

## **Review: Economic Dynamics of Environmental Law**

By David M. Driesen

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David M. Driesen. *Economic Dynamics of Environmental Law*. Cambridge, MA: MIT Press, 2003. 278 pp. ISBN 0-262-04211-8 (trade cloth); 0-262-54139-4 (trade paper). US\$62.00 (cloth); US\$24.95 (paper).

Those of us whose knowledge of law is limited to lawyer jokes may be surprised to discover that law (both making laws and interpreting them) involves deep thinking about the nature of human existence and society.

The study of economics has been used in legal decision making, especially in antitrust cases, for over a hundred years. Economics carries with it its own assumptions, such as the notion that the world's resources are limited but human needs unlimited, resulting in the desire to maximize efficiency. Economics attempts to predict behaviors, which is where it can be helpful in consideration of legal theory. In this book Driesen uses his knowledge of economic and legal analysis to explain and define concepts often misused.

Though an efficiency-based economic analysis traditionally has been used in environmental law (whether a law makes efficient use of resources to accomplish its goal), today's climate is one of regulatory reform which favors "cost-benefit analysis" and economic incentives to achieve environmental goals. This climate of reform is part of a general movement claiming to make government be more like a free market private business. Government-as-corporation has led to such controversial practices as deregulation of essential utilities and services, and privatization of even our most sensitive government assets-anything from weather satellites, workers with access to agency confidential records, and machines that count our election votes.

Yet the question of which free market virtues should be emulated by government is not well analyzed, and Driesen offers suggestions. Instead of emulating only the business world's concern with short-term cost-savings, Driesen believes that the virtues to emulate should be an interest in developing new technology as a way to cut costs, and an ability to make decisions more quickly.

Those who oppose the economics-based movement typically argue for what Driesen calls the "static efficiency" model. But he points out that technological innovation, often occurring in response to new regulations as

companies strive to comply as cheaply as possible, arises from one of humankind's most inefficient endeavors: creativity.

In this book, Driesen advocates an "economic dynamic" analysis which places technological change in a central position. Such an analysis looks at the long term rather than the short term. This would be most useful to lawmakers and law interpreters seeking to influence society, as a whole, in the right direction.

This book describes the failings of the traditional static efficiency approach using, in part, material from Driesen's earlier writings, then elaborates on economic dynamic analysis. Driesen finds the chief difference between incentives society creates to introduce innovations enhancing our material well-being and those created for innovation protecting the environment, to be the slowness of the government regulatory decision making process. This process, he shows, lately has been slowed even further by additional cost-analysis requirements demanded by those who claim to seek to make our slowpoke bureaucracy more like peppy private industry.

Finally, Driesen notes that the current way of protecting our environment, regardless of which analysis one favors, is mortally slow given today's rapid rate of environmental degradation. He argues that government's decision making ability must be more dynamic, not only to address current known problems, but to anticipate problems of the future.

Once an attorney in the Natural Resources Defense Council and former Washington State assistant attorney general (not to mention holder of both a law degree and a master of music degree from Yale), Driesen now teaches law at Syracuse University and is a nationally recognized expert. The theory side of the book will be most intelligible to those in the fields of law or economics, but it is also packed with thought-provoking, original ideas. It should be required reading for all students, who will become the economists, lawmakers, business owners, inventors, and consumers of tomorrow.

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