

## Oregon State Bar Sustainable Future Section

Photo: J. Michael Mattingly

# The Long View

## Sustainability in Education: Is there a need for a general text on “sustainability law?”

By Amy Bushaw

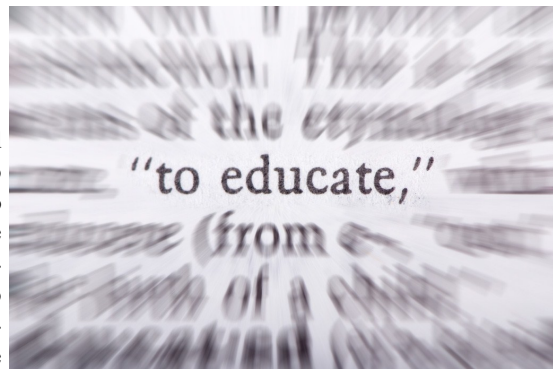
Oregon’s lawyers, law professors and law schools have a rare opportunity to model educational programs related to sustainability law. Law school is where many students begin to shape their professional identities. Early exposure to the integration of principles of sustainability into the practice of law may have transformative power.

Ideally, law school provides law students with the foundation they need for a lifetime in the law. It introduces students to the theoretical building blocks of the law, exposes them to essential doctrines, and helps them develop the practical skills they will need to effectively and ethically represent their clients. At many law schools, however, the concepts, legal rules and practices that weave sustainability into the law are essentially ignored in conventional coursework.

Law schools and professors who are otherwise interested in integrating sustainability into the existing curriculum might highlight the lack of suitable teaching materials as one obstacle. Oregon’s lawyers, law professors and law schools could change that.

There are those who might question the very notion of “sustainability law”. Some lawyers have a long-standing interest in sustainability issues; others have just recently developed a passion for the topic. For many, however, the interest was a purely personal one. Although they believed in environmental protection and sought to reduce their own use of natural resources, the connections between principles of sustainability and their own legal practices were far from clear.

This is changing. Over the last decade or so, an increasing proportion of lawyers have represented clients seeking to contribute to a more sustainable future. In the process of so doing, some lawyers have wrestled with new legal issues; others have adapted traditional legal principles to new contexts. Although its outlines remain fluid, a distinct body of legal theories, doctrines and practices has emerged that can fairly bear the label “sustainability law.” Oregon lawyers have



been at the forefront of conceptualizing and developing this body of law.

It is rare for a law school to recognize sustainability law as a field of study, separate, for example, from traditional environmental law, land use law, or international law courses. Again, however, Oregon law professors and law schools are leaders in providing law students opportunities to study sustainability law as an integrated yet distinct subject. All three Oregon law schools now offer courses, seminars or

programs related to sustainability, broadly defined.

Concise and appropriate teaching materials, however, remain in short supply. None of the three major legal publishers currently offers a general text dedicated to sustainability law and policy. Several specialized texts allude to the notion of sustainability – texts on international law, land use law or environmental law, for instance, often introduce students to the concept of sustainability or sustainable development – but the treatments tend to be abbreviated and narrow in their focus. Few texts in business or tax law make more than passing mention of legal issues particular to sustainable business enterprises. Of course, law professors who teach specialized courses often compile their own teaching materials. Inherently, sustainability law is interdisciplinary. As a result, professors teaching in conventional doctrinal areas may find it time-consuming and difficult to develop appropriate teaching materials, particularly to the extent it is necessary to incorporate legal concepts from disciplines outside their own areas of expertise. Oregon’s law schools have the benefit of professors who have long been interested in sustainability and who are in a position to collaborate with like-minded colleagues with varied areas of technical expertise. Law professors teaching at the Oregon law schools can also draw the talents of local lawyers who are highly sophisticated in their understanding of sustainability issues and who have a wealth of relevant practice experience. Not all law professors enjoy the same luxuries.

Information on sustainability, broadly speaking, is omnipresent.

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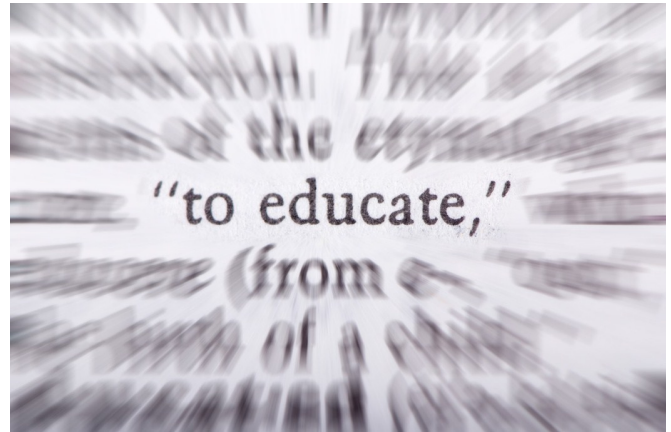
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### Sustainability in Education (continued)

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Likewise, there is an increasingly large body of work that explains, advocates or critiques isolated technical issues related to sustainability and the law. Neither is particularly well adapted to law school study. Law students struggle to connect general principles of sustainability with the legal issues they study in their conventional coursework. They question how sustainability will be relevant to their future as practicing lawyers, especially if they anticipate practicing outside traditional environmental, land use or international law fields. The general literature on sustainability does little to help them make those connections. At the other end of the spectrum, technical materials on energy tax credits, securities disclosures of climate change risk, or regulatory control of ecosystems markets, for example, are largely inaccessible to students who have not yet studied the basics of tax law, securities law or environmental regulation. There is a need for brief, accessible and thought-provoking teaching materials on sustainability law to bridge the gap.

Ideally, teaching materials would introduce students to sustainability law at three levels: the jurisprudential level, the doctrinal level and the practical level. Students who have no exposure to sustainability principles generally would benefit from a general introduction, but excellent teaching materials would also highlight the central themes that unite the inherently interdisciplinary field of sustainability law. At the doctrinal level, excellent teaching materials would provide at least the broad outlines of the legal principles that are mostly likely to concern those clients who seek to forward a sustainable future. They would do so at a level that would be accessible to the non-specialist, but yet would expose students to essential legal principles. Teaching materials could also explore some of the skills and challenges endemic to a legal practice that focuses on sustainability. For instance, because sustainability almost always requires consideration of the needs of competing stakeholders, the teaching materials could emphasize collaboration skills. They could address, for instance, strategies for fostering public-private partnerships, or for conducting difficult conversations in high-stake environments.



Oregon's lawyers, law professors and law schools have been among the first to recognize the important connections among sustainability and the law. Several have published highly useful and effective practice materials, theoretical articles and treatises related to legal aspects of sustainability. Perhaps the time is now ripe for those interested in advancing legal education in this area to develop and disseminate teaching materials on "sustainability law." ■

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