

**Avoiding the Tragedy of the Commons:
Greening Governance through the Market or the Public Domain?**

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Contemporary environmental policy is torn between a corporate-led attempt to privatize the commons, and efforts to build a vibrant public domain capable of governing the commons in a more democratic, equitable and ecologically sustainable manner. To date, it is the former political project, which has prevailed. The ‘tragedy of the commons’, i.e., the destruction of collective assets, such as eco-systems, through the pursuit of private gain, continues unabated while the institutions capable of defending the environmental commons against new enclosures and encroachments are being systematically weakened.

To understand this situation, we must examine how the promise of the second wave of environmental concern, which arose in the late 1980s and early 1990s has been betrayed by the shifting of environmental governance out of the public domain and into the private sphere. This shift has been accomplished through the adoption of ‘market environmentalism’ and the creation of a privatized commons in order to de-politicize and thus mute environmental concern. The response to the environmental crisis is thus shifted away from collective responses to the challenges posed by ecological interconnectedness and into the privatized world of individualistic consumer choice amongst a range of options governed by corporate investment decisions.

While the empirical evidence presented below is drawn primarily from the Canadian experience, market environmentalism is not limited to Canada. The Canadian case is, however, an interesting one for two reasons. First, Canada has portrayed itself as

an environmental leader, yet the enthusiastic endorsement of sustainable development by Canadian political and economic elites has not resulted in significant environmental improvements. Secondly, Canada has a tradition of a strong public regulatory system (at least relative to the United States) but since the mid-1980s, its state agencies have been downsized and restructured along market lines. Not surprisingly, this 'marketization of the state' has spilled over into the realm of environmental governance.

The principal argument of this paper is that 'market environmentalism' represents a profoundly mistaken response to the environmental problematic. It will, in fact, replicate and entrench ecologically and socially destructive dynamics. To truly avoid the tragedy of the commons, we must build the institutions, norms and social relations capable of integrating ecological criteria and concerns into all aspects of collective and private decision-making. This, in turn, can only be achieved through a 're-embedding' of market relations within the public domain.

Defending the Commons

The evidence of ecological crisis is compelling. As detailed in the latest *State of the World* report, humans are using fresh water, forests, range-lands and oceanic fisheries at a rate which is undermining the ecological processes which support these resources. We are also in the early stages of the greatest loss of plant and animal species in 65 million years: 14 percent of known plant species are threatened with extinction, while two thirds of all animal species are now in decline and 11 percent are threatened with extinction. Synthetical chemicals can be found in all parts of the globe and in concentrations which may disrupt human and animal hormonal systems with serious consequences for health. Global climate change is under way as a consequence

of the burning of fossil fuels with consequences, which are difficult to predict, but which are potentially devastating. There are also emerging concerns over the long-term implications of genetic engineering on the already-declining levels of biodiversity (Brown and Flavin 1999). Taking action to counter these trends is particularly important in the industrialized nations, which use the majority of the world's resources.

Addressing this crisis is fundamentally a question of protecting the commons, where the commons is understood as the web of ecological interconnectedness which links and supports all life.² It is this character of interconnectedness, which has made environmental governance so difficult for the modern administrative state. Environmental governance consists of the establishment and operation of social institutions for resolving conflicts, facilitating co-operation and alleviating collective action problems related to ecological processes in a world of interdependent actors (Environment Canada 1999: 2).³ The effect of many of the regulatory measures adopted to capture contaminants at the 'end-of-pipe' has been not to reduce pollution so much as to move it from one medium to another (e.g. from the air into the soil or water), to send it somewhere else (e.g. shipping the toxic waste to Africa) or to shift the costs forward in time so that our descendants will pay the costs (Dryzek 1987).

Pollution and the overexploitation of natural resources are rooted in the conflict between the pursuit of private interests (profit) and collective interests (protecting the commons, be it the ozone layer, clean water, breathable air or genetic diversity). It is this conflict between private rationality and collective responsibility which is captured in Garrett Hardin's influential metaphor of the tragedy of the commons:

Picture a pasture open to all. It is to be expected that an individual herdsman will try to keep as many cattle as possible on the commons. Unfortunately, this is the conclusion reached by each and every rational herdsman sharing a commons and therein

is the tragedy. Each is locked into a system that compels them to increase their herd without limits and yet the world, the commons are limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in the commons brings ruin to all. (Hardin 1968: 1244).

A Modern Tragedy: Market Environmentalism

Written at a time when environmental problems were still relatively new on the political agenda, Garrett Hardin's metaphor of the 'tragedy of the commons' helped to shape our collective understanding of, and response to, the ecological crisis.⁴ Hardin used this simple parable, borrowed from a pamphlet written in 1833, to argue that the only way to avert the "tragedy of freedom in the commons" was through strong state intervention, i.e. "mutual coercion, mutually agreed upon" (Hardin 1968: 1244-47). This echo of Hobbes' call for a Leviathan – a sovereign state capable of imposing order on the 'state of nature' – struck a sympathetic chord with policy-makers and analysts, resulting in the construction of an elaborate administrative state to undertake environmental regulation (Paehlke and Torgerson 1990).

Thirty years later, the metaphor of the commons still has a hold on the collective imagination but now the 'invisible hand' of the market has replaced the 'heavy hand' of state intervention as the favoured means of averting tragedy. In contrast to Hardin's call for a re-definition of morality, the tragedy of the commons, for many contemporary policy-makers and corporate lobbyists, lies not in our moral character or in freedom, *per se*, but rather in poorly defined property rights. Their solution is to privatize, as far as possible, environmental regulation through the creation of markets in pollution, the privatization of

collectively-held resources, and the shift toward corporate self-regulation and 'voluntary' environmental governance regimes. The advocates of this form of 'market environmentalism' argue that it will ensure the most efficient allocation of resources, provide environmental protection at the least cost, and use the power of the marketplace to stimulate entrepreneurial innovation, so as to develop technological solutions to our environmental problems.

This shift from the state to the market as the central mechanism for regulating humanity's relation to non-human nature must be understood in light of the two waves of environmental concern which have occurred in the industrialized countries and the different political-economic situations in which they arose.

Two Waves of Environmental Concern

Popular concern over the environment and the resulting forms of environmental regulation are commonly divided into two waves or generations, which can be distinguished in terms of the substantive focus of environmental policy, the dominant political actors, the policy instruments employed and the prevailing ideas on the relationship between the environment and the economy (Paehlke 1997; Hoberg 1993; Skogstad 1996).

The origins of the first wave are often traced to the publication of Rachel Carson's *Silent Spring*, with its high point on Earth Day 1970. First wave environmentalism extended the older conservationist agenda of wilderness preservation and scientific resource management to incorporate a concern for industrial pollution and more urban-oriented concerns, such as air and water quality, occupational and environmental health, hazardous waste, nuclear power, and resource depletion, particularly oil (Paehlke 1997).

It was initially linked to the radical democratic and participatory politics of the New Left, but it also included a more apocalyptic concern for the very possibility of survival, highlighted by the oil crisis of 1973 (Eckersley 1992: 8-11). In Canada, it resulted in the emergence of an environmental movement embodied in groups like Pollution Probe (established in 1969), the Canadian Environment Law Association (1970), Greenpeace (1971) and the transformation of the Sierra Club of Canada from a conservation group into an environmental group.

The rise of the environmental movement was significant, not only for its role in bringing new issues onto the political agenda, but for the way in which it (along with other social movements such as the women's movement, the peace movement, and civil rights movement) challenged the conventional definition of politics. These new collective actors protested "not against the failure of the state and society to provide for economic growth and material prosperity, but against their all-too-considerable success in having done so, and against the price of this success" (Berger 1979: 32). Rather than organizing themselves into political parties and arguing over the fairest distribution of an ever-larger pie, these new collective actors rejected the issues, identities and institutional modes of the post-war class compromise as embodied in the Keynesian Welfare State in favour of the politics of civil society:

From this observation [that political parties only allow citizens to select from among the elites who are to govern them], some movement activists concluded that the foremost site of political activity must be civil society itself. Here, outside the party system, and beyond the reaches of the centres of state power, public spheres of interacting citizens could project into the political arena problems and issues untreated or compromised by the party system and the state. Here, in what remained of civil society, the movements demanded that hitherto neglected interests be articulated and served. It was also here

that individual pleasure and the self-confidence gained through participation in the public sphere could be maximized. (Keane 1988: 136)

For social movement activists, these “public spheres of interacting citizens” (a key element of the public domain) represented a space from which both the political sphere (the state) and the economic sphere (corporations) could be democratized and thus re-embedded within social and ecological processes. In the case of the environmental movement, this meant challenging the idea that economic growth, in and of itself, furthers the public good and pointing to the ecological costs and ultimate unsustainability of this form of growth.

The Command and Control Model

In contrast to the often-radical demands coming from the environmental movement, the institutional response to the first wave of environmental concern was to create in the early 1970s, largely on an *ad hoc* basis, Ministries of the Environment and a patchwork of environmental legislation across the country. The form of regulation, which emerged in this period, is often referred to as ‘command and control.’ The label is misleading, however, for environmental ministries in Canada have typically not only had difficulty ‘controlling’ corporate practices but have often lacked the scientific and legal capacity to issue ‘commands’ (Conway 1990; Paehlke and Torgerson 1990). Business, in turn, was largely successful in its attempts to ‘resist’ environmental regulation (Schrecker 1990).

In practice, the first wave regulatory approach was technology focussed and had three principal characteristics: "a preference for regulatory [as opposed to legislative] standards-setting, a tendency to negotiation and exhortation as a substitute for strict legal

enforcement of standards, and spending to facilitate industrial adjustment" (Conway 1990: 27). Nevertheless, the 'command and control' variety of environmental regulation has been extensively criticized from the Right as overly bureaucratic (e.g., Block 1990). Environmentalists have also criticized it for addressing the symptoms rather than the causes of ecological degradation. According to this critique, it promoted an end-of-pipe approach, an expert-driven discourse, anti-democratic processes and it failed to challenge the equating of capital accumulation with human development (not to mention the fate of non-humans) (Paehlke and Torgerson 1990; Harvey 1996).

North America and Europe experienced a second wave of environmental concern in the late 1980s and early 1990s, which once again brought environmental issues to the forefront of citizens' concerns and government policy agendas. The defining moments of second wave environmentalism have been the 1987 publication of the World Commission on the Environment and Development's *Our Common Future* and the 1992 Earth Summit in Rio which introduced and then entrenched "sustainable development" as the new goal of both environmental and economic policy.

The most prominent definition of sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (World Commission on Environment and Development 1987: 43). The concept of sustainable development is, however, a notoriously ambiguous one, with dozens of definitions in circulation. The popularity of the term is, in fact, largely a consequence of this intentional ambiguity and the resultant political flexibility (Daly and Cobb 1989: 75). As one commentator remarked: "Sustainable development is a 'metafix' that will unite everybody from the profit-minded industrialist and risk minimizing subsistence farmer to the equity seeking social worker, the pollution-concerned or wildlife

loving First Worlder, the growth maximizing policy maker, the goal orientated bureaucrat, and, therefore, the vote counting politician" (Lele in O'Riordan 1997: 8).

Second Wave Environmentalism at Bay

In second wave environmentalism, new 'global' issues, such as climate change, the ozone layer and biodiversity are at the top of the political agenda. At the same time though, the political-economic processes of globalization have restructured economies, societies and ecosystems around the world. Globalization poses particular problems for analyzing and addressing environmental problems. On the one hand, the environmental problems which rose to prominence in the 1980s, such as global warming, the hole in the ozone layer, ocean and air-transported toxic pollution, or the loss of biodiversity have been increasingly constructed as global in character and thus beyond the purview of individual sovereign states. And yet, in spite of the plethora of international institutions addressing environmental problems,⁵ the capacity of these institutions to prevent ecological degradation is relatively weak.

Environmental groups, which are now better integrated into (and some would say co-opted by) policy-making processes, have organized themselves at the international level in order to use international fora to criticize their own governments and corporate sectors in what is "a mirror-image, though usually from a weaker base of power, of what business and corporate interests do in using international alliances and agreements to 'discipline' their national social sectors" (Doern, Pal and Tomlin 1996: 10).

It is this other half of globalization -- economic globalization --, which undermines environmental policy-making. On the one hand, globalization promotes patterns of economic growth which put increasing pressure on eco-systems as they extract ever-

more resources and put out increasing amounts of waste into ecological 'sinks' at ever-faster rates (Altvater 1993; Lipietz 1992). On the other hand, even as the trans-boundary and global character of ecological relationships greatly complicates political responses to the crisis, economic globalization has transformed the structure and role of nation-states, i.e. the principal institutions through which social, economic and environmental problems have been "regulated" in the post-World War II era. Although the need for collective intervention to address the environmental crisis is increasingly recognized, the capacity of states to do so has been limited in the 'new' global world of powerful transnational corporations and free capital mobility.

Even the Organization for Economic Cooperation and Development, one of the most ardent institutional promoters of globalization, has recognized that globalization poses significant problems for environmental governance:

Market-based policy responses might not even be sufficient to address the *ecological* bases of globalization/environment problems. This is because: i) markets often do not capture environmental externalities at all; ii) even where they *do* capture some of these externalities, markets are typically not sensitive to *local* ecological conditions; and iii) countries have even less reason to use markets as a vehicle for internalizing trans-frontier/global externalities than they do for internalizing domestic ones. (OECD 1997a: 9)

Environmental Governance

The regime of environmental governance which has emerged out of the intersection of sustainable development and the changing political-economic context in the 1990s has been labelled "ecological modernization" (Hajer 1995; Harvey 1996). Ecological modernization rests upon a new vision of the relationship between the

environment and economy, wherein the economy is seen as systematically producing environmental harms. Thus, society should adopt a proactive stance with regards to ecological protection. In contrast to the older view, which saw the trade-offs between environment and economy as a zero-sum game, ecological modernization stresses the possibility of "win-win" scenarios wherein enhanced efficiency contributes to the emergence of environmental industries and technologies.

Although the precise meaning of ecological modernization varies significantly depending on author and context, certain core features can be identified (Mol 1996). First, ecological modernization identifies science and technology as central institutions for ecological reform and seeks to re-orient technological innovation toward solving environmental problems rather than creating them. This is to be accomplished through the replacement of end-of-pipe technological regimes by pollution prevention through changes in production processes and in the products produced. Secondly, it stresses the increasing importance of economic and market dynamics in attaining ecological reform and further it grants an important role to innovators and entrepreneurs alongside state agencies. There is also recognition that social movements can play a key role in informing and implementing ecological modernization strategies. There had been, as a result, a widespread adoption of the 'multi-stakeholder' model where environmentalists, government bureaucrats and industry representatives negotiate directly (albeit from highly unequal bases of power) over the content of policy. Thirdly, it stresses the need for political reforms which would transform the role of the state in environmental policy-making from curative and reactive to preventative, from centralized to decentralized, and from a directing role to one of contextual steering.

Ecological modernization is significantly more advanced in Europe than in North America due to the stronger social-democratic tradition and acceptance of the 'social

market.' It is most advanced in Germany and the Netherlands where, for example, the success of the Dutch National Environmental Policy Plan has been linked to "the highly corporatist nature of Dutch politics and planning, the Dutch state's acceptance of a significant role in facilitating and directing industrial development and environmental protection, and also the timing of the Plan's release in 1989, during a high point of international and national environmental concern" (Christoff 1996: 479; see also Neale 1997). The key distinctions between first- and second-wave environmentalism and environmental governance regimes are presented in Table 1.

Market Environmentalism

This integration of ecological concerns into economic policy has taken place concurrently with the trend toward a smaller and more market-driven state.⁶ The product of this confluence of second wave environmentalism and the "triumph of markets"(Drache, present volume) is market environmentalism – a political/policy project which adopts the principles of ecological modernization but seeks to incorporate, and ultimately subordinate, these concerns within a broader project of governance by and through the market.

It is important to recognize that the political response to second wave environmentalism has been shaped in profound ways by a more proactive and class conscious corporate leadership. In the words of one CEO, "The environment is too important to be left to environmentalists" (Willums 1990). Today's industry associations do not simply oppose new regulatory policies (although they also do this), but actively campaign for a new model of environmental regulation. What they support is an interpretation of 'ecological modernization' which emphasizes the market-enhancing

aspects of the new governance paradigm, while downplaying the role of public accountability and participation in advancing environmental protection. Within market environmentalism, private corporations are portrayed as the central actors in designing and implementing public policy *vis-à-vis* the environment.

Table 1: Contrasting First- and Second-wave environmental governance⁷

	First Wave (1968-76)	Second Wave (1986-94)
Discourse on environment and economy	Limits to growth: Environmental protection hurts economic growth (zero-sum game).	Sustainable Development: emphasis on win-win scenarios where what is ecologically sound is also profitable.
Governance regime	'Command and Control'-ad-hoc, fragmented and bureaucratic approach to environmental regulation; react-and-cure strategy using end-of-pipe technological solutions.	Ecological Modernization-attempt to integrate environmental concerns into overall policy; Pollution Prevention: adoption of the precautionary principle and an emphasis on changing production processes to prevent pollution rather than clean it up.
Issues	Urban-based air and water pollution concerns; nuclear power; population; resource depletion; urban neighbourhood preservation.	New 'global' problems such as climate change, ozone depletion and biodiversity (old-growth forest, tropical rain forests, animal rights); waste recycling, landfill siting; hazardous waste, carcinogens; urban planning, cars & land use.
Characteristics and emphases	Environmental concern tended to be linked to alienation, detachment from social, political and economic order; anti-technological inclinations and attitudes.	Globalized focus of concern; re-emergence of 'preservationist issues; acceptability of some environmental ideas within political and economic elites; professional character of major environmental organizations.

Key actors	The administrative state (in closed-door consultation with industry), Ministry of the Environment is the lead actor in environmental regulation.	Multi-stakeholder negotiations (government, business, environmentalists & sometimes labour, academics or Aboriginals); Green plans, environmental bills of rights, and the 'greening' of taxation or budgets attempts to integrate environmental concern into all aspects of government policy
Policy instruments to regulate pollution	Environmental regulations which specify which technologies must be used; uneven enforcement and tendency toward moral exhortation and spending rather than strict legal application of regulations	Environmental regulations specify standard to be met and allow for entrepreneurial innovation to meet these in the cheapest way possible; greater use of legal processes; greater use of economic instruments (taxation, tradeable permits, etc.); corporate self-regulation.

This is perhaps clearest in the creation of bodies such as the Business Council on Sustainable Development, which co-ordinated industry's input to the Rio Earth Summit, and national counterparts such as the 'Friday Club'⁸ in Canada. It is also evident in the adoption by some environmental groups of a reformist agenda of trying to work with corporations.⁹

For market environmentalists, the environmental crisis calls not for a questioning of the entire capitalist growth model, but rather for its intensification via an extension of the neo-liberal model.¹⁰ And yet because nature is not produced as a commodity, to treat it as such, paradoxically, requires an active state although one which intervenes so as to create markets rather than replace them.

In short, governments, in 'partnership' with industry, have been actively shifting environmental governance out of the public domain and into the realm of privatized decision-making through the market. Since 1984, The Organization for Economic

Cooperation and Development has played an important role in generalizing a market-driven response to second-wave environmentalism through its championing of the use of economic instruments in environmental policy (see OECD 1997b for a recent summary), for example, in its work on the win-win possibilities inherent in harmonizing environmental and employment policies (OECD 1997c), green taxes (OECD 1997d), the reform of energy and transport subsidies (OECD 1997e), and in its promotion of 'eco-efficiency' (OECD 1998).

An explicit policy statement of second-wave environmentalism can also be found in the federal Liberal party's 1993 Red Book – the policy platform for the political party, which has governed Canada since 1993 (Juillet and Toner 1997: 179-80). In Ontario, Canada's largest province, the New Democratic Party government in Ontario (1990-95) enthusiastically adopted the discourse of ecological modernization. Ultimately, however, even this social democratic party implemented the market-environmentalism version of ecological modernization (Stewart 1998).

Market environmentalism, broadly speaking, is comprised of four inter-related elements: an overall development model, a critique of the state and proposals for corporate self-regulation, privatization as a solution to the tragedy of the commons, and a shifting of responsibility within environmental governance from the citizen to the consumer through market-based mechanisms of environmental regulation.

The Limits of Market Environmentalism: the Goal of Development

At the most general level, it is argued that the neo-liberal, market-driven development model should be applied as fully as possible because market competition promotes innovation and efficiency. Efficiency allows for 'doing more with less' which in

turn promotes competitiveness. In the words of the blue-ribbon, multi-stakeholder Ontario Round Table on the Environment and Economy “sustainable development can lead to economic prosperity: as efficiency and innovation become the engines of our economy, they provide direct economic returns here, and provide the basis for marketing goods and services abroad as well as at home” (ORTEE 1992: 1).

If ecological degradations were simply unwanted ‘externalities’, then a market-driven strategy might be effective. But ecological catastrophes, such as climate change, the destruction of bio-diversity and toxic contamination are not an accidental side effect of our contemporary capitalist civilization. Rather they are a consequence of its formal mechanism of development (Altvater 1993). Ecological degradation thus provides a powerful point of departure for critiques of the neo-liberal model of development. The question in the OECD countries is not simply one of ‘doing more with less’, but of ‘doing less’, i.e. reducing the throughput of materials and energy in the economy.

More efficient and cleaner forms of production are, without a doubt, important. Yet if we simply follow the logic of the market place, then the rebuilding of the environment becomes simply a new market niche. Environmentalists have argued that this limits environmental policy to what is profitable for the transnationals and locks us into continuous growth without reflecting on what *kind* of economic activity is being encouraged.

The ecological critique thus goes beyond the conservationists’ call for the rational and scientific exploitation of natural resources to encompass a critique of contemporary society. The debate on the ecological crisis is “one of the few remaining places where modernity can still be reflected upon. It is in the context of environmental problems that we can discuss the new problems concerning social justice, democracy, responsibility,

the preferred relation of man [sic] and nature, the role of technology in society, or indeed, what it means to be human” (Hajer 1996: 265).

To engage in such a reflection requires a strong public domain. We must engage in public, democratic debate on the goals of development and what constitutes ‘the good life’ rather than leave these key questions to the marketplace:

The objective. [is] to limit the field in which economic rationality may find expression – or, in other words, to limit the logic of profit and the market. The point is to subject economic and technical development to patterns and orientations which have been thought through and democratically debated; to tie in the goals of the economy with the free public expression of felt needs, instead of creating needs for the sole purpose of enabling capital to expand and commerce to develop. (Gorz 1994: 8)

A broadly-based political project of education and institutional creation will be required to limit economic rationality along these lines and tie the goals of the economy to the free public expression of felt needs. This involves strengthening certain aspects of the public domain, e.g., the public sphere of democratic debate, as a means to protect other aspects of the public domain, e.g., collectively held resources and eco-system integrity.

The Limits of Market Environmentalism: Corporate Self-Regulation versus Citizen Participation

In response to the perceived limitations of state environmental regulation, both market-environmentalists and public-domain advocates have sought to involve the institutions of civil society directly in environmental regulation. These proposals take two forms. Coming out of a perspective of promoting a vibrant public domain, environmentalists demand more democratic forms of regulation in which citizens and/or

environmental groups participate directly in environmental decision-making. Participation is framed as both a democratic right and as a means of reaching better decisions. The market environmental approach, on the other hand, calls upon corporations as the representatives of civil society to undertake voluntary/self regulation. Corporate self-regulation is depicted as being more flexible and cost-effective, capable of being strategically targeted, and as encouraging creativity and innovation.

Both approaches are rooted in the widespread perception of the failure of the Keynesian welfare state. While the state continues to be the central democratic institution for determining who gets what, when and how within society, the national Keynesian welfare state is undergoing an unprecedented assault. This challenge comes from below, as new social movements demand greater openness from the state's institutions and seek to participate more directly in the development and implementation of public policy. It also comes from above, as trade agreements and international organizations are created to administer the rights, rules, decision-making procedures and compliance mechanisms of the global trade, monetary, investment, environmental and other regimes. These regimes organized by states themselves, enhance capital mobility and limit the state's capacity to regulate capital.

Market environmentalism has a well-developed critique of what it refers to as "command and control" forms of environmental regulation, which are depicted as overly bureaucratic and an impediment to innovation (see Doern 1990a & 1990b; Block 1990). In light of this critique, the emphasis on pollution prevention within ecological modernization discourse and the budget crisis faced by the state, corporate self-regulation and voluntary programs have been adopted by Canadian governments within a 'new politics of greening.' The programs are said to provide incentives for industry to initiate environmental clean-up measures and to be more cost-effective than regulations because

they cost less to implement and enforce. They are believed to be capable of being designed and implemented more quickly than regulations or legislation, and to encourage technological and organizational innovation.

Voluntary corporate environmental initiatives are usually contrasted with the supposed heavy hand of regulation. As such, they are said to "signal a movement away from traditional adversarial relationships between industry and government towards those which are more cooperative in nature and involve varying degrees of government intervention" (Labatt and Maclaren 1998: 191). Voluntary initiatives include: the establishment of an industry-based regulatory body with responsibility for monitoring its members' compliance with laws (e.g. the chemical industry's Responsible Care program), government challenge programs where polluters are encouraged to improve their performance and report their results publicly (e.g. the Voluntary Challenge Program described below), environmental management systems (e.g. the ISO 14000 series), the adoption of new methodological norms (environmental accounting and environmental audits), eco-labeling (Canada's Eco-Logo program), memoranda of understanding between companies and government, as well as a range of self monitoring and reporting programs. In general, these initiatives are intended to influence and shape the actions of the affected industry without having to rely on the traditional regulatory approach of command and control inspection and enforcement, with its subsequent increased government involvement.

Voluntary Compliance Codes: Are they Effective?

Virtually all analysts would agree that when combined with the full use of regulatory tools and effective forms of public scrutiny, such initiatives are potentially a

useful complement to the regulatory system, as a means of forcing and facilitating environmental improvements in the private sector (Gibson 1999). Yet there are also fears that voluntarism is being adopted as an alternative to public action by governments and as part of a movement toward corporate self-regulation. When implemented in tandem with the cut-backs in government ministries identified in Table 2, there is a very real fear that this is a form of *de facto* de-regulation.¹¹

Table 2: Downsizing of Environmental Ministries in Canada¹²

	Reduction in Ministry budget	Resource reductions (\$ millions)	Staff reduction
Federal government	30% (1993- 96)	737 to 503	5,700 to 4,300
Ontario	63% (1995- 98)	529 to 194	2,208 to 1,494
Alberta	31% (1993- 97)	405 to 317	1,550 to be cut between 1993 - 2000
Newfoundland	60% (1995- 97)	10.6 to 3.6	n/a

The failure of the most high-profile voluntary initiative in Canada, i.e. the National Climate Change Voluntary Challenge and Registry Programme (VCR), is indicative of the broader limits of voluntarism. Governments around the world have recognized climate change as one of the most important environmental issues facing us today. In signing the 1997 Kyoto protocol on climate change, the federal government committed itself to reducing Canada's greenhouse gas emissions by six percent from 1990 levels by the year 2000. Yet, thus far its principal strategy has been to stall. First, by establishing an 18-month climate change process involving 15 issue tables and 450 members in order to further study the problem (which is already one of the most studied of contemporary

public policy issues), the government put off the possibility of any immediate action.

Secondly, the government continues to rely on 'voluntary' measures to reduce emissions even though most of the fossil fuel industry, which will be the most heavily affected by such measures, continues to deny that any action is necessary.

Even the environmental groups, which initially strongly supported voluntary measures as a useful complement to the regulatory system, are now arguing that "the VCR doesn't work". The Pembina Institute for Appropriate Development evaluated the 587 corporate submissions to the VCR and found that only 11 constituted credible action plans. The majority simply catalogued past actions in normal business practices that also happened to reduce greenhouse gas emissions (Hornung 1999). Meanwhile, overall emissions continue to rise. The problem here is not a failure to act on the part of governments. Rather, they are acting through the adoption of means, which are unlikely to achieve the kinds of changes, which are necessary to 'defend the commons.' The principal weaknesses of voluntary initiatives, from the perspective of groups operating in the public domain and which see themselves as defenders of the public interest, have been identified as the following:

- the lack of public involvement in the development and overseeing of voluntary initiatives (i.e. a return to backroom deals as an approach to environmental regulation).
- the danger that the initiatives will pre-empt more rigorous environmental protection measures (i.e. that environmental protections measures will be dictated by what industry is willing to do, rather than on what is required to be done to maintain a healthy and sustainable environment).
- the lack of accountability and verification of such measures; and

- the problem of how to ensure a level playing field for the affected industries (Muldoon and Nadarajah 1999, 51).

Accountability- the Core Concern

The question of accountability and verification is an important one. In its advocacy of self-regulation, market environmentalism builds upon the classical liberal celebration of civil society as the realm of freedom and individual autonomy which stands in opposition to the realm of coercion embodied by the state. In its contemporary incarnation, however, it is the market which stands in for civil society and whose virtues are opposed to the inefficient, innovation-stifling bureaucratic state.

What is notably lacking from voluntary regimes, however, is the non-market aspect of civil society, i.e., environmental groups and the general public. In an otherwise extremely positive assessment of voluntary programs in the United States, Beardsley, Davies and Hersh (1998: 32) note that both European and North American participants frequently assert that “a rather limited role for public environmental organizations is critical to the success of the program. Facility officials seemed convinced that extensive participation by environmental groups in the negotiating process over permits would have curtailed the trust and risk taking necessary to this experiment.”

This attempt to restrict participation to corporations and governments (in many ways a return to the model which the environmental movement initially opposed in the 1970s) is consistent with the market environmentalism model’s emphasis on a technocratic system run by experts

The Walkerton Water Contamination Crisis

Since this article was first written, the May 2000 contamination of the municipal water supply in Walkerton, Ontario by E. coli bacteria has caused at least seven deaths and made over a thousand more people seriously ill.

An official inquiry into the Walkerton tragedy is just underway, but initial reports have linked both the failure to correct earlier problems with the town’s water supply and the 3-day delay in notifying the public of its contamination to the privatization of the water testing system and budgetary cut-backs at the provincial Ministry of the Environment (Gallon 2000; McAndrew, Boyle and Brennan 2000).

The province’s environmental regulatory system was initially established to protect the public’s drinking water, yet the Ontario Ministry of the Environment’s budget has been cut so deeply that by 1997-98 it was left with fewer resources than it had in the mid-1970s. These cuts and the dismantling of the regulatory system have been linked to the neo-liberal ideology of the Conservative government elected in 1995 (Krajnc, 2000). These changes have included the closing of government water-testing labs, the lay-offs of inspection personnel, and the devolution of responsibility for ensuring water quality to cash-strapped municipalities.

The Walkerton tragedy has stimulated a public debate on how to protect the province’s drinking water supply. It remains to be seen if this will be transformed into a broader debate on the value of the public

(preferably from the private sector). Yet for most environmentalists, the politics of civil society has been manifested as a demand for public participation.

One of the principal differences between the environmental movement and the earlier conservation movement was the latter's faith in expert administration and government bureaucracies as protectors of the public interest, whereas the former insisted upon a role for the public in environmental decision-making (Paehlke 1990: 38). The position of the environmental movement regarding democratic participation is summed up in the introduction to the Ontario Environment Network's *Public Consultation: A Citizens Handbook*:

Consultation is nothing new. Governments have always consulted before making major decisions -- behind closed doors, with powerful interests like corporations, professional bodies, and other governments. What's new is the demand by citizens and grassroots organizations to share in the opportunity to shape important decisions before they are made -- during the planning or policy-making process -- through open, systematic public consultation.

Public consultation is our right. We have the right in a democratic society to participate in planning the projects, laws and policies that affect our lives and our environment.

The ballot box is a very blunt instrument that is incapable of communicating our choices about all but a very few major policies, let alone the fine details of individual initiatives. Further, the politicians we elect inevitably lack the knowledge, sophistication, and interest to address many of the issues that come before them. As a result, power concentrates among career civil servants and private-sector lobbyists with access to the levers of power.

Public consultation is necessary to help us challenge this dangerous tendency, and to help us restore meaning to the practice of democracy in advanced industrial societies.

At the same time, public consultation is necessary to ensure better decisions.

Through consultation, we contribute not only our sense of urgency about neglected social and environmental values, but also fresh perspectives, creative solution, and technical information which has been overlooked or suppressed.

This handbook is written as a practical tool for citizens. It is a response to the current sorry state of consultation, which sometimes owes more to manipulation than genuine participation. (Maynes and the Ontario Environment Network 1989: 1-2)

A Contested Role for Government

This passage is broadly illustrative of the arguments of Canadian environmentalists' *vis-à-vis* consultation and participation. First, there is a criticism of the existing secretive relationship between policy-makers and corporations -- a criticism, which has been extended to many 'voluntary' initiatives. Secondly, there is an assertion that participation in decision-making is a democratic right. Environmentalists are constructed as 'citizens' first and foremost representing the 'public interest' rather than as 'special interests', which many of their opponents attempt to paint them as. Thirdly, it is claimed that democratic participation will result in better decisions and better policy. And finally, there is a warning to the effect that participation needs to be distinguished from manipulation. This passage is also illustrative of the importance of reclaiming and

redefining certain concepts and words (democracy, rights, and genuine participation versus manipulation, citizenship) as an aspect of 'practical' politics.

The demand for participation was a key element in the programmes of virtually all of the new social movements, which emerged in the advanced capitalist countries in the 1960s and 1970s to challenge the boundaries of institutional politics. The overriding concern of the New Left, with its emphasis on who exercises power on whose behalf and its critique of "scientism" and instrumental rationality, was "to open up improved channels of political communication in order to facilitate the achievement of a democratic consensus that would direct the development and use of technology toward more human liberatory ends" (Eckersley 1992: 8-11).

The environmental movement has been the most successful social movement in terms of integrating forms of public consultation and participation into law and bureaucratic processes (Warriner 1997). These institutions are, however, still a far cry from the socialization or democratization of the means of production. They also have their limits, i.e. "the participatory dimensions of environmental legislation both promote and place orderly bounds on participation. In so doing such legislation limits, while at the same time legitimizes, such participation" (Paehlke 1990: 42). Nevertheless, the political praxis of 'citizen groups' organizing to defend the environment constitutes a concerted attempt to shift environmental governance out of the corporate-controlled sphere of 'the private' and into the public domain. Here what has previously been the prerogative of private capital -- decision-making over what will be produced and how we will collectively use the 'environmental commons' -- can be debated and decided.

The Limits of Market Environmentalism: Privatizing the Commons

The third plank of the market environmentalism platform focuses on the need to privatize collectively held natural resources and establish private property rights in pollution "sinks" in order to avoid the Tragedy of the Commons. Groups such as the Fraser Institute have advanced the logic of privatizing the commons in Canada:

There is a problem because the air, water and the forests that are polluted are in most cases everybody's property. Therefore no particular person objects when a polluter infringes upon his land or when airborne noxious chemicals kill his trees. The question is how do we ensure that the protective reactions of private property ownership will leap to the aid of the forest in the same way that they protect front lawns? (Block 1990: 281)

The idea that 'the protective reactions of private property ownership' might leap to the aid of the environment is an appealing one. Direct damage to other individuals' property can perhaps be redressed through the court system if one has the resources to go to court. Collective assets are more difficult to protect and thus become the 'dumping ground' for externalized costs. Precisely because it is difficult to make individuals pay for the use of public goods and common property resources, it was generally accepted that they are likely to be under-provided for or under-protected by the market mechanism. Hence collective action – traditionally by the state – is required to provide these benefits (Olson 1965).

Many contemporary analysts, however, argue that the key to environmental protection is to assign economic value to environmental goods and price them accordingly (Pearce, Markandya and Barbier 1989; Helm 1991; Block 1990; see also Heal 1999 on 'new global public goods'). While there are a number of advantages to this approach, not least that it provides a means of speaking in the language of social power (Harvey 1996: 151), it is not a panacea. The establishment of monetary prices presupposes 'things' which can be exchanged and to which private property rights can be

established. Natural resources must be removed from their surroundings before we are able to attach a price to them. We must literally value the fish independently of the water in which they swim -- yet the process of isolating these "things" often implies the destruction of the networking that makes up an ecosystem. Only some environmental goods will have monetary prices attached, which implies that other aspects of the relevant ecosystems are still considered worthless (Altvater 1993, 69).

Furthermore, Hardin's presentation of the Tragedy of the Commons and the Fraser Institute's example above grossly distort the historical evidence and ignore the role of power. The original Tragedy of the Commons to which Hardin referred took place in the late seventeenth and early eighteenth century in England. The undeniably tragic nature of the Enclosure Movement was not, however, a consequence of over-grazing by peasant farmers. Rather, the tragedy lay in the "massive violence exercised by the upper classes against the lower." As wealthy landowners appropriated common lands, which had traditionally provided community members with access to sufficient resources to be able to perform obligations as part of the community's collective struggle for survival, into sheep pasturage and commercial crops destined for markets. The resultant "surplus" peasants were "caught in the end between alternatives that meant degradation and suffering, compared with the traditional life of the village community" (Moore 1966: 29).

Re-thinking the Tragedy of the Commons

As a counterpoint to Block's argument, we can look at recent examples in Canada. In a study of the fisheries and logging in British Columbia, Patricia Marchak (1995: 239) concludes that:

The argument [that natural resources in Canada are depleted because they are not privately owned] is both logically flawed and factually false. With reference to the fishing and forest industries in British Columbia, the argument is entirely misplaced. What is signally missing when the depletion of the resources for these industries is blamed on their common property status is the central fact that the resources are potential commodities, and their excessive exploitation is directly connected to private commercial activities combined with state management. The literature sometimes confuses the state with the commons, and that confusion contributes to the ambiguity of the property status of resources used in commercial industries.

Marchak reminds us that property is a relationship, not a thing, which determines socially enforceable claims over who may benefit from access to and use of resources, and who may be excluded. Hardin's example confuses 'the commons' with open-access regimes. Historically, the commons has referred to collective resources which are co-managed and around which social institutions -- not necessarily limited to 'the state' -- are created for allocating access to the resource and the benefits thereof. The resource tends to be overexploited once outside interests (typically large corporations), who are not part of the co-management institutions, use their market and political power to gain access to the resource and ignore the existing co-management regime (Marchak 1995; see also Gerkes and Feeny 1990).

Barrington Moore (1966: 497-500), in his classic study on the origins of democracy, goes even further to argue that the governance practices associated with village-level commons were important preconditions to the eventual development of democracy and notions of equality. Utilizing a very different analytical framework, Keohane and Ostrom (1997: 10) come to very similar conclusions. "Recent discussions of 'social capital' have emphasized the importance not only of institutions and their

associated rules, but of the networks of communication, norms of social practice and relationships of trust [developed through on-going management of common resources] that facilitate co-operation within some communities – but whose absence can lead to violence-increasing and welfare-reducing cycles of conflict or deadlock.”

Marchak builds on the concrete example of the BC fisheries in order to argue that what is needed is not further privatization, but “a system that builds in public responsibilities, specifies management obligations, and adjusts calculations of costs and benefits with reference to ecology” (Marchak 1995: 252). Such a system would not be contained wholly within the state, or the market, but would bridge these two institutions and incorporate participation from civil society, i.e. it would operate in the public domain.

The Limits of Market Environmentalism: Shifting Responsibility

The fourth element in the market-environmentalist position revolves around the question of how responsibility for decision-making is to be assigned. The preferred option here is to support economic instruments such as emissions trading (privatizing the commons in pollution ‘sinks’ such as the atmosphere by creating property rights and markets in pollutants such as greenhouse gases or toxic chemicals and allowing firms to trade these rights), or accounting techniques which will shift prices of goods and services at the margin, and let the individual consumer choose.

This question of choice is crucial, for it shifts responsibility for ecological degradation away from profit-seeking corporations and onto the sovereign consumer, who is envisaged as the utility-maximizing rational individual of neo-classical economic theory. Here we can see the co-optation of the language of empowerment, whereby individuals are empowered not as citizens or as part of an ecological and social

community, but as sovereign consumers who can save the world by buying green products.

This reflects a broader change in political discourse on the nature of citizenship. The 'citizen' was previously constituted as a social being whose powers and obligations were articulated in the language of social responsibility and collective solidarities. Citizens are now being reconstituted as active individualists exercising free political choices whose most vital economic role is not as a producer but as a consumer, i.e. as entrepreneurs of themselves who maximize their quality of life through the artful assembly of a lifestyle (Miller and Rose 1990).

Within this governance regime, the individual is seen not as a democratic citizen, but as a consumer reacting to price signals. The atomistic model of society as made up of free and individual consumers is reinforced and deepened by the attempt to reassert control over the environment through the extension of forms of economic calculus to the environment, i.e. the capitalization of nature and the further colonization of the natural world (O'Connor 1994). This social construction of nature as "natural capital" is ideologically important for natural capital is interchangeable with other forms of capital through the medium of money.

The central point, from the perspective of strengthening the public domain, is that the equation of nature with natural capital leads to decisions being framed as "technical" rather than as issues subject to democratic choices. They should, it is then argued, be at "arms-length" from democratically accountable governments. This is a key moment in the political project of de-politicizing environmental concerns:

Thus, [the transformation of the public space of politics into a pseudo-space of interaction in which individuals no longer 'act' but 'merely behave' as economic producers, consumers and urban city-dwellers] does not represent simply a blurring of

the boundaries between public and private life – something many social movements might want to preserve as part of the democratization of everyday life – but the replacement of both by a particular configuration of social life in which the commodity is king, and in which bureaucratic, administrative and instrumental logic have largely replaced democratic conversations. (Sandilands 1997: 81)

This process of narrowing the boundaries of the collective discussion and contestation can be attractive to some environmentalists. It offers the promise of swift action and direct negotiation with key decision-makers within existing structures of power, alongside the possibility of exhorting individuals to ‘do something’ in their individual lives without the difficulties inherent in collective organization. Yet many environmentalists and theorists such as Hannah Arendt, Jurgen Habermas and Nancy Fraser have put forward strong arguments in support of approaching environmental problems as *public* and *political*:

There is no reason to doubt our present ability to destroy all organic life on earth. The question remaining is whether we wish to use our new scientific and technical knowledge in this direction. This question, in turn, cannot be decided by scientific means; it is a political question of the first order and therefore can hardly be left to the decision of professional scientists or professional politicians. (Arendt, in Sandilands 1997: 91)

Conclusion: Strengthening the Public Domain as a Means of Environmental Governance

The attempt to avert tragedy by privatizing the commons is doomed to failure. While compelling as an intellectual model, market environmentalism is unable to avoid the tragedy of the commons for four main reasons. First, in treating the ecological crisis

as primarily a quantitative problem of allocating 'public bads' (pollution) in the most efficient way possible, it ignores the importance of collectively reflecting on the qualitative issues of what constitutes 'the good life' and how we, as a society, can live within ecological limits.

Secondly, the push toward voluntarism and corporate self-regulation masks an attempt to dismantle the institutions of public involvement and oversight in environmental regulation. This is evident not only in the proactive attempt by corporations to set the terms for environmental policy-making but also in the dramatic cutbacks in those state institutions whose role it is to make and enforce environmental regulations. The elimination or bypassing of mechanisms for the participation of civil society through the adoption of voluntary initiatives is a reaction to the success of the environmental movement in forcing environmental governance into the public domain.

Thirdly, market environmentalism's attempt to privatize the commons cannot address the interconnectedness of ecological systems. It literally seeks to value the fish independent of the water in which they swim. Analysts working from the perspective of contemporary microeconomics reflect this in the misunderstanding. For them, the 'tragedy of the commons' was a consequence of the fact that the collective resource was un-priced, hence the need to assign strong private property rights to natural resources and sinks. Historical analysis, however, shows that the tragedy of the commons ensues when the system of reciprocal rights and obligations, which govern the 'public domain' of the commons and regulate individual and collective access to resources, is destroyed through the introduction of the market logic of private property and profitability.

And finally, market environmentalism seeks to empower individuals not as citizens or as part of an ecological and social community, but as sovereign consumers who can save the world by buying green products. This privatizing model seeks to replace

collective discussion and action with consumption. In contrast, we must approach environmental problems as *public* and *political*. To this end, it is vital that we strengthen the public domain by opening and expanding the spaces of public contestation which are vital to the democratic formulation and resolution of issues.

In many ways, ecological modernization represents an advance over the first-wave, state-centred regime of environmental governance. If we are to genuinely address the ecological crisis, it must be recognized that the market cannot be the primary mechanism for governing the commons and that the 'greening' of governance is ultimately a political, not a technocratic, project which must be embedded in a strong public domain.

Endnotes

¹ This paper was commissioned as part of the public domains project under the direction of Daniel Drache, Director of the Roberts Centre for Canadian Studies, York University.

² Exactly what the commons means varies significantly between various authors. It can refer to public goods (commodities or services whose benefits are not depleted by an additional user and for which it is generally difficult or impossible to exclude people from its benefits even if they are unwilling to pay for them) or common property resources (goods or services for which it is difficult to exclude people from its benefits but which are depleted by additional users) (Keohane and Ostrom 1997). The way in which 'the commons' is used here is closer to the definition established by editors of *The Ecologist* (1993: 7-8), i.e. a set of relations which "provides sustenance, security and independence, yet... does not typically produce commodities. Unlike most things in modern industrial society, moreover, [the commons] is neither private nor public." The

commons is a central element of “the public domain”, i.e. the realm of democratic debate, public culture, social capital, and collectively held goods and services.

³ The recent interest in environmental governance on the part of academics and policy makers in the question of governance as opposed to government (e.g. OECD 1995). What is relatively novel in the governance approach to policy-making and policy-analysis relative to the earlier emphasis on government is that there is no *a priori* assumption that it is the national state which will be the principal institution for organizing and regulation economic, social, and ecological relations (Jessop 1995).

⁴ The tragedy of the commons “supplied the framework in which most environmentalists and those in related social and especially natural sciences understood natural resource issues” and “became an important part of environmental education and applied resource management curricula, and provided the essential insight for the genesis of environmental problems for generations of students” (Berkes and Feeny 1990: 48).

⁵ Canada is signatory to over one hundred legally binding multi-lateral and bilateral agreements with environmental implications and participates in at least nineteen international organizations with environmental mandates and/or programs (Toner and Conway 1996).

⁶ On the general trend toward cutting back the role of the state and reshaping state institutions and roles so as to make them market-enhancing rather than market-replacing, see the publications by the World Bank (1997), Organization for Economic Cooperation and Development (1995), and Williamson (1994). For an examination of how the privatization of state assets and functions has been complemented by a restructuring of

the state itself along market lines in Canada through the “new public management” and the “marketization of the state”, see Pierre (1993) and Albo (1993).

⁷ Table 1 is based on Paehlke (1997), Hoberg (1993), Skogstad (1996) and Stewart (1998).

⁸ The Friday Club is an informal group made up of the Mining Association of Canada, the Canadian Chemical Producers Association, the Canadian Petroleum Products Institute, Business Council on National Issues, Canadian Electrical Association, Canadian Pulp and Paper Association, Canadian Chamber of Commerce, and Canadian Vehicle Manufacturers' Association. It meets every month or two, often inviting politicians or high-ranking bureaucrats as guest speakers and provides a forum where industry representatives can discuss and formulate common positions on environmental regulations -- pushing for voluntary rather than regulatory action and arguing that the private sector can provide solutions to the environmental challenges (Spears 1997: C1). The Friday Club played a key role in weakening the 1999 revision of the Canadian Environmental Protection Act (Jacobs 1999).

⁹ There is even a small but vocal neo-liberal wing of the environmental movement aggressively championing a pro-market, anti-state agenda. In Canada, Energy Probe plays this role (Walkom 1997: E1). In the U.S., free-market environmentalism is championed by the Natural Resources Defense Council as a way of defining a ‘market-niche’ with potential funders (personal communication with former NRDC staff-person). A number of the other big ten U.S. environmental groups have also proven receptive to a market-based approach (Driesen 1992).

¹⁰ “Neo-liberalism is primarily concerned to promote a market-guided transition towards the new economic regime (e.g. Reaganism in the USA and Thatcherism in the UK). For the public sector, it involves a mixture of privatization, liberalization and the adoption of commercial criteria in the residual state sector; for the private sector, it involves deregulation and a new legal and political framework providing passive support for market solutions” (Jessop 1994: 266). These neo-liberal principles will vary between different national societies depending on their institutions, history, class balance of power, etc.

¹¹ As a concrete example, the Canadian Institute for Environmental Law and Policy has argued that weaker regulations and lax enforcement has led an increase in hazardous wastes being imported into Ontario from the U.S. from 56,000 tonnes in 1993 to 288,000 tonnes in 1998 (Yacoumidis 2000).

¹² Sources: (Stefanick and Wells 1998; Winfield and Jenish 1998; Muldoon and Winfield 1997).

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