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Michael S. Greve, The Demise of Environmentalism in American Law

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may be a sociology professor, but a good portion of this book is rooted in environmental law and regulation. Parts of some chapters were first published in the *Law and Society Review* and *Law and Social Inquiry* journals. The author also recognizes the American Bar Foundation and the Center for Dispute Resolution (at Northwestern University) for their assistance with her dissertation on the topic and ultimately this book.

Jennifer Lee

Michael S. Greve, The Demise of Environmentalism in American Law, merican Enterprise Institute Press, La Vergne, TN (1996); 147pp; 29.95; ISBN 0-8447-3980-4, hardcover.

The Demise of Environmentalism in American Law discusses the collapse of environmental values in American law, specifically focusing on constitutional and administrative case law. Greve begins Chapter One by stating that "environmentalism" is not simply a desire for clean air and water, but rather an ideology or worldview. Greve calls this an "ecological paradigm" which views the world as being completely interconnected. This interconnectedness, therefore, leads to what Greve feels is a coherent, yet perverse, view of the legal world. Greve discusses the impact that environmentalism has on politics and public policy in the United States. A trend in American case law currently demonstrates the reversal of environmental era doctrines, such as the National Environmental Policy Act and the Clean Air Act, that were once championed by American courts. Greve feels that the courts are now deliberately rejecting the ecological paradigm "as a matter of principle."

Greve explores the political changes that may occur as a result of the shift in the intellectual ground on which environmental politics rest. He discusses the impact of the ecological paradigm on common law property rights, statutory law, and judicial interpretation and review of that law. Greve refutes the proposition that the ecological paradigm is simply a "bigger New Deal" based on the theory that the ecological paradigm is unparalleled in both form and substance, and has no analog in other regulatory arenas. He claims that judges, along with policy experts, began to realize that there were systematic defects in the environmental regulatory system and that this too has contributed to the demise of environmental values.

In Chapter Two, Greve takes an indepth look at the Fifth Amendment takings clause. He discusses one of the leading Supreme Court cases in this area, *Lucas v. South Carolina Coastal Council*, and the implications that this case has on takings in the environmental arena. Greve also discusses *Nollan v. California Coastal Commission* and *Dolan v. Tigard*. Greve discusses the opinions of the justices in these cases and the idea that manipulable standards make it almost impossible to de-

termine the outcome of a particular case in advance.

In Chapter Three, Greve describes how standing to sue issues have evolved in environmental law. He begins with the idea that during the 1960s and throughout a better part of the 1970s the judiciary expanded the definition of standing by lessening the importance of the requirement that a plaintiff must have suffered some tangible harm in order to have standing. Congress supported the judicial expansion of standing by authorizing citizen suit provisions in every major environmental statute. Greve argues that in the past several years, however, federal courts have rejected the extension of standing to public interest plaintiffs. This shift evidences a rejection of the ecological paradigm. Greve discusses the landmark cases of *Lujan v. National Wildlife Federation* (1990) and *Lujan v. Defenders of Wildlife* (1992). Greve provides an informative analysis of the significance of these decisions. The chapter concludes by comparing the *Lucas* case with the *Defenders of Wildlife* case, and the fact that the rationale underlying these decisions firmly rejects the political-legal perspective of the ecological paradigm.

Chapter Four discusses different types of judicial review of environmental regulation. The author bases the first type on the values embodied in environmental statutes. The ecological paradigm requires that these values be placed above political bargains and economic considerations. The author bases the second type on close judicial scrutiny of an agency's decision making process. This "hard look" approach is appropriate when an agency's policies seem less aggressive than the agency's underlying statute appears to permit. Greve states that substantive review focuses on ensuring regulatory results that are reasonable, *i.e.,* more beneficial than detrimental. Substantive review of environmental regulations resembles a "hard look" due to the fact that both place a premium on reasoned decision making. Greve uses major cases to illustrate the results of these different types of judicial review.

In Chapter Five, Greve argues that the ecological paradigm imitates, rather than reduces, the complexity of the outside world and places private interests above public values. This chapter focuses on the idea that ecological doctrines have produced excessive regulations and irrational policy results. Greve feels that the return to common law harm-based principles promises to restrain such excesses and irrationalities. Greve discusses the position held by environmentalists on what is the appropriate standard of review for environmental legislation.

Finally, in Chapter Six, Greve deals with environmental ideology and real-world politics. Greve summarizes the theme of his book and discusses the changes that have occurred in the environmental realm, specifically the return to common law doctrines concerning environmental aspirations. Greve argues that a return to common law principles will promote the protection of private orderings, the ability to exclude others, voluntary exchanges, and protection from aggression by

outsiders. Additionally, Greve discusses the power that ideology, such as the environmental paradigm, can have over law and politics. He also discusses the interplay between the judiciary and Congress as it relates to environmental legislation.

The Demise of Environmentalism in American Law provides an interesting, thoughtful and informative discussion of the catalysts of change in environmental policy and legislation, illustrated by a discussion of relevant case law.

Maureen D. McInerney

Colin Ward, Reflected in Water: A Crisis of Social Responsibility, Cassell, London and Washington (1997); 147pp; $25.95; ISBN 0-304-33568-1, paperback.

In a practical, non-technical style, *Reflected in Water* examines social issues raised both locally and globally due to our need for water and the crises associated with water that face the world. The book emphasizes the need for local community control of access to water.

The first chapter explores the history of water in Britain, where access to water was recognized as a universal human right. Now, however, water has become yet another publicly owned utility being offered for sale to a public that already owns it collectively. This privatization of water especially effects the poor in Britain. Thousands of households have had their water supply cut off due to inability to pay their water bills.

The next chapter discusses the tragedy of the commons and how to avoid it. The tragedy is analogized to a group of herdsmen who live together in harmony until the long-desired goal of social stability becomes a reality and the inherent logic of the commons generates tragedy. The theory is that a herdsman will pursue his interest by increasing the size of his herd while failing to consider the actions of others. The consequence is that the land held commonly becomes overgrazed. The author offers the proposition that local, popular control is the surest way to avoid the tragedy of the commons and discusses the plight of Spain as an illustration of this proposition.

Chapter Three illustrates the current preoccupation with large-scale water engineering projects throughout the world and how the control of water is inevitably control of life and livelihood. The author remarks on the devastation of lives and livelihoods that these grand projects cause, wondering why today's engineers, advocating central control and incorporating a vast bureaucracy, dream of such projects when a thousand smaller projects would be more beneficial.

Chapter Four sets forth a brief history of the dam and how a regime that is ruthless and unopposable equates to more extensive water engineering projects. For example, in the Soviet Union, a series of irrigation projects were implemented in the rivers that feed into the