profiteering, and destruction of this our third rock from the sun.

Although a critic of free enterprise environmentalism, he treats this viewpoint sympathetically. He does not give it the back of his hand in derision. You will look in vain for contempt in his rejection of this philosophy. Rather, his critique is a careful, cautious, knowledgeable treatment of this perspective. All the more reason that his criticisms be examined critically, since in my view, the best last chance of saving the environment lies in exactly the direction opposite to the one he avers.

Keywords: *Environmentalism; libertarianism; private property rights; economic freedom*

Introduction

(Shahar, 2022) has penned an important critique of free market environmentalism. As an advocate of this latter position, I am extremely grateful to him for his scholarly, dispassionate, careful treatment of it. There will be no “ships passing in the night” between the two of us. He criticizes what adherents of this viewpoint write; there are no straw man arguments to be found in his presentation. However, he starts on the wrong foot. This philosopher states: “Whereas environmentalists favor limiting freedom for nature’s sake, libertarians seem opposed to this.” But this implies that all environmentalists are leftists, opposing economic and other freedoms. This is true, for many, but, happily, not for all. For example, there are indeed libertarian free-market environmentalists, who

think that the best way to protect nature lies in the very opposite direction: via enhancing private property rights and economic freedom. There are, indeed, free enterprise environmentalists (W. E. Block, 2021a). However, (Shahar, 2022) is entirely correct in asserting that “libertarianism is often regarded as incompatible with serious environmental concerns.” (Shahar, 2022) castigates libertarianism for its supposed inability to protect nature for its own sake. It is difficult to comprehend what this would even mean, thus almost impossible to defend this philosophy from that criticism.

One way to make sense of this disparagement would be to assume that Mother Nature owns the planet, and ask, What would be her view on whatever issue is under discussion? For example, to plow a field would be akin to scratching her in the face, and she might well resent this imposition; she might well consider this in effect an assault and battery. To engage in deep mining would be similar to gouging her.

Well, if this is the charge, I shall have to plead guilty on behalf of libertarianism. Plowing and mining are certainly compatible with this philosophy. On the other hand, if the critique is that no nature preserves, untouched by human hands or feet, can be erected based on private property rights and homesteading thereof, the reader is directed to (W. E. Block, 2022; W. E. Block & Edelstein, 2012) which makes the opposite case.

I object to this statement of our author: “Whereas environmentalists favor limiting freedom for nature’s sake, libertarians seem opposed to this.” This, to be sure, is only a verbal dispute I am now having with this scholar, but it is an important verbal dispute. It implies that none of those concerned with protecting the planet, its forests, and animals, can be libertarians. It completely, arbitrarily, and unjustifiably cancels out the possibility of free-market environmentalism. And, yet, as Shahar full well knows, there are indeed free enterprise environmentalists (T. L. Anderson & Leal, 1991, 2015; Rothbard, 1982a).

This chapter makes no effort to settle on the correct version of libertarianism. Instead, it focuses on the familiar natural rights version which places individual rights at libertarianism’s foundation and understands these in a broadly Lockean way. This paradigm sees coercion as justifiable solely in response to coercion, and it regards political action as justifiable solely for defining and enforcing negative rights. This is just one variety of libertarianism, to be sure

not Proudhon's, for example, nor Hayek's or Friedman's. But it is the tradition of core figures like Rand, Rothbard, and Nozick, and it is what critics typically have in mind when they call libertarianism weak on the environment.

This is excellent on his part. It demonstrates that Shahar is willing to their most plausible and persuasive form; he must feel the whole force of the difficulty which the true view of the subject has to encounter and dispose of; else he will never really possess himself of the portion of truth which meets and removes that difficulty.

Robert Nozick famously called individual rights 'side constraints' on how people may treat each other (Nozick, 1974). One way to visualize what Nozick had in mind is to imagine each person occupying a moral 'bubble' encompassing everything over which she has rights her body. Nozick's account holds people are free to do as they please so long as they avoid invading others' bubbles. On the other hand, incursions into others' bubbles are strictly forbidden, with sanctions and compensation becoming appropriate when invasions occur. This simple model makes it obvious why libertarianism must be sensitive to environmental problems: environmentally impactful activities often invade people's bubbles of rights.

Our authoress sets up a moral bubble, around which, in her view, libertarianism with its non-aggression principle (NAP) is required to defend. But then she avers that there are all sorts of things that would have to be ruled out of court if property rights are to be fully defended. For example, gas-powered or even electric cars, indeed, "virtually every action that relies on energy and natural resources—i.e., just about everything. Turning on lights, taking a shower, preparing food, donning a t-shirt: all can be traced to some incursion against someone somewhere." Left off this list is my particular favorite: exhaling. Yes, it would be problematic not to be able to use lights or take a shower, but it would be even more inconvenient not to be able to expel breath. We would all burst if we could not do that.

So, what is the libertarian or free market environmentalist response to this clever attempted reduction ad absurdum of Shahar's? There are three rejoinders, the law does not take into account trifles. Yes, we all exhale carbon dioxide, which is indubitably a poison. But it is of so slight a rights violation that this behavior of all of us has never been implicated in anything untoward (Ehrlich, 1968; Malthus, 1798).

Two, the burden of proof always rests with the plaintiff. The defendant is assumed innocent of any uninvited border crossing against a bubble or anything else owned by anyone unless proven otherwise. The socialist environmentalists have made all sorts of claims about global warming, etc., but no proof has even been forthcoming from that quarter. Instead, they engage in the pejorative of climate denial which substitutes for evidence.

Three, again sticking to exhaling as perhaps the most powerful *reductio ad absurdum* in the armament of the woke environmentalists, there is that little matter of homesteading. Our forefathers all exhaled. They thus bequeathed to subsequent generations the right to continue to do so. Similarly, if the pig farmer was there first, the odors he hurls at his neighbors are not a rights violation; he first homesteaded them. Johnny come lately are coming to the nuisance. Ditto for airport noise and, also, for pollutants from steel mills, etc.

(Calabresi & Melamed, 1972) Melamed (1972), or (Kaldor, 1939) pointed to by Shahar, libertarian theory hardly needs enemies. Shahar waxes eloquent about the “infringe and compensate” viewpoint of these scholars, but she puts paid to it, correctly writing: “few libertarians would endorse a right to punch them in the gut for anyone willing to pay compensation.” However, this author errs in this statement: “For libertarians who are willing to endorse pollution with compensation, it is essential to the idea that pollution ‘pays its way’ that victims are compensated.”

Friedman or a Hayek libertarian might concur, but Shahar is not addressing theorists of that sort; instead, this honorific applies, only to core figures like Rand, Rothbard, and Nozick, who critics typically have in mind when they call libertarianism weak on the environment.

Shahar’s next sally against the good ship libertarianism is his Coalsville example: he regrets that it would be exceedingly difficult to prove that cancer was caused by the local polluters. The burden of proof rests with the plaintiff, and if this was worthy cannot adhere to this requirement, he is just plain out of luck and good riddance to his frivolous lawsuit. Shahar plaintively asks: “Must they wait until serious and potentially irreparable health problems emerge before they can stand up for themselves in court?” No, of course not. If they can show evidence of potential rights violations, they can apply for and be granted an injunction which would compel the future, or would-be polluters to cease immediately. According to this author:

"Solutions might be even less forthcoming for our other neighbors who have not yet experienced illness but fear the long-term effects of the city's pollution." But here solutions in his view pretty much means success for the plaintiff.

The basic libertarian principle is that everyone should be allowed to do whatever he or she is doing unless committing an overt act of aggression against someone else. But what about situations where it is unclear whether or not a person is committing aggression? In those cases, the only procedure consonant with the libertarian principle is to do nothing; to lean over backwards to ensure that the judicial agency is not coercing an innocent man. If we are unsure, it is far better to let an aggressive act slip through than to impose coercion and therefore to commit aggression ourselves.

Yet, Rothbard's response sits uneasily with the underlying libertarian vision of rights as constraints on how people may treat each other. Condoning pollution means permitting individuals to enter others' bubbles of rights without permission. Even if some pollution must be permitted for industrial civilization to function, it hardly seems obvious that polluting is morally on a par with the blameless exercises of liberty that libertarians are most keen to protect. The systematic difficulty of proving pollution-related harms should give us pause in insisting that the burden of uncertainty should always lie with victims.

But this is problematic. I go so far as to say that the burden of uncertainty should never lie with the supposed victims; rather, it should always be incumbent upon the plaintiff to prove his case. People are innocent until proven guilty, not the other way around, as Shahar would seem to have it. There is almost always uncertainty in the real world. Even if A is found on tape to be murdering B, it is always possible, asserts the skeptic, that someone faked the film. Do we want the burden to lie with the accused, that he has to prove his innocence? This seems to be the direction in which Shahar would drag us, and no libertarian would want to go down that garden path. Nor should anyone else.

Unexpectedly, given his criticisms of Rothbard, Shahar articulates a strong defense of this position. Defenders of Rothbard's view might retort that the real problem here is with the limitations of our current scientific, technological, and legal understanding and not the principle of refusing to interfere with people unless we can prove they violated rights. Pollution impacts may be difficult to track, and

courts may lack graceful responses to environmental uncertainties, but these are not inexorable problems.

These difficulties may simply reflect the fact that pollution is a new challenge we have not fully learned to navigate. Whereas many areas of law reflect eons of refinement, serious environmental concerns have emerged only in the past 200 years. Perhaps, instead of taking our lack of answers to show there are none to be found, we should focus on developing the scientific, technological, and legal innovations that may someday empower victims to hold polluters accountable."

However, Shahar's bias rears up once again when she asserts:

"The nature of environmental risks themselves, rather than our current lack of scientific and practical understanding, presents a serious obstacle to formulating a satisfactory regime based on the principle of compensation."

Shahar discusses nuisance law as an alternative to private property rights violations. He states: "Establishing an environmental nuisance does not require proving physical harm" If the victim merely does not like what the perpetrator is doing, and considers it a nuisance, then anyone can pretty much object to anything anyone else is doing.

In a more serious vein, Shahar states:

"By way of illustration, imagine I pollute a river that flows past your house to the point where swimming in it would be dangerous. Because you recognize the danger, you avoid swimming in the river and thus do not get sick. Even so, you can sue me because my pollution has hampered your ability to swim, which is protected as part of your rights as a riverside homeowner."

But in a radical libertarian world, all bodies of water would be privately owned (W. E. and P. L. N. Block, 2015). The river owner may do exactly as he pleases with his property, as long as he in no way violates your property rights. He also avers as follows:

"Likewise, imagine I fill the air with toxic chemicals to the point where you cannot safely go outside. Even if you have not breathed

enough of the pollution to grow ill, you may still sue me for impairing your ability to 'use and enjoy' the air."

But this sounds the same as in the previous case of property rights violations. There, it was not necessary to prove actual illness as a result of the defendant's action. If you "cannot safely go outside" that would be more than sufficient to trigger a winning lawsuit, at the very least for an injunction.

This author is willing to concede that nuisance might not at all be the full answer:

"In practice, they may prove unwilling to enforce stringent standards of environmental quality, especially when doing so would place significant burdens on polluters who drive their local economy, employ many people, and produce goods and services that consumers demand. When facing polluters like these, courts might end up insisting that it is citizens who ought to adjust their expectations."

However, did it get established that stringent standards and significant burdens are the be-all and end-all of correct environmental law? This merely seems to be but one more instance of Shahar's unjustified bias in this direction. Secondly, if courts cannot be relied upon to do the right thing, where is the evidence that his own favored alternative, legislatures. Nor are the government courts all that reliable. States (Rothbard, 1982a). Not actionable, this means if it means anything, that the plaintiff cannot even bring a lawsuit against the trespasser-polluter, let alone win one.

Even so, there are some fundamental reasons why we should expect courts to balk at deploying stringent standards against polluters. In line with Rothbard's comments about the Hippocratic Oath, courts typically see themselves as occupying a conservative role in society, disrupting the status quo only when this is conclusively justified. Insofar as there is inherent ambiguity in what counts as going too far in impairing the reasonable enjoyment and use of environmental amenities, and insofar as overzealous intervention could have massive economic and social impacts, it is understandable why courts are often hesitant to take a hard line.

Please excuse us for repeating that Shahar nowhere justifies his continued call for stringent standards or a hard line. It is very important to stress this point. The second difficulty, here, is that this

author is unduly extrapolating from government to private courts. Shahar is not justified in tying Rothbard's hands with the former variety when he would only favor the latter. Just because government courts, by stipulation, cannot be relied upon to do the right thing, whatever that is, does not logically imply that private competitive courts will similarly fail. Competition does bring about a better product, and there is no reason why this basic economic principle should not apply to courts.

Our author calls for "some workable principle for adjudicating competing claims over the right to pollute." But pollution is necessarily a rights violation. The optimal amount of pollution, then, would be zero. In like manner, the optimal amount of murder is zero; the optimal quantity of rape is zero; the optimal rate of all such crimes is that amount too. I do not say that the entire GDP should be devoted to crime prevention, even if such a procedure would eliminate all crime; for then we would all starve to death. But, abstracting from how to stop crime, it seems reasonable to acquiesce in the notion that all crime should end. Ditto with pollution, which, under the libertarian legal code, is also criminal. It is an uninvited border crossing, or a trespass, which violates libertarian law; it commits the crime of trespass against people bubbles. So, contrary to Shahar, this is no such thing as the right to pollute, any more than that there could be a right to rape or murder or enslave. Ideally, these crimes, all of them, must be eliminated.

What about the right to exhale, to have a pig farm, to create noise as airports do, and to put into the air chemicals such as coal-fired steel mills? If these count as pollution, then libertarian law would require their termination. The real debate, then, is what counts as criminal pollution and what does not. A far better word in this context than pollute would be emit. The latter is neutral, the former is a pejorative.

Shahar next discusses riparian rules: "... individuals who own riverfront property have a right to make reasonable use of it, whether for domestic purposes (e.g., drinking, swimming, fishing) or for commercial or industrial purposes (e.g., agriculture, waterpower, waste disposal). Under this doctrine, no one is held to 'own' the river itself: what each person has is a right to use the river alongside the other rightful users. When users come into conflict with one another, courts seek to identify an equitable balance between the competing parties' claims."

He rejects this because it will

“be cumbersome in practice. In the first case of trying to balance every user’s claims against every other’s, it is easy to see applying this standard would put courts in the difficult position of negotiating (and potentially renegotiating) multilateral conflicts in constantly changing social and economic circumstances.”

At this point, Shahar contemplates yet another possible solution: property rights, and thus the right to emit chemicals, etc., into the air or water, are predicated upon homesteading, on a first come first served basis. He rejects this because it would have the potential for ossifying the status quo.

A basic principle of prior appropriation is that users may not alter their behavior in ways that impair other users’ rights. Taking this principle seriously can make it difficult for users to change what they are doing, relocate their activities, or transfer their claims to others who have different plans in different places. To illustrate, imagine a company in west Coalsville wants to relocate its factory to the east part of town.

Would this action be covered by its existing rights to pollute? If so, this would have significant consequences for others in east Coalsville: residents might now face additional pollution, or junior polluters might be asked to cut back. To avoid these problems, courts might refuse to sanction the new factory based on the old rights from West Coalsville. However, this would force the company to go through the costly process of acquiring new permissions from established Eastside polluters to complete its move.

But if I own a house in West Coalsville, and I want to relocate to East Coalsville, I simply sell the former, and buy another in my now preferred neighborhood. I would certainly not have the right to seize someone else’s house in east Coalsville against his will. Why this limitation, when applied to an emitter, not a homeowner, should be a drag on economic dynamism is not easy to discern. However, Shahar has one more arrow in his quiver in his attack on libertarian environmental theory. In his view, the shortcomings are even worse when one considers our most difficult environmental problems. For complex global challenges like climate change, for example, it is difficult to imagine a satisfactory court-based resolution through any of the approaches we have discussed.

At the planetary scale, it would seem unfeasible for courts to design and enforce a scheme of compensation between greenhouse gas emitters and their far-flung victims, define standards of reasonable use and enjoyment to regulate every source of emissions, or adjudicate a scheme of priority access to cover every emitter on Earth. Even acknowledging that climate change represents the kind of injustice libertarians should resist courts may simply lack the tools to adequately handle the problem. Of course, it bears noting that societies have failed to resolve these most difficult problems through any means, libertarian or otherwise. Still, it would be a problem for libertarianism if its adherents were forced to say, at the level of abstract theory, that we simply cannot hope to resolve problems like climate change without giving up on their paradigm.

First of all, it is by no means clear that there is any such thing as man-made climate change. In the 1970s, the indictment against capitalism was, instead, global cooling; in the 1990s, it was global warming; when both of these failed to sufficiently indict capitalism, climate change was trotted out to that end. But let us stipulate, *arguendo*, that the free-market system is guilty of at least one if not all of these complaints. Of course, our author is correct: government courts may simply lack the tools to adequately handle the problem.

But if we are in the Rothbardian world that Shahar has properly embraced as at least a hypothetical foil, of course, this does not at all apply. Rather, private courts are the order of the day. They are manned, after all by human beings. But it is a comparative issue. Are they more or less likely to address this challenge than governmental legislatures? About that, there can be little doubt, given that they are part of the competitive environment.

You will note that Shahar specifically and explicitly renounced the libertarianism of the likes of Friedman and Hayek, and embraced that of Rothbard. But he now goes back on this stipulation, embracing a government that engages in cap-and-trade schemes and pollution taxes offer mechanisms for limiting pollution at safe levels or compensating those who are victimized. Even so-called command and control regulations which impose specific performance requirements on polluters can be used to specify an equitable balance among individuals' rights to 'reasonably use and enjoy' resources like air and water.

Shahar is very clever in his attack on Rothbardian environmental libertarianism. Not for him an either-or situation; that is, the way he

sets up his critique, it is impossible to maintain, in response, that yes, courts are imperfect, even private ones, but they are better than legislatures, and bureaucrats. Au contraire, in his view, courts are fine and dandy. I go along with him on this with only the proviso that they be private, and thus part of the free enterprise system. His view is that both are better than only one, only that one. So, in his perspective, let us by all means have private courts on the case, but, in addition, the government too. In that way, societies could draw on the expertise and coordinating power of high-level public administrations while still preserving the basic rationales and strategies of a court-based regime.

Thus, the only way to counter his astute attempt to undermine free enterprise environmentalism is to maintain that on net balance, governments constitute a negative contribution to society, to civilization, to the economy, and the environment. Happily, for the defense of environmentalism based on free markets and private property rights, this is not all that difficult to do. Two considerations buttress this viewpoint. One, government is necessarily compulsory. It taxes, that is, robs from, people who have not agreed to pay any amount of money to this institution. It demands a monopoly of the protection and other such services it provides to the people.

This is definitive in that it cannot be maintained anymore that the state is a more positive benefit than another other robber gang, even though the latter lacks the public relations expertise of the former. Two is Rothbard's demonstration that a more accurate set of GDP statistics would be attained by subtracting the government's "contribution" than by adding it. True, these considerations impact, only, the government in general. They say nothing about its ability to enhance environmental protection. But given them, it would appear that the burden of proof rests with those, such as Shahar, who maintain his organization can be a positive influence on the environment.

Consider in this context Shahar's claim that government interventions have been and will continue to be indispensable for controlling pollution. A very strong counterexample is the Athens Empire Laundry case, mentioned above. It is difficult to imagine even a statist court, let alone a private one, taking such an explicitly pro-pollution stance. It is from this quarter that Shahar expects pro-environmental succor; he may well be disappointed.

My next quarrel with this author involves this statement

of his from a libertarian perspective, each of these pathways to environmental protection is noteworthy for being noncoercive, involving private parties using their liberty and influence in the marketplace to further environmental objectives. On the strength of strategies like these, some libertarian writers have articulated a paradigm of 'free-market environmentalism' that treats voluntary actions as the principal mechanism for protecting landscapes, ecosystems, and biodiversity (T. L. Anderson & Leal, 2015). But these authors are only fair-weather friends of the libertarian version of environmentalism, at least insofar as the Rothbardian version is concerned. For example, see (W. E. Block, 1990, 2021b).

According to our philosophical critic, purely voluntary efforts, even when highly ambitious, will often fail to prevent ecological degradation and loss. Although it may be possible to translate nature's value into profit opportunities, this will not always be feasible. Especially beautiful or charismatic parts of nature may receive disproportionate protection while other parts struggle to earn their keep.

Yes, it is easy to see that buffalo, cuddly bears, and not-so-cuddly alligators and crocodiles, so-called mega-fauna, will be protected. But what about disgusting creatures such as spiders, worms, vermin, bats, snakes, and their ilk? Who will likely step up to the plate to protect them? Pharmaceutical companies, and biology departments of major universities, will likely do so, that is who. Why? If the latter are not too busy imposing diversity statements and DEI upon all and sundry, they will want to preserve these less attractive species for future study. As for the industry tasked with coming up with new drugs, they will want to keep these potential sources alive, just in case they hold the key to future such products.

Will this suffice for the survival of all species? Presumably not. Only those will continue in existence that can pass the profit and loss market test. This will not satisfy Shahar and his fellow critics of free enterprise, but they can propose no better criterion than that. If we were to try to save all species, the expected costs would presumably be far greater than the benefits, to human beings, that is. Only a dictator would impose his view on this matter on other people.

Yes, "... it would be unrealistic to expect activists to be able to protect every vulnerable part of the natural world." So, let us by all means use compulsion to impose on all other left-wing environmentalists' views on what is important. That seems to be the

message of this author. Our author takes yet another stab at justifying his viewpoint, through compulsion.

A second argument questions whether environmental protection should be viewed as an appropriate matter for private discretion in the first place. Environmentalists who view nature as independently morally significant may be reluctant to characterize preservation as something to be pursued to only the extent that citizens voluntarily choose in the marketplace. Surely libertarians would not treat the protection of human rights this way. If someone were abusing a child, for example, we would not advise objectors to buy the child or propose a contract to halt the abuse. Nor would we highlight how the abuser could profit from gentler treatment. Abusing children is wrong and should be stopped, period. In the eyes of many environmentalists, environmental destruction is also wrong, and the propriety of stopping it does not start and end with what market actors consensually work out amongst themselves". (Shahar, 2012)

The obvious rejoinder to this plea for coercion is disanalogy. There is a world of difference between child abuse and not preserving every jot and tittle of the environment. The former involves a human rights violation, the latter does not. Child abuse is always wrong; it was a rights violation during our caveman days, is at present, and always will be. Preserving nature millennia ago would have been incompatible with the preservation of the human race, and, therefore, cannot be a human right.

In response, Shahar launches into, in effect, a call for animal rights. Some environmentalists have urged the extension of rights beyond humanity. But libertarians, and others as well, of course, have rejected this stance for good and sufficient reason. For example, if it were true, then the lion who killed a zebra could be considered a murderer. In the view of this philosopher. Some readers may struggle to understand how libertarians could simultaneously affirm nature's inherent value and deny the legitimacy of coercing people who fail to respect it.

I could scarcely understand this concept then, and now, again, fail to do so. The best I can make of it is that those who see matters in this way see intrinsic values in the environment, apart from any human beneficiaries of it. This is difficult to understand since only human beings can value things or objects and here, they do not value nature for any benefits that flow from it toward human being

evaluators; rather, they assert that the planet has value apart from that. I still do not understand how that can occur. But one thing I am sure of: this is not part and parcel of libertarianism, and this critique of Shaha's is thus misaimed. His solution to this problem is the right to do wrong. But the wrong here is not a rights violation; it is, rather, nasty but entirely legal behavior such as "suddenly dumping a longtime romantic partner without reason or explanation." Very revolting indeed, but certainly not a crime. However, libertarianism confines itself to the examination of criminal behavior, since that is precisely what the basic principle of libertarianism consists of: opposition to initiatory threat or aggression, namely the non-aggression principle.

For Shaha, there are only two viewpoints involving the environment. One is "free-market environmentalism" which he places in scare quotes. The other is plain, old, ordinary, mainstream, widely accepted environmentalism, which needs, in his view, no such adornment. For him, there is no such thing as left-wing environmentalism, socialist environmentalism, or Marxist environmentalism, as separate from ordinary environmentalism. In my view, some scholars are representative of all three viewpoints.

Our author next claims that libertarians cannot without transforming core features of their worldviews accept the nonconsensual programs many environmentalists favor. This is false. (Rothbard, 1982a) analyzes unjustified pollution as a trespass. And what is his libertarian remedy for such improper behavior, which violates private property rights? Why, coercive remedies, of course: compelling by law that the perpetrator cease. Here is yet another, similar, analysis. In the view of (M. Anderson, 1989).

At its root, all pollution is garbage disposal in one form or another. The essence of the problem is that our laws and the administration of justice have not kept up with the refuse produced by the exploding growth of industry, technology, and science.

Fortunately, there is a simple, effective approach available long appreciated but underused. An approach based solidly on private property rights.

If you took a bag of garbage and dropped it on your neighbor's lawn, we all know what would happen. Your neighbor would call the police and you would soon find out that the disposal of your garbage is your responsibility, and that it must be done in a way that does not violate anyone else's property rights.

In civilized society, he stands at all times in need of the cooperation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship of a few persons. In almost every other race of animals each individual, when it is grown up to maturity, is entirely independent, and in its natural state has occasion for the assistance of no other living creature.

But man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest the only effective way to eliminate serious pollution is to treat it exactly for what it is garbage. Just as one does not have the right to drop a bag of garbage on his neighbor's lawn, so does one not have the right to place any garbage in the air or the water or the earth, if it in any way violates the property rights of others.

We have tried many remedies in the past. We have tried to dissuade polluters with fines, with government programs whereby all pay to clean up the garbage produced by the few, with a myriad of detailed regulations to control the degree of pollution. Now some even seriously propose that we should have economic incentives, to charge polluters a fee for polluting - and the more they pollute the more they pay. But that is just like taxing burglars as an economic incentive to deter people from stealing your property, and just as unconscionable.

"What the strict application of the idea of private property rights will do is to increase the cost of garbage disposal. That increased cost will be reflected in a higher cost for the products and services that resulted from the process that produced the garbage. And that is how it should be. Much of the cost of disposing of waste material is already incorporated in the price of the goods and services produced. All of it should be. Then only those who benefit from the garbage made will pay for its disposal."

States (Dolan, 2014):

"What we need are tougher clearer environmental laws that are enforced not with economic incentives - but with jail terms."

I put it to Shahar: you can't get too much more coercive than that. It is difficult to see how libertarian free market environmentalists can be clearer that pollution is a crime, deserving of the usual type of punishment meted out to criminals.

Nothing loath, this scholar continues:

“The question must therefore be asked whether environmentalists can embrace the kinds of limitations libertarians’ demand. If not, then this may mean they cannot be accommodated within the libertarian paradigm... Even if environmentalists find it acceptable in theory to use coercion in achieving their goals, they may nevertheless concede that using force against others is a moral cost to be avoided when feasible.”

As I see matters, left-wing environmentalists, once they learn a modicum of economics, and begin to comprehend libertarian theory, most certainly can “be accommodated within the libertarian paradigm.” Nor should they look upon the use of physical force with misgiving. It is not at all a moral cost to be avoided when feasible.

It is now time to conclude this paper. All libertarians, and environmentalists, should be extremely grateful to Shahar for his contribution to both fields. Most environmentalist critics of libertarianism do not accurately depict it. Shahar does us the honor of taking us seriously. Moreover, he criticizes what we have written; no straw man attacks here. With criticisms of this sort, free enterprise environmentalism can only become stronger; many of his points are very well taken. This applies to all varieties of environmentalism; they can all benefit from Shahar’s insights.

References

- Anderson, M. (1989). *The Christian Science Monitor* (W. E. Block (ed.)). The Fraser Institute.
- Anderson, T. L., & Leal, D. R. (1991). Free market environmentalism. *Free Market Environmentalism*, 13(2), 1–192.
- Anderson, T. L., & Leal, D. R. (2015). Free market environmentalism for the next generation. In *Free Market Environmentalism for the Next Generation*. Palgrave Macmillan.
- Benson, B. L. (1990). the Enterprise of Law: Justice Without the State. In *Journal des Économistes et des Études Humaines* (Vol. 3, Issues 2–3). Pacific Research Institute for Public Policy. <https://doi.org/10.1515/jeeh-1992-2-314>
- Benson, B. L. (2002). *Justice without Government: The Merchant*

- Courts of Medieval Europe and Their Modern Counterparts. In Gordon and Tabarrok (Ed.), *The Voluntary City: Choice, Community, and Civil Society*. The Independent Institute.
- Berman, H. J., & Dasser, F. J. (1990). The “new” law merchant and the “old”: sources, content, and legitimacy. In ed Thomas E. Carbonneau (Ed.), *Lex Mercatoria and Arbitration, A Discussion of the New Law Merchant*. Transnational Juris Publications.
- Block, W. (2006). Katrina: Private enterprise, the dead hand of the past, and whether socialism; an analysis in economic geography. *Ethics, Place and Environment*, 9(2), 231–241. <https://doi.org/10.1080/13668790600694477>
- Block, W. E. (1990). Earning Happiness Through Homesteading Unowned Land: a comment on “Buying Misery with Federal Land” by Richard Stroup. *Journal of Social, Political and Economic Studies*, 15(2), 237–253.
- Block, W. E. (2021a). *Free Enterprise Environmentalism*. Lexington Books.
- Block, W. E. (2021b). Rejoinder to Huemer on Animal Rights. *Studia Humana*, 10(4), 66–77.
- Block, W. E. (2022). Animal Rights from the Perspective of Evictionism. *Studia Humana*, 11(2), 10–19.
- Block, W. E. and L. H. R. (2007). Katrina and the Women of New Orleans. *Telos*, 139, 170–185. <http://tinyurl.com/2wv8lc>
- Block, W. E. and P. L. N. (2015). *Water Capitalism: The Case for Privatizing Oceans, Rivers, Lakes, and Aquifers*. Lexington Books, Rowman, and Littlefield.
- Block, W. E. and S. C. (2017). Animal torture. *The Review of Social and Economic Issues (RSEI)*, 1(4).
- Block, W. E., & Edelstein, M. R. (2012). Popsicle sticks and homesteading land for nature preserves. *Romanian Economic and Business Review*, 7(1), 7–13.
- Calabresi, G., & Melamed, A. D. (1972). Property Rules, Liability Rules, and Inalienability: One View of the Cathedral. *Harvard Law Review*, 85(6), 1089–1128.
- Culpepper, D., & Block, W. (2008). Price gouging in the Katrina aftermath: Free markets at work. *International Journal of Social*

- Economics, 35(7), 512–520.
- Dolan, E. (2014). The Austrian paradigm in environmental economics: Theory and practice. *Quarterly Journal of Austrian Economics*, 17(2), 197–217.
- Ehrlich, P. L. (1968). The Population Bomb. In *The Top 50 Sustainability Books*. Sierra Club - Ballantine.
- Feeley, M. M. (2019). Private alternatives to criminal courts: the future is all around us. *Columbia Law Review*, 119(2).
- Friedman, D. (1979). Private creation and enforcement of law: a historical case. *University of Chicago Law Review*. Friedman, D. (1989). The Machinery of Freedom: Guide to a Radical Capitalism (excerpt). *Anarchy and the Law: The Political Economy of Choice*, 40–56.
- Holman. (1919). *Athenz Empire Laundry Co.*
- Hoppe, H. H. (2001). Democracy - The god that failed: The economics and politics of monarchy, democracy and natural order. In *Democracy - The God That Failed: The Economics and Politics of Monarchy, Democracy and Natural Order*.
- Kaldor, N. (1939). Welfare Propositions of Economics and Interpersonal Comparisons of Utility. *The Economic Journal*, 49(195), 549–552.
- Malthus, T. (1798). *an Essay on the Principle of Population, As It Affects the Future Improvement of Society With Remarks on the Speculations of Mr Godwin, M. Condorcet, and Other Writers*. *Environment and Ecology in the Long Nineteenth Century: Volume I: Scientific and Professional Perspectives on Environment, 1789-1858*, 1, 81–85.
- Marcus, B. K. (2009). *The Enterprise of Customary Law*.
- Mercer, I. (2004). How much is that doggie in the window? *SMT Surface Mount Technology Magazine*, 18(6).
- Montgomery, S., Block, W. E., Scholar, I., & Butt, E. J. A. (2016). Comment And Analysis Animal Torture : A Critique Of Thick. 504.
- Nozick, R. (1974). *Anarchy, State, and Utopia*. Basic Books.
- Osterfeld, D. (1989). Anarchism and the Public Goods Issue : Law, Courts, and the Police. *The Journal of Libertarian Studies*, 9(1),

47–68.

- Peden, J. R. (1977). Property rights in Celtic Irish law. *Anarchy and the Law: The Political Economy of Choice*, 565–585.
- Popeo, D. (1988). Privatizing the Judiciary.
- Rand, A. (1971). The Objectivist Tradition. *Chicago Review*, 30(3), 5.
- Rothbard, M. N. (1973). Free Market Police, Courts, and Law. 519.
- Rothbard, M. N. (1982a). Law, Property Rights, and Air Pollution. *Cato Journal*, 2(1), 55–99.
- Rothbard, M. N. (1982b). *The Ethics of Liberty*. Humanities Press Atlantic Highlands.
- Rothbard, M. N. (1991). On Denationalizing the Courts. 2(10).
- Shahar, D. (2022). Environmental Issues. *Routledge Companion to Libertarianism* (Routledge), 307–328.
- Stringham, E. (1998). Justice Without Government. *Journal of Libertarian Studies*, 14(1), 53–77.
- Tannehill, Morris, & Linda. (1984). *The Market for Liberty*. Laissez Faire Books.
- Thierer, A. (1992). *Judgment Day: The Case for Alternative Dispute Resolution*. Adam Smith Institute.
- Wenzel, R. (2014). Would Animals Have Rights In a Libertarian Society? *Economic Policy Journal*.
- Woolridge, W. C. (1970). *Uncle Sam the Monopoly Man*. Arlington House.
- Young, A. (2002). Arbitration on Trial. *Mises Daily Article*. <https://mises.org/daily/1002/Arbitration-on-Trial>

