2003

Minnesota Wild

Lisa Heinzerling
*Georgetown University Law Center, heinzerl@law.georgetown.edu*

This paper can be downloaded free of charge from:
https://scholarship.law.georgetown.edu/facpub/325

87 Minn. L. Rev. 1139-1143 (2003)

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author. Follow this and additional works at: https://scholarship.law.georgetown.edu/facpub

Part of the [Environmental Law Commons](https://scholarship.law.georgetown.edu/facpub)
Minnesota Wild

87 Minn. L. Rev. 1139-1143 (2003)

Lisa Heinzerling
Professor of Law
Georgetown University Law Center
heinzerl@law.georgetown.edu

This paper can be downloaded without charge from:
Scholarly Commons:  http://scholarship.law.georgetown.edu/facpub/325/

Posted with permission of the author
Commentary

Minnesota Wild

Lisa Heinzerling

In these remarks I am going to tell two stories and then add—to the growing list compiled so far in this Symposium—two new quasi-religious, metaphorical figures. In keeping with our overall theme of eco-pragmatism, my remarks will be experimental, contingent, even nonlinear. I hope you will indulge me.

I grew up about thirty miles southwest of Minneapolis in a town called Chaska. At that time, Chaska was a little town, mostly rural. My family lived in a house on the edge of a field planted with what must have been alfalfa (from my memory of what it looked like). The field ran down to what we called “the woods.” A creek ran through the woods.

I spent many childhood days in that field, those woods, that creek. In my family, it was a kind of sin to go a whole day without going outside. This was especially true if the day was fine; but even if not, the notion that a person could spend an entire day indoors was unthinkable in the home where I grew up. So outdoors we went, in all the different kinds of weather Minnesota has to offer. When you grow up like that, you do not learn to think of yourself as a thing separate from nature itself. The wind on your face, the snow on your eyelashes, the frog pulsing against your trembling hands—they do not really feel

† Professor of Law, Georgetown University Law Center. This Commentary is based on remarks I delivered at the Symposium on eco-pragmatism held at the University of Minnesota Law School in November 2002.

1. Minnesota Wild is the name under which a cousin of mine sells Minnesota specialty products. Minnesota Wild also happens to be the name of Minnesota’s professional hockey team. The first Minnesota Wild has sued the second for trademark infringement, and the case is pending. See Minn. Specialty Crops, Inc. v. Minn. Wild Hockey Club, No. 00-2317, 2002 U.S. Dist. LEXIS 13991, at *1-*3 (D. Minn. July 26, 2002).
like separate organisms from the child who takes them for granted. People can mean all sorts of different things when they talk about a "spiritual" connection to nature. When I talk about it, I mean just the kind of connection I have described, one where you do not know where you end and nature begins.

The first Earth Day happened when I was nine years old. I did not even know to call it Earth Day at the time. All I recall is that suddenly the environment became a topic of discussion in my third-grade class. We read a pamphlet telling us that Lake Minnetonka, where my family spent many a day fishing, swimming, and water-skiing, was polluted with pesticides and gasoline from the many motorboats—including ours—that used the lake. It had never occurred to me that a lake I loved could be poisoned, much less that it would be partly my fault. It was a double loss of innocence.

Many people, including many of the good people at this Symposium and many of the people who think and write about environmental law for a living, shy away from seeing, or at least talking about, the spiritual side of our work. It may be that some of us spend too much time indoors (an occupational hazard for law professors). It may be that some of us hesitate to use anything resembling religious imagery or rhetoric. Whatever the reason, I think the absence of a spiritual undertone to our debates about the environment has perhaps helped to inure us to events that, as any child could tell us, are unacceptable.

This brings me to my second story. This past fall, in the Maryland suburbs where I live, we were terrorized (the word is not too strong for what we felt) for three weeks by a sniper who shot people going about their everyday lives—pumping gas, shopping, mowing the lawn. My children were not allowed to play outside at school during this time. Parks emptied out, and many people simply stayed at home. To a person, the situation was, understandably, deemed unacceptable. Period. Unacceptable. So anxious was the public for a resolution that vast police dragnets, covering miles and miles of highways and roads, were accepted as part of the price to pay to catch the culprits.

Now, in a comparison some might resist, I am going to tell you that once the new national standard for smog takes effect where I live, there will be dozens of days—some people think as many as sixty days—every year when children are advised to stay inside to play, when people who have asthma are advised
to avoid strenuous activity, when the elderly are told they should stay home rather than venture out. Sixty days. Two months. Over half the summer. Indoors. Yet no one has sounded the alarm, no one has thrown a dragnet over the region trying to stop the culprits.

Obviously, there are differences in the two events. People who are hurt by smog cannot be identified like people who are hurt by gunmen can. Because we cannot identify them, we can even—if we close our eyes and really try—pretend that people hurt by smog do not exist. Or we can say they are not hurt very badly. People who are hurt by smog also are not hurt by anyone who is out to get them. And people who are hurt by smog are hurt by people doing the same kinds of everyday things the people shot in the Washington suburbs were doing—pumping gas, mowing the lawn. When we have met the enemy and he is us, it is not surprising if we retreat.

Which brings me to the two quasi-religious, metaphorical figures I promised at the outset to introduce, who arrive on the scene just in time to save us from ourselves—one to lead us out of (or I guess in this context, into) the wilderness, and the other to follow.

First comes the seer, the prophet, the person who reminds us what environmentalism is. Environmentalism consists, for my prophet (and for me), of a set of ten or so core commitments or beliefs. Only some of these are openly embraced by environmentalists today. Many of them are a direct affront to the consumerist, atomistic, hubristic society we seem poised to become. My prophet, really, is a heretic.

I will start with the least heretical of my prophet’s commitments. These are a concern with human health and life, a concern for nonhuman species, and a love of natural beauty. And these concerns and this love extend further into the future than we can see; future generations, the future of species, the long-term fate of the planet, are all preoccupations of the prophet. (Indeed, one meets few prophets who do not care about the future.) This is almost certainly the set of values captured by the claim “we are all environmentalists now.” Who would disdain, in principle, the commitments I have described so far?

Other commitments are probably equally uncontroversial, at least in principle, but they are not as obviously associated with environmentalism. A desire for freedom (freedom to choose our risks, freedom to know what threatens us), a longing
for justice (in the distribution of risks, in the punishment for misdeeds), and an embrace of community (so that catastrophic harms, harms that are visited upon a whole community at once, are worse than diffuse harms) are deeply held and widely shared commitments in the American legal system, and they are part of the reason why we have environmental laws, rather than laws that just tell us to maximize the bare number of lives saved. It is not so much that the commitments themselves are contested; it is that sometimes we forget that it is freedom, and not just health, that is threatened when our children are told to stay indoors on a summer day.

The last set of commitments moves from prophesy into heresy. It includes a belief in the superiority of the natural over the artificial (plastic trees do not cut it), a commitment to frugality, and an attitude of humility. The frugality of the environmentalist comes from an aversion to waste, a desire to do more with less. The humility of the environmentalist comes from an appreciation of the limits of our own knowledge. These commitments, together, define environmentalism at its most subversive. Anti-consumerist, distrustful of scientists who claim to know it all, satisfied that enough can be enough—these are attitudes profoundly upsetting to the prevailing ethos. As John Kenneth Galbraith observed at the dawn of the modern environmental movement,

Nothing would be more discomfiting for economic discipline than were men to establish goals for themselves and on reaching them say, "I've got what I need. That is all for this week." Not by accident is such behavior thought irresponsible and feckless. It would mean that increased output would no longer have high social urgency. Enough would be enough. The achievement of the society could then no longer be measured by the annual increase in Gross National Product. And if increased production ceased to be of prime importance, the needs of the industrial system would no longer be accorded automatic priority. The required readjustment in social attitudes would be appalling.2

No wonder the industrialist fears the environmentalist committed to these attitudes; no wonder the mainstream environmentalist eschews them. The industrialist does not want the laborer to stop work at noon nor the consumer to stop shopping on Monday. The mainstream environmentalist does not want to let on that personal sacrifice might be in the works if we are to save the planet and ourselves. But without guides like frugality and humility, the other commitments of the

environmentalist—to health, to life, to freedom—are hard to translate into terms that bring environmental problems home to us all.

Here enters my second quasi-religious figure: the humble parishioner. The lost soul of the environmental movement, the humble parishioner sits quietly, hands folded, waiting to be told what to do. Occasionally she answers a survey and reports that she is one of the vast majority of Americans who consider themselves environmentalists and who would be willing to pay more for greener products. Sometimes, in such polls, she becomes excited and says—again, along with a large number of her fellow citizens—that no price is too great to protect the environment. But otherwise no one calls, no one writes, unless you count the fund-raising appeals from national environmental groups reassuring her that the blame lies not with her, but with someone else. The humble parishioner is just as happy, true enough, that the problem is not hers to solve, but if you catch her in a quiet, unguarded moment, she will confess that she is just waiting for the law to catch up with her.

We have never had a national leader on the environment who is willing to go to such a person, the ordinary citizen, and tell her that she must change her attitude, and her ways, if the environment she values is to be protected. We have never, in other words, had a national leader on the environment. For starters, I think the heretical prophet would do.