



The Long View

45 Years of Earth Days—A Critical Overview

By Brian Tokar

The 45th anniversary of the original Earth Day is here, and many elder environmentalists are still nostalgic for the heady days of the 1970s, when 20 million people hit the streets. Although Earth Day 1970 was largely a staged event, it was also the largest outpouring to date of public sentiment on any political issue. It drew attention to environmentalism as a social movement in its own right, perhaps for the first time, and it set the stage for the passage of our most ambitious environmental laws. These laws helped clean up waterways that were turning into sewers, save the bald eagle and other species from the ravages of DDT, and clear the air, which in the early 1960s was so polluted that breathing was hazardous to health in some cities.

The planet has also suffered widespread ecological damage since 1970 and, in the words of renowned climatologist James Hansen, climate change is the “predominant moral issue of this century.” Yet Earth Day is no longer a day of visible protest against corporate exploitation.

As Naomi Klein, British journalist Johann Hari, and others have reported, this is partly the result of increasing collaboration between corporate-styled environmental NGOs and the world’s most polluting corporations. Around climate policy, this collaboration took the form of an alliance, known as USCAP: the U.S. Climate Action Partnership, formed in 2007, with members such as Duke Energy, DuPont, GE and GM, along with corporate-friendly environmental groups. USCAP led the way in pushing for the “market-based” approach to climate legislation known as “cap-and-trade.” Its main result would have been a vast, highly speculative market in carbon credits and offsets, with gigantic payoffs for corporations and precious little benefit for the climate. Cap-and-trade legislation in the U.S. thankfully faltered in early 2010 under pressure from both right wing anti-tax fanatics and market-skeptical environmentalists.

How did such an alliance come about? Throughout the 1970s and eighties, represent-

(Continued on page 2)

Also IN THIS ISSUE:

Just a Theory on People and Climate Change

By Steve Harvey

Case Note: New York Court Rules that Chimpanzees Must Have Duties to Be Considered “Persons”

By Lyndsay A. Byrne

A Survey of Oregon Groups Taking A Grass-roots Approach to Climate Change: Part One

By Ann McQuesten

Oregon Public Policy Initiatives—Responding to Climate Change

By Tuck Wilson

SECTION NEWS: New Partners in Sustainability

BOOK REVIEW:

“The Conscience Economy: How A Mass Movement For Good Is Great For Business” by Steven Overman

By Max Miller

atives of the largest national environmental groups became an increasingly visible and entrenched part of the Washington political scene. As the appearance of success within the system grew, organizations from the National Wildlife Federation to the Environmental Defense Fund restructured and changed personnel so as to more effectively play the insider game. The environmental movement became a stepping stone in the careers of a generation of Washington lawyers and lobbyists, and official environmentalism came to accept the role long established for many regulatory advocates: that of helping to sustain the smooth functioning of the system. Environmentalism was redefined, in the words of historian Robert Gottlieb, as “a kind of interest group politics tied to the maintenance of the environmental policy system.”

This shift in the character of the most nationally visible environmental groups spelled the end of bold new policy initiatives on behalf of the environment. An environmental mainstream adapted to “insider” politics proved incapable of sustaining even a moderate Congressional consensus in favor of environmental protection, and ultimately helped prepare the stage for the anti-environmental backlash of the 1980s and beyond.

By 1990, most mainstream politicians claimed the mantle of environmentalism. So it was not a huge surprise when the celebrations of the twentieth anniversary of Earth Day in 1990 became the coming-out party for a more overtly corporate outlook. Earth Day celebrations became a virtual extravaganza of corporate hype, and “green consumerism” was the order of the day. The overriding message was simply, “change your lifestyle”: recycle, drive less, stop wasting energy at home, buy better appliances, etc. And while the national Earth Day organization turned down over \$4 million in corporate donations that didn’t even meet their rather flexible criteria, celebrations in major U.S. cities were supported by notorious polluters such as Monsanto, Peabody Coal and Georgia Power. Everyone from the nuclear power industry to the Chemical Manufacturer’s Association took out full-page advertisements in newspapers and magazines proclaiming that, for them, “Every day is Earth Day.” The now-familiar greenwashing of Earth Day had begun.

Some activists responded by organizing more politically challenging local Earth Day events of their own, focusing on local environmental struggles, urban issues, the nature of corporate power and a host of other problems that were systematically excluded from most official events. Left Greens and Youth Greens in the Northeast initiated a call to shut down Wall Street the Monday following Earth Day, and were joined by environmental justice activists, Earth-First’ers, ecofeminists, New York squatters and many oth-

ers. In the early morning of April 23rd, 1990, just after millions had participated in polite, feel-good Earth Day commemorations all across the country, hundreds converged on the New York Stock Exchange with the goal of obstructing the opening of trading on that day. Juan Gonzalez, in the following day’s *New York Daily News*, wrote: “Certainly, those who sought to co-opt Earth Day into a media and marketing extravaganza . . . almost succeeded. It took angry Americans . . . to come to Wall Street on a workday and point the blame where it belongs.”

The 1990 Earth Day Wall Street Action reflected the flowering of grassroots environmental activity that had emerged throughout the 1980s, partly in response to the compromises of the big environmental groups. The popular response to toxic chemical pollution—launched by the

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mothers of Love Canal—grew into a nationwide Environmental Justice movement that exposed the disproportionate exposure of communities of color to toxic hazards. Others joined in solidarity with indigenous peoples’ movements around the world that had arisen in defense of traditional lands, responding to the new onslaught of neoliberal development policies. During the lead-up to Earth Day 1990, a hundred environmental justice activists signed a letter to the eight largest national environmental organizations

challenging their increasing reliance on corporate funding and tepid support for communities of color.

Today, on Earth Day, the green marketing of products is alive and well, from Priuses to luxury “ecotourism.” Corporations view concerns about climate change and ecological degradation as little more than marketing opportunities. Indeed, one Dutch study of consumer behavior suggested that ethical consumer choices are made chiefly for the added social status they confer. “Researchers found consumers are willing to sacrifice luxury and performance,” for example by buying a Prius instead of an SUV, “to benefit from the perceived social status that comes from buying a product with a reduced environmental impact,” *The Guardian* reported.

Today, right-wing pundits depict environmentalism as an elite hobby that threatens jobs, while many progressive environmentalists cite the potential for “green jobs” to help reignite the economy. Both views are missing a central element of what has made environmentalism such a compelling alternative worldview since the 1970s: the promise that reorienting our society toward a renewed harmony with nature can help spur a revolutionary transformation of society. This outlook has helped inspire antinuclear activists to sit in at power plant sites, forest activists to sustain

(Continued on page 3)

long-term tree-sits, and environmental justice activists to stand firm in defense of their communities. It is at the center of a new generation of resistance to the expansion of fossil fuel infrastructure today. With climate chaos looming on the horizon, such a transformation is no longer optional. Our very survival now depends on our ability to renounce the status-quo and create a more humane and ecological way of life.

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*Brian Tokar is the director of the Vermont-based Institute for Social Ecology (social-ecology.org) and a lecturer in Environmental Studies at the University of Vermont. Many of the themes in this article are addressed more fully in his books *Earth for Sale* (South End Press, 1997), and *Toward Climate Justice* (New Compass Press, Revised edition 2014).*

Just a Theory on People and Climate Change

Editor's note: Steve Harvey, a Philadelphia lawyer, recently took a bold step to create a new nonprofit to challenge the American legal profession—A Call to the Bar: Lawyers for Common Sense on Climate Change. We invited Steve to explain what moved him to action. If you wish to respond for publication, please submit your response to osbsustainablefuture@gmail.com.

By Steve Harvey

I have a theory about people who understand and are willing to act on the urgent problem of climate change.

I should note that I am using the word “*theory*” in the sense of conjecture, not in the scientific sense of comprehensive explanation supported by a vast body of evidence. The difference matters because some people have criticized evolution, for example, as “just a theory,” when in reality it’s as well accepted among scientists as gravity. This lesson came home to me in 2005 as one of the lawyers for the successful plaintiffs in *Kitzmiller v. Dover Area School District*, 400 F. Supp. 2d 707 (M.D. Pa. 2005), which featured a phony conflict between evolution and “intelligent design.” I point out this possible confusion about the word “*theory*” because I fear that misunderstanding of science may be part of the reason why the public is not crying for an immediate solution to climate change, just as scientific misunderstanding led to widespread misinformation about evolution.

My theory is that people who love nature and learning about nature are much more likely to grasp and be willing to act on the threat to the natural world caused by anthropogenic climate change.

I don’t have a science background, and I don’t think I’m smarter or better educated than most lawyers, but I get climate change. I understand and accept that the vast majority of scientists concur that (1) greenhouse gas emissions, primarily CO₂, have created a blanket in the atmosphere that prevents the Earth’s natural cooling process, (2) if emissions continue at their current trajectory we can expect warming of between 4.7 and 8.6°F by the end of this century, and (3) this will mean irreversible changes to the climate with catastrophic effects on the natural world, including human society.

It’s a horrific scenario and one that is probable. But only if we do not reduce CO₂ emissions.

Lots of smart people say they get it too. But how can anyone get it and not do anything about it? Most people don’t write to their elected officials, don’t give money to any of the numerous organizations working on it, don’t go to rallies, don’t educate themselves, and don’t even lie awake at night worrying about it.

If my theory is correct, it might be because nature has not played an integral role in most peoples’ lives. I was fortunate to grow up surrounded by natural beauty in the Berkshires Hills of western Massachusetts, and I return there frequently.

(Continued on page 4)

I love nature, up close and personal, and that love of nature drives me to understand and accept that it is gravely threatened.

The actions of the Oregon legal community further support my theory. No legal community in this country has been more active and supportive on climate change, as exemplified by Oregon Lawyers for a Sustainable Future and the Oregon State Bar through its Sustainable Future Section.

Of the 50 states, why is the Oregon legal community providing leadership on this important issue? I hazard to guess that Oregonians in general are more willing to understand and take action on climate change because they live in and near great natural beauty. Just looking at photos on the Internet is enough to make one want to move there or at least visit.

What sets the Oregon program apart is that it goes far beyond sustainable office practices. It also encompasses “the role of law and the legal profession” in creating “new legal frameworks” to protect “the rights of future generations . . . in facing the daunting challenges of climate change” (<http://osbsustainablefuture.org/about/>).

This is crucial.

Lawyers play an important and influential role in society. We should take a leadership role. It’s a moral imperative. As one lawyer (a New Yorker) recently said: “If lawyers remain absent from that call for change, or if we continue to view this issue as one where lawyers can responsibly advocate for the status quo, we will have failed our nation as surely as those who defended ‘separate but equal’ as the law of the land.” *New York Law Journal* (May 2, 2014).

Virtually everyone who studies the problem of climate change agrees that we must reduce greenhouse gas emissions. There will be the need for many other measures, but mitigation of CO₂ emissions has to be the start. Economists generally agree that the best way to do that is through carbon pricing, either a carbon tax or cap and trade program (I support the carbon fee and dividend proposal endorsed by Citizens Climate Lobby (<https://citizensclimatelobby.org/>) as the most effective and feasible carbon pricing alternative).

I recently founded a nonprofit organization called A Call to the Bar: Lawyers for Common Sense on Climate Change. We seek to enlist the support of lawyers and the legal community for immediate government action on climate change, specifically carbon pricing. We want lawyers throughout the nation

to join us in calling for this common sense solution and we want bar associations to take the lead in educating lawyers, law students, and all citizens on the need for carbon pricing as a primary solution to climate change.

The ultimate goal of A Call to the Bar is to convince elected officials to enact carbon pricing and take further measures so that we can continue to benefit from normal climate patterns to the greatest extent possible. The Oregon legal community cannot do it alone. We need a groundswell of support from lawyers everywhere.

“Virtually everyone who studies the problem of climate change agrees that we must reduce greenhouse gas emissions.”

You are free to disagree with my theory about why some lawyers and some people are more likely to understand and act on climate change. But I hope you will agree that as lawyers, we are uniquely situated to fight climate change. A Call to the Bar is my attempt to organize action in the legal profession aimed at winning that fight.

■ *Steve Harvey is the owner of the Steve Harvey Law LLC in Philadelphia, Pennsylvania, where he represents clients in a variety of civil litigation matters. You can find out more about A Call to the Bar: Lawyers for Common Sense on Climate Change at <http://www.calltothebar.org>.*

New Partners in Sustainability



The Sustainable Future Section would like to recognize the following new Partners in the Oregon State Bar Partners in Sustainability Program. These Oregon law offices have shown commitment to operating sustainably and provide valuable leadership to others as law offices throughout the State move toward office practices that conserve resources and reduce waste.

Law offices ready to become Partners can find information on the Program at: www.osbsustainablefuturesection.org.

Any questions regarding the Program may be directed to osbsustainablefuture@gmail.com.

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New York Court Rules that Chimpanzees Must Have Duties to be Considered “Persons”

By Lyndsay A. Byrne

In *The People of the State of New York ex rel. The Nonhuman Rights Project, Inc. v. Patrick Lavery*, 124 AD 3d 148, 998 NYS 2d 248 (2014), the Supreme Court of New York, Appellate Division held that a chimpanzee is not a person entitled to the rights and protections afforded by the writ of habeas corpus. The case involved a chimpanzee, Tommy, whose owners were allegedly keeping him in solitary confinement in a small shed at a used trailer dealership in New York.

On appeal from the trial court’s ruling that the term “person” under the New York rules of civil procedure does not include chimpanzees, the Court noted that there is no common law supporting that an animal could be considered a person

for the purpose of habeas corpus relief and such relief has never been provided to any nonhuman entity. However, this did not end the inquiry as the Court went on to consider the fact that legal personhood has historically been defined in terms of both rights and duties, an idea based in social contract. Because chimpanzees cannot bear any legal duties, submit to societal responsibilities, or be held legally accountable for their actions, the Court concluded that chimpanzees are not “persons” for the purpose of habeas corpus protections.

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Oregon Public Policy Initiatives – Responding to Climate Change

By Lyndon “Tuck” Wilson

Responding to continuous urgent warnings from Oregon scientists that alarming accumulation of carbon in the earth’s atmosphere—now measured at over 400 ppm CO₂—may jeopardize much of what makes the world habitable and Oregon the special place we love, a collaboration among Oregon environmental and business groups over the last decade has secured legislation making Oregon a leader in combating climate change.

Notable achievements include a requirement that utilities generate 25 percent of their electric power from renewable sources, i.e. wind, solar and other technologies, by 2025.

The Energy Trust of Oregon, established by the Oregon Legislature in 1999 and funded by a public purpose charge, has successfully promoted energy efficiency and the transition to electricity generation from renewable sources. Addressing transportation emissions, the Clean Fuels Program reinvigorated this session will reduce carbon intensity from gasoline and diesel fuels by 10 percent over the next 10 years.

To focus and guide state climate policy, in 2007 the Legislature established the Global Warming Commission and the goal of reducing Oregon’s emissions by 75 percent by 2050.

While existing policies have produced a reduction in state carbon emissions, unfortunately Oregon is not on track to achieve the outcomes scientists and the legislature indicate will be needed to avoid significant temperature and sea level rises.

Pursuant to a Pacific Climate Action Plan, our west coast states—California, Oregon and Washington—and British Columbia are collaborating on ambitious initiatives to demonstrate that significant carbon reductions are achievable. These collaborators seek to motivate other states and the federal government to be stronger partners with other leading emitters, such as China and Europe, in the global effort to constrain climate warming.

Leading economists agree that strategies to price carbon, thereby harnessing market forces, will most effectively hasten utilities’ transitions and influence consumer choices. Early indications from California’s cap and trade program and British Columbia’s carbon tax reflect that policy goals are being achieved. Similar results are reported from the Northeast states and numerous countries across the globe.

In Oregon, continuing collaboration among business, labor and the environmental community, having already secured Oregon’s status as a climate leader, is underway to promote and achieve carbon pricing in Oregon.

With initial impetus from Oregon Environmental Council, Oregon League of Conservation Voters and Climate Solutions, an umbrella organization has been launched. Renew Oregon will provide leadership, focus and coordination for hundreds of organizations and thousands of Oregonians throughout the state in the quest for new, effective climate policies. As described on its website, the West Coast region has a “unique opportunity to demonstrate powerful climate and clean energy leadership. The region—the fifth largest economy on the planet—can dramatically cut climate pollution, build a strong clean energy economy, and establish working, replicable models of how to limit and price carbon pollution that can build toward national action.”

The process of translating policy concepts into legislation, defending them upon adoption, and understanding Oregon’s regulatory process involves the skills and experience common to many Oregon lawyers.

As we approach April 22, Earth Day, we can hope the Sustainable Future Section and its emerging Task Force on Climate Change can serve as an avenue for lawyers interested in lending their time and talents to work with those in the movement to address the greatest challenge of our time.

■ *Lyndon “Tuck” Wilson, Lewis & Clark Law 1967, has served many major capital projects, primarily transit.*

A Survey of Oregon Groups Taking A Grassroots Approach to Change: Part One

By Ann McQuesten

This year. As we recognize the 45th anniversary of Earth Day, there is little room for debate that climate change will be one of the most significant challenges we'll face going into the next 45 years.

Later this year, the United Nations will meet in Paris with the goal of reaching a universal agreement on climate change, and legislators at the state and federal levels across the U.S. are currently pursuing climate-related legislation. As momentum grows around the world, *Long View* readers may wonder what is being done locally and how they can get involved. The following is the first of a series of brief profiles on grassroots organizations with a local presence that we will publish in the *Long View* this year. Although we do not endorse any particular organization, we hope that this will be a useful resource for readers wishing to get involved in local organizations working in the area of climate change.

350PDX is the Portland, Oregon chapter of 350.org, a global grassroots movement comprised of climate change activists focused on promoting action by world leaders to address climate change. Specifically, 350PDX is working to educate the public on the need to leave 80% of the known worldwide fossil fuels underground in order to avoid catastrophic climate change effects. Its primary campaign to accomplish this goal involves persuading institutional investors, including the State of Oregon, to divest ownership of securities issued by 200 corporations that hold the vast majority of listed coal, oil and gas reserves. <http://350pdx.org/>.

The Oregon Chapter of the Sierra Club is working to pass legislation that will transition Oregon utilities completely off of coal and onto clean renewable energy by

2025. In addition to its legislative undertakings, the Sierra Club is engaged in resource conservation initiatives and hands-on activities throughout Oregon aimed at promoting conservation of the Oregon natural environment through a combination of legislative, administrative, legal, and electoral processes. <http://oregon2.sierraclub.org/chapter>.

Climate Solutions, an organization founded in Washington with offices in Olympia and Seattle, also has an Oregon presence and works on a number of clean energy initiatives along the West Coast. Through its West Coast Climate Campaign, Climate Solutions is working closely with elected officials in British Columbia, Washington, Oregon, and California to transition away from fossil fuels. Its primary policy objectives include limiting harmful emissions by capping and pricing carbon, securing commitments from utilities to phase out coal, and adopting clean fuel standards to address climate pollution caused by transportation. <http://climatesolutions.org/>.

Environment Oregon is involved in efforts to pass legislation this year that would require the transition to clean energy sources in the next ten years. In conjunction with Oregonians for Renewable Energy Progress, which advocates for a feed-in tariff, Environment Oregon is focused on making Oregon regulations more welcoming to solar and wind energy production, with the ultimate goal of bringing ten times the current level of solar power to Oregon. <http://www.environmentoregon.org/>.



Book Review

“The Conscience Economy: How A Mass Movement For Good is Great For Business” by Steven Overman

By Max Miller

In 1970, the captain of conservative Chicago School economics, Milton Friedman said, "there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud." *The New York Times Magazine*, September 13, 1970. In *The Conscience Economy*, Steven Overman argues that something very dramatic happened in America about the time Friedman wrote those words, and it has changed everything. College campuses became fueled by a newly permissive and experimental sense of revolution against the established order. Civil rights, feminism, the environmental movement, and gay pride emerged as big issues.

Overman has another theory that he attributes to mainstream sociology. He posits that most big ideas take about 40 years to move from the margins to the mainstream. He combines these two thoughts to establish that the seeds of change planted in the '70s have now matured into a global-conscience culture that translates into a conscience economy. When you realize that Overman was the cofounder in the '90s of *Wired Magazine*, it is not surprising that he believes that the root and catalyst of this great change is connectivity. Overman says none of us are born with a conscience, and if we live our life in solitary confinement we will never develop one. Conscience emerges from connectedness and awareness, and the world is more connected now than it has ever been. Accessibility to knowledge and information compels people to act conscientiously. Just as 40 years later, the digital age has disrupted every facet of the business world Milton Friedman wrote about, the conscience economy is turning upside down Friedman's view of corporate social responsibility.

Overman throws another bit of recent history into the mix. He points out that in the 1990s, social responsibility took a wrong turn. Making a fast buck

was driving the economy. A business plan consisted of putting "dotcom" in your name. The goal was to vest early, get rich, and get out. This plan was effectively wiped out with the burst of the dotcom bubble.

Overman says that businesses today view themselves as equally answerable to more constituencies than ever before. He believes that environmental protection, social impact, and customer delight have taken their rightful place next to profit as business goals. Business is no longer a massive engine churning out product and profit. The world has changed. Economic drivers are no longer predetermined or entrenched. Product development, talent management, marketing, sales, and distribution are no longer the keys to operating a business. Value is not intrinsic; it is based on relationships and commonly-held beliefs. As our values change, the manner in which we engage in trade changes too. This is not your father's capitalism. Society expects transparency, authenticity, democracy, collaboration, empowerment and fairness. We demand

(Continued on page 9)

that businesses promote human rights, health, and a thriving natural environment.

There are, of course, many economists and business critics that believe that left unregulated, business can't possibly serve the social and environmental needs of the world because carbon output, for instance, will always be an externality unless it is regulated. One problem with Overman's position is that he would like to believe that having all businesses doing well by doing good is inexorable, but he also feels compelled to exhort business founders, leaders, and their consumers to stimulate the movement. He is in one paragraph certain, and in the next merely hopeful. He vacillates between declaring the conscience economy is here now, and

predicting that it is on the horizon. The reader is left wondering whether his perceived mass movement for good is sufficient to create the conscience economy, or whether we need something more. If you need a dose of optimism about where a connected business world might be headed, give *The Conscience Economy* a read. But let's not break our arms patting ourselves on the back.

■
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Oregon State Bar
Sustainable Future Section

The Long View

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