

**SAME SONG, DIFFERENT CHORUS:
MODERNIZING ENVIRONMENTAL LAW CURRICULUM**

***Introduction to a Roundtable Series for Environmental Law
Faculty on the Future of Legal Education***

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Environmental law is not what it used to be.¹ Much has changed since the original major federal environmental statutes became law under President Nixon in the early 1970s.² The climate crisis, loss of biodiversity, and more public recognition that environmental impacts disproportionately harm (and benefit) different communities according to race, ethnicity, and economic conditions have resulted in a renaissance and evolution of environmental law and policy. In addition, the private sector—or at least portions of it—has become a more active participant in preventing and mitigating environmental impacts.³ Some countries are learning how to work together to tackle global environmental challenges,⁴ and some tribal, state, and local governments are leading the way in developing environmental and climate adaptation policies.⁵ Even state courts have shown some signs of willingness to

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¹ See Jan G. Laitos & Lauren J. Wolongevicz, *Why Environmental Laws Fail*, 39 WM. & MARY ENV'T L. & POL'Y REV. 1, 4–6, 32–39 (2014).

² See generally A. Dan Tarlock, *Environmental Law: Then and Now*, 32 WASH. U. J.L. & POL'Y 1 (2010).

³ See Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 170–75, 183 (2013).

⁴ See Harriet Bulkeley et al., *Governing Climate Change Transnationally: Assessing the Evidence from a Survey of Sixty Initiatives*, 30 ENV'T & PLAN. C: GOV'T & POL'Y 591, 591–612 (2012); but see, e.g., Lisa Friedman, *Trump Serves Notice To Quit Paris Climate Agreement*, N.Y. TIMES (Feb. 19, 2021), <https://www.nytimes.com/2019/11/04/climate/trump-paris-agreement-climate.html>.

⁵ For examples of local ordinances in the United States, see *What's Challenging*

address environmental matters through novel claims.⁶ Meanwhile, Congress and some federal courts have been perhaps the slowest to evolve when it comes to adapting to changing environmental conditions, often getting tripped up by politics and grandstanding, as well as the legal issues of standing and redressability, among other preliminary matters.

As environmental challenges and those seeking to address the challenges have evolved, so too have jobs in environmental law and policy. The opportunities for work in environmental law are more diverse in every way compared to when the field began.⁷ Jobs in private environmental governance and sustainability, which hardly existed when many environmental law programs were founded, are now booming.⁸ And knowledge of “environmental law” is now a requirement for many jobs that are not traditional “environmental law” positions—such as jobs in real estate, insurance, and corporate law. Some positions are abandoning the “environmental law” label entirely, and instead seeking to hire someone in “sustainability,”

Your Community?, SUSTAINABLE DEV. CODE, <https://sustainablecitycode.org/subchapters/> (last visited June 5, 2022) (providing access to local ordinances on a wide variety of environmental challenges facing communities across the United States).

⁶ See, e.g., *Rhode Island v. Shell Oil Prods. Co.*, No. 19-1818 (1st Cir. May 23, 2022); *Cnty. of San Mateo v. Chevron Corp.*, 32 F.4th 733 (9th Cir. 2022); *Mayor & City Council of Balt. v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022); *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020); *People by James v. Exxon Mobil Corp.*, 119 N.Y.S.3d 829 (Table), No. 452044/2018, slip op. 1 (N.Y. Sup. Ct. 2019). See also Lesley Clark, *Congress' Climate Inaction Puts Spotlight on the Courts*, E&E CLIMATEWIRE (Dec. 23, 2021), <https://www.eenews.net/articles/congress-climate-inaction-puts-spotlight-on-the-courts/>; U.N. Env't Programme, *Global Climate Litigation Report: 2020 Status Review*, U.N. DEL/2333/NA (2020); KOREY SILVERMAN-ROATI, SABIN CTR. FOR CLIMATE CHANGE L., COLUM. L. SCH., *U.S. CLIMATE LITIGATION IN THE AGE OF TRUMP* (2021).

⁷ Sandra Cassotta, *The Development of Environmental Law Within a Changing Environmental Governance Context: Towards a New Paradigm Shift in the Anthropocene Era*, 30 Y.B. INT'L ENV'T L. 54, 56–58 (2021).

⁸ Sarah Fecht, *How Have Careers in Sustainability Evolved over the Past 10 Years?*, COLUM. CLIMATE SCH.: STATE OF THE PLANET (Mar. 4, 2020), <https://news.climate.columbia.edu/2020/03/04/careers-sustainability-evolving/>.

“sustainable development,” “resilience,” “environmental, social, and corporate governance (ESG),” or a related manifestation of the subject to capture a broader understanding of ecosystems, systems thinking, regenerative design, biophilia, inclusive growth, and how the environment directly and indirectly impacts individuals and public and private entities. For these and other reasons, law schools have been shifting or diversifying environmental law teaching to keep up with the times.⁹ And yet, there is abundant evidence that law school curricula need to further evolve further to reflect changes.

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Thirty years ago, the American Bar Association (ABA) published the *MacCrate Report*, which illustrated and discussed the need to continually review law school curricula to ensure that law schools are meeting students’ academic and professional needs as those needs evolve.¹⁰ The *MacCrate Report* performed an extensive survey of law schools around the country. The Report’s findings noted, among other things, that “education in lawyering skills and professional values is central to the mission of law schools,” and that students need more exposure to “recognizing and resolving ethical dilemmas” and communication and counseling skills.¹¹ While the *MacCrate Report* focused heavily on skills training,¹² the Report’s research, examination, and recommendations encouraged law schools

⁹ In 2010, Professor Rosenbloom introduced the first experiential law course on sustainability and resilience. For more on that course and others like it, see Jonathan Rosenbloom, *Now We’re Cooking!: Adding Practical Application to the Recipe for Teaching Sustainability*, 2 PACE ENV’T L. REV. ONLINE COMPANION 21 (2011). See also John Dernbach & Jonathan Rosenbloom, *Teaching Applied Sustainability: A Practicum Based on Drafting Ordinances*, 4 TEX. A&M J. PROP. L. 83 (2017).

¹⁰ TASK FORCE ON L. SCHS. & THE PRO., AM. BAR ASSOC. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 3–8 (1992) [hereinafter *MacCrate Report*] (commonly referred to as the “MacCrate Report”—named for then-chair of the ABA Task Force on Law Schools and the Profession, Robert MacCrate).

¹¹ *Id.* at 235, 330,

¹² *Id.* at 4.

and the ABA to regularly review and/or modify law school curricula.¹³

Since the *MacCrate Report*, several influential reports have highlighted the need for law schools to continue evaluating their own curricula. The 2007 *Carnegie Report*, for example, again analyzed the gap between law school curricula and the skills and tools needed to succeed as a lawyer.¹⁴ Specifically, after visiting 16 American and Canadian law schools, the *Carnegie Report* found that helping students better prepare for practice requires law schools to “help[] students develop practical ‘lawyering’ skills and understand[] . . . ethical and moral considerations.”¹⁵

On the heels of the *Carnegie Report* was the Clinical Legal Education Association’s *Stuckey Report*.¹⁶ While more directed and critical than the *MacCrate* and *Carnegie* Reports, the *Stuckey Report* again highlighted the need to constantly evaluate law school curricula and whether courses are adapting to changing needs and norms.¹⁷ The *Stuckey Report* specifically advocated for more skills-based courses to develop problem-solving and professionalism skills. In the forward to the *Stuckey Report*, Bob MacCrate—principal author of the *MacCrate Report*—stated that the “central message in both [the *Carnegie* and *Stuckey* Reports] . . . is that law schools should broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method; integrate the teaching of knowledge, skills and values, and not treat them as separate

¹³ See, e.g., COMM. ON THE PRO. EDUC. CONTINUUM, AM. BAR ASSOC. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, TWENTY YEARS AFTER THE MACCRATE REPORT: A REVIEW OF THE CURRENT STATE OF THE LEGAL EDUCATION CONTINUUM AND THE CHALLENGES FACING THE ACADEMY, BAR, AND JUDICIARY 3, 25 (2013) [hereinafter TWENTY YEARS AFTER THE MACCRATE REPORT].

¹⁴ William M. Sullivan, AFTER TEN YEARS: THE CARNEGIE REPORT AND CONTEMPORARY LEGAL EDUCATION, 14 UNIV. ST. THOMAS L.J. 331, 336–37 (2018).

¹⁵ *Id.* at 333.

¹⁶ See generally Roy Stuckey et al., BEST PRACTICES FOR LEGAL EDUCATION (1st ed. 2007) [hereinafter *Stuckey Report*].

¹⁷ *Id.* at 55.

subjects addressed in separate courses; and give much greater attention to instruction in professionalism.”¹⁸

These three reports have since been followed by several others evaluating law school curricula and identifying ways to bridge the gap between the classroom and practice.¹⁹ For example, since the publication of the 1992 *Carnegie Report*, there has been discussion about having an integrated curriculum in which law schools: (1) teach legal doctrine to establish a foundation; then (2) introduce several facets of practice to build on that foundation; and finally (3) explore identity and values consistent with the purposes of the legal profession.²⁰ Further, there has been a continual attempt to refine law school curricula to better prepare students and respond to changing circumstances once they enter the profession.²¹

In 2020, the ABA Commission on the Future of Legal Education echoed this call for regularly revisiting curricula needs.²² The Commission published a report focusing on access to legal services and justice, noting how onerous and expensive such access is.²³ As the Commission wrote, law schools are “preparing the next generation of legal professionals for yesterday rather than for tomorrow.”²⁴ The Commission pointed to technology, globalization, and mobility as the primary forces compelling changes in the field.²⁵ Further, it noted that law schools have yet to adapt to these changes.²⁶

This could not be more relevant to environmental law curricula and the profession as a whole right now. Environmental law professors have so much to gain from engaging in shared learning

¹⁸ *Id.* at vii.

¹⁹ *See, e.g.*, TWENTY YEARS AFTER THE MACCRATE REPORT, *supra* note 13, at 3, 25.

²⁰ Sullivan, *supra* note 14, at 338, 344.

²¹ *Id.* at 340.

²² AM. BAR ASSOC. COMM’N ON THE FUTURE OF LEGAL EDUC., LICENSURE IN THE 21ST CENTURY: PRINCIPLES AND COMMENTARY 3, 13 (2020), <https://www.americanbar.org/content/dam/aba/administrative/future-of-legal-education/cfile-principles-and-commentary-feb-2020-final.pdf>.

²³ *Id.* at 3.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 8.

around challenges and best practices in evolving our teaching. Many of our colleagues are trying new, exciting, and creative techniques in their classrooms. Yet, environmental law professors rarely convene for the purpose of discussing pedagogy curriculum reform; instead, most of our opportunities to get together focus on scholarship (a worthy endeavor no doubt). To help facilitate a dialogue around teaching practices and courses and the evolution of environmental law, Vermont Law School hosted a series of three roundtables and asked nine leading legal academics whether the findings of the aforementioned law school curriculum reports resonate today with current environmental law curricula.²⁷ In addition to the nine panelists, the series brought together many leading professors in environmental law from across the United States to discuss how environmental law programs can best prepare students to meet the challenges of the future and advance the evolution of environmental law curricula.

To the nine roundtable panelists, we put forth a series of questions, including: What should our environmental law curricula look like as environmental challenges change? What courses should be in an environmental law core curriculum? Is there a heightened need for exploring identity and values in environmental law curricula? If so, what changes should we make? How does a lack of access to justice play out in environmental law and the environmental law curriculum? What skills do our students need to be suited for this growing professional field? What kinds of assessment should be incorporated into doctrinal, experiential, and problem-based learning to figure out if the students are understanding the core principles?

To explore these questions and to better educate our students, the first roundtable, *The Essential Environmental Curriculum*, was dedicated to discussing the core curricular needs of environmental law programs today. This first session examined the issues a modern curriculum should include to give students a fundamental understanding of current environmental law. The roundtable featured

²⁷ See *Emerging Environmental Law Curriculum Workshops*, VT. L. SCH., <https://www.vermontlaw.edu/academics/centers-and-programs/environmental-law-center/events/eelc-workshops> (last visited June 5, 2022).

Dean and Professor of Law at the University of Utah's S.J. Quinney College of Law, Elizabeth Kronk Warner;²⁸ Associate Dean and Professor of Law at Albany Law School, Keith Hirokawa;²⁹ and Professor of Law at the University of Wisconsin-Madison, Steph Tai.³⁰ These three panelists explored questions concerning the fundamental issues of what courses should law schools be offering for the next generation of environmental lawyers and what administrators and faculty members need to know about emerging environmental law to shape curricular decisions.

The second roundtable, *New Techniques in the Classroom and Beyond*, jumped into the law school classroom to explore whether changing environmental law conditions warranted a change in the way professors deliver educational content today. The roundtable featured Dean and Frank R. Strong Chair in Law at the Ohio State University Moritz College of Law, Lincoln Davies;³¹ Deputy Solicitor for Parks & Wildlife at the U.S. Department of the Interior, Sarah Krakoff;³² and Acting Professor of Law at the U.C. Davis School of Law, Karrigan Börk.³³ The panelists dove into issues exploring ideas beyond traditional lectures to engage students in new and innovative ways. Questions included: What pedagogical

²⁸ Elizabeth Kronk Warner, THE UNIV. OF UTAH, https://faculty.utah.edu/u6024740-Elizabeth_Kronk_Warner/hm/index.html (last visited May 28, 2022).

²⁹ Keith Hirokawa, ALB. L. SCH., <https://www.albanylaw.edu/faculty/faculty-directory/keith-hirokawa> (last visited May 28, 2022).

³⁰ Steph Tai: Professor of Law, UNIV. OF WIS.-MADISON L. SCH., <https://secure.law.wisc.edu/profiles/tai2@wisc.edu> (last visited May 28, 2022).

³¹ Lincoln L. Davies, THE OHIO STATE UNIV. MORITZ COLL. OF L., <https://moritzlaw.osu.edu/lincoln-l-davies> (last visited May 28, 2022).

³² Professor Sarah Krakoff Named to Interior Department Leadership Team, UNIV. OF COLO. BOULDER: COLO. L. (May 12, 2021), <https://www.colorado.edu/law/2021/05/12/professor-sarah-krakoff-named-interior-department-leadership-team>. This roundtable series took place while Sarah Krakoff was the Moses Lasky Professor at the University of Colorado Boulder Law School, a position from which she is now on leave. The views herein are her own and do not represent those of the U.S. Department of the Interior.

³³ Karrigan Börk, U.C. DAVIS SCH. OF L., <https://law.ucdavis.edu/people/karrigan-bork> (last visited May 28, 2022).

decisions should faculty consider in light of an evolving environmental law curriculum? What materials will be and are relevant for the future and how should those materials be explored in and out of the classroom? What role will technology play in this education? How can we incorporate opportunities for field study and problem-based learning?

The final roundtable, *Preparing for Environmental Practice*, explored the role of skills-based courses and clinics in environmental law education and whether their roles are changing or should change. This roundtable featured Dean and Myra and James Bradwell Professor of Law at Northwestern's Pritzker School of Law, Hari Osofsky;³⁴ Director of the Environmental and Regulatory Law Clinic at the University of Virginia School of Law, Cale Jaffe;³⁵ and Professor of Law and Director of the Environmental Law and Justice Clinic at Golden Gate University, Helen Kang.³⁶ The panelists examined how we can continue to prepare students for their careers beyond law school, and explored questions such as: What skills will the next generation of environmental lawyers need to be prepared to practice? What is the role of clinics and experiential learning? Are there new strategies to addressing emerging environmental issues?

The following transcripts from each of the three roundtables in this workshop series document the roundtable discussions and provide ideas and models for thinking about how law schools can best prepare the next generation of environmental lawyers. We discussed learning opportunities like the role of community-based learning, field studies, interdisciplinary offerings, problem-based learning, and technology. We talked about the importance of teaching deep listening skills as we help our students prepare to represent a

³⁴ *Hari M. Osofsky*, NW. PRITZKER SCH. OF L., <https://www.law.northwestern.edu/faculty/profiles/HariMOsofsky/> (last visited May 28, 2022).

³⁵ *Cale Jaffe*, UNIV. OF VA. SCH. OF L., <https://www.law.virginia.edu/faculty/profile/caj5f/1176168#:~:text=Cale%20Jaffe%20is%20director%20of,national%2C%20state%20and%20local%20levels> (last visited May 28, 2022).

³⁶ *Faculty: Helen Kang*, GOLDEN GATE UNIV., <https://www.ggu.edu/shared-content/faculty/bio/helen-kang> (last visited May 28, 2022).

diverse set of clients in their careers. We explored courses, issues, and topics outside of traditional—and in some cases outmoded—forms of federal statutory and regulatory environmental law. And we shared ideas for how legal education can improve in the areas of equity, inclusion, and justice.

Reflecting on this series of roundtables, we are struck by the level of interest and engagement in this topic from professors teaching environmental law. Law professors rarely have the opportunity to gather and focus on sharing lessons learned from their teaching. It was invigorating and encouraging to see how much interest and creativity there is in our professional community for working together to teach our students in the best way possible. We hope this rich discussion from our collective environmental law teaching community serves as a starting place for continuing to share ideas on both how to best educate future environmental lawyers, and how to adopt the recommendations of extensive research on curriculum development and apply them to our field of environmental law.