



The Market and the Environment

Guest: Walter Block

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WOODS: I want to talk about the environment today. That's one of the areas that you specialize in. Now when you have over 400 peer-reviewed articles, you specialize in a lot of things, but if you were to look through your CV, you'll find there's quite an extensive collection of writings on the subject of the environment. I wanted to have you on because I feel like in some ways you really are—I don't want to say the only person doing this, because there are people who are doing so-called "free market" environmentalism—the hardest core of the hardest core, and that's why I find you especially interesting on these subjects.

Let's start with the hardest issue of all, I think, in terms of the environment. I think some people understand that property rights mean that the environment gets cared for better than if the government cares for it. Not the whole general public, but libertarians, at least, get that. So let's start with an area that even libertarians probably have some trouble with, and that would be the general case of air pollution. I want to first talk about how Walter Block would handle air pollution, and then I am going to introduce to you the so-called free market environmentalist idea of tradable pollution permits, and then you'll tell us what's wrong with that. But let's start off with what your ideal solution to the problem of air pollution is.

BLOCK: Well, first I have to correct you. The hardest of the hardcore libertarian people on environmentalism is not me. It's Murray Rothbard.

WOODS: Okay, all right, living.

BLOCK: I'm easier to get a hold of than he is now.

WOODS: Right.

BLOCK: So I will accept that very great compliment. And my knowledge of environmentalism, I hate to say this, also comes from Murray, as does a lot come from Murray. Murray had this magnificent article originally in the *Cato Journal* and now you can get it in a book of mine: "Law, Property Rights, and Air Pollution." In that article Murray is just magnificent—for a change; you would be shocked. [Laughter]

The view is that air pollution is a trespass. Look, if I take my garbage—eggshells, orange peels, coffee grounds, crap, whatever—and I just dump it on your front lawn, we all know how the law actually would work and should work. Someone in the white suits would come and grab me, or maybe the in the blue suits, and say, "Hey, look, you can't put your crap on Tom's lawn or on his property without his permission. What are you thinking? What, are you a maniac?"

However, if I grind this stuff up into little cinders and dust and stuff like that, and then waft it over your the house, well, we do have laws against that nowadays, too, although we didn't always, and I would like to go into a little of the history of this. But the point is that there's little difference in principle between dumping

let's call it macrogarbage on your property, and then microgarbage, which is all ground up into fine dust mites that you might not even be aware of except when you—if you put your laundry out there on a clothesline as in the old days, you'll come back and it'll be a little dirty.

Let me give the history again as I get it from Murray Rothbard. What happened was that in the 1830s and 1840s and 1850s in the U.S., the law was pretty good. If a little old lady put out her laundry on a clothesline and she put it out there wet and clean, she came back two hours later dry and dirty, and she went to court and said, "Hey, that there factory two miles away—you can see the smokestacks and black smoke coming out of there and it got onto my laundry. And I want two things. I want an injunction, and I want damages." An injunction is a ruling from the court saying cut that out, otherwise we'll put you in jail, and damages for the harm you've done to the little old lady.

Or there was another case where a farmer would have haystacks on his property and 300 feet away there'd be this railroad coming along, and it would have smoke and dust particles, and it would set sparks. It would set the man's haystacks on fire. Then the farmer would go to court and say, "I want damages and an injunction," and pretty, not always, but pretty much the courts would uphold the plaintiff. These would be the environmentalists. You would have to prove it. The burden of proof would be on you that it came from that railroad or that factory and not any other. But the courts were open to it, and often, not always, as in the real world, the plaintiff was upheld.

Now this had several very, very good effects. One, the factory was swayed as if by Adam Smith's invisible hand to use slightly more expensive anthracite coal, which would be more expensive but very clean burning, rather than the sulfur coal, which was cheap but dirty burning. It would also give the factory owner an incentive to put something in his chimney, some sort of mesh, to catch the smoke before it went out.

Now look, you never had zero smoke. There is such a thing a *de minimis* in law. The law does not concern itself with trifles. Look, we all breathe out. We all breathe carbon dioxide. So we're all polluters, but that sort of polluting doesn't count. It's *de minimis*.

But there were several good effects, and you even had in the 1830s and '40s people with little microscopes trying to figure out—well, where did this dust particle come from? And also the railroad had an incentive to put the smoke prevention devices and spark catchers on the railroad stock so that the sparks didn't go 300 feet, they only went 20 feet or whatever, or they were caught entirely, and things were pretty good. Perfect, no. Not perfect.

And there was even environmental forensics, and we all know what forensics is—you know, hair follicles and semen and blood and stuff to find out who the murderer or the rapist is. Well, in those days you had the burgeoning environmental forensics movement or industry to try to figure out who done it. And there was no problem. There was no crisis. There was no market failure. There was no nothing. Everything was sort of okay, and technology would have improved and would have found better ways had we followed this pattern. However, we then got to the progressive period, and in the progressive period 18, I don't 70, 80, 90, 1900—a new, how should I say, philosophy overtook the courts, and at that time who is number one in the world? Great Britain. And who wanted to be number one? The United States. We wanted to kick butt. We wanted to be an imperialist country. So how do you become an imperialist country when a little old lady is bugging a manufacturing plant or a stupid farmer is bugging a railroad?

If you want to have battleships and tanks and stuff like that, you have to favor heavy industry. So the next time, well, I shouldn't say the next time, but the law changed slowly, and in the progressive period when the environmental plaintiffs came into court, the reaction was very different. The reaction was, yeah, yeah, they're violating your property rights, yeah, of course—who could doubt that? But your stinking, lousy private property rights are selfish and greedy, and there's something more important than that and that is the public good, and what does the public good consist of? Pretty much manufacturing. Let me read a quote that I actually pulled out of Murray's article, and this is the case *Coleman vs. Athens Empire Laundry Company* (1919). The Supreme Court of Georgia declared: "The pollution of the air, so far as is reasonably necessary to the enjoyment of life and indispensable to the progress of society, is not actionable."

Get that? It's not actionable? Well, if it's not actionable, and you are a green businessman or say a religious

businessman and you don't want to be polluting people, and you'll use the anthracite coal even though it's a little more expensive, and you'll stick the mesh into your chimneys to catch pollution because you don't want to be a pain in the neck to other people, well, what's going to happen to you? The Adam Smith invisible hand is going to work in the exact opposite direction, namely it's going to penalize you. Because *ceteris paribus*, you now have a competitive disadvantage vis-à-vis your competitors, and they'll drive you out of business. As a sop the courts did say, okay, look little old lady, we're not going to bug the manufacturing plant, but I will tell you what we'll do, we'll have minimum smokestack smoke regulations. Now before, the smokestacks were oh, 10, 20, 30 feet high, and now the smokestacks had to be 200 feet high. So in effect, we pushed the problem not under the rug but into the clouds. So the situation is just horrible from the progressive period.

Then what happens it continued the history to the modern era right before the Clean Air Act—somehow we discovered, much as China is discovering now, that if pollution is not actionable, meaning that anybody can dump any crap on anyone else's land provided they pulverize it finely enough into dust, well, what you're going to get is vast pollution. I remember seeing a cartoon I think in *New York Magazine*, or one of those, and there was a mother and a daughter eating lunch in an outdoor restaurant, and you'd think the mother would say to the daughter, "Hurry up dear, eat your food before it gets cold." Instead she said, "Hurry up and eat your soup before it gets dirty." Well, so we now had to have a Clean Air Act because obviously you had market failure—I am being sarcastic here. There was no market failure. There was a government failure to uphold private property rights. Government seized the monopoly of courts and said, you know, we'll protect private property rights, and they did the very opposite, and then we inherited the whirlwind.

WOODS: Well, Walter, let me raise an objection that I think a lot of people might have. They might say this is a good story Walter Block is telling us, and yes, of course it would be nice to hold polluters strictly liable in this way, but maybe the regulatory approach of government is superior after all. Because suppose some concern somewhere is polluting my water or polluting my air, and it's giving my kids cancer, and I am waiting two years to get into the government's crummy courts to go have them hear my claim. Meanwhile we're all dead. It seems like a very slow approach. Whereas a regulatory approach would be, look, we're going to stop you from emitting X amount of pollution to start with. It's not ideal, but it's more or less given us a livable situation in the U.S. How would you answer that?

BLOCK: Well, it's a very strange objection, not unusual but strange, illogical in the sense that it seems that one branch of government will be super-*uber* efficient, and another branch of government will not be efficient at all, and to me all government is inefficient, but why we should single out branches of government and say that the courts will be very inefficient with the regulatory powers will be deficient. I don't know. I just don't see it. Another objection along these lines is look, you can't sue everybody. Right now, I don't know how many people own cars and assuming that there were no catalytic converter and EPA regulations, what are you going to do? Start suing 100 million automobile owners? Murray's answer to that is, look, yes, that would be very inefficient because each automobile contributes very little pollution, unless it's a real smoky car. So each one could say, look, I am hiding under *de minimis*.

Murray's answer is we have to privatize the highways—which is a whole other subject that I got from Murray. I wrote a book on that as well. And now you don't sue each individual car owner, of which there are millions, but rather you sue each highway owner or street owner, of which there would be, oh, I don't know, hundreds of thousands in the whole country, and it would be much more malleable, and much more effective, and much more efficient that way. In effect, you're suing each car owner for, I don't know, being a bawdy house—like if there was a nightclub making a lot of noise, any one person probably isn't making all that much noise, but if you get 300 to 400 people in the nightclub, together they make a terrific racket. So you wouldn't sue each individual partygoer for going or making noise. You would sue the nightclub or the place from which the noise is emanating. So it would be similar. You don't sue each car owner. What you do is you sue the highway owner or the street owner, and that makes it much more effective.

WOODS: Let me now raise the point of view of the free-market environmentalists, we might say. I learned this from Martin Feldstein years ago as a Harvard freshman, actually. The idea was this: yes, we understand that in the old days we had this stupid, top-down approach to pollution abatement. We would just say: all

right, everybody, cut 30 percent of your pollution across the board. And then we realized that it was a heck of a lot more expensive for some firms to cut 30 percent than it was for others, where it would be relatively easy for them to cut 30 percent. So maybe we could try to say instead, here's the overall amount of pollution abatement we want, but how it actually gets abated, which firm does more pollution abatement than any other firm—that doesn't really matter to us so much. So we'll introduce tradable pollution rights so that the firms that can abate pollution very inexpensively can just do so, and they can sell their pollution rights and earn money. They won't need to use those pollution rights because they are not going to pollute. They will just spend a little money, get rid of their pollution, and they can sell their pollution rights to a company that it would cost a fortune to abate pollution, and it would be a lot cheaper for them just to buy the pollution rights. And this way we get the same amount of overall pollution reduction but at a much lower cost to society. What's the matter with that from Walter Block's point of view?

BLOCK: Well, at the beginning of this show you did say that me and Murray and the people associated with the Mises Institute, people like that, you know, weirdos, are very radical on the free-market environmentalism. Well, there are the Chicago types—people who are free-market by and large, sort of, or quasi-, demi-, semi-free-market environmentalist. I am thinking of this group called PERC, Political Economic Resource Center located in Montana, and there are other groups like that inside the Beltway that favor these sorts of things. It would be similar to ITQs for fish, International Tradable Quotas on fish instead of private property rights in fish—very similar to Milton Friedman's view on, what is it? Educational vouchers, where you buy and sell vouchers. By the way, I think the technical term is not tradable pollution permits but rather tradable emission rights, but I am not sure. I think that both terms are in vogue.

The problem here, talk about, buying and selling pollution rights. Well, how about buying and selling rape rights? Look, we don't want rape. Rape is a bad thing. Maybe one rapist can reduce his rape rate at a much more efficient rate than other rapists can reduce their rape rate. I hope you get what I am trying to say here. I don't want the *New York Times* to get on here and say—

WOODS: I get what you are trying to say, yes.

BLOCK: [laughs] I can just see the *New York Times* saying well, Block comes out in favor of rape, and he wants rapists to trade rape rights. [laughs] No, no, no. This is a—

WOODS: Yeah, just for the record, let's just clarify that Walter is against rape—

BLOCK: Yes!

WOODS: —in case any blockhead with an IQ of 50 is listening.

BLOCK: Yes, I mean I oppose rape. Rape is bad and it violates the non-aggression principle. What I am trying to do is make *reductio ad absurdum*. I'm trying to label this as is. In other words, if regard pollution as a property right, then how can you have the right to violate rights? It's sort of a bit of a contradiction. On the other hand, I have to admit that the Chicagoans have something to be said for them. In some sense ITQs are better than the tragedy of the commons, and in some sense Milton Friedman's voucher system is more efficient than central planning. It's sort of like market socialism, you know, the socialism of Tito in Hungary. It had certain advantages and other disadvantages. I on net balance come out against ITQs. I come out against Friedman's schemes. I come out against all these Chicago-type schemes where you have semi, demi, private property, or you have a market-based. That's a big one: "market-based." Well, I am against market-based. I only see the markets, and this is sort of the inside-the-Beltway people, but I have to admit that if you have to reduce pollution—let's say there are three polluters, and each of them are polluting 15 units of pollution per time period and somehow we've decided that the maximum we can stand is 100 pollution. Well, one way to do it is to say, okay, each of you guys has to reduce from 50 to 33 and that way we'll go from 150 to 100. On the other hand, why not allow one of them to reduce pollution not at all, maybe even increase it, and then other two decrease it a lot, so that together they come down to 100. But this is not really free enterprise. This is market socialism. This is Chicago-type free enterprise and inside the Beltway-type free enterprise. It has certain advantages and disadvantages compared to the tragedy of the commons or the having no actionable, no law against pollution at all. On the other hand, it's hardly exactly what you want to write home about. It's not really the essence of free enterprise, and the problem is so tragic

because one, the full free-enterprise system is more efficient than the quasi-market system and two, it sends the wrong message, that somehow there is market failure and the government has to come in and fix it up, and the way they are going to fix it up is to be quasi-market oriented, and then these people are saying, well, we're really free enterprise. They're not really free enterprise. They are muffling the free-enterprise trumpet. The free-enterprise trumpet is the Rothbardian trumpet of pure private property rights.

WOODS: Walter, let's switch to species extinction and endangered species. Here I think it's easy—for a person of good will, anyway—to understand the logic of our position that you tend to be better stewards when you have property rights and you think about the long-term capital value of your asset. You don't just think about consuming it in the immediate run for the income it gives you. I think people can get that. In the case of the U.S. government, I have in my book *Rollback* an interesting statistic. The net recovery rate, out of over 1300 listed species on the endangered species list, is six! Not 600! Six is how many, through all their spying and police work and hangmen to try to save the endangered species, they've got six? And the incentive that it gives people is to kill endangered species they find on their property. Because of course if there's a member of an endangered species found on your property, they basically take over your property. It becomes a protected habitat. So of course, if I find the spotted owl or whatever, I have the incentive to shoot him in the head instead of to preserve him. So how then could the marketplace, could the private-property order, be brought to bear to try to solve this problem?

BLOCK: Oh, yes, this is a very good example to show the virtues not of government ownership, nor of non-ownership. We have the tragedy of the commons and not of quasi-markets, but of pure markets. There is this woman, Elinor Ostrom, who won the Nobel Prize recently, and she attacked Robert J. Smith who was a devotee, a lieutenant of Murray Rothbard in the old days. He was part of the living room crowd. Bob Smith made the rational point of the tragedy of the commons. When you hold stuff in common, you tend not to take as good care of it as when you own it individually. If you have a can of soda, and I slip in the straw a monitoring device that shows how fast you sip your soda. Well, if you own it, you'll sip it whenever you feel the urge, whenever you feel thirsty, but you're not going to rush to drink it up before I get it because I can't get it because you own it. Whereas if instead we had a bigger can of soda, and now we had two straws in there, we would each say, hey, you know, maybe I've got to slurp it up before that greedy Block does, and I will say, evil Woods is going to sip up my soda, and if you have hundreds of people doing that, then you're going to dissipate the resource very quickly. So there is such a thing as the tragedy of the commons, and unfortunately Elinor Ostrom got the Nobel Prize by attacking the very concept, which is just ridiculous.

Take the elephant. Right now the elephant in Africa is endangered in many countries. And what is the response of the people in charge? It's to get ivory tusks and to burn them and to have this thing called CITES, Convention on International Trade in Endangered Species, and what they do is they want to stop trade and they want to focus attention on the problem by burning very precious ivory which is very, very precious. See, right now the problem with the elephant is that they are not owned. They are not fully owned, and when they are not fully owned, nobody is going to be protecting them and the poachers go out there and just kill them to get the ivory and they don't care whether it's a young, pregnant elephant or an old elephant. They just grab the tusks and run. So of course the elephant species are going to be going extinct.

On the other hand, if we privatize them—think of a big barnyard with electric fences and a big barnyard, not just a couple of acres, but a couple of square miles; these elephants need space to roam around in. People think that the reason they are endangered is because they are valuable. No! The reason they are endangered is because they are not owned. Horses in Canada are pretty valuable. Dogs are valuable. You know, some dogs, the very expensive breeds are tens of thousands of dollars per dog. No. The reason that animals, the elephant and the lion are going extinct is not because they are valuable; their value is the main reason why we'll keep them alive if we can only own them. The example I am fond of using is the cow and the buffalo. The cow and the buffalo are about the same size. They are both about the same weight. They both smell alike as far as I know. I have never really been that close, and isn't it amazing that the buffalo almost went extinct, whereas the cow never came within a million miles of extinction? And you have these horrible movies, *Dancing with Wolves*, which give the left-wing view that the reason for the extinction of the buffalo is that white men are evil and capitalism is evil and greed is evil. No! The reason is that people

own cows individually, and if you slaughtered a cow, that was a very, very extensive operation for you because you wouldn't have a cow tomorrow. So the cost here of losing a cow today is you don't have the cow tomorrow. Whereas the buffalo, if you shoot it, you're not going to have that buffalo anyway. So the cost is virtually nothing, just the cost of the bullet.

So the buffalo were being slaughtered with impunity, and people were not allowed to own buffalo for many years. Nowadays in the United States people are allowed to own buffalo and there's no problem. That's the same thing with the crocodile and fish and just about anything, any animal. Well, as far as I am concerned, the elephant is just a buffalo with a big, funny nose and the big, funny ears, and what saved the buffalo can save the elephant and the rhino and other valuable creatures. Just allow people to own them privately and then they will have a very, very strong incentives to protect them. Look, was there ever cattle rustling? Yeah, there was cattle rustling, but you know, one or two percent compared with buffalo. Buffalo were just being shot left and right. So allow people to own buffalo. They will take care of them. They will have barnyards. They will not only be able to take advantage of the tusks, the ivory. You know, also be able to take advantage of the skin, of the meat, and will you be allowed to kill an elephant under private ownership? Sure! If I owned some, and you wanted to be a safari hunter, and you shot an old, male elephant, well, I might charge you \$20,000 or \$30,000 or whatever it is. You want to shoot a young, female elephant, okay, sure. But now it's going to cost you \$3 million, or, you know, some much, much higher figure because female, young females are the limit on the biology.

So if we had full, private ownership—no quasi, demi, semi, market-based anything, just private ownership, treat elephants and rhinos just the way we treat cows and horses and dogs and cats—the whole problem would go away.

WOODS: There are so many other environmental issues that we could hit on, but I think this will have to be the last one, unfortunately. I do have to ask one last thing on this, though. Suppose we are talking to a radical environmentalist. I am not talking about the soccer mom who in the abstract would like to see the environment cared for, would like to see species protected. I am talking about—you know what I mean—the absolutely radical, all-life-is-equal, and if anything human life is somewhat less so because humans are so bad and wicked and they want to kill all the species. Suppose we're dealing with somebody like that. I am not sure libertarianism, although I do think it can appeal to basically everybody, I am not sure it can appeal to them because their view would be: I shouldn't have to buy up the different species, they have an inherent value whether or not they have immediate use for human beings. There will be species that we have no immediate utilitarian use for, and yet I still don't want to see them die out, and I don't want to have start a nature conservatory every single time there's an endangered species. I just demand that everybody curtail his activities in the face of these species. Is there any way that you can reach somebody like that?

BLOCK: Well, you know, there's a joke. One economist was asked, "How is your wife?" And his answer was, "Compared to what?" Supposed to be a funny joke.

WOODS: Yeah, but I have heard it too many times, Walter.

BLOCK: Okay, you are a lousy audience, Tom. [Laughter] We're going to tough row to hoe to convert this guy, but compared to what? And I think the message we can give to the Gaia-ist, the Gaia, the earth mother, you know, even when you plow you're invading the earth mother, you are using violence against her, is we'll give you a better deal than those guys. Those guys, the animals are going to go extinct. At least with us they won't go extinct. So it's true you're not going to get the whole loaf with us, but you'll get part of the loaf, you'll get something. You know, another problem with the Gaia-ist is that they believe that all animals have rights. Well, suppose a lion kills an antelope. Should we consider the lion guilty of murder? It would appear that we would have to, based on their own position. So another attack at them or another way to deal with them is to try to show that they're illogical because none of them believe that lions are guilty of murder, and yet if they believe that lions have as much rights as human beings, then the lions should be accused of murder. Then there's also the *reductio ad absurdum*: okay, look, you Gaia-ist, I see you have a leather belt there. Take that leather belt off. Oh, you're not a vegetarian? Well, you have to be a vegetarian. But even vegetarians are not good because what they've done is they've put [laser-driven microphones] into plants. Then when they pull a plant out of the earth, there's sort of like a shriek, and if

the Gaiaists are consistent with their principles, they would have to say, well, you know, we can't eat plants, either.

WOODS: Walter, I really appreciate this conversation. Of course, everybody should read that Rothbard article that you mentioned at the start, but there's a lot of work that can still be done on this subject. A lot of times we get young scholars who say, "What can I work on?" Well, wouldn't you agree there's plenty of stuff to do on the environment?

BLOCK: Oh, yes, magnificent. It's the overlap of law and biology and libertarian theory. It's not really Austrian economics, but what the heck. No, no, no, for young scholars, there are any number of essays and Ph.D. theses that can be written, and as long as you have Rothbard in mind, you will at least know what the right view is, the correct view, and don't be misled by these Chicagoan, free-market imposters.