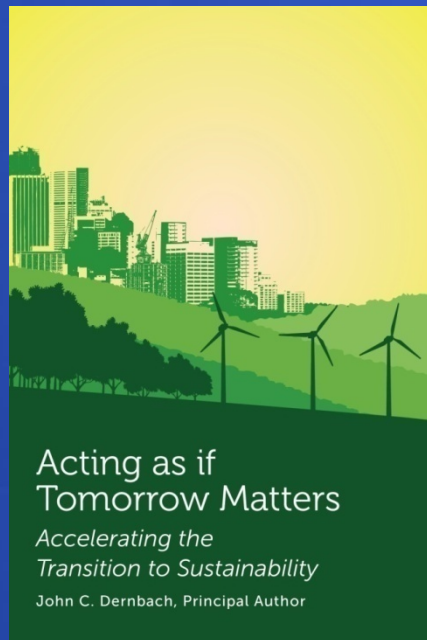


Sustainability and Law: Turning Risks into Opportunities



John Dernbach
Widener University Law School

University of Cambridge
Faculty of Law
15 November 2012

Overview

- 1. Sustainability*
- 2. U.S. Sustainability Efforts in Last Two Decades (briefly)*
- 3. Drivers for Sustainability*
- 4. Obstacles*
- 5. How to Accelerate Progress (and create opportunities)*

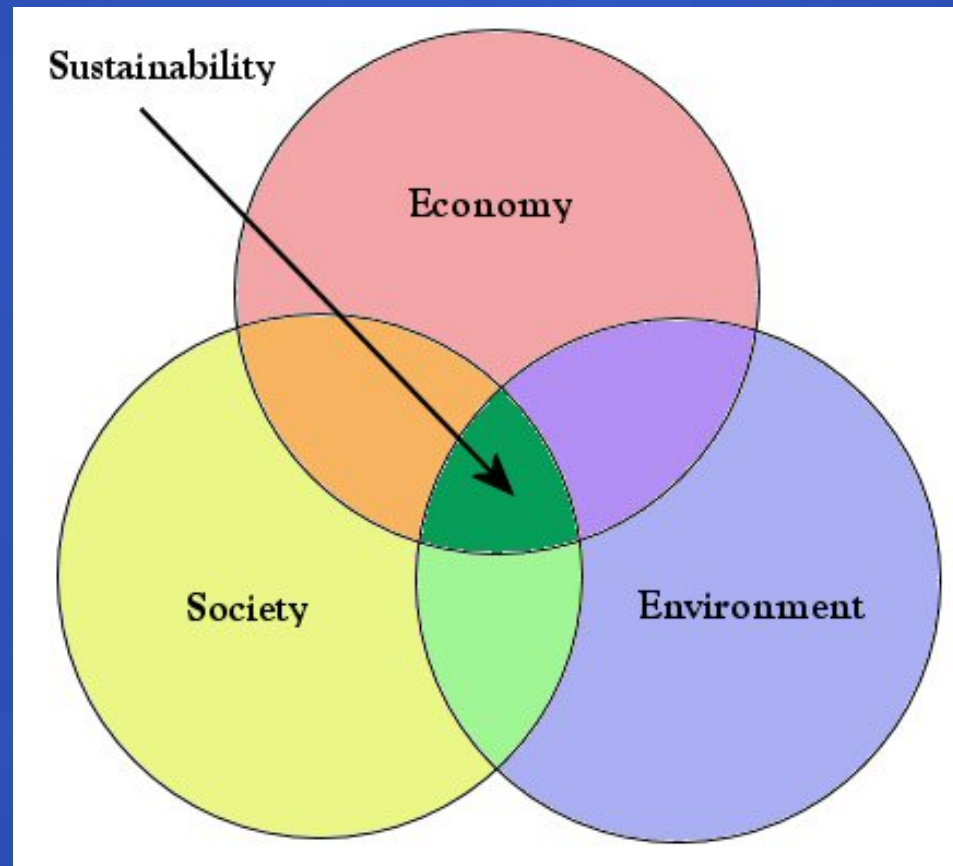


Two kinds of environmental protection activity in U.S.

- Environmental regulation—
 - More than four decades
- Emerging sustainability movement—
 - This is new, and much broader than environmental regulation



The focus of this emerging movement



Take Away Messages

- U.S. sustainability effort thus far is primarily bottom up—based on seizing opportunities and limiting risks.
- Stronger sustainability movement, involving all sectors, including business, industry, and law, is needed.
- Patterns in progress thus far suggest a workable framework for moving ahead.
- Sustainability creates opportunities for lawyers, law firms, and faculties of law—and this framework can assist in finding and creating them.
- While this framework is based on US experience, it may also be useful in the UK.



Plan of Book

- 51 Contributing Authors—experts in particular sustainability fields (e.g., sustainable agriculture, green building, sustainability in higher education)
- Four questions:
 - What progress was made in your field over past two decades?
 - What are drivers for progress?
 - What are obstacles?
 - How can we overcome obstacles and accelerate progress?
- Book is based on patterns in the answers.
- Collaborative process employed to refine and clarify patterns
- *Book provides an experienced-based framework or theory that any organization can use to make greater progress toward sustainability*

1. Sustainability

- *The iconic definition: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”*
 - *World Commission on Environment and Development, Our Common Future (1987)*

Where we are heading

- **Problems:**
 - *Widespread poverty/enormous unmet basic needs*
 - *Growing environmental degradation*
 - *Points of “no return” or irreversible damage are uncertain*

- **Systematic causes:**
 - *Increasing consumption of resources (e.g., energy, materials, water, land, biodiversity)*
 - *Population growth*

Development

PROGRESS:

- Peace & security***
- Economic Development***
- Social Development/ Human Rights***
- Supportive National Governance***

PRICE OF PROGRESS:

- Environment & Natural Resources***

Sustainable Development

PROGRESS:

--Peace & security

--Economic development

--Social development/human rights

--Environmental protection/restoration

--Supportive national governance

Thus, sustainable development is:

- *Development that--*
 - *Protects and restores the environment.*
 - *Eliminates and prevents large-scale poverty.*
- *Or: Ecologically sustainable human development*
- *Or: U.S. environmental and conservation law and practice applied to a wider range of resources and problems (e.g., climate change/biodiversity)*
- *Sustainable development is not the same as:*
 - *“Traditional environmentalism”*
 - *Sustainable growth*

Purposes

- *Development—*

- Freedom

- Opportunity

- Quality of Life

- *Sustainable Development—*

- Freedom

- Opportunity

- Quality of Life

For this and future generations

2. U.S. Efforts in Last Two Decades (briefly)

U.S. 20-year summary: Modest progress toward an increasingly distant goal

- Most substantial efforts include: green building, community sustainability, corporate sustainability, brownfields redevelopment, higher education
- Our environmental footprint has grown.
- Greenhouse gas emissions have grown in spite of growing evidence of:
 - The seriousness of the risks climate change presents
 - The fact that climate change is already occurring.

3. Drivers for Sustainability

Growing support in spite of mixed public opinion

- On one hand: Mixed opinion polling
- On the other hand:
 - More-supportive public opinion on specific issues
 - More supportive nongovernmental organizations and corporations
 - Support and advocacy by NGOs
 - Public-private partnerships
 - Market and peer pressure



Contrasting(?) Examples

- Business and industry
 - Corporate sustainability reporting
 - Voluntary environmental performance commitments
- Growing recognition of ethical/moral dimension
 - Environmental damage sooner or later also hurts people
 - Abstract “future generations” = one’s children/grandchildren or, for younger people, themselves

Growing support for sustainability in legal education

- Drivers outside legal profession
 - Clients
 - Universities and colleges
 - Nongovernmental organizations
 - Government
- Drivers within legal profession
 - American Bar Association as well as several state and local Bar Associations
 - Law firms and other law organizations
 - Current and prospective law students

More-sustainable decisions are easier to make and more attractive

- Better practices
- Attractiveness of more-sustainable alternatives
- Growing cost of, and limits to, business as usual
- More and better tools

Examples in law practice

- Growing interest by ABA Section on Environment, Energy, & Resources
- ABA-EPA Law Office Climate Challenge--
http://www.americanbar.org/groups/environment_energy_resources/projects_awards/aba_epa_law_office_climate_challenge.html
- ABA SEER Law Firm Sustainability Framework--
http://www.americanbar.org/groups/environment_energy_resources/projects_awards/model_law.html
- Pennsylvania Lawyers United for Sustainability:
<http://www.pabar.org/public/sections/envco/plusprogram.asp>
- Law Firm Sustainability Network (organized by ecoAnalyze)--
<http://www.ecoanalyze.com/resources/LawFirmSustainabilityNetwork.aspx>
 - Planning to launch American Legal Industry Sustainability Standards

Sustainability in seven core areas of legal education

- Curriculum & teaching
- Scholarship & research
- Buildings & operations
- Outreach & service
- Student life
- Institutional mission, policy, & planning
- External stakeholders

Growing use of private governance

- Certification standards:
 - Green building: U.S. Green Building Council—Leadership in Environmental & Energy Design (LEED)
 - Forestry: Forest Stewardship Council, Sustainable Forestry Initiative
- Goals for reducing greenhouse gas emissions, energy consumption, water use, etc.
- Voluntary reporting and auditing standards (e.g., Sustainability Reporting Guidelines by Global Reporting Initiative)
- Management systems

Lawmaking is not limited to environmental regulation

- Implementation of existing environmental laws
- New economic development laws for environmental sustainability
- Government financial or other support
- Other legal and policy tools



4. Obstacles

Basic challenges to departing from “business as usual”

- Existing habits
- Lack of urgency
- Uncertainty about alternatives

Unsupportive law and governance

- Laws that support and encourage unsustainable development
- Lack of substantial and bipartisan consensus
- Governance failures

Political opposition and growing influence of other countries

- Economic recession and budget deficit
- Political opposition
- Continuing adherence to conventional development



5. How to Accelerate Progress (and create opportunities)



More and better sustainability choices

- More credible and demanding standards
- Broader availability of sustainability options
- Better decision-making tools
- More use of behavioral tools



Or, put differently:

● Better Defaults

(thanks to Jake Reynolds, Director, Business and Policy Leaders Groups, Cambridge Programme for Sustainability Leadership)

Law for sustainability

- From a primary focus on environmental regulation to a focus on the law of sustainability
- Address climate change in a manner that corresponds to its seriousness



Disclosure & reporting

- Emissions reporting already required:
 - Toxics Release Inventory
 - Greenhouse gas emissions (required beginning in 2011)
- Areas where broader and more complete disclosure would help consumers and/or investors:
 - Sustainability labeling (FTC Green Guides are a start)
 - Corporate reporting of business risks and opportunities from climate change

Visionary and pragmatic governance

- Bipartisan narrative and strategy
- Improved public education and engagement
- Prioritize transformational technological research
- Willingness to discuss and act on hard issues

An American movement for sustainability

- Emerging movement already exists
- Should include middle 60-80% of public
- Include all sectors, all groups, that are supportive
- Why participate?
 - Higher quality of life
 - Sustainability is economically attractive
 - Sustainability is right thing to do



Summing Up

- There is emerging sustainability movement in the U.S., and it is primarily bottom up.
- Movement is growing and will continue to grow—in response to growing environmental pressure and population.
- Patterns in progress thus far suggest a framework for moving ahead—providing more and better choices, employing law on behalf of sustainability, and governing in both visionary and pragmatic ways.
- Sustainability movement, involving all sectors (and your organization), is needed.
- If challenges are great, so are opportunities, including opportunities for attorneys.



Questions?

Prof. John C. Dernbach

Widener University Law School

3800 Vartan Way

Harrisburg, PA 17106-9382

(717) 541-1933

(717) 541-3966 (fax)

jcdernbach@widener.edu

<http://ssrn.com/author=411559>

<http://www.johndernbach.com/>



Widener University