

Closing Comments

*Kai N. Lee**

This was a stimulating and useful symposium. I want to thank the students of the *Ecology Law Quarterly* for all the hard, invisible work they did to realize the potential of this gathering. My one regret is that I did not hear enough from students. I wondered how what we were saying, oftentimes in grand terms, would connect with the work those students will do after they graduate from law school, and how it might affect what they do ten and thirty years later.

The symposium reminded us again to what degree science and technology set the agenda for human deliberations. This became apparent in the twentieth century;¹ before then it was a wild notion to think that new knowledge could be so compelling that governments and societies might use it to guide their own futures.²

There was little empirical controversy in the symposium discussions. Professor Guruswamy's reminder that there is lively controversy about climate change science was really the only significant example, in the day and a half of discussions, about the content of the science. Yet those attending this symposium were mostly inclined toward environmentalism. Accordingly, one ought to be suspicious of apparent empirical agreement. Professor Guruswamy's introduction of a minority view on climate science stands for a whole set of discussions that go on outside of Berkeley and outside of this occasion.

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1. DANIEL BELL, *THE COMING OF POST-INDUSTRIAL SOCIETY* (1973); JOHN KENNETH GALBRAITH, *THE NEW INDUSTRIAL STATE* (1967); EDWARD TENNER, *WHY THINGS BITE BACK* (1996).

2. See LANGDON WINNER, *AUTONOMOUS TECHNOLOGY* (1977).

We also found in the symposium discussions an emerging consensus on the major environmental challenges of the twenty-first century. Several people talked about the great integration that lies ahead in the next two generations. Professor Clark put this forcefully when he described the challenge of meeting human needs while respecting the fragility of ecosystems.³ This is the challenge of bringing humans back into the landscape, in our thinking and doing, on terms that accommodate other species as well. One might also recall Professor Harte's warning against complacency, against thinking that humans know enough to control nature.⁴ Notwithstanding the enormous gains in scientific understanding during the twentieth century, scientists agreed on these broad conclusions—that we do not know enough to control nature, and that we have yet to integrate natural and social science. These challenges have the practical implication that neither control nor prediction is a feasible approach to the future. In response, one finds scientists turning to values to ground discussions of the trajectories ahead.⁵

Beginning with Professor Sax's stimulating paper,⁶ and throughout the symposium, land use and property were prominent and recurrent themes. Professor Wiener commented on the concerns of the insurance industry and reminded us that climate change affects property. One of the closing questions, which addressed the link between agriculture and climate change brought us back to the themes that Professor Matson introduced: the importance of multiple interacting effects, such as the way global climate change can reinforce the damage done by local pollutants. Such interactions are unexpected and lie beyond the scope of the research now being done on both pollution and global climate. But they can be both significant and surprising.⁷

Despite the fact that science normally creates more questions than answers, we also heard analyses grounded in

3. William Clark, *A Transition Toward Sustainability*, 27 *ECOLOGY L.Q.* 1021 (2001).

4. John Harte, *Land Use, Biodiversity, and Ecosystem Integrity: The Challenge of Preserving Earth's Life Support System*, 27 *ECOLOGY L.Q.* 929 (2001).

5. See BD. ON SUSTAINABLE DEV., NAT'L RESEARCH COUNCIL, *OUR COMMON JOURNEY: A TRANSITION TOWARD SUSTAINABILITY* (1999) [hereinafter, *OUR COMMON JOURNEY*] (articulating goals for a sustainability transition).

6. Joseph L. Sax, *Comment on John Harte's Paper, "Land Use, Biodiversity, and Ecosystem Integrity: The Challenge of Preserving Earth's Life Support System"*, 27 *ECOLOGY L.Q.* 1003 (2001).

7. Pamela Matson, *Environmental Challenges for the Twenty-First Century: Interacting Challenges and Integrative Solutions*, 27 *ECOLOGY L.Q.* 1179 (2001).

important historical continuities. Professor Falcon⁸ described the struggle for adequate nutrition despite the confining bonds of poverty. Professor Wiener's paper explained how governments borrow from existing and recent policies,⁹ an aspect of what Professor Sax felicitously called the common law of public administration.¹⁰

The symposium discussion also described policy failures, which have been abundant in environmental governance. Policy failures are really opportunities for the future, however. Governments will be challenged to craft more insightful, more durable arrangements, even though the conditions which will govern these arrangements will be unclear until they are forged through dispute and negotiation. These conditions paradoxically create significant opportunity for today's law students. Lawyers are good at negotiation, even though law schools may not be particularly good at developing those skills. Lawyers are also good at trying to figure out how not to get mad, but to get even. In the dynamic, uncertain world we inhabit, such pragmatism advances the search for a sustainable economy.

There are opportunities beyond policy, too, as Spencer Beebe's fascinating examples showed.¹¹ The instances he described arise from the fragmentation and rigidities of government, inflexibilities that make it possible to improve things in quite unorthodox directions. Beebe's examples drew powerfully from the cultural values of indigenous peoples, and they illuminated the kinds of economic development desired by people in rural communities. He described what one might call "liberal arts entrepreneurialism"—taking a wider view of human need and inventiveness than the usual business school approach and finding genuine value there, value that releases human potential in ways that both make money and enrich lives.

Let me close with a comment about legal education.¹² Listening to the scholars who spoke at the symposium, I thought

8. Walter P. Falcon, *Comments: Searching for Sustainability*, 27 *ECOLOGY L.Q.* 1163 (2001).

9. Jonathan B. Wiener, *Something Borrowed for Something Blue: Legal Transplants and the Evolution of Global Environmental Law*, 27 *ECOLOGY L.Q.* 1295 (2001).

10. Sax, *supra* note 6 at 1011.

11. Spencer B. Beebe, *Integrative Solutions: Current Success and Future Trends*, 27 *ECOLOGY L.Q.* 1239 (2001).

12. Michael Sawyer, the symposium editor for *Ecology Law Quarterly*, discussed at the meeting the strengths and weaknesses of a legal education to prepare environmental decisionmakers for managing environmental conflicts in the new century. His remarks are not published.

how legal education is greatly enriched at Berkeley by people like John Harte and Louise Fortmann, who are not part of the legal faculty, as well as by law professors such as Joseph Sax, Harry Scheiber, and David Caron. The elective structure of the legal curriculum provides rich opportunities. It is often observed that legal education is too narrow and is blind to many options— but how fortunate we are to be at one of the world's great universities. It is in the reflective corners of schooling that ideas like the sustainability transition¹³ need to be debated, so that these ideas have a chance to become part of the mainstream much as environmental law has asserted itself as part of mainstream American and international society over the past generation.

Here is the symposium volume, in which the things that people were fumbling at are presented in crisp prose that underrepresents the degree of uncertainty we felt. Reader, you missed that, and the fun we had, too.

13. OUR COMMON JOURNEY, *supra* note 5, at 21 (introducing the concept of a "sustainability transition").