

## NEW DIRECTIONS IN ENVIRONMENTAL LAW: A CLIMATE OF POSSIBILITY

*Lisa Heinzerling\**

*On April 2nd, 2011, the Yale Environmental Law Association, together with a diverse group of students, academics, and practitioners, gathered for the first conference of the New Directions in Environmental Law series. Attendees critically examined environmental law as a field and imagined new directions for bringing law to bear on the changing scope and nature of environmental challenges. Reflected in the conference theme, A Climate of Possibility, such student-driven efforts embody an aspiration to look beyond logjams and political divides and to open up new value-driven possibilities in environmental law. Lisa Heinzerling, the recipient of the conference's inaugural award, embodies the spirit of this endeavor. In her keynote address, reproduced below, Heinzerling urges the lawyers of today and tomorrow to look beyond traditional narratives to address the underlying laws and institutions that produce the infrastructure of the polluting state. Heinzerling began her speech with a quote from "Goose Music," a passage from Aldo Leopold's A Sand County Almanac, after the conference organizers presented to her a commemorative edition of the book in recognition of her inspiring work.*

*And when the dawn-wind stirs through the ancient cottonwoods,  
and the gray light steels down from the hill over the old river sliding  
softly past its wide brown sandbars – what if there be no more  
goose music?<sup>1</sup>*

*Aldo Leopold*

If you do nothing else of an evening, turn to "Goose Music" and just read it, and if you have any doubt about whether you should be doing, or do, environmental law, I just challenge you to read this chapter without thinking that it is an important thing.

I want to start just by thanking the students who put this conference together. You are smart, dedicated, patient, and stubborn. You are undeterred by obstacles. You will make excellent environmental lawyers.

I want to thank Yale Law School for sponsoring this conference, especially with its unusually intense focus on *students*, and its generosity in bringing together so many students from so many different schools.

It is fitting that, as U.S. environmental law enters its fourth decade, and as the original fabric of our environmental laws is showing its age, Yale Law School should sponsor a conference on new directions in environmental law. For this is one of the places where it all began. Some 40 years ago, a group of smart, fearless, and dedicated law students — much, I'm thinking, like all of you — formed the Natural Resources Defense Council ("NRDC"). In doing so they helped launch the modern environmental movement and modern environmental law. It is excellent to see the Law School devote some of its considerable resources and prestige to the possibility of again charting a new course for environmental law.

I was struck this morning as well when people mentioned the connection between the creation of the NRDC and the civil rights movement in the

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<sup>1</sup> ALDO LEOPOLD, A SAND COUNTY ALMANAC 233 (Ballantine Books 1970) (1949).

1960s. I think we might miss a moment of opportunity if we did not somewhere today note that around the world there are social movements and protest movements happening and creating change with a speed we would not have thought possible months ago. I do not think it is too much of a stretch to look at how quickly things are changing around the world, and think and hope that things could change in environmental law, too, even though now they may seem stubbornly resistant to it.

Yale and the nation's other most elite law schools should — if I may say so — be eager and proud once again to forge new territory in environmental law. For the territory is vast and varied and exciting. In fact, environmental law has been the source of many of the most significant and interesting developments in American public law in the last four decades. Many of these developments happened as a result of interaction between academics and practitioners. People in nonprofit groups and at the agencies actually do read law review articles. They are hungry for legal arguments that will help them; they are also hungry for someone out there reminding them to be doing what they are doing. It matters a whole lot.

The administrative law casebooks alone attest to the centrality of environmental law: *Chevron*,<sup>2</sup> *Vermont Yankee*,<sup>3</sup> *American Trucking*,<sup>4</sup> *Calvert Cliffs*,<sup>5</sup> *Ethyl Corporation*,<sup>6</sup> *Overton Park*.<sup>7</sup> One could easily teach contemporary administrative law with environmental cases alone. Environmental law has also brought us procedural and substantive innovations that would be the envy of any field: the citizen suit, the impact statement, emissions trading, right-to-know, the precautionary principle, environmental justice, and more. Beyond this, environmental problems have challenged and enriched our approaches to the basic common-law concepts of duty, causation, and injury. One could, as they say, build a life around environmental law. It is so rich that you can stay in it forever and not do the same thing twice.

With this history, there should be every reason to hope that the next generation of environmental lawyers — that is, all of you — will enjoy the same success and bring the world the same good things as the lawyers who 40 years ago started us down this path.

But times are hard. I believe you realize that. I believe you invited me here partly because you realize that, and you want — maybe need — assurance that starting a career in environmental law in this country at this time is not a fool's errand.

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<sup>2</sup> *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837 (1984).

<sup>3</sup> *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519 (1978).

<sup>4</sup> *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457 (2001).

<sup>5</sup> *Calvert Cliffs' Coordinating Comm. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109 (D.C. Cir. 1971).

<sup>6</sup> *Ethyl Corp. v. EPA*, 541 F.2d 1 (D.C. Cir. 1976).

<sup>7</sup> *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971).

It is not a fool's errand. It is honorable, hopeful, rewarding, and stimulating work. But it's not easy, and I would be less than honest if I didn't mark the challenges you'll face doing this work.

Before I do that, let me offer two thoughts, from two unlikely sources — the movies *A League of Their Own*<sup>8</sup> and *Patton*.<sup>9</sup> I realize the choice of movies dates me in this crowd; so be it. I hope you'll see these thoughts are meant to stiffen your spines even in the midst of the challenges I am about to describe.

Here is a thought from *A League of Their Own*. The movie is about the first female professional baseball league. Tom Hanks plays the coach. After a failed baseball play, Tom Hanks is yelling at one of the female baseball players. She begins to cry. At which point the Tom Hanks character turns on his heel and screams: "Are you crying? Are you *crying*? There's no crying. There's no crying *in baseball*." Apply that to environmental law. When you're tempted to complain, or whine, or cry, just remember: there's no crying in baseball.

A second thought is from the opening scene in *Patton*. George C. Scott plays General Patton. The scene shows Patton giving a speech to troops heading off to fight in the war. At one point, Patton says: "Now there's another thing I want you to remember. I don't want to get any messages saying that 'we are holding our position.' We're not holding anything. The United States Army does not hold its position. We advance. We advance constantly and we're not interested in holding onto anything except the enemy." It's the same for environmental lawyers. We aren't holding our position. We don't hold our position. We advance.

There's no crying in baseball. We don't hold our position; we advance. Remind yourself of these things as you contemplate the challenges we now face as environmental lawyers. We don't have time to cry, and holding our position is not enough.

One of the great challenges, of course, is the severity of the environmental problems themselves. Climate change is upon us, and in some ways moving faster than scientists had predicted not long ago. My children are 12 and 15. By the time they are my age, the world may well face an ice-free Arctic in the summertime. Glacier-free Alps. Oceans bereft of their coral reefs. And on down the sad list.

Climate change is an environmental problem of the first order in its own right. But it will also make nearly every other part of the mission of environmental protection harder.

As if to remind us that climate change is not the *only* bad consequence of our unwise energy policy, the last year has brought us, in the Gulf, the largest oil spill this country has ever seen. It has brought us, through the marvels of hydrofracturing, tap water that bursts into flames. And it has brought us the continuing calamity at the nuclear reactors in Japan.

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<sup>8</sup> A LEAGUE OF THEIR OWN (Columbia Pictures 1992).

<sup>9</sup> PATTON (Twentieth Century Fox 1970).

One must wonder: What's next? Locusts?

At the same time as the environmental imperative confronts us as never before, our leaders seem as reluctant as they have ever been to do something about it. When Congress is not hopelessly paralyzed, it is actively hostile. The anti-environmental element in the legislature lurches between denying altogether that environmental problems exist and saying that in any event they are too expensive to fix. Only two years ago, the U.S. Environmental Protection Agency ("EPA") had just come back after what one might call a long break. Yet already the agency appears to be in at least partial retreat. It has signaled some scaling back of its greenhouse gas permitting program. It has noted that an important rule on coal combustion waste has been delayed. Just this week it issued a rule leaving to *states* the job of figuring out how to deal with the massive water intake structures used by power plants to cool their equipment — structures that kill billions of fish. On top of all this — perhaps even related to it — the President the other day proposed an energy policy that places new energy *development* at its center, with only infrequent and elliptical references to why the "clean" in "clean energy" is important.

And, not to be left out, the Supreme Court has taken up a case in which it is altogether possible that it will hold that common-law claims based on injuries from climate change are "political questions" not subject to judicial review.<sup>10</sup>

This is only a partial rendering of the challenges we face. But you get the idea.

In the midst of all this, what might "new directions in environmental law" look like? Can we see our way clear to "a climate of possibility"?

I believe we can. To do so, we must enlarge our vision about what "environmental law" is, to include the basic laws and structures that lead to the moment when environmental law as we have understood it for decades is activated. We must find, reveal, and take on those laws and structures that make that moment itself seem natural, foreordained, the product of a market operating freely and well — and that, therefore, make environmental law as we have come to understand it seem unnatural, contingent, intrusive on free and well functioning markets.

To make my point adequately, we need to back up a bit and revisit some of the history of environmental law and academic debates surrounding it.

All of the major modern environmental laws were passed in a single decade, from 1970 to 1980. Certainly, there were important natural resource statutes before then. And there were some moves in the direction of the modern laws before the 1970s, including several fairly narrow statutes on air and water pollution. But the conventional story — which in this case I think is true — is that our major environmental laws were all passed in a remarka-

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<sup>10</sup> See Brief for Petitioners at 46–52, *Am. Elec. Power Co., Inc. v. Connecticut* (No. 10-174), available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/03/AEP-et-al-v-Connecticut-et-al-No-10-174-US-Brief-for-Petitioners.pdf>.

ble wave in the 1970s. On New Year's Day in 1970, President Nixon signed the National Environmental Policy Act ("NEPA") into law. In December 1980, President Carter signed the Superfund law. NEPA and Superfund are bookends in a decade that saw the passage of laws such as the Clean Air Act, Clean Water Act, Toxic Substances Control Act, Resource Conservation and Recovery Act. The statutes passed in that single decade, even though most have since been amended, provide the basic framework for what we know as "environmental law" today.

You can see this in environmental law in the academy. Environmental law courses vary, but the vast majority take these statutes as their predominant text.

It is tempting, then, to hearken back to the 1970s as a time when environmental law enjoyed political support from all sides. And certainly that decade saw bipartisan support we do not enjoy today. But it is also true that the ink was not even dry on these laws when they came under attack as drags on the economy, spurs to inflation, and more. President Nixon campaigned on environmental issues, but then also set to work trying to narrow the laws that were passed. He tried to impound the funds Congress provided to implement the Clean Water Act. His "Quality of Life" reviews were the precursor to the OMB-led interagency reviews that squeeze the life out of many environmental rules even today.

The point is not to diminish the tremendous successes of the 1970s or even President Nixon's part in them. The point is simply to remind us that environmental law has always been hard. It has never been easy.

At a recent conference at Harvard celebrating EPA's 40th anniversary, many people noted the progress EPA had achieved in controlling pollution. They also suggested future progress would be harder, that the "easy" problems had come first. But I think it is better if we realize these problems were never easy. Banning DDT was not easy. Getting lead out of gasoline was not easy. Better, when facing the problems we see today, to understand that people before us who enjoyed some success were also acting in the face of severe pressure.

It was not just politicians who created that pressure. Almost as soon as the basic environmental laws were passed, legal academics began carping about the laws that had passed. The Clean Air Act's National Ambient Air Quality Standards were blind to costs and thus thoroughly irrational. The Clean Water Act's aspiration of ending pollution discharges to our rivers, lakes, and streams within a decade ignored the fact that it is not *zero* pollution we want, but *optimal* pollution instead. The technology-based requirements of laws aimed at reducing pollution in our air, water, and land were too prescriptive, too rigid, too "command and control." They were even, some seemed to suggest, un-American.

Here, the savior on all counts came from a surprising quarter: the answer, many said, was simple: just make environmental law act more like the market! Instead of cost-blind statutes, have cost-benefit statutes — statutes requiring agencies to do analyses trying to make environmental goods as

much like ordinary market goods as possible. Instead of command and control, create new markets — like markets in emission permits — that provide continuous incentives to do better. Never mind that the market helped get us into trouble in the first place. The new environmental markets — hypothesized for purposes of cost-benefit, created in fact for purposes of trading — would surely do better.

I do not want to re-engage in this debate today. Instead, I want to point out how narrow it was. Here folks were, chiding environmental law for not acting enough like a free and rational market — while all the while, environmental law was sitting atop a massive structure of laws and institutions that channeled markets in irrational directions and made pollution — *a lot* of pollution — the nearly inevitable result of the combined operation of this structure and of markets in response to it.

I could cite multiple examples, but I will rest with a handful.

The most obvious are the gargantuan subsidies to highly polluting industries. Take fossil fuel subsidies as one example. A recent study from the Environmental Law Institute concluded that U.S. subsidies to the fossil fuel industry came to about \$72 billion in a six-year period, about \$12 billion a year.<sup>11</sup> Another recent estimate puts the annual total for fossil fuel subsidies at something closer to \$14 billion a year.<sup>12</sup> This same study estimated annual subsidies to the nuclear power industry of about \$1–2 billion, not even including loan guarantees. And it pointed to “hidden subsidies” like liability limits made famous by the BP oil spill and military spending aimed in part at securing energy supplies around the world.

The importance of seeing subsidies in a clear light came home to me some years ago when a friend of mine who is an economist recounted a conversation he had had with a member of this law faculty. The faculty member was giving my friend a ride to the Amtrak station. Along the way, the law professor scolded my friend for riding Amtrak: how can you ride Amtrak, the law professor asked, when it is so heavily subsidized? My friend asked how the law professor could stand to drive on the *highway*, since *it* was so heavily subsidized. The ride to the station became rather quiet after that.

Thus even subsidies that should be obvious are not always so. And there are much more subtle incentives for pollution than highway funds. Zoning codes encourage sprawl with all of its attendant environmental harms. Utility regulators effectively prevent the retirement of aged power plants through “must-run” contracts aimed at protecting the reliability of the energy supply. A whole suite of laws — tax laws, safety laws, etc. — basically invented the SUV. The Eighth Amendment — of all things — protects multinational corporations from punitive damages awards that are, in the

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<sup>11</sup> ENVTL. LAW INST., ESTIMATING U.S. GOVERNMENT SUBSIDIES TO ENERGY SOURCES: 2002-2008 6 (Sept. 2009) available at [http://www.elistore.org/Data/products/d19\\_07.pdf](http://www.elistore.org/Data/products/d19_07.pdf).

<sup>12</sup> Jeffrey Leonard, *Getting the Energy Sector Off the Dole*, WASHINGTON MONTHLY, Jan.–Feb. 2011, available at <http://www.washingtonmonthly.com/features/2011/1101.leonard-2.html>.

Court's view, just too high. Even fire codes come into the picture by determining the width of streets — and hence, in an important but subtle way, affecting the walkability of neighborhoods.

I could go on. I hope I have said enough to convince you that “environmental law” — as in, most broadly, law that affects our environment — consists of much more than laws like the Clean Air Act and Clean Water Act. And I hope you can see that standard environmental laws like the Clean Air Act and Clean Water Act come at the end of an enormous chain of legal and institutional events. And, because those events are usually subtle or even hidden, pollution seems like the inevitable product of freely and rationally operating market forces.

Nothing could be further from the truth, of course. As we can see, the “infrastructure of pollution” is, from top to bottom, a product of legal rules and structures that create huge momentum in favor of polluting activity by the time it arrives at EPA's doorstep.

Let me give one more extended example. Nucor Corporation has proposed to build an industrial iron facility in St. James Parish in Louisiana. The facility is the first to receive a PSD air permit since EPA's permitting requirements for greenhouse gases kicked in on January 2 of this year. Before receiving the permit from Louisiana, the company had already solidified plans to use \$600 million in tax-exempt bonds to help finance the facility. It had struck a deal to receive \$30 million in cash as part of Louisiana's incentive package. The state would compensate the company for the \$60 million it had paid to purchase the site for the facility. Millions more in financial rewards awaited Nucor if it proceeded with plans for additional phases of the project. While we await EPA's final word as to whether it will object to the permit Louisiana has granted, we should ponder the legal architecture that has brought us to this point, and wonder how much EPA's new, supposedly “fearsome” rules on greenhouse gases can do in the face of a project that is all dressed up and ready to go.

This kind of set-up makes “environmental law” as we have come to understand it — laws on clean air, clean water, clean land — seem both too small and too big. Too small, because it cannot hope to derail projects and programs that have already have enormous legal and institutional momentum behind them. By the point when the coal-fired power plant comes to EPA for its air permit, it is too late to do anything but limit the damage — and even that, only so much. We do not ask: should this be a coal plant? Much less do we ask: should there be a power plant at all?

But the lesson of Mary Shelley's *Frankenstein*<sup>13</sup> is not: go ahead and make the monster. Just make sure to put him in a dress shirt, trim his fingernails, and give him a curfew. The lesson is: *don't make the monster*.

In addition to being too small, environmental law is too big, because it comes too late, at the moment when everyone is ready to pack up and get on their way.

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<sup>13</sup> MARY SHELLEY, *FRANKENSTEIN* (1818).

Far from being the 500-pound gorilla, or the regulatory juggernaut, EPA and its laws sometimes operate in the system as a whole as a kind of wistful afterthought. “Gee, maybe it would be a good idea if this power plant, this refinery, this gold mine – weren’t *quite* so dirty. . . please. . .?”

Perhaps even worse, the simultaneous smallness of environmental law (in comparison to the legal and institutional forces surrounding it) and bigness in the political imagination make it possible that “environmental law” as we’ve come to define it actually legitimates the enormous but largely invisible legal structure making pollution not only possible but inevitable. If we have the Clean Air Act and Clean Water Act, why would we need to reform our energy subsidies and zoning codes? How many times have you heard something like: “The water must be safe to drink — otherwise EPA wouldn’t allow it?”; “The air must be safe to breathe; EPA is on the job.”

The very presence of law — seemingly comprehensive, intrusive, costly law — makes us assume all is well. But in fact, environmental law is rather small compared to the real levers of power — deep legal and institutional structures encouraging environmentally destructive activities.

I do not actually believe that environmental law as we have generally understood it legitimates pollution. And I do not believe that it has no power. But I do believe it may distract us from the larger levers that lie underneath the surface and make the work of environmental law much harder than it should be.

Maybe you don’t want to hear this, but I think this is where you all come in. We need you to re-imagine environmental law, to think bigger and earlier, to see and to reveal the large yet hidden structures that lead *this* power plant to be built *there*, and to be fired with coal, and to operate around the clock. And, upon revealing them, we need you to go after them.

This is hard work. It’s not politically popular, yet. It requires sleuthing; you must dig to find these structures, you cannot simply look them up in an environmental law casebook. It is in some sense “retail” rather than “wholesale”; there are often many different laws that combine to encourage an environmentally destructive activity.

Let me give you one concrete example of the kind of reimagining you might do; a very simple example. Imagine a strawberry. You look at that strawberry and you think: “I wonder where that strawberry came from. I wonder how many miles it took to get here. I wonder if there were any pesticides applied. I wonder what the conditions of the workers are who brought that strawberry to me. I wonder what kind of truck it was brought to me in. I wonder what the subsidies for agriculture in the state in which it was grown are like.” You just try to spin out all of that so that even as simple an item as a humble strawberry can bring to you the kind of thinking I am encouraging. Bring it all the way back and think about what led that strawberry to be here on your plate at this time.

Take something else: imagine that light in this room. The whole infrastructure of energy is in a way made to make us think it is invisible, there’s no pollution in it, it’s clean, it’s lovely. (The fixtures are lovely as well.)



And yet, if you draw it all the way back, you find a whole legal infrastructure that led that light to come here now. I am asking you to re-imagine environmental law in the biggest possible way. Make it bigger, not smaller.

Again, this is hard work, but the rewards would be great. This work would aim at the core of the problem and not the periphery. It would naturally enlist members of other social movements who should be our allies; the broader the lens through which we see environmental law, the larger the number of friends I think we will find.

At this point, I want to anticipate two questions you might have for me. First, will this new environmental law still be “law”? And will it be “environmental”? The answers are yes and yes.

Law is at the heart of the pollution infrastructure I have described. Tax law is law, zoning codes are law, public utility law is law, and so on. Even in my re-imagining, law — understanding law, analyzing law, reforming law — remains at the core of what environmental lawyers will do.

One could also reasonably ask whether environmental law can remain “environmental” when environmental concerns are neither the purpose nor the target of the specific laws in question. Here, I believe what is most important is the vision the lawyer carries with her of what she is trying to do.

Even where traditional environmental laws are concerned, sometimes it is hard to keep the actual environmental harm in mind. One can move so quickly from the environmental harm to available technologies, the affordability of available technologies, the potential alternatives, ensuring consistency with prior rules, and so on, that by the time one is done with a rule or a case, one might barely remember what the whole thing was about. I am not saying this is good or healthy; but it can happen.

It will happen even more easily if the laws with which the environmentalist is concerned are not self-consciously “environmental” laws. It will become, in this setting, even more critical to keep in mind what one is fighting for — not only to keep a sense of high purpose and dedication to the task, but also to know when compromise is unacceptable or a line has been crossed.

Thus it is important, here, to remind ourselves what environmental law, at its largest and best, tries to do. Thinking about this question requires us to think about the nature of environmentalism itself.

To me, environmentalism consists of a set of ten or so core commitments or beliefs.<sup>14</sup> Only some of these are openly embraced by environmentalists today. But if we are thinking about new directions in environmental law, we probably should think hard about whether the direction we are considering takes us where we want to go.

The most obvious commitments of the environmentalist are a concern with human health and life, a concern for nonhuman species, and a love of natural beauty. These concerns and this love extend further into the future

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<sup>14</sup> This discussion draws, with some adjustments, from Lisa Heinzerling, *Minnesota Wild*, 87 MINN. L. REV. 1139, 1141–43 (2003).

than we can see; future generations, the future of species, the long-term fate of the planet, are all preoccupations of the environmentalist. This is almost certainly the set of values captured by the claim "we're all environmentalists now." Who would disdain, in principle, the commitments I've described so far?

Other commitments are probably equally uncontroversial, at least in principle, but they're not as obviously associated with environmentalism. These are: a desire for freedom — freedom to choose our risks, freedom to know what threatens us, freedom to swim without fear in our rivers, lakes and streams. Freedom to play outside on a hot summer's day without wondering whether the "code red" alert really means we should be inside instead. Also a longing for justice — justice in the distribution of risks and in the punishment for misdeeds. Last, an embrace of community — making catastrophic harms, harms that are visited upon a whole community at once, worse than diffuse harms. These values — freedom, justice, community — are deeply held and widely shared commitments in the American legal system. They are part of the reason why we have *environmental* laws, rather than laws that just tell us to maximize the bare number of lives saved or illnesses avoided. What makes these commitments more controversial than the first set is not that the commitments themselves are contested (so much). It's more that sometimes we forget that it's *freedom* — and not just health — that's threatened when our children are told to stay indoors on a summer's day.

The last set of commitments may be the least widely shared. It includes a belief in the superiority of the natural over the artificial, a commitment to frugality, and an attitude of humility. The frugality of the environmentalist comes from an aversion to waste, a desire to do more with less. The humility of the environmentalist comes from an appreciation of the limits of our own knowledge. These commitments, together, define environmentalism at its most subversive. Anti-consumerist, distrustful of experts who claim to know it all, satisfied that enough can be enough — these are attitudes profoundly upsetting to the prevailing ethos. As John Galbraith observed at the dawn of the modern environmental movement,

Nothing would be more discomfiting for the economic discipline than were men to establish goals for themselves and on reaching them say, "I've got what I need. That is all for this week." Not by accident is such behavior thought irresponsible and feckless. It would mean that increased output would no longer have high social urgency. Enough would be enough. The achievement of the society could then no longer be measured by the annual increase in Gross National Product. And if increased production ceased to be of prime importance, the needs of the industrial system would no

longer be accorded automatic priority. The required readjustment in social attitudes would be appalling.<sup>15</sup>

No wonder the industrialist fears the environmentalist committed to these attitudes; no wonder the mainstream environmentalist eschews them. The industrialist does not want the laborer to stop work on Wednesday nor the consumer to stop shopping on Monday. The mainstream environmentalist does not want to let on that personal sacrifice might be in the works if we are to save the planet and ourselves. But without guides like frugality and humility, the other commitments of the environmentalist — to health, to life, to freedom — are hard to translate into terms that bring environmental problems home to us all.

These are the commitments that make environmental law rich and distinctive. They are the commitments that, to me, make it worth pursuing. They are the commitments that make it possible — imperative — not to cry, but to advance. Always advance.

#### TO CLOSE

We find ourselves, as environmentalists, in hard times. Environmental problems worsen while politicians delay and deny. The environmental laws we have called upon to protect us come at the end of a long chain of other laws that encourage the very environmentally destructive behavior the environmental laws aim to prevent. These laws are intricate and pervasive and backed by the most powerful interests in the world. They are, despite their influence and pervasiveness, almost invisible to the naked eye. They make pollution seem natural, inevitable, the product of freely functioning markets. Your charge is to find them, reveal them, and take them on.

The wonderful organizers of this conference have a hope that you will all remain connected once you leave here, that the conference will help create a network of like-minded environmental lawyers who will pursue new directions in environmental law. I hope this, too. I hope you will fan out from here, fan out across the country, in search of the laws and institutions that sit at the core of our environmental problems.

I wish you the very best in your common endeavors.

Thank you.

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<sup>15</sup> JOHN KENNETH GALBRAITH, *THE NEW INDUSTRIAL STATE* 319 (1967).

