

**Oregon State Bar
Sustainable Future Section**

Photo: J. Michael Mattingly

The Long View

In My Opinion: Can Existing Environmental Laws Meet the Challenges of Sustainability?

By Amanda Righi

In April 2012, at the Sustainability and the Law Symposium, sponsored by Washington Lawyers for Sustainability, Professor William Rodgers gave a presentation examining whether our current laws meet the challenges of sustainability. The symposium was focused on finding pragmatic solutions to complex problems within the context of sustainability and law. Professor Rodgers is the Stimson Bullitt Professor of Environmental Law at the University of Washington and is recognized as a founder of environmental law. This article was inspired by his presentation.

After forty years with our environmental laws, we are not meeting the challenge of fostering a healthy and ecologically vibrant Earth. Legal definitions of sustainability, the dominant economic paradigm focused on growth, and the unwillingness to implement the drastic changes needed to halt environmental destruction are all contributing to the collapse of the Earth's environmental services and resources. It is not enough to have laws on the books that purport to protect the environment. We must train the current and next generation of attorney's to push back against interests that strive to dilute our environment laws. Through the courts we have the best opportunity to effect the change necessary to avert the impending environmental disaster.

In 1987, in what is now generally recognized as the definition, the Bruntland Commission defined sustainability as "[d]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs."ⁱ Conceptually, sustainable development responds to the conflict between environmental health and economic growth by "adding environmental protection to the goals of traditional development."ⁱⁱⁱ

In the context of U.S. environmental laws, sustainable development has different meanings and interpretations. For example, the Multiple Use Sustained Yield Act (MUSY) requires that use of renewable resources be at a level that ensures no "impairment of the productivity of the land."ⁱⁱⁱ Similarly, the Alaska National Interest Lands Conservation Act (ANILCA) provides that Alaska native resources must be protected with no unnecessary destruction.^{iv}

Though these definitions may provide comfort to those that wish to preserve our natural resources, we must ask ourselves: what does sustainability really mean in the face of the dominant economic para-

digim focused on growth at all costs? Population growth and the insistence that economic growth is the panacea for the world's problems are on a collision course with the earth's dwindling natural resources. As early as 1992, 1,600 scientists, including 102 Nobel laureates, from around the world issued a report that found that human activities inflicted irreversible harm on the natural world and warned that "human beings and natural world are on a collision course."^v More recently, the Millennium Ecosystem Assessment Synthesis Report found that population growth and economic activity had the most impact on the ecosystem services, consumption of which was above sustainable levels.^{vi}

Our current conception of sustainability is not meeting the needs of our dwindling resources. When Wal-Mart is viewed as exemplar of sustainability simply because it sells "sustainably harvested" fish or organic produce, our understanding of sustainability has been so weakened as to become almost meaningless. As William Ophuls states:

"Making the deck chairs recyclable, feeding the boilers with biofuels, installing hybrid winches and windlasses, and every other effort to "green" the Titanic will ultimately fail. In the end, the ship is doomed by the laws of thermodynamics and by implacable biological and geological limits that are already beginning to bite."^{vii}

Continuing down this path may lead to the collapse of our fisheries, irreversible effects of climate change, and a change in the Earth as we know it.

Collapse is, as described by Jared Diamond, where "societies have undermined themselves by damaging their environments...deforestation and habitat destruction, soil problems...water management problems, over-hunting, overfishing, effects of introduced species on native species, human population growth."^{viii} Indeed, we have already seen the effects of the collapse of certain fisheries. The 1970s collapse of the anchovy fishery is still being felt in California today, where the productivity levels have not reached where they were in the early 20th century.^{ix} This gives us a taste of the long-term effects of species collapse, which will be multiplied across species if we continue down our current path.

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Traditional, neo-classical economists claim that consumer buying habits are the answer to preventing environmental destruction. In this view, “all economic decisions are driven by the demands of consumers, who then become responsible for the entire direction of the economy. All stages of economic activity are aimed simply at final consumption, which drives the entire process.”^x This dominant economic paradigm, which promotes growth above everything else, is in direct conflict with the need to preserve the environment and our natural resources.

In fact, reversing the degradation of 15 of 24 ecosystem services requires drastic changes in law, policy, and action. These actions must recognize the supremacy of the protecting our natural resources and place the needs of the environment above the needs of corporate interests and consumerism. Litigation is a key tool to ensure that environmental laws meet the challenges of sustainability. As we have seen in the last 40 years of our environmental laws, the laws are not enough by themselves. As Aristotle said, “The best laws, though sanctioned by every citizen of the state, will be of no avail unless the young are trained by habit and education in the spirit of the constitution.”^{xi}

Amanda Righi has over 10 years of experience in environmental law and policy, working in government agencies, non-profit organizations and the private sector. She recently earned her J.D. from the University of Washington School of Law where she was the Editor in Chief of the Washington Journal of Environmental Law & Policy and published an article on marine hydrokinetic projects entitled Rough Seas for Renewable Energy: Addressing Regulatory Overlap for Hydrokinetic Projects on the Outer Continental Shelf. Amanda has a M.A. in Environmental Policy from American University and a B.A. from Macalester College.

Notes:

ⁱ World Commission on Environment & Development (Brundtland Commission), *Our Common Future* 43 (1987).

ⁱⁱ John C. Dernbach, “Synthesis” in *Stumbling Toward Sustainability 1* (Environmental Law Institute, Wash., D.C.) 1004 pp., 43 contributors).

ⁱⁱⁱ Multiple-Use Sustained-Yield Act of 1960, 74 Stat. 215, as amended, 16 U.S.C. § 528 et seq.

^{iv} Section 810 of ANILCA, 16 U.S.C. § 3120.

^v World Scientists’ Warning to Humanity (1992).

^{vi} The Millennium Ecosystem Assessment Synthesis Report (2005).

^{vii} William Ophuls, *Plato’s Revenge: Politics in the Age of Ecology* xi, 13 (2011 MIT Press, Cambridge, Mass.).

^{viii} Jared Diamond, *Collapse: How Societies Choose to Fail or Succeed* 6 (2005 Viking Penguin)

^{ix} Collapse Group Report, ch. 22, 2007 Costanza at 447, 450.

^x 2010 Ecological Rift at 383.

^{xi} *Politic*, V, 9, 1310 a 12-17.