

The Progressive Era's Derailment of Classical- Liberal Evolution

by Fred L. Smith, Jr.

It is true that where a considerable part of the costs incurred are external costs from the point of view of the acting individuals or firms, the economic calculation established by them is manifestly defective and their results deceptive. But this is not the outcome of alleged deficiencies inherent in the system of private ownership of the means of production. It is on the contrary a consequence of loopholes left in the system. It could be removed by a reform of the laws concerning liability for damages inflicted and by rescinding the institutional barriers preventing the full operation of private ownership.

—LUDWIG VON MISES
Human Action

This statement captures the core dynamic nature of the classical-liberal view of civilization. Civilization is the slow evolutionary process by which a rich framework of institutions evolves (private property, contracts, the rule of law) and enables individuals to engage in exchange. By so doing, individuals advance and protect the values they hold. As new values emerge, as older resources become scarce, classical liberals envision the institutional framework expanding to encompass them. The framework is always in flux, gradually growing as mankind's interests and challenges also expand.

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Civilization evolved familial institutions, which allowed diversified management units—experimental entities that could take chances without endangering the tribe. Land moved from the tragedy of the commons to private property. In more recent times, the initial bundle of concepts comprising the idea of private property was unbundled to allow separate ownership of subsurface rights and then later ownership of even the electromagnetic spectrum. As discussed below, environmental resources are the latest challenge to this evolutionary process.

Classical liberals do not see the market as failing; rather, they see inadequate resources making it difficult for individuals to express their preferences. That tension creates the

opportunity for institutional entrepreneurs to advance reforms that might better allow those preferences to be expressed. In the classical-liberal view, *we* are not charged with protecting the environment or anything else. There is no *social* utility function. Rather, individuals gain the right to own newly valued resources and to determine individually what sacrifices—what tradeoffs—they find worthwhile to protect those resources.

Precedents—in history or in other societies—guide that evolution. Innovators invent new ways of “fencing” the commons (barbed wire), devise methods of unbundling the “sticks” making up established property (creating divestible rights in subsurface minerals), and extend property rights to newly homesteaded resources (the electromagnetic spectrum). Institutional innovation is the process of *creative construction*, integrating an ever-greater fraction of the world’s resources into a system of voluntary exchange. That integration liberates the *creative destruction* of the extended market, making it possible for man to resolve more and more disputes without conflict or the risks of collectivism. Civilization is the trial-and-error process in which these experiments are validated or rejected.

This classical-liberal evolutionary process accelerated during the Industrial Revolution, as man’s creative energies found ways of working with nature to yield value. That process was weakened with the success of the “progressive” belief that planned order would better advance the human condition than the spontaneous order championed by economic liberalism. The progressives have largely succeeded in derailing institutional evolution for the last century or so. Resources not integrated into the classical-liberal order before 1900 are still not integrated today. Much of the western United States is the property of the federal government, as are almost all offshore areas. The electromagnetic spectrum, which Ronald Coase noted was actively being homesteaded privately, was brought back under collectivist control. And the air sheds, rivers and lakes, and wildlife—all of which became valued in the later nineteenth century—remain

totally under political control. The *fatal conceit* that motivated progressives ensured that centralized political management would replace the evolutionary approach that had prevailed. The result is the mishmash of public policy today.

Approach to the Environment

Contemporary environmental policy illustrates the result of that derailment. Today, most policy analysts (even libertarians) addressing environmental problems raise the possibility of private ownership of environmental resources (water, wildlife, air sheds) as a means of addressing environmental concerns, only to swiftly dismiss that approach as infeasible. The transaction costs associated with environmental resource ownership, we are told, are too high.

The classical-liberal challenge is to re-examine this history and to assess what institutions might have evolved had America not adopted collectivism. The roots of most modern public-policy problems stem from the destruction of the evolutionary process.

The implications of this thesis are important. It explains many of the fallacies of modern economics: market failures, “natural” monopolies (never, one might note, found in nature), public goods, externalities, lack of competitive grids. All stem from the impoverished state of institutions throughout the modern economy. Only areas where government was too slow to block the evolutionary process (the Internet, for example) have escaped this stagnation. I develop this theme in the environmental area.

As the quote by Mises suggests, it is not obvious that any environmental problems would have emerged—or if they had emerged, would have persisted—had the Progressive Era not prevailed. After all, economic issues are as old as mankind. The first cave dweller who dragged home his kill must have suffered some criticism from his neighbors as the carcass began to decay. Those early environmental problems were dealt with by the evolution of cultural rules—carry away offal, pollute waters only downstream of the tribe, move fires safely away

from the huts. Traditional societies evolved some sophisticated procedures for managing environmental issues.

The key question is: Why, as wealth increased and allowed this greater appreciation of environmental values, didn't new institutions evolve that would have empowered individuals to express their changing preferences?

The answer, I believe, lies in the undermining of the classical-liberal evolutionary process that occurred during the Progressive Era. Progressives believed that markets and private property slowed progress, and that collective management of resources would more surely advance the public interest. Thus they blocked the extension of private property to resources that had not yet been privatized (indeed, in the case of the electromagnetic spectrum and some arid western lands, rolling back fledgling homesteading efforts). Progressives also transformed the rule of law, making it more utilitarian, more willing to ignore individual values to advance the "common good." Social concerns trumped individual rights. Earlier common-law defenses of individual property rights that might have encouraged economic development along more environmentally sensitive paths were weakened or abandoned.

New Agencies

The progressives also created or expanded a vast array of "promotional" agencies—the Army Corps of Engineers, the Bureau of Land Management, the Rural Electrification Administration, the U.S. Forest Service—to dam rivers, build canals, manage timberlands, and string power lines. The pro-economic-growth biases of these institutions (undoubtedly the popular view at that time) led them to neglect environmental values. Progressive views came to dominate American culture, leading courts and legislators to weaken nuisance trespass. Economic activity became associated with low environmental protection; it is not surprising that many Americans saw economic development as "causing" disasters.

Thus when a wealthier America began to place greater value on ecological concerns—when, in fact, the effective political majority began to demand that the environment be protected—pollution and other environmental problems were viewed as a result of economic activity. The "market failure" explanation was accepted, even by most "free market economists."

Yet, as the initial quote by Mises suggests, this line of thinking is confused. Had classical-liberal institutions evolved, environmental values would have been integrated gradually into individuals' varying preferences. In earlier eras voluntary exchanges would favor economic development over environmental preservation—poverty leaves little room for aesthetics. But, even then, some minority interests would have preferred the tranquility of their undisturbed properties to wealth. Thoreau was not unique, even in his time. In a system that honored private property, Thoreau would have been able to enjoin those whose activities would have disturbed his peaceful use of his property.

Such preferences enforced by legal remedies would have encouraged economic developers to devise methods of alleviating environmental damages. Railroads would have acquired larger buffer zones around their lines; technologies would have evolved earlier to suppress noise, odors, and emissions. Noxious industrial activities would have been sited in areas far from sensitive individuals. Methods for re-aerating oxygen-depleted waters or restocking damaged hunting or fishery areas would have been explored by firms seeking to reduce costs.

Moreover, private property would have earlier been extended to ensure those protections for environmental resources as they became more valuable to the citizenry. As an example of this evolutionary process, consider the way property rights evolved to protect and advance the development of underground liquid resources. America had departed from the European tradition of transferring ownership and control of all underground mineral resources to the state. In America individuals privately owned sub-

surface mineral rights and could sell those properties to economic developers if they wished. That slight shift encouraged a far more aggressive entrepreneurial exploration for things of value. Privatization of the underground resource made possible the rapid development of the modern petroleum industry. (I am aware that oil wells had existed far earlier—in China around 1000 A.D.)

The result was that oil was always managed as a sustainable resource. From the time of Colonel Drake's first gusher in Titusville, Pennsylvania, in 1859 until today, America's private petroleum industry has aggressively spent vast sums mapping subterranean resources, seeking geological formations in which oil might be found. A new science, seismology, was developed to make this exploration more efficient. Once oil was discovered, owners sought to map the boundaries of each pool. Firms developed creative ways of contacting and negotiating with surface owners to acquire integrated ownership of these pools. One creative innovation was "unitization"—the acquisition of all initially dispersed subsurface rights and their economic reorganization into integrated physical units, allowing more efficient drilling, pumping, and extraction. The result of bringing this once-common property resource into the classical-liberal institutional framework has been spectacular. Oil has become an ever-more-abundant resource as we've become ever-more-skillful at discovering, developing, and refining it.

Note, however, that the evolution of property rights in petroleum occurred prior to the Progressive Era. Classical-liberal policies were still dominant; there was no force to block the creative evolution of rational institutional arrangements. The progressives had not yet derailed the process by which newly valued resources were gradually integrated into the market.

Groundwater and the Progressives

In contrast, groundwater became a scarce—and therefore valued—commodity after the progressives gained control. Ground-

water was abundant in the nineteenth century—moreover, surface water was generally a more economical source of this resource. The value of groundwater in this early period did not encourage anyone to incur the costs of promoting the institutional arrangements that would have allowed it to be owned privately, as was oil. Thus property rights were never extended to groundwater, so it never became a "private" resource like oil.

The result of these different treatments of comparable underground liquid resources is striking: The relatively scarce commodity (petroleum) has become ever-more abundant, while the relatively abundant commodity (water) has become ever scarcer.

Another cost of the Progressive Era has been the increasing conflict surrounding water policy. If oil is discovered in a region, the residents are elated. There exists a well-established way in which the value of that resource can be exchanged with the outside world, creating wealth for the local region and greater resource availability for the consumers of the world. In contrast, for example, a bottled-water facility in a basin may find demand for its products growing dramatically, but face great opposition if it seeks to expand output. The lack of any agreed-on exchange method of transferring water ensures conflict rather than cooperation. PERC economist Terry Anderson notes that this explains the saying "Whisky is for drinking; water is for fighting!"

Of course, in some environmental areas, fragments of a classical-liberal institutional order did survive. In England, fishermen formed associations that were able to force reductions in harmful pollutants from both industry and municipalities. In some regions, custom and culture produced property-rights arrangements to protect shellfish in bays and estuaries.

But the broad outlines remain dismal. Resources that were outside the private sphere in the 1890s remain so today. And resources that were only beginning to enter the private sphere at that time—the electromagnetic spectrum, fisheries, and western lands—effectively reverted to political con-

trol and suffered the tragedy of the commons. The gradual emergence of the environment as a valued aspect of life occurred in a world bereft of classical-liberal institutions. Older property-rights defenses were slowly eroded, and their newer adaptations were blocked. The result was that when environmental values became majority values, few realized that they might better be protected privately via a creative program of ecological privatization.

The Challenge

The challenge to classical-liberal scholars today—and to all those championing environmental values—is to revisit the evolutionary steps that were underway before the Progressive Era. Our goal must be to gather up those embryonic threads and extend them to today. The difficulties of doing so are great. Absent the incentives and the innovations that would now exist, we are forced into an imaginative and difficult *gedanken*, or thought, experiment: what would the world look like had the Progressive derailment not occurred?

As discussed, leaders of the modern environmental movement are not only unaware of the value of private property in protecting environmental values, they are often antagonistic to the market and its institutional underpinnings. We must not only present reasonable steps toward a system of ecological privatization, but also work to legitimize this approach. One path to such reforms is to recognize the overcentralization of current environmental policy (the view that only the federal government has the wisdom and concern needed to protect environmental values) and reopen the *Green Laboratory of the States*. Most environmental problems are local and regional in nature, and even those larger-scale problems occur somewhere before they occur nationally. Steps that would allow local owners to protect their properties would have positive spillover (external) value to the nation as a

whole. An effort should be made to identify and remove the barriers to classical-liberal environmentalism. The traditional common-law defenses of property—trespass and nuisance—should be reinstated in areas where current practices permit, and phased in where past locational decisions would block any immediate reform. The direction that reform should take is clear—to think creatively about the changes that would likely have occurred had the Progressive tide not derailed the evolutionary process.

Restoring the classical-liberal order in the environmental field (or anywhere else) will not be easy, but there is no alternative. To manage the modern economy via centralized control is impossible; to “perfect” the market via pervasive government regulations is even more impossible. Yet the absence of property rights in environmental resources—wildlife in America, air sheds, rivers, lakes, and bays almost everywhere—means that we must begin the reform process almost from scratch.

Indeed, in the ecological field, the problems faced are similar to—but perhaps even greater than—those addressed by Hernando de Soto in establishing private property rights in such conventional resources as land and buildings in the developing world. In both cases, we know where we wish to go, but we have no roadmap to guide us. Indeed, the problem in the environmental field is far more complex than that in the economic sphere. In the economic sphere, there are working approximations of the classical-liberal world, while in the ecological field, there are only fragments.

We must repair the impoverished state of our institutional framework for addressing the environmental concerns that we all share. To fail in this task is to risk further losses of economic liberty. Eco-socialism is even more complex than traditional socialism. It will fail. Our challenge is to ensure that as this occurs, a free-market alternative is available and is understood. There is much work to do. □