

AN ESSAY ON THE MARKET AS GOD: LAW, SPIRITUALITY, AND THE ECO-CRISIS

By: Daniel M. Warner*

I. INTRODUCTION

[1] This essay began when I became interested in the following questions: Why does our society promote ruinous profligacy and celebrate boundless consumption, with concomitant environmental destruction? Why is frugality, formerly virtuous, now laughable?

[2] Let us start with the principal manifestation of the problem -- the environmental crisis. Various studies confirm the environmental crisis is bad and getting worse.¹ It is a familiar

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¹ The United Nations Economic and Social Commission for Asia and the Pacific (UN/ESCAP) reported on May 30, 2002, “[w]hile there are some signs of improvement, the overall picture shows us our environment is deteriorating rapidly. The pressure on natural resources, for example, is overwhelming,” at http://www.unescap.org/unis/press/n_11_01.htm, last visited Nov. 1 2004. The North American Commission for Environmental Cooperation (NAFTA’s environmental watchdog group) reported on January 7, 2002 that “North America is facing a widespread crisis due to its shrinking biodiversity.” www.cec.org/news/details/index.cfm?varlan=english&Id.=2441, last visited Apr. 4, 2002. The United Nations Development Programme (UNDP), the UN Environment Programme (UNEP), the World Bank, and the World Resources Institute (WRI) reported in a study entitled *World Resources 2000-2001: People and Ecosystems: The Fraying Web of Life* reported that there is “a widespread decline in the condition of the world's ecosystems due to increasing resource demands” and the report warns “that if the decline continues it could have devastating implications for human development and the welfare of all specie,” available at <http://www.wri.org/wri/wr2000/wr2000-nr01.html>, last visited Apr. 4, 2002. U.S. News and World Report, in a cover story on “empty oceans” noted: “In a series of recent reports, scientists warn that fish stocks are dangerously overexploited and that many of the methods that provide the [seafood] we so enjoy are destroying the very ocean habitats and ecosystems needed to rebuild the stocks Yet the bad news also holds an encouraging message: Modest changes in fishing practices and management could reverse decades of misuse” Thomas Hayden, *Fished Out*, U.S. NEWS & WORLD REPORT, Jun. 9, 2003, at 38.

observation,² and one need only live on the outskirts of almost any “progressive” American community to see that man’s ruinous displacement of nature continues apace, bringing with it the ultimate dislocation and destruction of every living thing standing in the path of progress. We are witnessing, in essence, the paving of the planet; an unbalancing, bit by bit, of all the systems upon which life depends. Yet we do nothing, or almost nothing. As one commentator has noted, “[s]ince 1970 all the Western democracies have made efforts to respond to the eco-crisis. The failure to reverse the process of destruction implies that Western culture is embedded in an ecologically pathological paradigm.”³

“Yet despite . . . successes . . . in recent years anti-environmental forces have gained the upper hand. Progress toward environmental protection has stalled and in some instances slid backward. In Washington, the environmental movement has been on the defensive, really, since Ronald Reagan took office in 1980.” Peter Montague, “*Rebuilding the Movement to Win*,” RACHEL’S ENVIRONMENT & HEALTH NEWS, ENVIRONMENTAL RESEARCH FOUNDATION, available at http://www.rachel.-org/bulletin/index.cfm?issue_ID=2185, last visited Apr. 15, 2002. The London-based *Ecologist* is the world’s oldest environmental magazine, founded in 1970. A recent issue compared official international “statements,” and “goals” from the 1972 Stockholm UN Conference on the Human Environment and the 1991 Rio UN Conference on Environment and Development with current reality, and reported on climate change, deforestation, land degradation, fresh water depletion, fisheries degradation, biodiversity loss, nuclear waste and chemical pollution, waste creation and disposal, health epidemics, and poverty. In each category was found significant degradation since 1972. Matilda Lee, *State of the Planet*, 32/7 THE ECOLOGIST, Sept. 2002, 6.

² See MAX OELSCHLAEGER, *CARING FOR CREATION: AN ECUMENICAL APPROACH TO THE ENVIRONMENTAL CRISIS* (1994). Oelshlaeger wrote:

Consider the twenty-some years between Earth Day One and the present. In spite of environmental achievements, which I do not mean to belittle, *on the whole* conditions are worse [W]orld-wide nearly a billion and a half people have been added in twenty years Population growth is, without question, tied to other facets of global ecocrises--resource depletion, habitat destruction, loss of biodiversity, and rising levels of atmospheric carbon dioxide.

Id. at 20. (emphasis in original).

³ *Id.* at 47.

[3] Why is this occurring? The argument here is that our new religion, The Market,⁴ drives this destruction, and that, further, it is The Market's radical devotee, modern corporate capitalist business, that is primarily responsible for this disaster. Paul Hawken speaks the truth bluntly when he says, "[t]here is no polite way to say that business is destroying the world."⁵ Another commentator concludes that modern corporate big business is destroying the world because, to The Market, the environment has almost no intrinsic value.⁶ Such observations are certainly not remarkable.⁷ What is remarkable is that the forces of the American political system that have traditionally, and triumphantly, curbed all other religious or cultural excesses, and that have kept any other one world-view system from becoming monopolistic and oppressive, have failed to curb the excesses of The Market. That failure has resulted in an environmental crisis.⁸ Arguably, we again confront religious

⁴ "The Market, which I capitalize to signify both the mystery that enshrouds it and the reverence it inspires in business folk . . ." Harvey Cox, *The Market as God*, THE ATLANTIC MONTHLY, Mar. 1999, at 18.

⁵ PAUL HAWKEN, THE ECOLOGY OF COMMERCE 3 (1993). Hawken is really talking about corporate capitalism, not small, local businesses. There is no alternative to a business economy, whether in an operating system of capitalism, free enterprise, or some kind of socialism; free enterprise--a far cry from our trendy corporate capitalism--is the best of them. The complaint here is not against business, of course, but against corporate capitalism.

⁶ MARTIN HEIDEGGER, THE QUESTION CONCERNING TECHNOLOGY, AND OTHER ESSAYS 100 (William Lovitt, trans., 1997)(1977). As a result of the disappearance of religion as a limiting, transpersonal authority, "man enters into insurrection. The world changes into object The earth can show itself only as the object of [an] assault . . . [that] . . . establishes itself as unconditional objectification. Nature appears everywhere . . . as the object of technology." *Id.*

⁷ To go back 150 years, Karl Marx, famously critical of capitalist society, was also very concerned with the effects of human activity on the environment; *see, e.g.*, JOHN BELLAMY FOSTER, MARX'S ECOLOGY: MATERIALISM AND NATURE (2000). Also out of the Marxist school came many familiar criticisms of capitalism by Gramsci, Marcuse, and Habermas. The American line of criticism ranges from Thoreau to Herman Daly and John B. Cobb in their seminal book FOR THE COMMON GOOD (1989).

⁸ Wendell Berry, *The Idea of a Local Economy*, available at

warfare. On one side of the battle is The Market and its earthly emissaries, the giant corporations; and on the other side, nature and its self-proclaimed defenders, the environmentalists.

[4] This article is divided into six sections. After this Introduction, section II presents and analyzes the contention that The Market has become our national religion and that this religion is leading us to ruin. Section III criticizes the Founding Fathers' Constitutional genius. Here I contend that although these Founders resolved the old religious problems of oppression, persecution and intolerance by insisting upon government neutrality in matters of conscience, they failed to lay a groundwork for dealing with the relentless new absolutism of The Market as god. Next, section IV traces the relatively recent development of a New Enlightenment, the recognition that the eco-crisis is a *spiritual* crisis. This leads to a problematic recognition: to address the eco-crisis we need a new "injection" of spirituality into our society. Section V examines the extant proposals to achieve such an "injection" and explains why they probably won't work. Finally, the conclusion suggests that the necessary spiritual component might come from a revived localism.

II. WE HAVE A NEW RELIGION -- THE MARKET

[5] Today it can safely be said that our national religion is The Market. Religion may be broadly defined as a "kind of cultural and/or linguistic framework or medium that shapes the entirety of life

http://www.oriononline.org/pages/om/archive_om/Berry/Local_Economy.html, last visited Oct. 24, 2004:

Let us begin by assuming what appears to be true: that the so-called environmental crisis is now pretty well established as a fact of our age. The problems of pollution, species extinction, loss of wilderness, loss of farmland, loss of topsoil, may still be ignored or scoffed at, but they are not denied. Concern for these problems has acquired a certain standing, a measure of discussability, in the media and in some scientific, academic, and religious institutions.

and thought.”⁹ It is what gives substance to culture, and culture is the totality of forms in which the basic concern of religion expresses itself. Religion describes the understanding of a transcendent reality that binds a community by “connect[ing] individuals to their community and to nature, to history, and to the cosmos.”¹⁰ “Religion,” as the term is used here, does not necessarily refer to anything traditionally metaphysical, theological or church-related. It is the cultural “overlay” that animates the spirit of a people; it is an over-arching ideology.

[6] A brief summary follows of the salient historical and cultural components of The Market’s elevation to the status of the divine.

(a) Prehistory

[7] Thorstein Veblen (1857-1929) was an American economist whose well-received book, *The Theory of the Leisure Class*,¹¹ posited the provocative and intuitively appealing idea that in very primitive societies everyone has to work to survive. However, once society progressed beyond subsistence to the beginnings of division of labor and agriculture, not everybody had to spend all their time looking for food. Some people--warriors, kings and shoguns--could *take* their livelihood by predation, by force and cunning (or terror, in the case of priests, who preyed on the common folks’ fear of death and the afterlife), or by becoming educated.

[8] Obtaining wealth without physical labor became honorable and dignified. Wealth without

⁹ OELSCHLAEGER, *supra* note 2, at 28 (quoting GEORGE A. LINDBECK, THE NATURE OF DOCTRINE: RELIGION AND AUTHORITY IN A POST LIBERAL AGE 33 (1984)). It was Max Weber (1864-1920) whose work, read in the U.S. after World War II, gave rise to the understanding that “culture” was not something only “uncivilized” people had. Weber’s “culture” was a system through which all societies give meaning to life.

¹⁰ Timothy Fort, *The First Man and the Company Man*, 36 AM. BUS. L.J. 391, 394 (1999).

¹¹ THORSTEIN VEBLER, THE THEORY OF THE LEISURE CLASS (1931).

physical work was associated with high class; labor was denigrated, and relegated to the underclass, and to women. Veblen noted, though, that wealth accumulation is of no use unless it is displayed. To demonstrate a high social standing “*conspicuous consumption*” becomes necessary. He concluded that the demonstration of wealth is a status assigner; “booty serves as prima facie evidence of successful aggression.”¹² Just as kings wear elaborate robes, and priests wear elegant vestments, people today buy SUVs and “McMansions” to show that they are successful “economic aggressors,”¹³ that they have so much money they can afford to spend it wastefully, beyond any real need, except the need to communicate their economic status.

[9] As other commentators have noted, in a world of scarcity, acquisitiveness was no doubt a useful evolutionary adaptation; today, in the West, it is frequently pathological.¹⁴ The inclination toward aggressive acquisitiveness, unmitigated by more benign influences, tends toward familiar market-place amorality. As Veblen noted, “[f]reedom from scruple, from sympathy, honesty and

¹² *Id.* at 17.

¹³ Indeed, one can but marvel at the transparent allure of vehicles with names like “Marauder” or the modern Dodge “Avenger.” Avenging what? The Cadillac “Escalade” advertises that it “defies everything”; advertising for GM’s \$52,000 vehicle, the largest of all SUVs, asserts that “[n]eed is a very subjective word” (advertisement in *THE NEW YORKER*, Nov. 11, 2002, at 109). Harvey Cox wrote, “Nihilism is the equivalent in the ethical realm of the vengeful onslaught against nature which may follow its disenchantment. Both are essentially adolescent reactions to liberation from previous constraints.” HARVEY COX, *THE SECULAR CITY* 47 (1966).

¹⁴ John Kenneth Galbraith, in *The Affluent Society*, observed that Western civilization, having pretty much satisfied our *needs*, continues to encourage us to consume (and trophy-hunt) as if we still lived in a savage world of desperate insufficiency:

[T]he total alteration in underlying circumstances has not been squarely faced. As a result, we are guided, in part, by ideas that are relevant to another world; and as a further result, we do many things that are unnecessary, some that are unwise, and a few that are insane. Some are a threat to affluence itself.

regard for life may, within fairly wide limits, be said to further the success of the individual in the pecuniary culture.”¹⁵ But the point of interest here is that we may be, to some extent “programmed” to acquisitiveness.¹⁶

(b) The Greeks

[10] All things that are acquired (and consumed) must obviously be produced, originally from the exploitation of natural resources. In “primitive” societies any tendency toward rampant natural-resource exploitation is tempered by a belief that “all inanimate entities have spirit and personality so that the mountains, rivers, waterfalls, even the continents and the earth itself have intelligence, knowledge, and the ability to communicate ideas.”¹⁷

[11] In contrast the Western mind thinks of the earth as a thing, a hunk of rock and soil with life

JOHN KENNETH GALBRAITH, *THE AFFLUENT SOCIETY* 2 (4th rev. ed. 1985)(1960).

¹⁵ VEBLEN, *supra* note 11, at 223.

¹⁶ Max Weber wrote: “The impulse to acquisition . . . has been common to all sorts and conditions of men at all times and in all countries of the earth, wherever the objective possibility of it is or has been given.” MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 215, 217 (Joyce Appleby, ed., 1996).

¹⁷ VINE DELORIA, *GOD IS RED*, 152-53 (2d ed. 1994)(1992). This is the “enchantment” the “dissing” of which Cox refers to in the quotation in *supra* note 13 (the “disenchantment of nature”). Vine Deloria, Jr. is an American Indian spokesman, lawyer, author, and professor at the University of Colorado. Author Jerry Mander points out that American Indians often resist resource development because they understand, as do “primitive peoples” generally, that the earth is our “mother.” “Plants, animals, all life as we know it is nurtured at her breast. We have germinated within her, we are part of her, we burst into life from her, and we dissolve back into her to become new life.” JERRY MANDER, *IN THE ABSENCE OF THE SACRED: THE FAILURE OF TECHNOLOGY AND THE SURVIVAL OF THE INDIAN NATION* 212 (1991). The phrase “Mother Earth” is not only used by American Indians, Australians, Pacific Islanders, Ecuadorians, and Inuit native people use it also. *Id.*, at 212. *See also* James Rainey, *Economic Development vs. Tradition: Shonshones Bitterly Divided Over Offer*, SEATTLE TIMES, Mar. 2, 2000, A3, reporting on a proposed offer by the federal government to pay every Shoshone Indian \$20,000 in settlement of a land-claim dispute. Some Indians want to take the money. Others insist, “There is no price you can put on the land. It is part of us.” *Id.*

forms adhering that may be of some economic value if properly worked. The Western mind separates spirit from matter; we disenchant or “unspiritualize” nature. The Western mind came by this characteristic as an inheritance from the Greeks. Edith Hamilton in her 1930 classic *The Greek Way* stated that this world view “is built upon the idea of the reasonable, and emotional experience and intuitive perception are accorded a place in it only if some rational account can be given of them.”¹⁸ This overweening philosophical materialism is integral to Westernism and, especially, to capitalism. Perhaps it would be better to say that it is inherent in Westernism, and capitalism has taken a kind of perverted advantage of it. It began a long time ago. Hamilton continues:

[T]he spirit of the West, the modern spirit, is a Greek discovery and the place of the Greeks in the modern world . . . That which distinguishes the modern world from the ancient and that which divides the West from the East, is the supremacy of mind in the affairs of men, and this came to birth in Greece and lived in Greece alone of all the ancient world. The Greeks were the first intellectualists. In a world where the irrational had played the chief role, they came forward as protagonists of the mind . . .
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In the ancient world ruled by the irrational, by dreadful unknown powers, where a man was utterly at the mercy of what he must not try to understand, the Greeks arose and the rule of reason began. The ancient priests had said, "Thus far and not farther. We set the limits to thought."²⁰

[12] It might be noted, however, that at most, the Greeks only *prepared* Western minds for a perception of reality that allows the eco-crisis. Their own attitude towards “the non-human environment” was informed “with their dread of hubris and their belief in a Necessity or Fate superior

¹⁸ EDITH HAMILTON, *THE GREEK WAY* 5-6, 21 (1942).

¹⁹ *Id.* at 7. In comparison to the dreadful half-animal gods of Egypt, mostly interested in death, the Greek gods were not fearful. They bickered and laughed among themselves. For the Greeks, "very human-like gods inhabited a very delightful heaven." *Id.* at 271.

²⁰ *Id.* at 21.

even to Zeus, [so they] carefully avoided what would have seemed to them insolence toward the universe.”²¹ For us, mostly, insolence is the rule;²² creation is dross; undeveloped real estate is useless until it is “improved.” The rational account for us is in the ledger and bankbooks, and nowhere else. Any “intuitive perception” that matter has value beyond its monetary measure is discounted as mere superstition or silliness.

(c) Christianity, the Reformation and the Enlightenment

[13] Lynn White, Jr., in his seminal 1967 essay “The Historical Roots of Our Ecologic Crisis” did not blame the Greeks for the disenchantment that leads to today’s environmental disaster, he blamed Judeo-Christianity and the interpretation of the Biblical command to “multiply and subdue the earth.”²³ Another commentator has noted, more generally, that Judeo-Christianity has posited a theology of creation “that views God as pure spirit apart from the material universe. . . . Matter is mindless, irrational. God is goodness itself; matter in itself is without value, mere stuff.”²⁴ To

²¹ BERTRAND RUSSELL, *A HISTORY OF WESTERN PHILOSOPHY* 827 (1945).

²² “Man enters into insurrection. The world changes into object” HEIDEGGER, *supra* note 6, at 100.

²³ LYNN WHITE, JR., *The Historical Roots of Our Ecologic Crisis*, in *WESTERN MAN AND ENVIRONMENTAL ETHICS: ATTITUDES TOWARD NATURE AND TECHNOLOGY* 206, 208 (Ian G. Barbour, ed., 1973). MARY E. TUCKER AND JOHN A. GRIM in *Introduction: The Emerging Alliance of World Religions and Ecology*, *DAEDALUS*, 130/4, (Fall, 2002), 1, observe:

Over thirty years ago the historian Lynn White . . . noted: “What people do about their ecology depends on what they think about themselves in relation to things around them. Human ecology is deeply conditioned by beliefs about our nature and destiny -- that is, by religion.” White's article signaled the beginning of contemporary reflection on how environmental attitudes are shaped by religious worldviews.

²⁴ DIETER T. HESSEL, *Eco-Justice Theology After Nature's Revolt*, in *AFTER NATURE'S REVOLT* 1, 17 (Dieter T. Hessel, ed., 1992).

modern Westerners spirit does not reside in creation; it is separate. There was a creation in our Western cosmology, but as we currently view it, the creator does not reside in the creation; creation is part of the fallen world, lacking intrinsic value. Creation and created are separate; spirit versus matter.²⁵ Deloria, comparing Christianity with American Indian religions, asserted that Christianity tends to “downgrade the natural world and its life forms in favor of the supernatural world of the Christian post-judgment world of eternal life.”²⁶ But while Christians downgraded the natural world, of which humans obviously partake, early and medieval Christians went further than the Greeks in dreading hubris. Russell said that “[t]he Middle Ages carried submission much further: humility towards God was a Christian’s first duty. Initiative was cramped by this attitude, and great originality was scarcely possible.”²⁷

[14] It seems that the Greek influence, the insistence on the separation of matter and spirit, contributed to the development of Judeo-Christian cosmology so that man should, or could, have the kind of dominion (as opposed, say, to stewardship) over the earth that has resulted in its ruination. Vine Deloria writes, “[i]t is doubtful if American society can move very far or very significantly

²⁵ DELORIA, *supra* note 17, at 78, compares Christianity and traditional American Indian religions:

Both religions can be said to agree on the role and activity of a creator. Outside of that specific thing, there would appear to be little that the two views share. Tribal religions appear to be thereafter confronted with the question of the interrelationship of all things. Christians see creation as the beginning event of a linear time sequence in which a divine plan is being worked out, the conclusion of the sequence being an act of destruction bringing the world to an end. The beginning and end of time are of no apparent concern for many tribal religions.

²⁶ DELORIA, *supra* note 17, at 83, (summarizing Lynn White’s thesis).

²⁷ RUSSELL, *supra* note 21, at 827.

without a major revolution in theological concepts,”²⁸ but certainly Professor Max Oelschlaeger has no doubt that Christianity (or for that matter *any* religious belief) is entirely compatible with “caring for creation.”²⁹

[15] In any event, it is clear that Greco-Christian tendencies to separate matter and spirit were exacerbated by the Reformation and the Enlightenment. The basic idea of the Reformation, of course, was that Christians did not need corrupt priests and an unresponsive, unintelligible bureaucracy (the Catholic Church) to act as intermediaries with God. But more generally, the Reformation was “in large part of a revolt against suppression of the individual”³⁰ that was inherent in a primitive cosmology. This suppression is Edith Hamilton’s pre-Greek priests saying: “This far, and not farther. We set the limits to thought;”³¹ it is Bertrand Russell’s “humility towards God” as understood in the Middle Ages, cramping initiative and originality.³² Humans react variously to freedom from constraint. Harvey Cox observes that modern mankind’s treatment of “disenchanted nature has sometimes shown elements of vindictiveness. Like a child suddenly released from parental constraints, he takes savage pride in smashing nature and brutalizing it.”³³ One is hard-pressed, until recently, at least, to find any significant trend in mainstream Christian thought or practice since the Reformation that promotes respect for nature as something holy, or much of a trend

²⁸ DELORIA, *supra* note 17, at 74.

²⁹ OELSCHLAEGER, *supra* note 2, at 118.

³⁰ EDWARD MCNALL BURNS, WESTERN CIVILIZATIONS 479 (1958).

³¹ HAMILTON, *supra* note 18.

³² RUSSELL, *supra* note 21.

³³ COX, *supra* note 13, at 36-37.

opposed to smashing and brutalizing it. By contrast, Native American Indian religion opposes such behavior.

[16] The Reformation posited that individuals were capable of personally experiencing the divine, without being told and tutored. The Enlightenment went further. Perhaps the supreme act of the Enlightenment's revolution against the Ancient Regime was its anti-religiosity,³⁴ which is not to be equated with atheism. The philosophes (the French term for philosopher, used to describe the Enlightenment's proponents) believed that not only humans were capable of experiencing the divine themselves, but that they were capable of intelligently re-ordering the circumstances of civil society. They thought that human reason, addressed to the problems of the human condition, could make a positive difference in mankind's lot.³⁵ Human degradation and misery were caused by the corruption and suppression of human reason by superstition, prejudice, poverty, ignorance, and above all, by the Christian churches. Voltaire wrote: "[T]he most absurd of despotisms, the most humiliating to human reason, the most contradictory, the most deadly, is that of priests. Of all priestly dominations, that of the priests of Christianity is beyond question the most criminal. It is an outrage"³⁶ One of Voltaire's most famous lines was "*effacez l'infame*"-- crush the infamous thing! Enlightenment, said Immanuel Kant, "is man's release from his self-incurred tutelage. Tutelage is man's inability to make

³⁴ Anti-religiosity should be distinguished from atheism. Sidney Mead points out that the Founding Fathers were not unreligious. They were Deists. They believed all religions were equally good. Thomas Jefferson said the religions "of various kinds . . . [are] good enough; all sufficient to preserve peace and order." SIDNEY MEAD, *THE NATION WITH THE SOUL OF A CHURCH* 21 (1975). See *infra* text accompanying note 41.

³⁵ See, e.g., Daniel M. Warner, *Time for a New Enlightenment: A Review Essay of the New Ecological Order*, 34 AM. BUS. L.J. 455, 472-7 (1997).

³⁶ LUCIEN GOLDMANN, *THE PHILOSOPHY OF THE ENLIGHTENMENT: THE CHRISTIAN BURGESS AND THE ENLIGHTENMENT* 68 (Henry Maas, trans., 1973).

use of his understanding without direction from another. . . . ‘Have courage to use your own reason!’ - that is the motto of enlightenment.”³⁷

[17] It is the heritage of the Enlightenment’s rationalism, mixed with these other waves of influence, emphasizing the matter-spirit divide, that has convinced us of the importance and efficacy of reasoning and *measuring*. To liberate humankind from ignorance and superstition by exercising the power of reason required the scientific method. To investigate the orbits of the planets or the dimensions of motes under a microscope required, among other things, mathematics, and measuring devices for distance, volume, and time-keeping--clocks. “Nature and Nature’s laws lay hid in night; God said, Let Newton Be! and all was light.”³⁸ According to Rationalist thought, measuring is about quantification, not feeling. Matter is substance, spirit is not. Reason is exalted over reverence. This emphasis on quantification, however, has an unfortunate consequence: it tends to discount as non-existent those concepts that cannot be quantified, such as commitment, compassion, and respect for tradition and sense of place. Moreover, because humans are led to believe that by rationality we can *understand* the cosmos, less and less thought is given to the intervention of a supreme being as creator or redeemer. In that absence, the force of human domination over the environment is manifested and thereby justified.

(d) The Revolutionary Era

[18] The Framers of the Constitution, unintentionally, laid a foundation for our modern-day church of ruinous individual utilitarianism. It need not have turned out this way. The world-view that

³⁷ IMMANUEL KANT, *What is Enlightenment* (1784), in KNOWLEDGE AND POSTMODERNISM IN HISTORICAL PERSPECTIVE 106 (Joyce Appleby, ed., 1996).

³⁸ Alexander Pope, *Epitaph Intended for Sir Isaac Newton*, in BARTLETT’S FAMILIAR QUOTATIONS 214 (1939).

informed the religious belief of the Framers was part of their 18th Century experience; it was not atheistic. At a level of “high generality,”³⁹ for 18th Century cosmopolitans (those men and women engaged in the intellectual debates of the era) God remained as a trans-personal authority; religion was a sincere and powerful force.⁴⁰ Unlike traditional Christians, the Deists believed that:

[A]ll men are gifted by the Creator with “Reason” that enables them to read and understand his revelation in his creation. The two parties [Christians and Deists] agreed that man’s duty was to obey God, and that he learned what his duty was by interpreting God’s revelation. They disagreed on the locus and nature of the revelation. The Reformation [had] established in Christendom the right of private judgment, but without undermining belief in the biblical revelation as highest authority By the end of the eighteenth century, however, the right of private judgment had, for many intellectuals, been divorced from biblical authority. For the first time in the history of Christendom a genuinely *religious* alternative to orthodox Christianity surfaced.⁴¹

Benjamin Franklin described the 18th Century religious conception this way:

³⁹ MEAD, *supra* note 34, at 36.

⁴⁰ George Washington, in his Farewell Address, admonished posterity as follows:

Of all the dispositions and habits, which lead to political prosperity, Religion and Morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of Men and Citizens. The mere Politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connexions with private and public felicity. Let it simply be asked. Where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths, which are the instruments of investigation in Courts of Justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principle.

George Washington, Farewell Address, para. 27, *available at* <http://earlyamerica.com/earlyamerica/milestones/farewill/text.html>, last visited Sept. 28, 2004.

⁴¹ MEAD, *supra* note 34, at 118-9 (emphasis in original).

I never was without some religious principles. I never doubted, for instance, the existence of the Deity; that he made the world, and governed it by his Providence; that the most acceptable service of God was the doing of good to man; that our souls are immortal; and that all crime will be punished, and virtue rewarded, either here or hereafter. These I esteemed the essentials of every religion; and being found in all the religions we had in our country, I respected them all⁴²

[19] But still at the core of this religious understanding was a belief that man was *subordinate to God*. Sidney Mead argues that the “one most consistent strand in [American theology] has been the assertion of the primacy of God over all human institutions.”⁴³ John Adams closed his inaugural address with these words, which we may take to be more than mere rhetorical flourish:⁴⁴

And may that Being who is supreme over all, the Patron of Order, the Fountain of Justice, and the Protector in all ages of the world of virtuous liberty, continue His blessing upon this nation and its Government and give it all possible success and duration consistent with the ends of His Providence.⁴⁵

[20] Underlying the Enlightenment-based religion was a residuum of certainty in the Creator and a creation. Although Christianity had, by the Philosophes’ reckoning, traditionally impaired the reasoning capacity of humans, that capacity was not, the Deists thought, unlimited: even if Christianity were to be dethroned, humans would not be supermen. Mead notes that “[t]he obverse

⁴² BENJAMIN FRANKLIN, *THE AUTOBIOGRAPHY* 92-3 (L. Jesse Lemisch, ed., Signet Classic Edition 1961). Franklin described himself as “a thorough deist.” *Id.* at 70.

⁴³ MEAD, *supra* note 34, at 67. Mead refers to John Cotton, Justice Clark, Dwight Eisenhower, James Madison, William O. Douglas, and Abraham Lincoln to support his contention. *Id.* at 67-9.

⁴⁴ In David McCullough’s biography of John Adams, Adams comes across as a sincere believer in what appears to be Deism. As McCullough noted, Adams defended Christianity against skeptics, but he was no bible-thumper. He described his ideal man as one who possessed “wisdom, piety, benevolence and charity.” DAVID MCCULLOUGH, *JOHN ADAMS* 33, 113-14 (2001).

⁴⁵ John Adams, Inaugural Address, University of Oklahoma College of Law, Chronology of U.S. Historical Documents, *available at* <http://www.law.ou.edu/hist/adams1.html>, last visited Nov. 1, 2004.

side of the Enlightenment's high doctrine of the Creator and Governor of the universe was the finite limitation of the creature in *every* respect. This determined the conception of the nature and limits of the creature in *every* respect The creature could not have absolute knowledge of anything, but only 'opinions.'"⁴⁶ James Madison wrote:

Before any man can be considered a member of civil society, he must be considered as a subject of the Governor of the Universe: And if a member of civil society, who enters into any subordinate association, must always do it with a reservation of his duty to the general authority, much more must every man who becomes a member of any particular civil society do it with of saving of his allegiance to the Universal Sovereign.⁴⁷

[21] There is, on the one hand, the familiar recognition that Americans are graced or blessed, by good fortune--a good government, a virtuous community, and plentiful natural resources. On the other hand, there is a sense of being limited, not just physically, because humans are small before the forces of nature, but of being subordinates of God, and being without absolute knowledge, and therefore deferential to the Creator and to creation.

[22] Mixed with these senses of theological expansiveness and humility is something of the "Protestant ethic" that Max Weber described; it sets up a more economic version of the same dynamic. Weber, in his famous *The Protestant Ethic and the Spirit of Capitalism*, begins with quotations from Benjamin Franklin:

Remember, that time is money He that wastes idly a groat's worth of his time per day, one day with another, wastes the privilege of using one hundred pounds each day. He that idly loses five shillings worth of time, loses five shillings, and might as prudently throw five shillings into the sea. He that loses five shillings, not only loses

⁴⁶ MEAD, *supra* note 34, at 119 (emphasis in original).

⁴⁷ JAMES MADISON, *Memorial and Remonstrance (1795)*, in CHURCH AND STATE IN AMERICAN HISTORY 68-9 (John F. Wilson and Donald L. Drakeman eds., 1987).

that sum, but all the advantage that might be made by turning it in dealing⁴⁸

Here is advocated great industry and almost equally great frugality. According to the capitalist spirit, Weber explained, making money is good. It shows that you are engaged in your true calling and fulfilling your true place in God's plan:

It is true that the usefulness of a calling, and thus its favor in the sight of God, is measured primarily in moral terms, and thus in terms of the importance of the goods produced in it for the community. But a further, and, above all, in practice, the most important criterion, is found in private profitableness. For if that God . . . show to His elect a chance of profit, He must do it with a purpose. Hence the faithful Christian must follow the call by taking advantage of the opportunity.⁴⁹

[23] But the object was to make money, not to spend it or enjoy it. Having the money was the demonstration of righteousness; spending it on any frivolity, any luxury, was morally wrong because the “[i]mpulsive enjoyment of life, which leads away from both work in a calling and from religion, was . . . the enemy of rational asceticism” and it smacked of “[i]dolatry of the flesh.”⁵⁰ It smacked of

⁴⁸ WEBER, *supra* note 16, at 229. Max Weber (1864-1920), was a German sociologist. His particular concern was to account for the rise of capitalism as rational risk-taking and accounting. In his famous 1905 book, *The Protestant Ethic and the Sprit of Capitalism*, he identified Protestantism of the 16th century as the antecedent shift in values necessary for the rise of capitalism, and began a major controversy about the roles of religion and capitalism. *See, eg.,* ROBERT W. GREEN, *PROTESTANTISM, CAPITALISM, AND SOCIAL SCIENCE: THE WEBER THESIS CONTROVERSY* (Robert W. Green ed., D.C. Heath and Co. 1973)(1959).

⁴⁹ WEBER, *supra* note 16, at 237.

⁵⁰ *Id.* The American Prohibition Movement that resulted in the adoption of the 18th Amendment, grew out of the same ascetic spirit: “The rural, native American Protestant of the 19th century respected Temperance ideals. He adhered to a culture in which self-control, industriousness, and impulse renunciation were both praised and made necessary.” JOSEPH R. GUSFIELD, *SYMBOLIC CRUSADE: STATUS POLITICS AND THE AMERICAN TEMPERANCE MOVEMENT* 4 (1963). However enamored our 19th Century American antecedents were with “the magic of t[he] automatic markets,” society retained their belief that they were still in control . The ideal man was “addicted to hard work, moderate in personal habits, adhering to traditional values as he lived his life outside the hours of work.” LAWRENCE FRIEDMAN, *THE REPUBLIC OF CHOICE: LAW, AUTHORITY, AND CULTURE* 31-2 (1990).

pride. To accumulate property was good because it showed that a devout spirit was heeding God's call. To consume it was not good, because it showed a moral weakness toward materialism. Thus it was at once virtuous to acquire (as demonstrating divine favor) and virtuous not to consume (as demonstrating humility and resistance to the sins of the flesh). "[T]he inevitable practical result is obvious: accumulation of capital through ascetic compulsion to save."⁵¹ Moreover, the inevitable practical result was an emphasis on *frugality*. Franklin stated:

In short, the way to wealth, if you desire it, is as plain as the way to the market. It depends chiefly upon two words: INDUSTRY and FRUGALITY: i.e. waste neither time nor money... He that gets all he can honestly, and saves all he gets (necessary expenses excepted) will certainly become RICH: if that Being who governs the world, to whom all should look for a blessing on their honest endeavors, doth not in his wise Providence otherwise determine.⁵²

[24] The Virginia Declaration of Rights, written by George Mason and adopted by the Virginia Constitutional Convention in June, 1776 was drawn upon by Thomas Jefferson for major parts of the Declaration of Independence. It provides, in part, "[t]hat no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles."⁵³

Adam Smith himself described the prudent man as one whom,

[i]n the steadiness of his industry and frugality, in his steadily sacrificing the ease and enjoyment of the present moment for the probably expectation of the still greater ease and enjoyment of a more distant but more lasting period of time . . . is always both

⁵¹ WEBER, *supra* note 16, at 238.

⁵² FRANKLIN, *supra* note 42, at 186 (capitalization in original).

⁵³ James Mason, *The Virginia Declaration of Rights*, section 15, available at http://www.archives.gov/national_archives_experience/charters/virginia_declaration_of_rights.html, last visited Nov. 1, 2004.

supported and rewarded by the entire approbation of the impartial spectator⁵⁴

[25] John Adams often mentioned frugality as a virtue. He wrote to a young friend that “the more you devote yourself to business and study, and the less to dissipation and pleasure, the more you will recommend yourself to every man and woman in this country.”⁵⁵ He commended his daughter to marry a man who “labors to do good rather than be rich, to be useful rather than make a show, living in modest simplicity clearly within his means”⁵⁶ In a society slightly removed from the “poverty which had always been man’s normal lot,”⁵⁷ frugality had a benefit more immediate than theological; it kept people from starving by encouraging them to save up during prosperous times so they could weather the lean times.

[26] Frugality was, of course, only one manifestation of a culture grown out of a certain historical

⁵⁴ Adam Smith, *The Theory of Moral Sentiments, VI, 1: Of the Character of the Individual, so far as it affects his own Happiness, or of Prudence*, available at <http://www.marxists.org/reference/archive/smith-adam/works/moral/part06/part6a.htm>, last visited Feb. 20, 2002. Wendell Berry observes that capitalism is, in some ways, like Communism, “everything small, local, private, personal, natural, good, and beautiful must be sacrificed in the interest of ‘the free market’ and the great corporations, which will bring unprecedented security and happiness to ‘the many’ -- in, of course, the future.” Berry, *supra* note 8, at 16. Vine Deloria, from his perspective as an American Indian, describes Christianity similarly,

[the world is] a vale of tears filled with unexplained human tragedies. Animals are definitely placed beneath humans In many ways the body is seen as evil. The goal of life is to win eternal life where followers receive imperishable bodies in which they can do exactly the same things that were punishable offenses in the present life. This condition is known as salvation.

DELORIA, *supra* note 17, at 153-4.

⁵⁵ MCCULLOUGH, *supra* note 44, at 237.

⁵⁶ *Id.* at 289.

⁵⁷ GALBRAITH, *supra* note 14, at 1.

and religious tradition that began with the Greeks, flowed through Christian scripture, the Enlightenment and finally influenced Protestantism. People not imbued with this tradition would not necessarily share it, and without some kind of shared vision or culture, there would be no national unity or union. In his Farewell Address, George Washington contemplated the problem of nationality. “To the efficacy and permanency of your Union, a Government for the whole is indispensable.”⁵⁸ But there can be no government for the whole, and no nation, unless the people partake in a shared, transcendent reality that binds them together. Jeremy Seabrook notes, that “there are no secular societies in the world. All are held together by some deeply shared and transcendent faith.”⁵⁹ In his first inaugural address, Abraham Lincoln called that deeply shared faith the “bonds of affection; the mystic chords of memory” that “swell the chorus of the Union.”⁶⁰

[27] Despite this fine rhetoric, however, the fact remained that the diverse immigrants to the United States lacked any common bond of affection; they brought to the land no common ancestry, language, culture, history, or religion. They did not share similarly in the culture of the Enlightenment or Protestantism that influenced the Founding Fathers. They could not impose their culture or religion on others so as to achieve a unified chorus singing a single song. What they adopted in common was a republican political system based on the idea that government should provide an opportunity for life, liberty, and the pursuit of happiness. The political system informed

⁵⁸ George Washington, *supra* note 40, at para. 16.

⁵⁹ JEREMY SEABROOK, *THE MYTH OF THE MARKET: PROMISES AND ILLUSIONS* 11 (1991).

⁶⁰ ABRAHAM LINCOLN, *SPEECHES & WRITINGS, 1859-1865: SPEECHES, LETTERS, MISCELLANEOUS WRITINGS, PRESIDENTIAL MESSAGES & PROCLAMATIONS*, 224 (Library of America ed., 1989).

by the Constitution became a set of rules, a code, around which a different, *non-religious* framework of communal life and thought could be fashioned. What people came to have in common, as a national “religion” was capitalism or The Market. What people thought of as the pursuit of happiness became conspicuous consumption, untempered by Franklin-like frugality. Informing this religion is, again, a concatenation of influences reaching back from immutable prehistorical acquisitive tendencies to the Greek, Christian and Enlightenment de-sanctification of nature through to the Protestant approval of accumulation.

(e) The Industrial Age and Post-WWII Era

[28] The Constitution’s provisions for domestic and foreign security, post offices and roads, duty-free interstate trade, uniform bankruptcy laws, registration of intellectual property rights; the prohibition against impairing contracts, taking property without just compensation, denying due process--all “laid the foundation of private property rights so as to curb the arbitrary powers of government and promote security for the pursuit of productivity-raising activities of all kinds.”⁶¹ Productivity-raising activity was generally in accord with capitalism and with prevalent morality, as we have seen, but it was not (and is not) informed with any normative value beyond accumulation of material wealth. The frugality got left off. The American people had free reign (after dispatching the natives⁶²) to explore and exploit a huge geographic area, rich in natural resources. American law promoted private-property accumulation and free trade within the national borders. With the

⁶¹ ROBERT HIGGS, *THE TRANSFORMATION OF THE AMERICAN ECONOMY, 1865-1914: AN ESSAY IN INTERPRETATION* 53 (Ralph L. Andreano ed., John Wiley and Sons, Inc. 1971).

⁶² See MANDER, *supra* note 17, Part Four, “World War Against the Indians.”

development of the limited liability corporation, railroads,⁶³ and mass communication and production in the Industrial Age, it became possible in the United States to develop a vast consumer society and, then, for people to *express themselves through market behavior*. When the disapproval of conspicuous consumption faded, when frugality became simply another part of one's religious preference (and a rather odd one at that), which could be eschewed without societal disfavor, then upon that constitutional foundation was built a transcendent reality, featuring a new universality of commerce, production, wealth generation, and consumption⁶⁴ -- in short, capitalism, The Market.

[29] It became patriotic to be a consumer because consumption is fealty to the only thing all Americans seem to have in common: a commitment to free enterprise. Expressing oneself through market behavior is now a patriotic statement, and frugality is nearly traitorous. It is no surprise -- though one hopes it is still shocking -- that President George W. Bush, in rallying Americans following the events of September 11, 2001, should exhort us to consume: "Get on a plane and fly to Disney World . . ." the President urged.⁶⁵

⁶³ For a discussion of the influence of the railroad on American culture, see Daniel M. Warner, *To Hell on the Railroads: Why Our Technology and Law Encourage a Degrading Culture*, 26 TRANSP. L.J. 361 (1999).

⁶⁴ During the 19th Century, American courts were allowed to develop a sophisticated body of contract and corporate law favoring the growth of the market. The Supreme Court's infamous determination that corporations are legal "persons" entitled to constitutional protection was a part of this development. HIGGS, *supra* note 61, at 54-5.

⁶⁵ THE OHIO COUNTY TIMES NEWS, Oct. 4, 2001, *available at* <http://www.octimesnews.com/archive/100401opinion.html>, last visited Sept. 28, 2004.

President George W. Bush, obviously worried about the downturn effect the nationwide abandonment of the country's airlines is having on the economy, told Americans our airways now are safe and urged them to get back on airplanes. [The] President . . . told Americans not to be concerned - that business people can fly in the conduct of their business and that the rest of us can fly to our many favorite vacation spots. President George W. told us to get on a plane and fly to Disney World in

[30] What has happened, then, is that The Market has become our new god, and market capitalism our new religion; it is now what we all have in common. It was suggested above⁶⁶ that this perception is not remarkable. But because it does seem to be an odd state of affairs, further elaboration is in order, particularly relating to the triumph of The Market after World War II. Recall we have defined religion as a “kind of cultural and/or linguistic framework or medium that shapes the entirety of life and thought.”⁶⁷ Jeremy Seabrook makes this point:

The market economy in the West, being the dominant force in the lives of the people, becomes a source, not only of well-being, but of morality; and in the absence of any other force that can match its power, it is looked to as a bringer of truth. In other words, the market economy has been not merely re-moralized in our time, but sanctified as never before It has become the object of a quasi-religious cult.⁶⁸

[31] Part of our fanatical belief in the goodness and efficacy of The Market, Seabrook contends, came in reaction to the breakdown of the economic order of the 1920s and 1930s that led to World War II. In the 1950s and 1960s, the economy became the focus, not simply of an endeavour to feed, clothe and house the people of the continent, but also a version of salvation: an over-expiatory burden was placed upon the realm of economic activity that simply had no place there. The economy became the arena in which the guilt for what happened was to be assuaged.⁶⁹ Moreover, the reverence for the market is understandable

Florida.” *Id.*

⁶⁶ See text accompanying *supra* note 7.

⁶⁷ See LINDBECK, *supra* note 9.

⁶⁸ SEABROOK, *supra* note 59, at 11. He goes on to assert: “It is clear that in the West the economy has become a form of salvation; the realm of the economic is the only one in which miracles are now believed to occur by a cynical people; it performs, it delivers the goods, it’s a goose that lays golden eggs; religion, fable, and fairy story are intertwined.” *Id.* at 13.

⁶⁹ *Id.* Wilhelm Ropke (1899-1966) was an Austrian economist, advocate of a “humane market”

because, as Seabrook notes:

It is without doubt, the most dynamic and salient feature of Western society. When something so powerful and ubiquitous pervades the lives of people, it is easy to mistake its strength, not only for truth, but for morality also [T]here exists no other source of values that can compete with the vigor of the markets⁷⁰

The fragmented religious culture (shorn of its ethical duties) that developed in the United States made it difficult to offer any critical commentary on politics and economics other than those that simply endorsed democracy, freedom, and growth.⁷¹

[32] Harvey Cox's previously mentioned 1999 article, *The Market as God*,⁷² starts out almost jokingly. A friend had suggested that Cox move out from his academic study of religion and into "the

and influential advisor to the post-war German government. He wrote the following about the expiating function of post-war capitalism:

We have been through years of untold misery and disorders which so many Western countries, including, in particular, Germany, brought upon themselves by their disregard of the most elementary principles of economic order. During these [post-war] years there was a compelling need to put the accent on the "bread" of which the Gospel speaks and on the re-establishment of an economic order based on the market economy. To do this was imperative. Today, when the market economy has been revived up to a point . . . it is equally imperative to think of the other and higher things here under discussion. That the hour is ripe for this is appreciated by all who are wise enough to sense the danger of stopping short at "bread."

WILHELM ROPKE, *A HUMANE ECONOMY* 92 (Elizabeth Henderson trans., 1958). In the United States the post-war economic miracle (note the religious word) *was* understood by some to have a potentially troubling environmental consequence, "[y]et the critics . . . faced formidable obstacles, because the new [suburban housing developments] met so many economic, social, and political demands The nation's largest builders were *answering the prayers of millions*." ADAM ROME, *THE BULLDOZER IN THE COUNTRYSIDE: SUBURBAN SPRAWL AND THE RISE OF AMERICAN ENVIRONMENTALISM* 43 (2001)(emphasis added).

⁷⁰ SEABROOK, *supra* note 59, at 160.

⁷¹ Fort, *supra* note 10, at 423.

⁷² Cox, *supra* note 4.

real world” as presented in the pages of *The Wall Street Journal*. And so Cox did. “Soon I began to marvel at just how comprehensive the business theology is,”⁷³ he mused. He proceeded to compare The Market to traditional conceptions of the deity. Initially, The Market was one of several centers of meaning and value; there were other “gods” (such as commitment, and loyalty to person and place). But now, The Market is like the Old Testament Yahweh, the Supreme Deity, allowing for no rivals.⁷⁴ [33] The Market, Cox writes, is *omnipotent*, “there is no conceivable limit to its inexorable ability to convert creation into commodities.”⁷⁵ It is “transubstantiation,” but in reverse -- the conversion of sacred things into items for sale. “Land is a good example. For millennia . . . it has been Mother Earth, ancestral resting place, holy mountain, enchanted forest,” but at The Market it becomes real estate.⁷⁶ The Market is *omniscient*, it is “able to determine what human needs are, what copper and capital should cost The Market already knows the deepest secrets and darkest desires of our hearts--or at least would like to know them . . . [so] it can further extend its reach.”⁷⁷ But now there are no Voltaires to deflate The Market’s pretensions to all-knowingness. “Such is the grip of current orthodoxy that to question the omniscience of The Market is to question the inscrutable wisdom of Providence. The metaphysical principle is obvious: If you *say* it’s the real thing, then it must *be* the real thing.”⁷⁸ The Market is *omnipresent*. Its doctrines are applied not only

⁷³ *Id.* at 18.

⁷⁴ *Id.* at 20.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 22.

⁷⁸ Harvey Cox, *The Market as God*, THE ATLANTIC MONTHLY, Mar. 1999, at 22-3.

in the economy, but, as Cox notes,

[t]he latest trend in economic theory is the attempt to apply market calculations to areas that once appeared to be exempt, such as dating, family life, marital relations and child-rearing [N]ow The Market is not only around us but inside us, informing our senses and our feelings. There seems to be nowhere left to flee from its untiring quest.⁷⁹

[34] The Market is the most formidable rival of all other religions,⁸⁰ and its values are different. It places no importance on tradition⁸¹ and so has no use for old people, such as the Native Americans' revered "elders." Nor has it any respect for any sanctity of place. In other religions, God retains title to real estate, but at The Market's alter humans with money own anything they can buy. Other religions encourage attachment to place, but as Cox says, "in The Market's eyes all places are interchangeable."⁸² The tone of Cox's article becomes increasingly bitter as he reviews the

⁷⁹ *Id.* at 23.

⁸⁰ "Capitalism in modern business societies has not coexisted with other value systems. It has triumphed over alternative world views, such as those of religion." PAUL F. HODAPP, *ETHICS IN THE BUSINESS WORLD* 3 (1994).

⁸¹ Cox, *supra* note 4, at 23. "The Market . . . strongly prefers individualism and mobility. Since it needs to shift people to wherever production requires them, it becomes wrathful when people cling to local traditions. These belong to the older dispensations, and-like the high places of the Baalism-should be plowed under."

⁸² *Id.* This is the essence of William Leach's book, *Country of Exiles*, in which he asserts that the market commodifies everything, place included:

But there can be no culture built under unstable protean conditions, mainly at the borders, or by strangers. Any culture that hopes to endure, to say nothing of thrive, must be formed and sustained at the centers not at the edges [I]t is at those very edges . . . where the market forces are most Darwinian, most virulent, and most subversive to the making of any kind of decent, collective life.

WILLIAM LEACH, *COUNTRY OF EXILES* 176-77 (1999). Wendell Berry, a critic, author, poet, philosopher, and Kentucky farmer wrote about modern corporate capitalism and said,

devastation wrought in the name of The Market, and he closes with this: “All of the traditional religions teach that human beings are finite creatures and that there are limits to any earthly enterprise,” but for The Market “[t]here is *never* enough.”⁸³ There is no frugality, no restraint, no humility.

[35] Maybe a different set of rules could have been fashioned based on the Constitution⁸⁴ that would have given rise to a different kind of national economic development,⁸⁵ one that is not, as Hawken says, “destroying the world.”⁸⁶ And maybe Christianity,⁸⁷ or Protestantism,⁸⁸ has been

Our present 'leaders'--the people of wealth and power--do not know what it means to take a place seriously: to think it worthy, for its own sake, of love and study and careful work. They cannot take any place seriously because they must be ready at any moment, by the terms of power and wealth in the modern world, to destroy any place.

WENDELL BERRY, *SEX, ECONOMY, FREEDOM, AND COMMUNITY* 22 (1993).

⁸³ Cox, *supra* note 4, at 23.

⁸⁴ Timothy Fort cites approvingly the historian Stephen Presser’s assertion that “John Marshall’s interpretation of the Constitution strongly in favor of individual liberties created an ‘original misunderstanding’ of the Constitution . . . which rejected the divinely-directed requirements of a citizen’s life in favor of a Constitution understood only as a protector of individual freedom.” Fort, *supra* note 10, at 417.

⁸⁵ See, eg., DAVID C. KORTEN, *WHEN CORPORATIONS RULE THE WORLD* 59 (1995) (criticizing the United States Supreme Court’s decision giving corporations the status of persons (*Santa Clara County v. S. Pac. R.R. Co.*, 118 U.S. 394 (1886))); William Meyers, *The Santa Clara Blues: Corporate Personhood versus Democracy*, at <http://www.iiipublishing.com/afd/santaclara.html> (last visited Apr. 2, 2002).

⁸⁶ HAWKEN, *supra* note 5 at 3.

⁸⁷ DELORIA, *supra* note 17, at 2. “[T]he peoples from the Hebrew, Islamic, and Christian traditions first adopted the trappings of civilization and then forced a peculiar view of the natural world on succeeding generations. The planet, in their view, is not our natural home and is, in fact, ours for total exploitation.” *Id.*

⁸⁸ See *supra*, notes 48-49 (regarding Max Weber’s idea that capitalism is a spawn of the Reformation). Lynn White Jr. asserted under “Christian axiom[s] . . . nature has no reason for

responsible for the eco-crisis, or some of it. The important point here is that in the development of our national psyche (*national*, not personal), traditional religious belief got left behind in favor of a new faith in The Market because that was the only force or power that everybody could agree upon as a useful trans-personal authority.

[36] And again note that it *was*, formerly, religion--broadly defined, "at a high level of generality"-that put the brakes on excessive consumption, that encouraged frugality.⁸⁹ There always were countervailing influences to ameliorate the insistence upon consumption. The idea of people expressing themselves through market behavior used to be tempered:

[P]eople [used to be] guided by a set of moral principles that found expression in behavior outside the scope of the market mechanism. Deeply rooted in tradition, religion, and culture, these principles were not necessarily rational in the sense of presenting conscious choices among available alternatives. Indeed, they often could not hold their own when alternatives became available. Market values served to undermine traditional values The cult of success has replaced a belief in principles. Society has lost its anchor.⁹⁰

[37] William Leach, in his provocative study of the history of the American department store, quotes the American journalist Samuel Strauss, who wrote an article in *The Villager*, a journal of "cultural reflection," in which Strauss said:

In normal times there are spiritual goods which compete with the merchant's wares automatically setting limitations upon the number of material goods that can be forced upon the community. Ours, however, have been abnormal times; for more than a

existence save to serve man," and Christianity tends to discount the natural world in favor of the afterlife. Lynn White Jr., *The Historical Roots of Our Ecological Crisis*, 155 SCIENCE 1203-1207 (Mar 10, 1967). An entire body of literature has grown up to confirm and rebut this assertion. See, e.g., *The Environmental Crisis and Western Civilization: The Lynn White Controversy*, available at <http://ecoethics.net/bib/1997/enca-001.htm>, last visited Apr. 3, 2002.

⁸⁹ See *supra* text accompanying notes 49-59.

⁹⁰ George Soros, *The Capitalistic Threat*, THE ATLANTIC MONTHLY, Feb. 1997, at 52.

century things have little by little filling the stream of existence, little by little absorbing the place normally held by the imponderables, by religion, by art and culture. The fact is that capital's appetite for profits, meeting with no restraint, has been literally eating its way into our right existence and throwing it all of proportion.⁹¹

[38] By the 1880s, moral narrative had simply disappeared from public discourse. The situation was such that the economist Henry Carter Adams, the first President of the American Economics Association, argued in 1887 that "there is one code of practical conduct . . . for the family, the social circle, and the church, and a different one for mercantile life We are appalled by the great fact of the moral dualism in which we live, and are inclined to resign ourselves to the necessity of a twofold life."⁹² In 2001, Vice President Dick Cheney alluded, unintentionally, to the same duality between private and public morality when he stated that energy conservation, or frugality, "may be a sign of personal virtue, but it is not a sufficient basis for a sound, comprehensive energy policy."⁹³

[39] Bertrand Russell saw the problem of the lack of "spiritual goods" and the consequential lack of restraint in these terms:

In all of this I feel a grave danger, the danger of what might be called cosmic impiety. The concept of "truth" as something dependent upon facts largely outside human control has been one of the way in which philosophy hitherto has inculcated the necessary element of humility. When this check upon pride is removed, a further step is taken on the road towards a certain kind of madness-the intoxication of power I am persuaded that this intoxication is the greatest danger of our time, and that any philosophy which, however unintentionally, contributes to it is increasing the danger of a vast social disaster.⁹⁴

⁹¹ WILLIAM LEACH, *LAND OF DESIRE: MERCHANTS, POWER, AND THE RISE OF A NEW AMERICAN CULTURE* 268 (1993)(quoting Samuel Strauss, *Out of the Grip of Things*, *THE VILLAGER*, Jul. 5, 1919).

⁹² HENRY CARTER ADAMS, *TWO ESSAYS: RELATION OF THE STATE TO INDUSTRIAL ACTION AND ECONOMICS AND JURISPRUDENCE* 92-93 (Joseph Dorfman, ed., 1969)(quoting PROFESSOR J. B. CLARK, *THE PHILOSOPHY OF WEALTH* 156-7 (1886)).

⁹³ Vice President Dick Cheney, remarks to the Annual Meeting of the Associated Press in Toronto, Apr. 30, 2001, available at <http://democrats.senate.gov/~dpc/pubs/107-1-171.html>

⁹⁴ RUSSELL, *supra* note 21, at 828.

[40] To summarize this section: Maybe humans have an “acquisitiveness” gene, which is perhaps a real psychological need for security that makes us want to accumulate material goods. It is certainly clear that wealth does more than satisfy a need for material security, it is a status-assignor, and those who demonstrate their power of acquisition (wealth) are considered high-status people. With the Greeks came a separation of spirit from matter, an intellectualism that contributed to the disenchantment of the earth. With Christianity, the Reformation and the Enlightenment built upon and exacerbated the tendency toward the planet’s demystification, parcelization, and ultimate devaluation.

[41] The Framers of our Constitution were 18th Century deists for whom man was subordinated to God; they had a particular religious faith that colored their understanding of man’s role in the cosmos. But under the American system that formally separated church and state there was ultimately no way to require conformity to that particular view. The only institution to which all could abide was The Market, which, because of its impressive power, supplanted all others to become the national religion.

III. SOCIETY IS ILL PREPARED TO DEAL WITH THE ABSOLUTISM OF THE MARKET

[42] The Founding Fathers’ Constitutional genius, while it solved the old religious problem of oppression, persecution and intolerance (by insisting upon government neutrality in matters of conscience) has failed to deal with the relentless new absolutism of The Market.

[43] Secularization (the First Amendment) makes relative and materializes religious world views. The paradox of religious freedom is that it undermines societal norm setting. It has been postulated here that The Market is our new religion, taking over everything. Preventing any particular religion from becoming overwhelming has been one of the great functions of the American Constitutional system and its history:

Sectarianism, religious or national, is a greater threat than secularism or outright atheism, because, as the story of religious persecutions reminds us, when it comes in the guise of “the faith once delivered to the saints” it may legitimate terrible tyrannies. The primary religious concern in our nation must be to guard against national idolatry; against the state becoming God The constitutional structure was designed eventually to deny the traditional resort to coercive power to every religious sect⁹⁵

[44] Why has The Market been allowed to have such coercive religious power that it imposes terrible abuses? Why has our Constitutional system not curbed its excesses, as the system has curbed the excesses of every other religion?

[45] If a state makes the Constitutional decision that it shall not dictate religious orthodoxy, and that, generally speaking, everyone’s belief has to be tolerated, there is then no *official* basis upon which to say that one person is right and another wrong. On matters of faith, ethics, or morality the modern state has had almost nothing to say: nobody is wrong. Religion became a matter of preference. As Cox noted, secularization

relativized religious world views and thus rendered them innocuous. Religion has been privatized. It has been accepted as the peculiar prerogative and point of view of a particular person or group. Secularization has accomplished what fire and chain could not: it has convinced the believer that he could be wrong and persuaded the devotee that there are more important things than dying for the faith The world looks less and less to religious rules and rituals for its morality or its meanings.⁹⁶

[46] Theo-centric religion and its ethical impositions “have become a dead letter at the collective level--that is, in relation to the central purpose of the modern state.”⁹⁷ When religion is privatized, members of a society no longer share the basic ethical sensibilities that inform the religion and by

⁹⁵ MEAD, *supra* note 34, at 76.

⁹⁶ COX, *supra* note 13, at 17.

⁹⁷ OELSCHLAEGER, *supra* note 2, at 47.

which religion informs a culture. They are freed or forced to realize themselves individually, to develop their “personality” rather than their “character,”⁹⁸ and in the capitalistic framework “their notions of good . . . [are] constructed from the perspective of self-interest, a good that is individually described and defined.”⁹⁹

[47] For the most part, we do not have any respectable (or respected) way in our society to make a claim for anything’s worth unless it has some economic value to man; worth without economic value makes no sense; The Market doesn’t register this concept. The suggestion that a pristine wilderness might be left alone—*just leave it alone*-- is incomprehensible to those certain that “unimproved” land is real estate whose value has yet to be realized, that trees are of no value except as lumber and beauty bark or, even as the Sierra Club implies, that wilderness is of small value unless “enjoyed” by humans.¹⁰⁰ This is a denial that any general good exists outside the human materialistic frame of reference. Here is where it leads:

The benefits [of oil exploration in Alaska National Wildlife Refuge] include a gross valuation of roughly \$9 billion per year The cost involves hypothetical damage to a vast wilderness that is not especially attractive and that most of us will never see. I am waiting for the plausible calculation that makes this cost comparable to the billions on the revenue side.¹⁰¹

⁹⁸ As constraints on the individual lessened in the 19th and 20th Centuries, what became important was not so much the development of character, but of personality. The emphasis is on self-development (because how one should develop is not dictated by church or the constraints of small-town influences). The “‘idea of personal autonomy’ . . . is the ‘vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout all their lives.’” FREIDMAN, *supra* note 50, at 44 (quoting JOSEPH RAZ, *THE MORALITY OF FREEDOM* 369 (1986)).

⁹⁹ Fort, *supra* note 10, at 392.

¹⁰⁰ The motto of the Sierra Club’s magazine, featured under the title on the cover of every issue, is “Explore, enjoy, and protect the planet.”

¹⁰¹ Robert J. Barro, *Gore's 'Reckless and Offensive' Passion for the Environment*, BUSINESS WEEK, Nov. 9, 2000, at 32.

[48] Max Oelschlaeger picks up the same idea that The Market has transformed our culture (and become our religion) by causing us to “realize”¹⁰² only materialistic values. He states that we have lost the ability to articulate and take seriously non-market values in public affairs:

Like many others, I believe that some aspects of our Enlightenment philosophy are less useful than was once thought. Primarily, this is because that master narrative expresses itself through the language of utilitarian individualism--a language that hinders us in developing any sense of either community or social goals (citizen preferences) outside the market.”¹⁰³

[49] Others concede that our culture lost the ability to discuss, publicly--and even to understand, mostly¹⁰⁴--the valuation of non-economic things (as, for example, quietude, or views of the stars).¹⁰⁵ Oelschlaeger concurs that we have lost the “legitimizing narratives that remain outside the framework

¹⁰² I mean “realize” here in the sense that accountants use the term (i.e. gain or loss is “realized” at certain times in the accounting cycle, otherwise it doesn’t exist) -- so reality is created by accountants.

¹⁰³ OELSCHLAEGER, *supra* note 2, at 9.

¹⁰⁴ MANDER, *supra* note 17, at 30 (quoting LANGDON WINNER, THE WHALE AND THE REACTOR (no pub. info. available.) Winner’s question is why do we measure technology’s inputs and outputs so carefully, but almost never consider or measure its sociological and cultural effects:

The most interesting puzzle in our times is that we so willingly sleepwalk through the process for reconstituting the conditions of human existence Why is it that the philosophy of technology has never really gotten under way? Why has a culture so firmly based upon countless sophisticated instruments, techniques, and systems remained so steadfast in its reluctance to examine its own foundations?

Id.

¹⁰⁵ We do, however, put an increased value on real estate that has a view of water, mountains, and so on. The problem with the stars is that *anybody* can see them for free, so long as it is dark enough.

of utilitarian individualism [that] might... lead to normative judgments of the pure and impure....”¹⁰⁶ And, he noted, we have lost the ability to appreciate that “certain social preferences--for example, for sustainability, for preservation of endangered species and wild places--are incapable in principal of being realized through the market.”¹⁰⁷ We have no means, as a society, to discuss non-market evaluation very readily. We have no construct, no narrative, no story to set up against The Market; we have no edifice of thought to oppose the edifice of thought presented to us by The Market. When Thoreau said, “[i]t is a ridiculous demand which England and America make, that you shall speak so they can understand you As if Nature could support but one order of understanding As if there were safety in stupidity alone,”¹⁰⁸ he meant that people didn’t understand him because he was not talking Market-talk. Thoreau had different values.

[50] The First Amendment created a secularism that quieted sectarian discord; inadvertently it also atrophied our public ethical sensibilities, silencing most public discussion of ethical valuation. Thus we are left without tools with which to analyze non-market valuations. Moreover, if and when we do undertake a critical analysis, then, as does any religion, The Market denounces the analysis as heresy.

Harvey Cox reflected on this (writing in 1965):

[F]or the American business careerist, success is a residual religious vocation. It is *the* meaning of life, not *a* meaning of life--and he cannot tolerate any suggestions that there might be highly divergent patterns of life within which people find significance in ways totally different from him. Hence, for example, the bureaucrat’s fear and resentment of the beatnik. The rejection of meanings which do not contribute to those of one’s own group is the opposite of secularization. It is a remnant of the metaphysi-

¹⁰⁶ OELSCHLAEGER, *supra* note 2, at 41.

¹⁰⁷ *Id.* at 48.

¹⁰⁸ HENRY DAVID THOREAU, WALDEN 215 (Signet Classic Series, 1960).

cal period when “*the* meaning of history” seemed discernable.¹⁰⁹

And Jeremy Seabrook says:

Those who raised the faintest whisper of criticism [in the 1950s and ‘60s] against what came to be called the consumer movement met with disproportionate anger, denial, and resentment; with the result that only questioning of its workings provoked the kind of denunciation traditionally attracted by blasphemy, an attack upon the sacred.... No slur must be cast upon the shining innocence of a social and economic endeavor that now appeared in the world in the guise of deliverer of the people.¹¹⁰

[51] The American system has not “domesticated” The Market, as it domesticated all other religions. This is partly because Americans are bereft of the ability to mount a really meaningful public discussion of the value of anything outside its economic worth. We do not discuss national morality as it relates to capitalism, materialism and the environment because, for the most part, we have neither the language nor the context to have such a discussion. Therefore, we do not recognize the connection.

2. Corporations fill the void and provide our “world views,” our sense of values, and our religion.

[52] There is a related, more “mechanical,” reason for our denial of non-material valuations. Reality is socially created. When the churches and kings were deposed, the constraints of small-town mentality faded and the traditional “media” of parents, clergy, and community lost their ability to project a sense of reality. Corporations filled the void. We have ceded to business (which is today most influentially modern corporate capitalism) the power to fashion our sense of reality. Their interest is not in presenting us with a well-rounded, critical analysis of the nature of reality; it is in selling us goods and services, which are measured and toted up as part of the Gross National Product. Thus, this construction of reality is largely generated by advertising.

¹⁰⁹ COX, *supra* note 13, at 81.

¹¹⁰ SEABROOK, *supra* note 59, at 15.

For most human beings in the Western world, watching television became the principal means of interaction with the new world now under construction, as well as a primary activity of everyday life. At the same time, the institutions at the fulcrum of the process [of socially creating reality] use television to train human beings in what to think, how to be in the modern world.¹¹¹

[53] William Leach observed that the growing investment in advertising “is not (and has not been) grounded solely on its immediate or obvious impact on consumer choice; rather, it is based on the need of business to have unopposed cultural influence.”¹¹² Additionally, Paul Hawken has observed that “[b]y invoking the First Amendment privilege to protect their speech, corporations achieve precisely what the Bill of Rights was intended to prevent: domination of public thought and discourse.”¹¹³

[54] In addition to advertising, corporations also control and craft “news.” It is apparent that a few huge multi-media corporations--eight of them by some counts--are responsible for what most Americans understand as reality.¹¹⁴ They decide what news is aired and what perception of reality is presented for mass consumption. The decision is based primarily on money-making. And of course,

¹¹¹ MANDER, *supra* note 17, at 75.

¹¹² LEACH, *supra* note 82, at 384. Leach does not assert that this “need” is the product of any conspiracy; it is, rather, a consequence of capitalistic competition.

¹¹³ HAWKEN, note 5, *supra*, at 108.

¹¹⁴ In May 2000 the Justice Department approved Viacom’s purchase of CBS, meaning that all the TV networks, all the top film studios, all the major music companies, most cable TV channels, and much, much more are under the control of just seven media conglomerates. ROBERT W. MCCHESENEY, RICH MEDIA, POOR DEMOCRACY, xxvii (1999).

In 1982, 50 corporations controlled half or more of the media business. In December 1986, the 50 had shrunk to 29. In 1993, the number was down to 20. By 1997, that number was down to about six corporations that control half or more of the media business in the US. Of the 1,700 daily papers in the US, 98 percent are local monopolies and fewer than 15 corporations control most of the country's daily circulation. A handful of companies have most of the magazine business, with Time, Inc. alone accounting for about 40 percent of that industry's revenues. BEN BAGDIKIAN, THE MEDIA MONOPOLY, *passim* (1997).

corporations have for years used the legal process to harass people who oppose their actions, policies or products, thus discouraging such opposition--chilling dissent--and generating a sense in society that they are not to be criticized; if they are not criticized, then their behavior must be acceptable.¹¹⁵ Moreover, corporations can buy legislation by funding campaigns and candidates. Abraham Lincoln warned of this when he wrote in 1864:

We may congratulate ourselves that this cruel war is nearing its end. It has cost a vast amount of treasure and blood. . . . It has indeed been a trying hour for the Republic; but I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. As a result of the war, corporations have been enthroned and an era of corruption in high places will follow, and the money power of

¹¹⁵ Rachel Carson was vilified--hysterically denounced--for her criticism of the chemical industry following her publication of *Silent Spring* in 1962 (see, e.g., <http://ecotopia.org/ehof/carson/bio.html>) (last visited October 14, 2004). Ralph Nader sued General Motors for its efforts to silence his criticism of one of the firm's cars in the mid-sixties (Victor B. Legit, *Punitive Damages Controversy—Attorney's View: We've Come a Long Way from Nader to Ford*, BUSINESS INSURANCE, March 20, 1978, at 39.) Corporate real estate developers have harassed their critics from environmentalist circles with frivolous complaints against them, called "SLAPP Suits," for "strategic lawsuits against public participants;" the acronym was coined by two University of Denver professors, Penelope Canan and George W. Pring in a 1988 article, *Studying Strategic Lawsuits Against Public Participation*, 22 LAW & SOC'Y REV. 385 (1988). Corporations have sued those who report unfavorably upon their products (*Bose Corp. v. Consumers Union*, 466 U.S. 485, 1984), and they have encouraged states to adopt "food disparagement" laws, popularly called "veggie libel" laws (Ronald Collins and Paul McMaster, *Veggie Libel Law*, LEGAL TIMES, March 23, 1998 at 28).

William Wines and Mark A. Buchanan, both at Boise State University, felt the wrath of Boise Cascade Corporation when, in 1999, it pressured the Denver Journal of International Law and Policy to retract an article they wrote that was critical of the corporation (Peter Monaghan, *A Journal Article is Expunged and its Authors Cry Foul*, THE CHRONICLE OF HIGHER EDUCATION, Dec. 8, 2000 at A14). Mattel Corporation sued a tiny Seattle publishing house (Seal Press) for its book critical of the Barbie Doll (see Kristy Ojala, *Seal of Disapproval: A Local Publisher Meets Barbie's Makers--in Court*, THE SEATTLE WEEKLY, March 2, 2000, at 27.) Corporations have for years prohibited peaceful dissemination of position-oriented (non-commercial) ideas or writings on their property, such as shopping malls (*Lloyd Center v. Tanner*, 407 U.S. 551 (1972)). Corporations have even sought to co-opt the English language, claiming for themselves the right to use common English expression and threatening suit against anyone who crosses them; for example, in 1997 Starbucks claimed a trade-mark right in the phrase Christmas Blend (Lee Moriwaki, *Starbucks Ends Christmas Blend Dispute*, SEATTLE TIMES, Feb. 3, 1998, at C1.)

the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed. I feel at this moment more anxiety for the safety of my country than ever before, even in the midst of war. God grant that my suspicions may prove groundless.¹¹⁶

[55] Here is a relatively benign example of the wealth-aggregation Lincoln foresaw: In 1998 corporate interests persuaded Congress to adopt (and President Clinton signed) the Sonny Bono Copyright Term Extension Act (CTEA),¹¹⁷ retroactively extending copyright protection from 75 to 95 years. It was Michael Eisner, CEO of Disney Enterprises, who lobbied hardest to save Mickey Mouse from the fate of public domain into which the famous rodent would have lapsed in 2003 under the old law. Corporations used “the power of government to increase the here-and-now profits of the owners of antique assets,”¹¹⁸ and, at the same time, to squelch any public intellectual creativity that might have played off the Disney characters once they were freed of copyright protection. It is widely recognized that corporations, in general, strongly influence federal and state legislation.

[56] Obviously the Republic has not yet been destroyed. But the malefactors of wealth did much in 2001 through 2002 to “undermine capitalism and free markets” by violating the “implicit moral contract” that makes the economy work.¹¹⁹ Arthur Levitt, Jr., formerly chairman of the Securities and

¹¹⁶ Letter from Lincoln to (Col.) William F. Elkins, Nov. 21, 1864. Abraham Lincoln, *The Lincoln Encyclopedia* (Archer H. Shaw, ed. 1950), 40.

¹¹⁷ Copyright Term Extension Act, Pub. L. 105-298, 112 Stat. 2827 (1998).

¹¹⁸ Thomas G. Donlan, *Editorial Comments: Mickey Mouse Law*, BARRONS, Feb. 15, 1999, at 43. See also a web site devoted to the issue: Dennis S. Karjala, *Opposing Copyright Extension*, at <http://www.law.asu.edu/HomePages/Karjala/OpposingCopyrightExtension> (last visited October 16, 2004).

¹¹⁹ Michael J. Mandel, *Commentary: And the Enron Award Goes to . . . Enron*, BUSINESSWEEK, May 20, 2002, at 83. Don Mayer notes former Secretary of Labor Robert Reich’s observation that by the 1950s there was an implicit understanding of an American corporate social contract. In return for their special status, corporations would provide jobs, income, social security and progress.” Mayer goes on to discuss how corporations are no longer fulfilling that social contract;

Exchange Commission, saw the 2002 collapse of Enron as just the contest between the public good and private interests that Lincoln worried about. “This is about corporate greed. It is the result of two decades of erosion of business ethics. It was the ultimate nexus of business and politics. If there was ever an example where money and lobbying damaged the public interest, this was clearly it.”¹²⁰

[57] To summarize this to point: there are at least two reasons why The Market has become god. First, The Market is now firmly entwined with nationalism. Together these form the only universal focal point for our American civilization; to oppose The Market is un-American. Second, we have, generally speaking, lost any value-system that offers an alternative to The Market; to oppose the Market is nonsense--it makes no sense. This is especially true when the institutions responsible for presenting to us a picture of reality, sufficient to build a decent civilization, are themselves completely dominated by The Market’s influences and serving its purely materialistic ends.

IV. THE DEVELOPMENT OF A NEW ENLIGHTENMENT: THE RECOGNITION THAT THE ECOCRISIS IS A CRISIS OF *SPIRIT*.

he cites corporate crime, political influence, cultural influence, plant closings and “downsizing,” and abuse of the civil justice system. Don Mayer, *Community, Business Ethics, and Global Capitalism*, 38 AM. BUS. L. J. 216, 236-242 (2001). Jill Andreskey Fraser writes of the erosion of pay, pensions, vacations, sick leave, medical insurance, and free time that characterize the modern corporate workplace as compared to the post-World-War-II corporation where “the big-business world became a more secure, hospitable, and desirable environment for its white-collar inhabitants, sheltered as they were from the risk of unexpected job loss, financial insecurity, rapidly rising health care costs, or the potential for an impoverished old age.” JILL ANDRESKY FRASER, *WHITE-COLLAR SWEATSHOP: THE DETERIORATION OF WORK AND ITS REWARDS IN CORPORATE AMERICA*, 104 (2001).

¹²⁰ Jane Mayer, *The Accountants’ War*, THE NEW YORKER, April 22 & 29, 2002 at 64. Mayer reports that the major accounting firms lobbied Congress and the SEC tirelessly to forestall regulations that would have protected the public interest (and interfered with private money-making).

1. The post-WWII era. Concern about the ethical problems and related environmental problems--stemming from our worship of The Market is not new. But it is growing importantly.

[58] To speak only of the post-WWII era, certainly Aldo Leopold's seminal 1949 masterpiece *A Sand County Almanac* is a beacon; nobody has summed up what is right and wrong more succinctly: "A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise."¹²¹ Leopold saw what was needed: "The extension of ethics to [man's relationship to the land] is . . . a distinct possibility and an ecological necessity."¹²² He thought that the way to get to the necessary ethic was for us to "see land as a community to which we belong,"¹²³ but he did not explain how to accomplish this, and he was not optimistic. Reflecting gloomily on the prospects for conservation, or environmentalism, he wrote: "No important change in ethics was ever accomplished without an internal change in our intellectual emphasis, loyalties, affections, and convictions. The proof that conservation has not yet touched these foundations of conduct lies in the fact that philosophy and religion have not yet heard of it."¹²⁴ Even if Leopold was correct in 1949, philosophy and religion have heard of it now, as examined below.

[59] In 1957, the influential German economist Wilhelm Ropke wrote that The Market:

[I]s a disorder of spiritual perception of almost pathological nature, a misjudgment of the true scale of vital values, a degradation of man not tolerable for long. It is . . . very dangerous. It will, eventually, increase rather than decrease what Freud calls the discontents of civilization. The devotee of this cult is forced into a physically and psychologically ruinous and unending race with the other fellow's standard of life--

¹²¹ ALDO LEOPOLD, *A SAND COUNTY ALMANAC*, 262 (Ballentine Books ed., 1970) (Oxford University Press 1949).

¹²² *Id.* at 239.

¹²³ *Id.* at xviii.

¹²⁴ *Id.* at 246.

keeping up with the Joneses as they say in America--and with the income necessary for this purpose. ...[W]e sacrifice more to this idol than is right... [The sacrifice] disintegrates the social structure and its spiritual and moral foundations.¹²⁵

Ropke certainly identified the problem that The Market is ignorant of spiritual values. Moreover, he appreciated the effect of its materialistic evaluations on the environment.¹²⁶ He thought--as is argued in this article--that a proper response to the danger was to rescale the economy, to make it operate on a more humane scale. He said this would be accomplished by a concerted movement away from “inflationary collectivism,... [and] a resolute return to the market economy and monetary discipline.”¹²⁷ He posited that it was the adulteration of the “market economy [with]. . . admixtures of [government] intervention”¹²⁸ that mostly caused the growing complexity, remoteness, and lack of

¹²⁵ ROPKE, *supra* note 69 at 109-110.

¹²⁶ “Of what avail is any amount of well-being, if at the same time, we steadily render the world more vulgar, uglier, noisier, and drearier and if we lose the moral and spiritual foundations of their existence? Man simply does not live by radio, automobiles, and refrigerators e but by the whole unpurchasable world beyond the market and turnover figures, the world of dignity, beauty, poetry, grace, chivalry, love, and friendship, the world of community, variety of life, freedom, and fullness of personality.” *Id.* at 89.

¹²⁷ *Id.* at 23. “It is urgently necessary to strengthen the feeling for the imponderable nature of community surpassing all separate interests and immediate claims and commanding the individual’s loyalty, even unto death...” (*Id.* at 148). Donald Livingston (a professor of philosophy at Emory University), upon reflecting on the political and economic centralization that marked Western history from 1814 to 1914 (and more since, with the free trade movements), opined that it “led to a spectacular increase in economic liberty for the centralizers, a massive loss of economic liberty for the smaller polities crushed into large-scale liberal states, and the elimination of most economic liberty in the new socialist and communist states that emerged in reaction to the spectacular mismanagement of power by liberal regimes.” Donald Livingston, *Dismantling Leviathan*, HARPER’S MAGAZINE, May 2002, at 11, 14. Similarly, Wendell Berry describes ours as a “total economy,” which “is an unrestrained taking of profits from the disintegration of nations, communities, households, landscapes and ecosystems.” The way to protect ourselves is “to develop and put in play the practice of a local economy-- something that a growing number of people are now doing. . . [T]hey are beginning with the idea of a local food economy.” Berry, *supra* note 8, at 19.

¹²⁸ ROPKE, *supra* note 69, at 261.

humane sensibilities that he characterized as “mass society” and “enmassment.”¹²⁹

[60] Ropke put much of the blame for capitalism’s amoral perturbations on the influences of *inflation*; in this he was apparently mistaken. Chronic, rampant inflation may indeed, as Ropke said, subvert the ends of justice and make meaningless thrift and foresight; it may be “a moral disease, a disorder of society,”¹³⁰ but its virtual disappearance in the last fifteen years has not tamed The Market or informed it with an infusion of positive normative values.¹³¹ Perhaps inflation is a *symptom* of the problem, not a cause, one of many dislocations caused by a flawed economic system. Its excision has not rendered the patient well. Moreover, Ropke did not really explain how a “return” to a simpler, less complex market economy might be accomplished. Antitrust enforcement would seem appropriate to reduce the scale of big business. Ropke does not mention antitrust specifically (which would, at any rate, be another offensive government intervention), nor does he describe how any return to a smaller-scale economy and the gentle dismantling of the welfare state would be politically feasible.

[61] Adam Rome traces the first stirrings of the modern environmental movement to the tract-housing critics of the 1950s and ‘60s, who “sought to encourage a ‘land ethic,’”¹³² because they were alarmed at the pace of the suburban pave-over, the sprawl, ugliness, and pollution of a society given over to the automobile. However, he does not attempt to explain how the necessary ethic can be

¹²⁹ *Id.* at 36-37.

¹³⁰ *Id.* at 192.

¹³¹ John Kenneth Galbraith, in reviewing his classic 1958 book forty years later, observed that he was “wrong” to have thought that controlling inflation would really address the fundamental ills of society: “Running through the early editions of *The Affluent Society* was a strongly expressed warning about inflation. It was the prime threat hovering over a society of general well-being. . . This is no longer so clearly the case.” GALBRAITH, *supra* note 14, at x. But inflation’s demise has not delivered to us a society of general well-being.

¹³² ROME, *supra* note 69, at 4.

inculcated into the hearts and minds of developers, builders, and rural landowners who “have proved staunch opponents of land-use regulations,”¹³³ or even, for that matter, how the average homeowner can be convinced not to “ignore the environmental risks in order to get more house for the money.”¹³⁴ The question is: how can the average homeowner be convinced to think about the common good and not just the personally useful? Rachel Carson’s famous 1962 book *Silent Spring* raised alarms about the unintended consequences of our use of chemical pesticides. Although she did not attempt to suggest *how* we might develop a sustainable sensibility, she recognized the problem is caused by a politics informed by self-interest, and uninformed by a recognition of the common good.¹³⁵

[62] Professor Timothy Fort, a prolific and thought-provoking writer on business ethics, also recognizes that “[t]here must be a rethinking of our politics in order to create the room and incentives for consideration of the common good.”¹³⁶ Fort believes that we have lost (and must relocate) the ability to discuss what is for *the common good*. And he recognizes that the fundamental problem we face is a *spiritual problem*, one of values. As well, Fort states that the dialogue society must have to sustain “republican”¹³⁷ virtues, “requires religion . . . because religion deals with the topic of

¹³³ *Id.* at 268.

¹³⁴ *Id.* at 270.

¹³⁵ RACHAEL CARSON, *SILENT SPRING*, 127 (1962). “Who has decided—who has the right to decide—that the supreme value is a world without insects, even though it be also a sterile world ungraced by the curving wing of a bird in flight? The decision is that of the authoritarian temporarily entrusted with power. . . .”

¹³⁶ Fort, *supra* note 10, at 396. The “common good” as compared to “individual utilitarianism.”

¹³⁷ He means by “republican virtues,” not those of The Market, which I have taken to describe as our *new* national trans-personal authority. Rather he means a politics centered *not* among self-interested groups, but devoted instead to the development of a system wherein “citizens [can] deliberate in order to build consensus as to what constitutes the common good.” *Id.* at 398.

transcendence.”¹³⁸ Virtue cannot be merely socially created (only by the representations of the major corporations),¹³⁹ or else “moral behavior becomes merely bureaucratic efficiency and fealty to hierarchy.”¹⁴⁰ Max Oelschlaeger makes a similar point: we must begin “to consider alternatives to the present fateful direction. Insofar as alternatives are unspeakable, incapable of being named, then a democratic society cannot adequately discuss solutions.”¹⁴¹ And, he says, the only way to discuss those solutions is using available resources. “Of these, none presents a more potent possibility than religion”¹⁴² because it remains “a language of the heart that speaks to purposes and gives voice to issues outside the modern materialistic vocabulary of utilitarian individualism.”¹⁴³ Harvey Cox wanted the church to practice exorcism; he wanted men to be “freed from the narcotic vagaries through which they wrongly perceive the social reality around them, and from habitual forms of action or inaction stemming from these illusions... The church should be such a community,... and suggest ways of action which demonstrate the wrongness of such fantasies.”¹⁴⁴

2. Recognition by academics and divines.

[63] Before suggesting how it might be possible to re-spiritualize society so as to address the

¹³⁸ *Id.* at 403.

¹³⁹ *See supra* text accompanying notes 109-116, discussing corporate control of the creation of social reality and its baleful affects.

¹⁴⁰ Fort, *supra* note 10, at 404.

¹⁴¹ OELSCHLAEGGER, *supra* note 2, at 48.

¹⁴² *Id.* at 49.

¹⁴³ *Id.* at 48.

¹⁴⁴ COX, *supra* note 13, at 166-67.

ecocrisis, we should take note that there are already voices making the connection between spirituality and the environment more broadly and more insistently than ever before. Academics are becoming interested again in religion, and divines (but few organized religions) are showing concern about the environment.

[64] In 1993, Sallie McFague, a professor at Vanderbilt Divinity School, published *The Body of God: An Ecological Theology*. The idea expressed here is that the universe is the embodiment of the divine, and that religious people should care about it. This book, and others, “caused a good deal of intellectual excitement,”¹⁴⁵ and it was followed by a new economics textbook in 1997 titled *An Introduction to Ecological Economics*,¹⁴⁶ a respectable book that provided “a dose of heresy” compared to the standard economics textbooks.¹⁴⁷ Beginning in “the early 1990s, there has been a broad increase in the amount of interest in religion in the academy as a research topic.” This is a result of academics “beginning to see the ‘religion factor’ as a key to understanding historical, political, social, and even economic forces.”¹⁴⁸

[65] Among the academic theologians, strong connections are being made between religion and the ecocrisis. In 1998, Brennan R. Hill, head of the Theology department at Xavier University, wrote *Christian Faith and the Environment*. In reviewing his book *The Chronicle of Higher Education*

¹⁴⁵ Ellen K. Coughlin, *Christianity in an Ecological Context*, THE CHRONICLE OF HIGHER EDUCATION, July 20, 1994, A8.

¹⁴⁶ ROBERT COSTANZA, JOHN H. CUMBERLAND, HERMAN E. DALY, ROBERT GOODLAND, AND RICHARD B. NORGAARD, *AN INTRODUCTION TO ECOLOGICAL ECONOMICS*, (1997).

¹⁴⁷ Jack Beatty, *Color Us Green*, THE ATLANTIC MONTHLY, January 14, 1998, reproduced at <http://www.theatlantic.com/unbound/polipro/pp9801.htm#beatty>. (last accessed October 16, 2004).

¹⁴⁸ Mark Clayton, *Scholars Get Religion*, THE CHRISTIAN SCIENCE MONITOR, February 26, 2002, at 12 (quoting Kathleen Mahoney).

asserted that “[i]t has only been in the last few years . . . that religious environmentalism has become an academic subject in its own right.”¹⁴⁹ In 1999, Todd Wilkinson reported on “a growing global movement involving spiritual leaders from all faiths asserting a strong connection between a healthy environment, spiritual fulfillment, and fundamental religious teachings.”¹⁵⁰ The Associated Press reported in 2000 on the “growing number of people across the country who see a connection between their spiritual lives and their environmental activism,” and noted that “[a] decade ago, no one had heard of Christian environmental groups or Jewish tree-huggers because people considered religion and the environment separate.”¹⁵¹

[66] Moving out from academia, religionists are pressing the connection between spirituality and the environment. As Max Oelschlaeger insists could and should happen, the organized churches and American Indian religions are finding in their various “creation stories” a potential unity of purpose in “caring for creation.”¹⁵² In early 2002, while the federal administration fretted about the need to drill for oil in the Arctic National Wildlife Refuge, (in which refuge, Robert J. Barro could find

¹⁴⁹ Alison Schneider, *Ecology Meets Theology: Xavier U. Professor Seeks a Role for Religion in Saving the Planet*, THE CHRONICLE OF HIGHER EDUCATION, September 25, 1998, at A10.

¹⁵⁰ Todd Wilkinson, *Recruiting in Pews to Save Planet: Citing Scripture More Worshipers Join Environmentalists*, THE CHRISTIAN SCIENCE MONITOR, December 23, 1999, at 1.

¹⁵¹ Associated Press, *Religious Belief Part of Environmentalists' Life*, THE BELLINGHAM HERALD, December 29, 2000, at C3.

¹⁵² Trebbe Johnson, *The Second Creation Story: Redefining the Bond between Religion and Ecology*, SIERRA MAGAZINE, Nov/Dec 1998, at 50. In Oelschlaeger's (see *supra* note 2,) long chapter 4, “Caring for Creation: the Spectrum of Belief,” he demonstrates that in every major U.S. religion (Protestantism, Catholicism, Judaism), and all across each's spectrum from conservative, to moderate, to liberal, is--at a high level of generality--a similar story that should, reasonably understood, indicate to humans that we ought to care for creation. He goes on to make the same demonstration for “radical creation stories” (non-traditional Christians), and “alternative creation stories” (American Indians, Radical-Feminists, Wiccans, Goddess Feminism, and Deep Ecology).

absolutely no value, undrilled)¹⁵³ the community of faith weighed in. A “congressional staffer... expressed surprise that the faith community had anything to say about federal energy policy....”¹⁵⁴ That staffer might be surprised, given religion’s removal from public-policy making in the United States.

Over the past two years, “interfaith climate and energy campaigns” have been launched in 21 states, involving training, letter-writing campaigns, and meetings with lawmakers.... A pastoral letter signed [in June 2001] by all Roman Catholic bishops in the United States sought to raise the level of debate about global warming: “At its core... [it] is not about economic theory or political platforms, nor about partisan advantage or interest group pressures,” the bishops wrote... “It is about our human stewardship of God’s creation and our responsibility to those who come after us.”¹⁵⁵

[67] This whole trend puts the religious community “clearly at odds with the Bush administration.”¹⁵⁶ This is the administration whose vice president dismissed conservation as merely a “sign of personal virtue,”¹⁵⁷ and whose president, on the cusp of a national emergency, urged us all to go shopping.¹⁵⁸

[68] Besides academics and divines, organized environmentalists are also beginning to make the

¹⁵³ See also *supra* text accompanying note 101. Robert Barro, indeed, is taking the lead at Harvard in “examining the impact of religions on the economies of nations.” Clayton, *supra* note 148, at 13.

¹⁵⁴ Brad Knickerbocker, *Drilling and Divinity: Forces of Faith Enter Fray Over Energy Policy*, THE CHRISTIAN SCIENCE MONITOR, February 27, 2002, at 3.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ See, *supra* note 93.

¹⁵⁸ Warner, *supra* note 63. He actually urged us all to get on airplanes and fly to Disney World or the like.

connection between religion and their own concerns.¹⁵⁹

V. EXTANT PROPOSALS TO “INJECT” SPIRITUALITY INTO SOCIETY, AND WHY THEY PROBABLY WILL NOT WORK.

[69] It is becoming more common to recognize that our environmental/economic problem is a *spiritual* one at heart. The environmental crisis is a consequence of secularization and de-sanctification and a “dis-gracing” of the earth. What is needed, then, is to “inject” some non-materialistic ethos – a broad understanding of a new communitarianism that includes the natural world, some spirituality, some religion, back into our society. There must be a societal re-cognition and a re-understanding that humans and their economic institutions are *not* omnipotent, that other life-forms have as much a right to exist as humans. The “stakeholder theory”¹⁶⁰ needs to be broadened to encompass the earth itself.

[70] From where is this understanding to come? Some say it should come from the corporations; some say from the churches. Let us consider both possibilities and their problems.

¹⁵⁹ See, e.g., Johnson, *supra* note 152, at 50-57.

¹⁶⁰ The “stakeholder theory” posits that the shareholders of a corporation are only one of several “stakeholders.” Other stakeholders include: customers, employees, suppliers and competitors, and “society” more generally. See, e.g., Eugene Beem, *Ethical Response: An Important Ingredient of Good Management*, 5/1 BUSINESS INSIGHTS (1989), 19. Prof. Marianne M. Jennings traces the history of the theory and ridicules the expansion of the stakeholder theory as advocated by people like Christopher Stone who “would include as stakeholders ‘a cluster of deciduous trees, a star-filled evening, or a pool of diving whales.’ He would extend stakeholder status to all ‘natural objects.’” Marianne M. Jennings, *Stakeholder Theory: Letting Anyone Who's Interested Run the Business-No Investment Required* (1999), CORPORATE GOVERNANCE PAPERS, available at http://www.stthom.edu/cbes/marianne_jennings.html. (last visited November 3, 2004). The stakeholder theory does not suggest that outsiders should run the business, but rather that the business should be run with the recognition that outsiders are affected by its operations.

1. The spiritual “injection” should come from the corporations.

[71] Timothy Fort believes we need new “mediating institutions”¹⁶¹ that will, in small groups, socialize people into the culture of the common good, thereby moving them away from motivation based primarily on individual utilitarianism. He agrees with Oelschlaeger that “it is culturally appropriate for religious institutions to be educational carriers for the common good,”¹⁶² although he also notes that religious institutions are “not the only possible alternative.”¹⁶³ Fort thinks the necessary mediating institutions should be “autonomous centers of power,”¹⁶⁴ and that a proper locus for them in today’s world is *within* the corporation. “Allowing relatively small groups within corporations to form a community would foster the atmosphere in which individuals must face consequences of their actions and thereby form moral identity in a context transcending” typical individual utilitarianism.¹⁶⁵ If, as is posited in this essay and observed elsewhere by Paul Hawken, “business is destroying the world,”¹⁶⁶ then Fort’s idea that business is the place to inject the sensibility seems reasonable.

¹⁶¹ According to Fort, “mediating institutions” “teach individuals that they are not autonomous beings accountable only to their own wants and desires. Instead, a series of relationships comprise personhood and therefore human beings obtain their identity by becoming accountable for their relationships. In short, mediating institutions teach us that we are relational, not autonomous beings . . . In mediating institutions, we develop bonds of affection that motivate individuals to treat others well.” Timothy Fort, *The Corporation as Mediating Institution: an Efficacious Synthesis of Stakeholder Theory and Corporate Constituency Statutes*, 73 NOTRE DAME L. REV. 173, 175 (1997).

¹⁶² Fort, *supra* note 10, at 435.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 434.

¹⁶⁶ Hawken, *supra* note 5, at 3.

[72] But it is unlikely that corporations can very often be the place for this communitarian, spiritual expression. Fort notes that “mediating institutions are threatening to the nation-state precisely because they are independent sources of power.”¹⁶⁷ Given the need for business to have “unopposed cultural influence,”¹⁶⁸ it is difficult to imagine that the corporation would allow any independent sources of power to flourish in its midst. Indeed, given the corporation’s present conformation, Fort’s idea will never work. Corporations currently have no interest in promoting this broader vision of developing communitarianism: “It is inherent in corporate activity that they seek to drive all consciousness into one-dimensional channels. They must attempt to dominate alternative cultures and to effectively clone the world population into a form *more to their liking*.”¹⁶⁹ Corporate “liking” is most often used to withhold from employees and shareholders autonomous power that would open their eyes to the abuses the corporations inflict and make them agents of change.¹⁷⁰ Max Oelschlaeger, indeed, would set the church up *against* the corporation:

The need for the church to serve as a mediating institution in relation to the corporation is readily apparent: corporate decision-making is insulated from the

¹⁶⁷ Fort, *supra* note 10, at 429.

¹⁶⁸ HAWKEN, *supra* note 5, at 108.

¹⁶⁹ MANDER, *supra* note 17, at 136 (emphasis added).

¹⁷⁰ This is not to suggest that, with vigorous state legislative reform, corporations could not be changed. A number of states, for example, have prohibited non-family owner corporate farms. See, e.g., Rick Welch and Thomas A. Lyson [Clarkston University, Cornell University], *Anti-Corporate Farming Laws, the ‘Goldschmidt Hypothesis’ and Rural Community Welfare*, “Executive Summary” at http://www.i300.org/anti_corp_farming.htm (last visited October 18, 2002.) “Iowa, Kansas, Minnesota, Missouri, North Dakota, Oklahoma, South Dakota and Wisconsin [have anti-corporate farming laws]. The laws were primarily put into place between 1974 and 1975 for all states but Nebraska. Nebraska’s constitutional amendment (Initiative 300 or I-300) restricting corporate agriculture was adopted in 1982. The laws, called anti-corporate farming laws, vary from state to state but in general are intended to hobble or restrict corporate involvement in agriculture in order to protect family farm agriculture.”

democratic process. Corporations are publicly chartered by privately owned and managed entities that are oriented primarily toward the bottom line... Private interest, not the public good, is necessarily the limit of corporate decision-making.¹⁷¹

[73] A quick case-study of what one corporation appears to consider “ethical behavior” might be in order. A large corporation that has sincerely worked to promote ethical values within itself is Conoco, Inc. It is “a global firm operating in more than forty countries in the oil exploration, transportation, refining and marketing sectors of the industry.”¹⁷² Archie Duncan, Conoco’s President, Chair and CEO initiated the company’s Ethics Award in 1998 to “support and recognize ethics as one of Conoco’s four core values,” and to “recognize individuals who have gone beyond compliance.”¹⁷³ The first award was made in 1999 after a year of planning.

[74] The first nominee commended for “persistent and sustained leadership” was the “asset manager” of more than fifty Conoco-owned oil platforms in the Gulf of Mexico. The oil field there was becoming exhausted and was to be sold off. When a business is about to close and people are transferring and retiring, “it’s difficult to uphold the value of the asset for sale.”¹⁷⁴ In short, toward the end of a project people are inclined to do shoddy work and to steal things. This manager “would not tolerate ethical or other core lapses from employees or contractors.”¹⁷⁵ He supervised a safe and profitable disposition of the platform assets. This is commendable, but it is fair to ask whether

¹⁷¹ OELSCHLAEGER, *supra* note 2, at 77.

¹⁷² J. Brooke Hamilton III, Conoco’s Decision: First Annual President’s Award for Business Ethics 2 (April 2002) (unpublished manuscript on file with the Rutgers Journal of Law and Religion).

¹⁷³ *Id.* at 4.

¹⁷⁴ *Id.* at 6.

¹⁷⁵ *Id.*

keeping people from doing shoddy work and from stealing is really cutting-edge corporate ethics in action. The second nominee held firm and refused to pay bribes to facilitate development of a Georgian (central Asia) LPG (liquid petroleum gas) facility, even though “there was a lot of pressure on the team members to go along with these types of payments in order to keep the project on schedule.”¹⁷⁶ Again, firmly resisting the payment of bribes and promoting an atmosphere of integrity is better than not doing so, but, as one of the judges pointed out, “company policy is clear about not paying bribes. These guys did what they were supposed to do.”¹⁷⁷ What made their “behavior extraordinary” was that they were new to their jobs and to the area.

[75] A third nominee declined to reveal, even to an affiliated joint-venturer, proprietary information.¹⁷⁸ A fourth figured out graceful ways to keep convenience-store clerks from stealing from the company as much as would be expected (these included “visits by mystery shoppers who rewarded them on the spot for good behavior and reported on store procedures to management,” and installation of security cameras in virtually all stores.)¹⁷⁹ The final nominee, like the second, resisted bribes and insisted on “establishing relationships based on trust and dependability” in an African project.¹⁸⁰

[76] This is an entirely commendable effort and the purpose here is not to denigrate it. However, it must be observed that the ethical acts of five employees at Conoco singled out for commendation

¹⁷⁶ *Id.* at 8.

¹⁷⁷ *See* Hamilton, *supra* note 172.

¹⁷⁸ *Id.* at 9.

¹⁷⁹ *Id.* at 10-11.

¹⁸⁰ *Id.* at 12.

really bear hardly any relationship to promoting a broad-scale movement toward the kind of ethics that would promote an environmentally and culturally decent society.

[77] While it is certainly best to resist illegal behavior whenever possible, it is arguable whether doing so is always commendable ethical behavior, and it hardly sets a high mark for what a company like Conoco *ought* to be doing. Perhaps it is all camouflage. In August 1996, President Clinton, by presidential proclamation, directed the creation of Grand Staircase-Escalante National Monument in southern Utah. The proclamation serves to protect 1.7 million acres of red-rock canyons and desert wilderness. It would create the largest contiguous area of protected lands in the continental forty-eight states. Six months later Conoco announced its intention to drill for oil in the heart of the wilderness, based on pre-existing leases. Environmentalists saw nothing ethically advanced in Conoco's proposal to "riddle... America's remaining Western wilderness... with oil rigs, pipelines, power lines, storage tanks, new roads, sludge ponds and an abundance of hominids in hard hats."¹⁸¹ Conoco is heavily invested in deep-water oil and gas exploration and extraction in Indonesia, where locals have seriously complained about oil companies' environmental and human-rights abuses.¹⁸² There is more: there are allegations that Conoco directed the falsification of information relating to

¹⁸¹ Keith Hammond, *Don't Drill the Wilderness*, MOTHER JONES MAGAZINE, March 31, 1997 (http://www.motherjones.com/hellraiser_central/alerts/conoco.html (last visited November 3, 2004)).

¹⁸² DTE (Down to Earth), *Rights & Environmental Disputes Flare as Huge Oil and Gas Developments Continue in Indonesia: Communities in Areas Where These Industries Operate Are Becoming More Vocal in Demanding a Stop to Pollution and Fair Compensation*. February, 2001. <http://dte.gn.apc.org/48O+G.htm>, last visited June 7, 2002. (Down to Earth is a U.K.-based organization that works with Indonesian community groups and NGOs which are striving to promote democracy, social justice and the sustainable use of natural resources.)

Florida pollution,¹⁸³ that it agreed to pay \$1.5 million for federal Clean Air Act violations,¹⁸⁴ that is not being recommended as a socially and environmentally good company to invest in.¹⁸⁵

[78] The point here is not to vilify Conoco. Almost all of us drive cars and heat our houses with petroleum products; we consume products packaged in petroleum-based plastics. The exploration, extraction, refining, and marketing of petroleum products is, at best, a dangerous, dirty business, fraught with environmental problems and potential political pitfalls and demanding, in its present incarnation, a vast international bureaucracy. Conoco rightly claims that it is doing a lot to promote good environmental practices.¹⁸⁴ What Conoco has no interest in--what no transnational corporation has any interest in--is moving toward a humane economy where economic and political power is decentralized, where, as Ropke said, the economy is on a human and humane scale.

[79] It is highly unlikely that a significant response to the ecocrisis will come voluntarily from major trans-national corporations. That kind of reform is not in their blood.¹⁸³ Indeed, under current

¹⁸³ Scott Streater, *Documents Shed Light on Conoco Suits, Legal Wrangling Continues Amid. Environmental Study*, PENSACOLA NEWS JOURNAL, Dec. 30, 2001, <http://www.pensacolanejournal.com/-news/123001/Local/ST001.shtml>.

¹⁸⁴ Reuters News Service, *Conoco to Spend up to \$110 million at Oil Refineries*, Dec. 21, 2001, <http://www.planetark.org/dailynewsstory.cfm/newsid./13798/story.htm>, last visited June 6, 2002.

¹⁸⁵ Sherri Wallace, *A Kinder and Gentler Petrol?*, GreenMoneyJournal.Com, April/May 2001, at GreenMoney.Journal, <http://www.greenmoneyjournal.com/article.mpl?newsletterid=12&articleid.=95> last visited June 7, 2002. "The journal's ten-year mission has been to promote the win-win solution of teaching people to use their knowledge and their dollars to invest in positive corporate practices." <http://www.greenmoneyjournal.com/index.mpl>.

¹⁸⁴ See Conoco's website on "Environment and Safety," at <http://www.conoco.com/safety/envi/index.asp> (last visited November 3, 2004).

¹⁸³ Don Mayer, *Community, Business Ethics, and Global Capitalism*, 38 AM. BUS. L. J. 215, 231 (2001): "The corporation's dominant *raison d'etre*, profit-making, is the singular striving point. This dominant purpose tends to undermine efforts to establish 'community' or enduring ethical

corporate law, reform might subject management to shareholder law suits for mismanagement of corporate assets.

2. The spiritual “injection” should come from the church.

[80] Looking to the church for the ethical or ethical content for environmental protection and remediation remains very problematic. Professor Oelschlaeger admits that his insistence that religious discourse could be the path toward salvation that

seems nonsensical at first. Religion appears to be entirely a matter of private values and personal affairs. Further, the root values of Judeo-Christianity seem to many to have been co-opted by the gospel of greed--the idea that financial success is a sign of divine favor. And the separation between religion and politics seems sacrosanct....¹⁸⁴

[81] Religion is part of the capitalist problem; it is not taken seriously at the public-policy level, and most people think it should not be. Our historical experience is that the intertwining of religion and government results in clownishness or tyranny.¹⁸⁵ That is why we have marginalized religion at the public-policy level. Tim Fort makes the point that religion has been so marginalized by

values in corporations, and thus undermines efforts to reconfigure corporations as mediating institutions.”

¹⁸⁴ OELSCHLAEGER, *supra* note 2, at 50. Oelschlaeger’s basic point is not that religion does not now address the environment positively, but that with a little re-emphasis on the message of creation, it *could*.

¹⁸⁵ Lewis H. Lapham, *Notebook: Deus Lo Volt* [“God Wills It,” a cry of the medieval Crusaders], HARPER’S MAGAZINE, May 2002, at 7-8. This article comments that President George W. Bush’s

appointment of John Ashcroft to the office of the attorney general doesn’t speak well for his ability to separate the powers of the church from the powers of the state. Ashcroft makes no secret of his righteousness or his conception of the Justice Department as an agent of divine retribution. . . . [He] has been quick to order mass arrests, to suspend the right of habeas corpus, to deny requests for public information, to draw up legislation equipping his office with the authority

privatization that it can barely provide any “ethically-induced transformation of self-interest” into some broader interest “that is connected with the common good.”¹⁸⁶ By the early 20th Century, William Leach asserts, established Protestantism had lost “what remained of a strong tradition of social criticism . . . , a determination to judge social reality by religious standards.”¹⁸⁷ And the same was true of Catholicism and Judaism: in the struggle to assimilate, to achieve cultural unity with the larger society, the major religions generally “turned away from any duty to confront critically the new pecuniary culture and economy”¹⁸⁸ and “whatever remained of a social gospel, of a prophetic tradition, or of a philosophy of charity and abstinence in . . . these faiths seems to have been undermined for many, many, people.”¹⁸⁹ It is a shame and a travesty that the churches are sunk to the level of apologists for capitalism run amok.

[82] And prospects for a religious revival stemming from the church are not made brighter by the appearance that the most energetic sects, those of the Christian Right, are the most adamantly anti-environmental. It seems to be a very generous analysis of the Christian Right’s position on the environment for the last, say, twenty years, to describe it as “at least indirectly opposed to traditional

to tap anybody’s telephone and open everybody’s mail.

¹⁸⁶ Fort, *supra* note 10, at 424.

¹⁸⁷ LEACH, *supra* note 91, at 217.

¹⁸⁸ *Id.* at 220.

¹⁸⁹ *Id.* at 217. Harvey Cox in *The Market as God*, agrees: “It seems unlikely that traditional religions will rise to the occasion and challenge the doctrines of the new dispensation. Most of them seem content to become its acolytes or to be absorbed into its pantheon, much as the old Nordic deities, after putting up a game fight, eventually settled for a diminished but secure status as Christian saints. . . [N]o compromise seems possible.” Cox, *supra* note 4, at 23.

environmental protection efforts or to candidates labeled environmentalists.”¹⁹⁰ And as for conservative politicians, whose mandate increasingly comes from the Religious Right, “[t]hey have been notoriously negative, attempting to block virtually every attempt to clean up pollution, protect the environment, and conserve (!) resources. This propensity was carried to an abysmal extreme in the 104th Congress (1994-96), when many of the leading Republicans and many of the party’s ‘freshman’ class launched an unprecedented attack on practically every environmental protection law on the books.”¹⁹¹

[83] Beyond the observations that organized churches have been marginalized in our society, that religion has lost much of its ethical rigor and that many vigorously religious people are positively anti-environmental, there is a further, simpler point why we can not expect the churches to reinvigorate spirituality that will address the ecocrises: not very many people go to church.

Some pollsters say at best, religion is losing its grip on American society; at worst, growing amounts of Americans are finding the institution irrelevant. Nearly 100 million Americans live without a connection to a church, synagogue or temple, writes pollster George Barna, president of the Barna Research Group in Ventura, Calif. Most of them are unconcerned with this lack, he writes in "Re-Churching the Unchurched." "More than average, these are people who are aggressive, high-energy and driven," he says. "They have made something of themselves, by the world's standards [and] they do not necessarily believe that God, Jesus, religion, the Bible,

¹⁹⁰ Chuck D. Barlow, *Why the Christian Right must Protect the Environment: Theocentricity in the Workplace*, 23 B.C. ENVTL. AFF. L. REV. 781, 786 (1996).

¹⁹¹ John R.E. Bliese, *Conservative Principles and Environmental Policies*, 7 KAN. J. L. & PUB. POL'Y 1, 1 (Spring 1998). (Exclamation point in original). The present administration is hardly more sympathetic to the environment. As Elizabeth Kolbert recounts in her comment, Mr. Bush has lifted regulations limiting the removal of mountain tops to obtain coal and regulations limiting the disposal of “fill” in rivers and streams. Elizabeth Kolbert, *Bad Environments*, THE NEW YORKER, May 20, 2002, at 35-36. The Bush administration “scuttled new standards for arsenic in drinking water”, “rejected the Kyoto treaty on global warming,” “refused to consider stricter fuel efficiency standards,” “expedited the permitting process for power companies,” and “enabled logging companies to build new roads in national forests.”

faith or Christianity will help them overcome the struggles they face."¹⁹²

[84] Academics, divines (but not organized religion generally), and environmentalists have come or are coming to the recognition that the ecocrisis is a crisis of human spirit. The traditional impulse of spirituality to constrain excessive human consumption has so waned that it is nearly gone. If the church is impotent to affect the public's sensibilities as needed for a reformation of attitude on the environment, or if it is hostile to the environment, and if corporations will never allow their forms to be used for the public--as opposed to private--good, are we indeed in a quandary, without a moral compass of any kind?

VI. CONCLUSION, SUGGESTING THAT THE NECESSARY SPIRITUAL COMPONENT MUST COME FROM A REVIVED LOCALISM, AND SUMMARY.

[85] Paul Hawken asserted that "business is destroying the world."¹⁹³ What are we going to do about it? We might accept more regulations, reinvigorate antitrust laws, or change accounting standards.¹⁹⁴ We might reform business practices to make better goods, utilize fewer resources in

¹⁹² Julia Duin, *Fewer Americans in Church*, THE WASHINGTON TIMES, April 11, 2002, at <http://www.wash-times.com/culture/20020411-49783096.htm>, (last accessed November 3, 2004). Experts figure that about 20% of Americans go to church regularly, or perhaps 30%. *Id.* These people are not necessarily unspiritual, but they are unchurched. *Id.* The English political economist John Gray asserts that Britain is a "post-Christian" country. He wishes to find some locus of "unifying world-view of a culture" to replace Christianity, but recognizes that the necessary unifying view struggles "against the burden on thought and policy [imposed by]. . . market liberal dogma." JOHN GRAY, ENLIGHTENMENT'S WAKE: POLITICS AND CULTURE AT THE CLOSE OF THE MODERN AGE, 113 (1995).

¹⁹³ HAWKEN, *supra* note 5 at 3.

¹⁹⁴ The idea behind "environmental accounting" is that by accounting for something we give it reality—just as accountants talk about "realizing gain." Financial accounting, as we are familiar with it, recognizes an incomplete "reality" because it developed out of 19th Century neo-classic economic concepts, "when the major concerns were to recognize private property rights, the

making them, and waste nothing (this is Hawken's general proposal.)¹⁹⁵ All of these moves would require what is not immediately available: the will, or spirit, or ethics to change current market-oriented perceptions and practices, and thereby to revise our sense of reality.

[86] The ethical understanding will come, if it ever does, when humans establish a proper relationship with the earth and develop the self-discipline within the community to live harmoniously with other creatures (including other humans).¹⁹⁶ We know from environmental studies that there is a harmonious interwoven complex operating to sustain life on this planet. James Lovelock was a British atmospheric chemist who, in the early 1960s, first proposed the scientific theory that the Earth is a self-regulating, self-sustaining entity, which continually adjusts its environment in order to support life. In its least teleological (and least controversial) conception, the hypothesis is that "the Earth's living matter, air, oceans and land surface form a complex system which can be seen as a single organism and which has the capacity to keep our planet a fit place for life."¹⁹⁷ But no elaborate scientific citations should be necessary to make plain that, somehow, "nature" got along fine before human pollution and over-consumption changed things and that, when we change things, there are consequences (for example, paving the shoreline of a local lake with houses and driveways interferes

valuation of the market place and the concept of profit maximization;" air and water were considered "free goods." M.R. Mathews, 4/2 *Asian-Pacific Journal of Accounting*, 273, 274-75 (1997). Of course what is necessary to make environmental accounting work is a recognition is the natural environment's value.

¹⁹⁵ HAWKEN, *supra* note 5, at 12. "Business has three basic issues to face: what it takes, what it makes, and what it wastes." *Id.* Some progress is being made on Hawken's last point, "what it wastes." See, e.g. Michelle Conlin, *Industrial Evolution: Bill McDonough Has the Wild Idea He Can Eliminate Waste. Surprise! Business is Listening*, BUSINESSWEEK, April 8, 2002, at 70.

¹⁹⁶ DELORIA, *supra* note 17, at 88.

¹⁹⁷ J. E. LOVELOCK, *GAIA: A NEW LOOK AT LIFE ON EARTH*, 1979, viii.

with the natural filtering processes and results in a polluted lake, which causes fish kills, and there is no food for the various fish predators, and so on). The assumption that we can “manage” the Earth’s natural systems is a piece of Bertrand Russell’s “cosmic impiety.”¹⁹⁸

[87] A recognition that this interconnectedness exists is slowly coming, but most people (full of video games, television, professional sports and other of The Market’s seductive diversions) are not yet adequately sensitized to the defects of modern capitalism to understand the consequences of our adoration of The Market. Despite the good things the market provides us (and there is much good with the market),¹⁹⁹ there is a price to pay. Most of us do not recognize the price, though we sense something is wrong. That is because we are not doing our accounting properly, and

as long as the good remains separated from the bad, and not judged together, we shall continue to be tormented uncomprehendingly; only when we perceive that the horrors of contemporary existence are the unavoidable attendants of what is held out to tempt us, shall we be in a position to make a more sober assessment as to whether it is worth maintaining what is, or whether there might not be more equitable and satisfying ways of answering need, more modest and more frugal demands on the earth, ways that will not be won at the expense of the necessities of the poor or the wasting of the fabric of the earth.²⁰⁰

[88] What needs to be broadly understood is that the value system that our adoration of The Market promotes *causes* the environmental problems that we lament. At least now the ecocrisis is being recognized: as Wendell Berry says, “the so-called environmental crisis is now pretty well established

¹⁹⁸ See *supra* Text accompanying footnote 94.

¹⁹⁹ That The Market has, in much of the West, for most of the people, satisfied the basic human needs (food, health, entertainment, clothing, shelter, and transportation) is certainly a great thing. The problem is, The Market will not stop with mere satisfaction of basic needs. It insists that we should have, or should want to have, second homes, huge SUVs and four-foot wide televisions. As Cox said, with The Market, there is *never enough*. See Cox, *supra* note 4 at 23.

²⁰⁰ SEABROOK, *supra* note 59, at 55.

as a fact of our age....”²⁰¹ Some are recognizing more broadly the connection between the adoration of The Market and destruction of our community, which is, after all, our immediate human-made environment. “For what is the abuse and disfiguring of the earth, if not the outward sign and expression of our distorted relationships with each other?”²⁰² The connection between spiritual impoverishment and the eco-crisis and community-crisis is recognized in some of the media and in scientific, academic and religious institutions.²⁰³ It needs to be established for the man and woman in the street. Harvey Cox wrote:

Men must be called away from their fascination with other worlds...²⁰⁴ and summoned to confront the concrete issues of this one. They must be freed from the narcotic vagaries through which they wrongly perceive the social reality around them, and from habitual forms of action or inaction stemming from these illusions.... It requires a community of persons who are not burdened by the constrictions of an archaic heritage[, a community]... which is in the process of liberation from compulsive patterns of behavior based on mistaken images of the world.²⁰⁵

[89] That we are, for the most part, wrongly perceiving the social reality around us will undoubtedly one day be inescapably obvious to everybody. The environmental advocates that some call “nutballs” will be shown to have been right as, more and more, fisheries collapse, potable water becomes rarer and rarer, the ozone is depleted, Earth’s temperature increases and so on, all of which have long been predicted. But the Market today blinds us to this; it is “a faith that fails to meet the demands of life,

²⁰¹ Berry, *supra* note 8, at 15.

²⁰² SEABROOK, *supra* note 59, at 55.

²⁰³ See *supra* text accompanying notes 142-56.

²⁰⁴ Disneyland, the place President Bush suggested people should go in the wake of 9-11 (*supra* note 65), is an “other world” from which peoples’ fascination must be called away to confront the concrete issues of this one. See, e.g., MANDER, *supra* note 17, at 152-58 (discussing EPCOT Center and “San Francisco, the theme park.”)

²⁰⁵ COX, *supra* note 13, at 166-167.

the exigencies of living in a real world, [and thus it] is in danger of collapsing, of becoming empty, irrelevant, inauthentic” to our truest needs.²⁰⁶

[90] When a critical mass of people achieves a clearer perception, then a different and healthy set of values, a better religion must be available for them to embrace. “We should accept the fact that value systems, like states and civilizations, come and go. They are conditioned by their history and claim no finality.”²⁰⁷ The better religion must be an ethical system that works for today’s world. We need a new Reformation, and if we find a better way, then “we should have the courage to accept the revelation that comes and live in the manner it commands us.”²⁰⁸ The test of a proper value system must, at its base, be the test of pragmatism: does it work?

[91] So here we come to the final point. If what we need is an injection into society of a better set of values that recognizes the worth of things that cannot be measured or sold (such as loyalty, commitment to person and place, respect for the continued health and sustainability of life on this planet), and if those values cannot come from The Market²⁰⁹ (or its agents, the corporations), and they cannot come from the churches, where will they come from? The answer is that the values will arise when the market’s good and bad aspects are unseparated and immediately apprehendable; they will arise *sui sponte*, from people interacting with their neighbors at the local level.

[92] In a radio address dated July 19, 2002, U.S. Congressman Mike Ross (D-Arkansas) expressed

²⁰⁶ OELSCHLAEGGER, *supra* note 2, at 91-92.

²⁰⁷ COX, *supra* note 13, at 49.

²⁰⁸ DELORIA, *supra* note 17, at 234.

²⁰⁹ President Bush declared on July 9, 2002, speaking of corporate governance, that “self-regulation is important, but it’s not enough.” Lee Walczak, *Let the Reforms Begin*, BUSINESSWEEK, July 22, 2002, at 26, 28. That is to say, the values necessary to reform The Market cannot come from The Market.

the thought clearly:

Small business owners know their customers. Those customers are neighbors and friends, and they would never do them wrong.... I think perhaps some of our corporate leaders have forgotten these values they were raised on because *they don't see the faces of their customers, their employees, or their investors*. They only see an opportunity for personal gain.²¹⁰

Mark Sommer, director of the Mainstream Media Project, expresses a similar idea:

The face-to-face exchanges of small-scale commerce and community enforce accountability and transparency by their very nature as intimate transactions. Betrayals of trust are soon detected and seldom forgotten. In the anonymous world of large institutions, we never see the faces of those who sell us their goods and services. Some people therefore imagine that their facelessness permits them free rein. But while the consequences of their actions take longer to become apparent, the resulting fall from grace is more calamitous.²¹¹

[93] Similarly, Wendell Berry notes that the only way people can protect themselves against the “total economy” (i.e., The Market) where they are “losing their economic security and their freedom, both at once,” is to put into practice the idea of a local economy. “For several good reasons, they are beginning with the idea of a local food economy.”²¹²

[94] There are profound public policy questions inherent in the assertion that what is needed is to revitalize a kind of localism. Would it not entail the reversal of the whole trend of modernism? Would it not be “unglobalism”? Shall we roll back the supermarket revolution? I do not suggest that

²¹⁰ Mike Ross, Radio Address, *available at* http://www.house.gov/apps/list/speech/ar04_ross/radio_071902.html, (July 19, 2002) (last visited November 9, 2002.) (Emphasis added.)

²¹¹ Mark Sommer, *What Communism Could Not Accomplish, Capitalism Does to Itself*, THE EVERY OTHER WEEKLY (Bellingham, WA), August 8, 2002, at 10. Mr. Sommer “is an author, independent journalist, radio host, and internationally syndicated columnist who has written several books and hundreds of articles on national and international issues for major U.S. and foreign newspapers.” <http://www.mainstream-media.net/html/whoweare.cfm> (last visited November 3, 2004).

²¹² Berry, *supra* note 8, at 19.

it should be forced upon anyone, or that the traditional government resources devoted to “boosterism” be terminated. I suggest only that, gracefully and gradually, they be redirected. The local community development entities (the city and county contributors to the Chamber of Commerce, or the local Port authorities) should continue to spend public money to promote the economy, but they should direct that money to the promotion, of local self-sufficiency. It is beyond the scope of this paper to examine in any detail the current efforts being made on this front. The reader might wish to examine the University of Wisconsin’s “farm-to-campus” project, accessible on-line.²¹³ Michael H. Schuman, in *Going Local: Creating Self-Reliant Communities in a Global Age*,²¹⁴ believes that “the major struggle in the twenty-first century will be between those who believe in cheap goods and those who believe in place,”²¹⁵ and his book is a thoughtful analysis of how local folks can work to create a local economy, a place. He certainly does not suggest that the global economy will, any time soon, wither. Instead, he suggests that a necessary response to the “abuse and disfiguring of the earth” which is “the outward sign and expression of our distorted relationships with each other”²¹⁶ would be to amend those distorted relationships, and that such amendment could come from

nurturing locally owned businesses which use local resources sustainably, employ local workers at decent wages, and serve primarily local consumers. It means becoming more self-sufficient, and less dependent on imports. Control moves from the boardrooms of distant corporations and back to the community, where it belongs.²¹⁷

²¹³ Community Food Security Coalition, *available at* http://www.foodsecurity.org/farm_to_college.html (last visited November 3, 2004).

²¹⁴ MICHAEL H. SHUMAN, *Going Local: Creating Self-Reliant Communities in a Global Age* (1998), 20.

²¹⁵ *Id.* at 202.

²¹⁶ SEABROOK, *supra* note 59, at 55.

²¹⁷ SHUMAN, *supra* note 214, at 6.

[95] What is to be emphasized here, however, is not so much the economic aspect of “going local,” but the *spiritual* aspect of it. The spirit comes from a set of relationships that then create a humane and sustainable economy. The relationships come first, then the spirit, then the economy. Necessarily there are public-policy implications to “going local.” Specifically, community spirit will develop from more use of the increasingly popular farmers’ markets,²¹⁸ and fish markets, from community supported agriculture,²¹⁹ from “buy-local”²²⁰ and “local building materials”²²¹ programs. In short, we must begin to develop, where feasible, community self-reliance.²²² Again, this is not something to be

²¹⁸ “The U.S. Department of Agriculture today reported that the number of farmers markets in the nation has increased nearly 80 percent since 1994, according to data published in the National Directory of Farmers Markets 2002,” U.S. Dept. of Agriculture, News Release 0413.02, *available at* <http://www.usda.gov/news/releases/2002/09/0413.htm> (last visited November 3, 2004).

²¹⁹ Community Supported Agriculture (CSA) “reflects an innovative and resourceful strategy to connect local farmers with local consumers; develop a regional food supply and strong local economy; maintain a sense of community; encourage land stewardship; and honor the knowledge and experience of growers and producers working with small to medium farms. CSA is a unique model of local agriculture whose roots reach back 30 years to Japan where a group of women concerned about the increase in food imports and the corresponding decrease in the farming population initiated a direct growing and purchasing relationship between their group and local farms. This arrangement, called ‘teikei’ in Japanese, translates to ‘putting the farmers’ face on food.’” This concept traveled to Europe and was adapted to the U.S. and given the name “Community Supported Agriculture” at Indian Line Farm, Massachusetts, in 1985. As of January 1999, there are over 1000 CSA farms across the US and Canada. Univ. of Mass. Extension Agency, *What is Community Supported Agriculture and How Does it Work?* at <http://www.umass.edu/umext/csa/about.html> (last visited November 3, 2004).

²²⁰ *E.g.*, Duncan Hilchey (Cornell University), *Buy-Local Marketing Programs Taking Root in New York*, (July 2000), at <http://hortmgt.aem.cornell.edu/pubs/smartmkt/hilchey7-00.PDF> (last visited November 11, 2002).

²²¹ *See e.g.*, Kelly Hart, *Building Today for Tomorrow*, at <http://www.greenhomebuilding.com/index.htm> (last visited November 4, 2004).

²²² We must also stop expecting (or wanting) our local, state, and federal politicians to “bring home the bacon” for us in the form of highway, dam, and bridge projects. LEACH, *supra* note 80, at 56: “Many people have recognized the dangers posed by more roads or by widening the

forced on the community: it will grow by itself, and we cannot ask our legislators to make it happen.

[96] Indeed what we should ask of our legislators and of ourselves is that our communities might in a way be left alone, left to develop a spirit that will inform our economic system with a sense of place from which we would rediscover the antique and sustainable virtues of conservationism and frugality. That will in time help de-sanctify The Market, and then we might develop truer, more authentic allegiances.

highways to promote more development, which invariably presages more retailing and then more highways, more trucks, and more congestion.” *Id.*