

# Creating a Legal Framework for Sustainability



*John Dernbach*  
*Widener University Law School*  
*Nebraska Water Law*  
*Conference*  
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Widener University

# 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)*

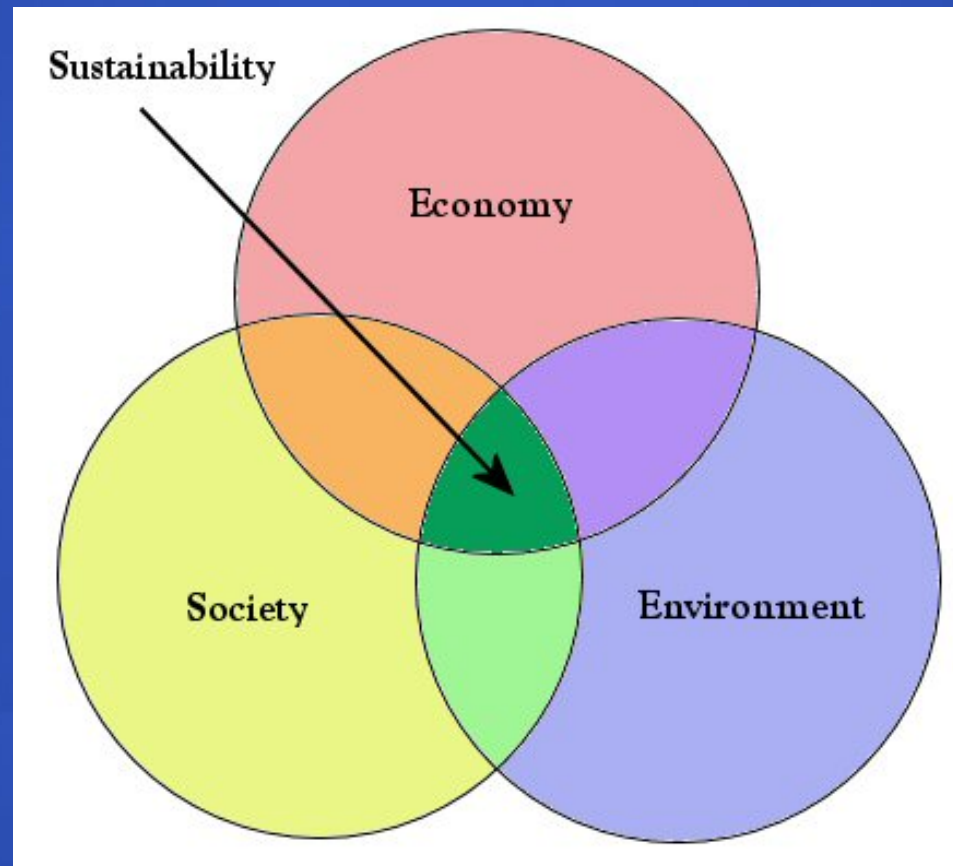


# Two kinds of environmental protection activity in U.S.

- 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.



# 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 or sector 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*



# Conventional Development

## ***PROGRESS:***

- Peace & security***
- Economic Development***
- Social Development/ Healthy Communities***

## ***PRICE OF PROGRESS:***

- Environment & Natural Resources***
- Living people who are harmed***
- Future generations that are harmed***

# 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

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## 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.

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# 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](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](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

# 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



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# 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



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# 5. How to Accelerate Progress (and create opportunities)



# A) 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)

# B) Law for sustainability

- From a primary focus on environmental regulation to a focus on the law of sustainability
- Repeal or modify laws that prevent or limit sustainability
- Address climate change in a manner that corresponds to its seriousness



# Laws for integrated decision making

- Procedural
- Substantive
  - Environmental or greenhouse gas reduction goals?
  - Resilience?

# Other attributes—law for sustainability

- Ecological Integrity
- Consistently foster sustainability at all levels of government
- Citizen participation and judicial review
- Metrics and monitoring



# 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

# Integrating sustainability into law practice

- Sustainability as better means of complying with (not needing to comply with) existing rules.
- Sustainability can provide more and better choices to clients
- ABA Task Force on Sustainable Development

# C) Visionary and pragmatic governance

- All governmental levels; private sector; nongovernmental organizations
- Bipartisan narrative and strategy
- Improved public education and engagement
- Prioritize transformational technological research
- Willingness to discuss and act on hard issues



# D) 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](mailto:jcdernbach@widener.edu)*

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

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



Widener University