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# Economics as Judo

## Turning self-interest to work for the environment

By David Roe (California and Merton '69)

Even in the inspired first cadre of full-time professional environmentalists, launched around 1970, Gus Speth stood out. A wise strategist, a brilliant lawyer, profoundly committed but invariably genteel, generous with his ideas and his time, he incarnated for many of us what an environmentalist should be. For over 40 years he has stayed true to his character and his cause, and the many distinctions of his professional and academic career have been entirely earned. So when he says that environmentalism is failing, as he did most recently in these pages, he deserves to be taken very seriously.

The trajectory of mainstream environmentalism that Speth paints, from his charter-member perspective, is familiar to other social movements as well: from grand rhetoric to grinding details, from demanding a seat at the table to actually sitting at it, from political passion to political pragmatism. A historian might map a similar arc with the American labor movement, and others. The progression Speth sees is to “a certain tameness.” He is ruefully honest about how much more glorious and gratifying the early days of the modern environmental movement were, especially for young Ivy-trained lawyers winning case after case in federal court using what were then brand-new environmental laws.

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I followed Gus Speth's path from Oxford to law school, a few years after him, and shortly found myself as a staff lawyer in another new environmental group, similar to his Natural Resources Defense Council. Over a 25-year stint, I lived through much of the same evolution of mainstream environmentalism that Speth describes. My perspective on environmental advocacy is somewhat different from his, however, and my sense of its future potential is less gloomy. Not that I disagree in any way with Speth's assessment of how much more needs to be done; the question is how.

LEGAL SYSTEMS tend to be self-correcting. The new federal environmental laws of the early 1970s were a remarkable disruption for American business, underestimated at first but quickly forced on major businesses and their Wall Street law firms—mostly, it seemed to them, by young whippersnappers in new little groups like NRDC and budding bureaucrats in new agencies like the US Environmental Protection Agency. But even by the mid-1970s, there were signs that it couldn't last. Judges were having second thoughts about halting major infrastructure projects over paperwork quibbles; and in a momentous showdown in 1973, after environmental groups blocked the proposed Alaska oil pipeline in court, Congress rushed through a special exemption from environmental laws to allow it to be built. It was a portent that some were reluctant to recognize.

As a newer and certainly less accomplished environmental lawyer than Gus Speth, I might have more easily perceived that an all-federal-law-and-lawsuit approach was bound to decay. But in truth, it was the lawyer colleague who hired me, whose genius was more political than legal, who recognized that a top-down, command-and-control approach to environmental protection was never going to master the infinite variety of specific situations that would have to be addressed. My mentor saw that environmentalists like us were never going to have the troop strength to keep up in court, even assuming that new government agencies assigned to protect the environment would always be fully staffed, fully competent, and fully free to pursue their mission. With a typically counterintuitive approach, he had also decided that the resident scientist he was expected to hire, instead of a toxicologist or an atmospheric physicist or a wildlife biologist, should be a PhD economist. He had found one in Berkeley, with world-class skills,

who was already in the office when my environmental career began.

When lawyers think about mechanisms for social change, they tend to think about laws and regulations. Economists tend to think about incentives. That businesses are motivated to seek profits is treated by economists as a given, like gravity, not as a malignant threat like plague. The strategy question for the economist is how to create incentives that lead key actors in the right direction through their own economic instincts—not how to block those instincts or, somehow, cure them. The lawyer's slant on social activism and the economist's are not mutually exclusive, of course, but it can seem that way from a certain idealist perspective. Put crudely: if money is the root of all evil, then economists speak the language of the devil, and speaking it is treachery to the virtuous cause.

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Our first attempt to put professional-grade economics on the side of the environment was an ambitious one: not only to stop the country's largest private utility company from building its next big power plant, but also to stop its entire future building plan for the years 1980 to 2000 (at the time, the equivalent of 13 new nuclear generating stations). Our argument was that the company could get the same results for its customers but at lower cost, charging them less while profiting more, if it put its investment capital into alternative sources of energy instead of into those big power plants. In effect, and backed up with thorough financial analysis, we were arguing that the utility was doing a poor job as a business.

The details were endless, the work took years, and the historical timing was lucky in the extreme; but the strategic lesson was vivid. We were playing what was supposed to be the company's own game, in front of an old-line regulatory commission whose mandate was only to keep monopolies behaving like reasonably efficient businesses. The monopoly utility company could not duck our argument as beside the point, or afford to look as though it couldn't disprove our economist's calculations, because we were holding it to what it claimed were its own principles, using what it had to admit, with some consternation, were its own numbers and its own calculating methods. It was judo, and it worked.

It was also cordially detested by most mainstream environmentalists at the time. David Brower, the most charismatic American environmentalist since John Muir, loved to say in his stump speeches that “economics is an advanced form of brain disease.” Fellow environmentalists felt that advocating for utility companies to keep making a profit, albeit only from pro-environment forms of growth, was a form of comfort to the enemy, and therefore a betrayal.

In the meantime, an approach to pollution control straight out of an economics textbook had been added to federal law, specifically the Clean Air Act, with the support of President George H. W. Bush. Cut the total nationwide emissions of one key air pollutant (sulfur dioxide) in half, but then let the coal plants and other big emitters bid against each other for permits to that remaining half. So-called tradable emission permits meant that the market would decide who got to spew which tons of SO<sub>2</sub>, instead of the government, as long as the overall total stayed firmly capped. It also meant that a business reducing its emissions reaped hard cash, taken out of the pockets of its more-polluting peers. Overnight, a 50 percent nationwide reduction became politically acceptable, where even a 20 percent drop under smokestack-by-smokestack regulation had seemed unattainable. Then, the economic cost of making those reductions turned out to be absurdly less than what the affected industries had calculated, in fact only about a tenth of what they had predicted to Congress. So much more environmental bang for the buck and so much less political obstacle to huge improvement were hard to ignore—although many environmentalists still felt betrayed in principle. They saw tradable permits as enshrining a pernicious practice of letting companies “pay to pollute.” It did not matter (or at least, not enough) that the environmental burden of SO<sub>2</sub> emissions was being cut in half, or that traditional pollution laws operated by issuing permits that allowed companies to pollute “for free.”

Of course, economic arguments and the tools deployed in their name are highly susceptible to manipulation, shortsightedness, misuse for propaganda purposes, and other forms of capture. But just as much, any lawyer has to admit, so are legal arguments and legal tools. Economics looks to the outsider like a mystifying game that any but the most powerful are bound to lose. But then again, to the outsider, so does law. The first cadre of professional environmentalists had top-flight legal training and mentors, giving them their optimism about law’s potential to work for their cause instead of against it.

LACK OF PROFESSIONAL FAMILIARITY with economics goes only so far, however, in explaining why much of the environmental community still flinches from thinking in economic-strategy terms. Economic motivation is at the root of the harms that the environment needs to be protected from; therefore, economics is the enemy. This syllogism is over-simple, but something in its shape is at the core of Speth's pained plea: "The fetish of GDP growth as the ultimate public good...; our runaway consumerism... These are among the underlying drivers of environmental outcomes." He therefore calls for "a new economy," one that instead "gives top, overriding priority not to profit, production, and power, but rather to people, place, and planet... [to] caring for each other, for the natural world, and for the future."

In other words, the degrading effect of a profit-oriented economy on any other social value, like the environment, is not just woeful but inevitable. The poet Randall Jarrell, over 50 years ago, saw the same degrading effect on culture: "If a man has all his life been fed a combination of marzipan and ethyl alcohol—if eating, to him, is a matter of being knocked unconscious by an ice cream soda—can he, by taking thought, come to prefer a diet of bread and wine, apples and well-water?" Speth's answer is "no": our profit- and growth-driven economy can produce only the environmental equivalent of ice cream sodas. Looking around, it is hard not to sympathize.

A strategist trying to improve the environment over the long term would seem to have to ask two questions. First, what strategy *will* work, in the world we concede we find ourselves in?

And second, if at least temporarily we were to put aside our distrust of economic tools and try them, how much pro-environmental action might there be?

Speth's prescription is plainly inspirational: "a progressive coalition" that develops "motivational messages and appeals" and listens less to "lawyers, scientists, and economists" than to "the poets, preachers, philosophers, and psychologists." It rings with an appeal to faith. But as political strategy, faith-based movements have a serious drawback. They appeal powerfully to the faithful; but they trigger their opponents to rely on counter-arguments that are, or at least can be made to seem, equally based on faith. "Growth" and "profit" have been preached in-

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cessantly to the American public as matters of faith, with conviction by some and with cynicism by many others. Ronald Reagan managed to equate “pro-environment” with “anti-growth” in the public mind, a false dichotomy that environmentalists can’t seem to keep from buying into, and one that environment-harming businesses and their allies have been happy to keep alive. If the debate is to be framed as one faith versus another, the environment’s opponents have prepared the ground well. Just as important, posing the question to the public as a choice between faiths has a critical disadvantage, because then any actual facts become less relevant and less persuasive.

My own belief is that distracting from the facts, or making it easier for opponents to do so, is a profound strategic mistake for environmentalists. Science has always been our strong suit, because it so overtly depends on the facts and on testing for them. Flinching from economics seems to me like one version of avoiding the facts, and allowing the debate to slide into ideology. At the same time, a call for “a new economy,” one that somehow avoids the drawbacks of the one we have, raises an awkward question: what expertise will environmentalists use to imagine it or design it? If faith does bring a new coalition to power and seats it at the drawing board, who will know how to use the pen?

Much shorter-term, it also seems a political mistake for environmentalists to give up on judo. The fact that smokestack industries were shown to be so incompetent at calculating their own business costs for SO<sub>2</sub> reductions (or so dishonest in congressional testimony) was worth a hundred earnest debates about the merits of electricity versus acid rain. If environmental improvement is much cheaper, then, according to the very principles that Speth’s enemy powers are preaching and asking the public to believe in, there should be much more of it. And if improvement is economically free, or even profitable, then there can be no principled opposition at all. National smokestack emissions of hundreds of toxic chemicals dropped by half in a single decade (1987–1996), merely because a new public disclosure system nudged companies to try to lower their numbers in the reports they knew the public was going to see. They were acting in their own perceived self-interest, without any new legal mandates or penalties to prod them. With a more tailored version of the same incentive, a ballot initiative in California (which I helped write) has been more successful than any federal law for the past 25 years in getting rid of unnecessary exposures

to toxic chemicals. It has worked mostly invisibly, causing businesses large and small to dig those chemicals out of their products and replace them without fanfare. Again, by their own choices made in their own economic self-interest, the businesses themselves proved that very many chemical exposures they were responsible for had no good commercial reason at all. Their reformulated products looked the same, worked the same, and sold the same, at the same prices, just minus some nasty chemicals that decades of federal laws hadn't been able to get after.

HOW MUCH MORE PROGRESS could the environmental movement make if it took economics seriously as an advocacy tool, and deployed as much talent in that direction as it has done for over four decades with mandatory law and micro-regulation? The best that can be said, I suppose, is that you don't know until you try. The invisible hand often seems to be invisible to environmentalists, even when it works for them. But the incompetence or hypocrisy of "money power and corporate power" interests to practice what they claim to preach—efficiency, consumer choice, the greatest economic good for the greatest number—is a huge open field of political opportunity. Senator Elizabeth Warren, for example, had a field day showing that the titans of the financial industry, supposed experts of efficient capital deployment for society's benefit, are doing anything but. She used their self-justification and their self-professed religion against them.

There may be one additional factor at work helping to keep environmentalists away from this kind of strategic thinking and practice, if only unconsciously, and that is self-image. Horatio at the bridge, sword in hand, may be a more gratifying model than Tom Sawyer in the shade, munching his apple and watching his playmates paint Aunt Polly's fence for him. But the environmentalists' task involves an enormous number of fences and bridges, with new ones turning up all the time. Strategies that self-execute and self-reinforce should not be shunned.

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Perhaps I am suggesting no more than another way of getting to Speth's wished-for "new economy," by smart nudges instead of brute negation; by becoming expert in how gravity works and taking advantage of it, instead of trying to repeal it wholesale. Or perhaps it would show "a certain tameness" even to try. But even if a faith-based transformation of the body politic is ultimately the only answer, it has to help in the meantime to be steadily undermining the credibility of the opposition's professed faith and turning its tenets back on themselves.

One of my professors back in law school, when asked where future advances in constitutional law might come from, used to borrow from Newton and say to us, "You have to stand on my shoulders." At the time it seemed hard enough even to get up to his knees; but what he meant was that he was already looking as far ahead as his insights and experience could take him, and that a new generation with new perspectives and insights would write the future. What he hoped was that they would start from as high a vantage point, intellectually and analytically, as he could give them. They (meaning we) would make new mistakes, but in the best of worlds they would not make old mistakes all over again. The most that any of us from the aging first generation of modern environmental professionals can hope for is that our successors will stand on our shoulders, as they look for where to go next. My own hope is that as they do, they look in all directions.