

Foreword

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By many measures, the modern era of environmental law has been impressive in its accomplishments. Looking from today back to the United States of 1970, the air is cleaner, water safer to drink, wetlands better protected, and waste more properly treated and disposed. To be sure, much remains to be done, but overall this represents a success story – glass half full.

At the same time, however, larger trends give real cause for concern. Greenhouse gas concentrations are still on the rise, as are extreme weather events around the world; global deforestation continues; biodiversity loss proceeds; water scarcity has become an ever-greater threat; the nitrogen cycle continues to be disrupted. While the oft-used image of rearranging deck chairs as the Titanic sinks may seem melodramatic, it has a kernel of truth, particularly if climate change models prove accurate.

Increasingly sophisticated and funded, the environmental movement has been remarkably effective in improving air quality, water quality and waste disposal in the United States, yet many of the most important global measures are going in the opposite direction. As Gus Speth has provocatively charged, the environmental movement has fallen short in addressing these larger threats and there is little reason to think that more of the same will make a difference. How have we done so poorly while doing so well?

Something new is needed. But what? It's hard to think of a more important question of our time. More specifically, what would an economic and legal system even look like that meaningfully addressed not only our greatest environmental challenges but also did so in an equitable and socially just manner? Can we make this transition through incremental movements or is transformative change necessary? Should we reframe our whole conception of what constitutes environmental issues?

This book offers a series of vantages into these basic yet profoundly difficult questions. The authors of the different chapters do not share

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a uniform vision of what a New Economy should look like. No shared ideology drives their views. Instead, their contributions offer us the opportunity to conceive of different futures.

Some of the visions work within the current legal system, with separate chapters calling for innovations that would advance crowdfunding, distributed solar power, food policy and agricultural reform. Others are more ambitious, calling for a legal transition to commons-based structures, or from the public trust doctrine to a much more encompassing nature's trust. Other chapters challenge us to think outside our shared experiences and imagine the law and policy of a joyful economy, an Earth-based economy, or an environmentally just economy within the emergent Anthropocene era.

The value of this book lies in forcing us to overcome the false comfort of cognitive dissonance. The current world of environmental law and policy is intentionally myopic, focused on the operation and challenges of a complex, massive legal system. Does the low carbon fuel standard violate the dormant commerce clause? Should "waters of the United States" encompass seasonally dry riverbeds under the Clean Water Act? It is entirely proper that scholars and practitioners focus on these types of questions because they have great practical import. At the same time, however, these efforts risk missing the larger and arguably more important trends.

If one accepts that climate change, loss of biodiversity, and other measures of planetary health are steadily moving in the wrong direction and appear likely to do so under business as usual, then intellectual honesty forces us to accept Gus Speth's charge that something new is needed. Readers will most likely not agree with all the proposals in these chapters. I certainly do not. But I also find myself in the uncomfortable position of not having a good alternative.

Law and Policy for a New Economy is an important book for the simple reason that it takes seriously the cognitive dissonance of the modern environmental movement – working within the system while acknowledging that something new is needed. As you read the chapters that follow, you will enter into an important discussion that is at once provocative, innovative, and sorely needed.