



1971

Symposium on Law and the Environment: Introduction

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Recommended Citation

Weyerhaeuser, George (1971) "Symposium on Law and the Environment: Introduction," *Kentucky Law Journal*: Vol. 59 : Iss. 3 , Article 2.

Available at: <https://uknowledge.uky.edu/klj/vol59/iss3/2>

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Symposium on Law and the Environment

INTRODUCTION

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“Most of the problems, or at least many of them that we now face, are technical problems and administrative problems. They are very sophisticated judgments which do not lend themselves to the great sort of ‘passionate movements’ which have stirred this country so often in the past.”

That comment came from President John F. Kennedy at the start of the 1960’s. The interim has seen a bewildering series of “declarations of war” on various societal problems—“wars” now half-forgotten, and virtually all unwon. Within the past year, “environment” has become the “passionate movement” in the forefront of attention. And, of all the movements which have arisen since President Kennedy’s statement was made, environment perhaps lends itself least well to passionate solutions.

This is not to say that passion does not have its place. Beneath the surface myth, hysteria, and distortion apparent in much of the media and much of the movement today, there lie some hard kernels of truth. There are serious environmental problems—not doomsday problems, but major problems. And public and political awareness can be of value in spurring solutions. Conversely, if carried to extremes, the movement can force wrong solutions, delay improvement, and result in intensification of environmental deterioration.

Business managers, not surprisingly, are human beings, usually fairly intelligent and sensitive ones who are well aware of their obligations to society, and to their communities. These obligations have never been spelled out, and in the past they often have been met in widely differing ways, usually determined by a manager’s

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personal judgment. The obligation to the shareholders in the managed company, however, has been clearly delineated; it has been a legal, not a personal, obligation. There has been, and remains in many instances, an assumption that the legal obligation to shareholders, and the personal obligation to society, are somehow in conflict.

These dual obligations need not conflict. Out of the present emotional situation may arise the rationale that will lay the assumption to rest.

The job-personal conflict has always been greatest in the enterprise which has been organized for objectives of short-range return. In such companies, there may indeed be a conflict between shareholder expectations and environmental expenditures. A careful delineation of the organizational objectives solves the problem for the manager—his shareholders will have to expect to play by the rules of the game to meet the desired objectives.

In the organization in which shareholder interest is directed toward long-term growth and return, the situation changes. The manager, to protect the shareholder interest, must be aware of societal needs and demands, including those pertaining to the environment. What is good for society will be good for any business organized for the long term. Managements which ignore environmental or other societal needs do so at the peril of losing their charter to operate in a free and unregulated atmosphere and are actually negligent in fulfilling their obligations to the shareholders.

Most industrial organizations, of course, must have both short-term and long-term goals, since short-term health is a prerequisite to long-term existence. In the past, the mix of these goals has generally determined management's position on environmental protection. In our company, we have been fortunate in that we were founded and guided with extremely long-range goals in mind, and have generally attracted shareholders interested primarily in long term objectives. As a result, we are in somewhat better shape than most industrial organizations in that we have more than 30 years of forest conservation experience, and many major pollution control efforts behind us. This circumstance has recently earned us some plaudits from those interested in giving praise or assigning blame in the present "Environment Crusade."

However our performance simply cannot be compared, on a moral or legal basis, with that of any other company because goals, shareholder expectations, and resources are unique in our industry. Our managements attempted to perform within that particular framework to fulfill their obligation to the shareholders; the managements of other companies presumably did the same, but within different framework.

What are those as yet undefined societal responsibilities for which managements today must be held to account? There is general agreement that industry is accountable to society on matters involving health and safety, "nuisance" qualities, and community aesthetics. Our company's view of these "social" priorities is: (1) Protect health and safety of employees and the community; (2) maintain our competitive capability in order to contribute economically to investors, the community, and society; (3) protect the rights of other users of land, air, and water; (4) mesh our activities insofar as possible with the current aesthetic preferences of, first, the local community, and, secondly, the total society.

Today, the greatest public pressures are coming in the area which we have given the lowest priority—aesthetics. Meeting this pressure at times requires top priority, awareness and action even at the expense of items which we feel to be of greater importance.

This occurs because *society itself* has set no priorities. It is attacking its environmental problems in a piecemeal fashion, issue by issue, often on the basis of poor information and in response to sensationalism and sometimes self-serving outcries from pressure groups. There is great danger that environmentalism, if its present course continues, may do more lasting harm than good to the American environment—and that, in doing so, it may needlessly disrupt the economic welfare of entire states and regions.

John E. Kinney, a consulting engineer, has said that "[p]ollution problems today are one-third factual, one-third hysterical, and one-third political. . . . Under the guise of panic, we are resolving technical issues by legislative means. Since they're frozen into law, we must live with the consequences." I share his concern with respect to this problem.

Order *must* be brought out of the current chaos of conflicting

and changing regulations and objectives. For example, we were recently cited for some work conducted in a streambed which had not been our idea. We had been ordered to do it by one state environmental agency. After its completion, we were cited by another environmental agency within the same state government. Unfortunately, this is not an isolated example. There are conflicts and differences of interpretation within most of the local, regional, state, and federal departments, and even more severe conflicts between departments at all levels and between the governments. In fact, the higher the governmental level, the greater is the confusion. In many cases at the federal level, the impulse is to draw national regulations to meet the most severe problem at any locality, and to enforce the result nationwide. Unfortunately, a regulation drawn to meet crisis problems of the Borough of Manhattan may be wholly inapplicable to a situation at Wild Horse Falls.

The federal government does have a crucial role in environmental performance. It must direct its efforts toward development of general guidelines and performance standards to *protect national health and safety*. This implies that federal guidelines, or standards, should address themselves to the maximum total of contaminants in the air or water allowable anywhere in the nation, rather than to emission standards per se.

The states, coordinating with localities, should carry the responsibility for implementation of these guidelines, involving in many cases ambient standards based upon full knowledge of both man-caused and natural sources of local air and water contaminants. In other words, state and local governments must insure that the sources of contamination are identified and sufficiently controlled to preserve the quality of ambient air and water at all locations.

In this total process, the economic rights of the total community, and those of the individual or corporation, should be considered and much more closely defined. "A cynic is a man who knows the price of everything and the value of nothing . . . a sentimentalist is a man who knows the value of everything and the price of not one single thing," Oscar Wilde said. In the environmental area, we have had our share both of cynics and sentimentalists. Today, we need more sentimental cynics, or

cynical sentimentalists. Both price and value must be important considerations in the decision-making process.

Aesthetics constitute a knotty problem, involving as they do subjective analysis and passionate approach. Generally, I believe that the aesthetic standards of a region or locality as represented in law should be the general standards of that region or that locality, not those of any current national aesthetic Establishment, inherently prone to faddism. There have been far too many cases in recent years of the aesthetic preferences of Central Park West being paid for by laboring men and their families in the small towns of the Western states, and this is hard to justify on any basis. It was Winston Churchill who said that "no folly is more costly than the folly of intolerant idealism." He could have added that it is seldom the intolerant idealist himself who pays the price.

Until a logical governmental division of effort and responsibility is developed, and a completely coordinated program effectuated between and within federal, state, and local governments, both economic and environmental deterioration may be expected. Major industrial environmental expenditures are hard to justify in the present atmosphere; the standards and guidelines may change, be reinterpreted, or repealed before the necessary equipment can be installed, and thus the investment made valueless from any standpoint. The result is delay in industry environmental performance for existing plants, and, in many cases, delay in needed new projects, many of which would replace technologically and environmentally obsolescent facilities.

Our own industry has spent hundreds of millions of dollars in environmental protection, and yet must spend more. The major steps, in our company at least, have been not so much in response to regulatory pressures—although there have been some of those—as in response to our perceptions of corporate long-term health and growth requirements. We are, for instance, planting and seeding approximately nine trees for each one we harvest. This expenditure is made not because we seek to build an image, nor because of public or regulatory pressure. It is made because we see a clear need for increasing wood supply from our 5.6 million acres of timberland. The forest is our basic asset, and we have a responsibility to our owners to conserve and enhance it. We are

a major user of water; hence, we have a vital interest in its conservation and in its quality. Many of our operations are in remote locations, in which our managers and employees are a major part of the community. Preserving the quality of the community not only meets our own immediate interests, but also is important in attracting personnel.

We have gained, as a company, a considerable amount of knowledge in pollution control in 33 years of research and development—knowledge and expertise which, in the “environmental decade,” may present us with some real business opportunities. We do not find that the current rational environmental objectives in society substantially conflict with our own goals, and some of them present us with opportunities. But there also are some dangers, for some of the popular current objectives are not completely rational. Aesthetics has become confused with ecology, and today there are demands being expressed *e.g.*, such demands as a halt in clearcutting timber stands—a ban for temporary aesthetic reasons which would completely disrupt the ecology of the vast Douglas fir region in the Pacific Northwest, since that major species cannot reproduce in the shade. There are increasing demands for pollution treatment for treatment sake, rather than treatment to meet a defined improvement objective.

The problem today is one of setting priorities and developing objectives, assigning responsibility, and coordinating the governmental task. Industry recognizes its responsibility—but its degree of recognition and its interpretation of that responsibility varies from enterprise, determined in part by each management’s understanding of its total responsibilities, including those to shareholders. In such a situation, government must determine the priorities, set the objectives, and furnish reasonable lead time for implementation. The present incoherence in government’s approach to the environment undermines both the environmental and economic interests of shareholders and the public generally.

The following symposium provides a beneficial examination of the interests and policies in various areas of the environmental arena. Such rational examination of the problems involved from the point of view of the interested parties, *i.e.* government, business and the public, will hopefully provide the basis for the

formation of rational decision-making models necessary to establish priorities. From the establishment of these environmental priorities within the framework of society's present objectives will come the basis for industrial organizations to fulfill their obligations to society without the threat of destroying their own objectives, and thus the economic supports of society.