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INTRODUCTION¹

Sustainable development is a little like Zen. Everybody talks about it, but few people really know what it is. Sustainable development as a concept has been around for quite some time, but it only hit the mainstream of environmental law with the World Commission on Environment and Development's *Our Common Future*.² *Our Common Future* broadly defined sustainable development and promptly sent the world into a tailspin trying to figure out what it means, how can it be achieved, and ultimately, whether it is possible.

In May of 1999, there will be another opportunity to further explore the meaning of sustainable development at the National Town Meeting For a Sustainable America: Building Communities and Business for the 21st Century. The *Duke Environmental Law and Policy Forum* ("DELPF") saw the national town meeting as an opportunity to discuss whether sustainable development is a viable concept that will impact the environmental decision-making of local, national, and international communities. Last fall, we solicited articles for a special symposium issue exploring how the concept of environmental justice could inform efforts to make sustainable development policies an operational reality in our communities.

In this Spring Symposium issue, we have published five compelling articles that explore the porous boundaries between the concepts of sustainable development and environmental justice. As we have worked with these articles, we noticed that all of the authors, in one way or another, have struggled with two key questions. First, can sustainable development policies benefit from the environmental justice movement's focus on equity issues? Secondly, can sustainable development policies learn from the lessons of the environmental justice

1. This article may be accessed on the World-Wide Web at <http://www.law.duke.edu/journals/9DELPFShaw>.

2. See WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (1987).

movement when seeking to incorporate community involvement in environmental decision-making?

SUSTAINABLE DEVELOPMENT, ENVIRONMENTAL JUSTICE AND THE QUESTION OF EQUITY

Sustainable development has been defined as encompassing environmental, economic, and equity issues.³ Within the context of sustainable development, the equity issues are the most poorly understood, elaborated, and defined. However, equity issues are a point of departure to analyze the distribution of environmental degradation and mitigation efforts within environmental justice.⁴ Can sustainable development benefit from the environmental justice movement's focus on equity issues?

In our first two articles, Michael McCloskey, Chairman of the Sierra Club, and Professor J. B. Ruhl, currently a visiting professor at the George Washington School of Law, examine whether equity concerns serve as a conceptual link between sustainable development and environmental justice. Mr. McCloskey argues that the Brundtland Report addresses social equity as a separate goal, divorced from the definition of sustainable development. Mr. McCloskey notes that neither the Brundtland Report's vague allusions to intergenerational equity, or its basic definition of sustainable development address equity issues meaningfully.

While Mr. McCloskey sees equity and sustainable development as mutually exclusive terms, Professor Ruhl argues that environmental justice and sustainable development exist in a co-evolutionary relationship, drawing ideas from each of their separate concerns. Professor Ruhl examines the evolution of the concepts of environmental justice and sustainable development. He argues that sustainable development incorporates much of the equity concerns of environmental justice. However, Professor Ruhl concludes that environmental justice, with its focus on social justice concerns, may be too unyielding to survive as a mainstream environmental paradigm. Instead, sustainable development will become the dominant theme of environmental policy and environmental justice will simply

3. See Peter Bartelmus, *Environment, Growth, and Development* 67-68 (1994) (focusing on ways to incorporate equity in the sustainability context).

4. See Karen Ferguson, "The Human Environment" *Requirements of the National Environmental Policy Act: Implications for Environmental Justice*, in 1997 DET. C. L. MICH.ST.U.L.REV. 1147, 1150 (WINTER 1997).

be a minor voice in future policy debates.

The next set of articles addresses the relationship between environmental justice and sustainable development, by focusing on how equity concerns have impacted three different examples of environmental policy-making. Professor Joel Eisen, Associate Professor of Law and Director of the Robert R. Merhige, Jr. Center of Environmental Law at the University of Richmond Law School examines how state and federal Brownfields programs have consistently failed to address the equity concerns of communities in redevelopment efforts. He suggests that state and federal policymakers should articulate a set of core operational principles that will make the community a partner in redevelopment policy.

Richard Toshiyuki Drury, J. Scott Kuhn, and Shipra Bansal of Communities for a Better Environment and Micheal E. Belliveau of Just Economics for Environmental Health, examine how programs that embody so many key aspects of sustainable development—the pollution trading programs in Southern California—have inequitably impacted low income and minority communities in Los Angeles. They argue that the pollution trading program is being upheld as a model for market-based environmental problem solving, even though they fail to deliver both on pollution reduction and environmental justice. The authors conclude that these programs do not protect low income and minority areas from receiving the bulk of pollution; yet at the same time, companies are given a free ride from pollution reduction targets. In their practical effects, these programs, based on the economic issues raised in sustainable development policies, completely ignore equity concerns.

Finally, Professor Donald T. Hornstein of the University of North Carolina School of Law utilizes the international renegotiations of the water rights to the Nile River as a backdrop to examine how sustainable development and environmental justice address notions of equity. Professor Hornstein argues that the concepts of sustainable development may come into conflict with the concerns of the environmental justice movement. Sustainable development often incorporates a variety of scientific and economic concerns. These concerns often contrast sharply with the strong ethical norms advanced by the environmental justice movement.

SUSTAINABLE DEVELOPMENT, ENVIRONMENTAL JUSTICE, AND
THE QUESTION OF COMMUNITY PARTICIPATION.

By incorporating environmental, economic, and equity perspectives, sustainable development policies seek to include a wide variety of political constituencies in environmental decision-making. Even so, sustainable development policies have often lacked substantive participation by impacted communities. Can the environmental justice movement's focus on community involvement serve as a framework for sustainable development efforts to include diverse social constituencies?

Again, Mr. Micheal McCloskey and Professor J. B. Ruhl offer us a broad overview of this question. In his essay, Mr. McCloskey concludes that the basic definition of sustainability contained in the Brundtland Report has no real core, and so offers little hope for communities seeking to use sustainable development principles in environmental decision-making. Mr. McCloskey further argues that since social equity plays a minor role in the Brundtland Report's affirmation of sustainable development, community concerns about the distribution of negative environmental externalities will be difficult to raise within the sustainable development context.

In his article, Professor Ruhl argues that the theories of environmental justice and sustainable development will come into conflict because of the environmental justice movement's primary focus on the issue of social equity. While sustainable development's broad policy goals embrace a wide, diffuse set of social constituencies, the environmental justice movement speaks to a constituency marginalized by race and class. Professor Ruhl concludes that sustainable development policies will weakly incorporate goals of community participation, but in doing so, will weaken the radical values of community participation encouraged by the environmental justice movement.

Professor Joel Eisen explores the tension between the federal and state Brownfields programs and community participation in his article. He analyzes how some environmental justice advocates are concerned that a loosely regulated clean-up process could create larger environmental problems for the community; while other environmental justice advocates argue that the community will need to work with industry in brownfields redevelopment efforts. Eisen concludes by suggesting that any brownfields redevelopment policy must include meaningful community participation. He offers a variety of

principles that could introduce the community into the public process of brownfields redevelopment.

The team of authors from Communities for a Better Environment and Just Economics for Environmental Health offer a pessimistic account of how pollution trading programs inspired by sustainable development principles fail to involve the minority and low-income communities of Los Angeles, California. In Los Angeles, the market-based scheme for pollution trading has never adequately included the concerns of communities which may be affected by what the authors call "toxic hot-spots." Furthermore, pollution trading discards deliberative decision-making by larger communities for market decisions made by private firms. Finally, the authors argue that since the program strip pollution of its stigma by treating it as a commodity, communities may have lost a valuable ideological tool in the debate over the location of negative environmental externalities. The article demonstrates the possible tension between the Clinton Administration's active encouragement of market based schemes like pollution trading, and its efforts to involve low income and minority communities in environmental decision-making.

Finally, Professor Hornstein offers an interesting alternative viewpoint on this question. He recognizes that both sustainable development and environmental justice value and encourage community participation. However, in the end, Professor Hornstein argues that neither concept can achieve truly paradigmatic status. By using the international efforts to control the population of elephants, Professor Hornstein demonstrates how environmental justice and sustainable development may only address small aspects of a larger problem. He leaves us with some compelling questions about how communities may come to questions of sustainability, development, and justice in the coming years.

CONCLUDING THOUGHTS

In addressing the nexus between sustainable development and environmental justice, we have discovered that analyzing these concepts from a general perspective is not helpful. Mr. McCloskey suggests that sustainable development has no operational reality. Perhaps he is right from a global perspective. But the global perspective may not be the right lens through which to view these concepts. Paul Hawkin once said that all global problems are only local problems with global symptoms.⁵ If that is right, then viewing these concepts within the context of a particular problem within a particular region may be more beneficial. As the case studies of Professors Hornstein and Eisen, and Mr. Drury demonstrate, one can only begin to understand these issues within a particular context.

As we close, we would like to thank Micheal Dorsey of the University of Michigan (School of Natural Resources and the Environment), for his insightful guidance and comments throughout this process. Mike inspired DELPF to tackle this tough issue last year when the National Town Meeting was first announced. From distributing the call for papers to obtaining Mr. McCloskey's essay, Mike has truly been invaluable.

In the end, DELPF sees this issue as only the beginning of the discussion. The exciting and fruitful aspect of this issue is not the answers the authors have reached about our topic, but the different questions each of these articles has raised. Finally, we would also like to thank the graduating third years for their continued commitment to this journal, and wish next year's editorial staff the best of luck.

Elizabeth C. Shaw
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Kali N. Murray
Spring Symposium Editor

5. PAUL HAWKIN, *THE ECOLOGY OF COMMERCE* 201 (1993).