

C O M M E N T

PROTECTING ALL PEOPLE FROM POLLUTION IN A PLURALISTIC SOCIETY

by Vickie Patton

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Thank you to Prof. Dave Owen for his meditation on environmental law in a pluralistic society. It is about some core values. It is about some dialogue, and it is far more, right? Because one of the foundations that we depend upon to have functioning environmental law is to have some reliable, predictable statements that are very normative and that establish a framework that we can all depend upon and work within—and that is reflective of our values, our commitment as a society to clean air, clean water, and to equity and justice.

We need that stability, that framework, and that way for it to be expressed. And within that, there's been an enormous amount of innovation. You can call it negotiation; you can call it discussion; you can call it dialogue. What it really comes down to is people deciding to show up as problem solvers. People deciding to show up within that framework and a commitment to work together to listen to each other, to do what the Vanderbilt students are doing here—that is creating the space for dialogue on difficult issues. We need more and more of that duality in its most broad, expansive form—it has been the success of environmental law in American society.

We have huge challenges in trying to tackle the climate crisis and trying to advance equity in a way that is meaningful and sustained, so we need more tools, we need more people in the conversation, more innovation, more ways to try to figure this out together. Professor Owen has given us a really important framework to think about and build from. It is changing right now before our very eyes. We are seeing a sweeping, changing landscape in environmental law. For example, there are historic investments unleashed by the Inflation Reduction Act that fundamentally change the whole conversation and the possibilities of where environmental law can take us.

Editors' Note: Vickie Patton's Comment is based on an edited transcription of her remarks at the Environmental Law and Policy Annual Review conference. See 2023-2024 Environmental Law and Policy Annual Review Conference, available at <https://www.eli.org/events/2024-environmental-law-and-policy-annual-review-elpar-conference>.

We are seeing new manufacturing being built across our country as part of the transition to clean energy. You're seeing it in Tennessee, and Kentucky, and Texas, and Ohio, and Michigan, and Nevada, and Arizona, and much more—thousands and thousands and thousands of jobs, and billions and billions and billions of dollars. As lawyers, how we show up in those conversations really matters. Are we doing that in a way that creates benefits for people's lives or runs roughshod over people's communities? This is hugely important. We can't get to net zero unless we are showing up in a way that is creating benefits for people's lives.

You are also seeing right now historic investments in rural energy. We have to bring everyone along. No communities left behind as part of these big, big grants. Yesterday, the U.S. Environmental Protection Agency announced a new massive grant to direct resources and unlock clean energy and opportunity in communities across our country.¹ This is how environmental law is changing within this framework that Professor Owen has laid out. We have new technologies from sensors to satellites that enable all sorts of possibilities in terms of accountability and progress and change in the conversation. As law students, as legal practitioners, it's an opportunity to show up as a problem solver, to show up and be innovative and part of the solution. You can have both. You can do that in a way that is committed to the foundations of environmental law, and you can do that in a way that is listening and learning from others, meeting them where they are, and trying to make important progress.

I want to touch on some of the key concerns that the article raised about equity and transparency and share a couple of examples that have emerged in the last few months that people are inventing to try to address this.

The Sabin Center for Climate Change Law has just launched a terrific platform where they are trying to col-

1. U.S. Environmental Protection Agency, Biden-Harris Administration Announces \$20 Billion in Grants to Mobilize Private Capital and Deliver Clean Energy and Climate Solutions to Communities Across America, <https://www.epa.gov/newsreleases/biden-harris-administration-announces-20-billion-grants-mobilize-private-capital-and-0> (Apr. 4, 2024).

lect all of the community benefit agreements.² One of the key issues that Professor Owen highlighted is that communities need more information to understand and answer questions such as: What if someone shows up in my neighborhood with the big storage project?; What does that look like?; and How do I protect myself? You can go on the Sabin Center website and check out what other communities have done to assure that they benefit from a large-scale storage project showing up in their neighborhood. What did the developer provide in terms of emergency preparedness? What did the developer provide in terms of compensation on property values? What did the developer provide in terms of sustained engagement with the community? We need more of this—and it is one way people are inventing to provide greater transparency and greater equity.

I have some colleagues at Environmental Defense Fund who partnered with Blacks in Green³ to create a whole new initiative called Community Voices in Energy,⁴ and I invite you to check it out. One of the areas that the article does not spend as much time on that is really, really important is what happens in our public utility commissions—a place where communities have not been part of the dialogue. Community Voices in Energy is all about knocking down those barriers and trying to bring community voices into the conversation. This is where in environmental law and investments the rubber meets the road: Will the capital have benefits for people’s lives or will it not have benefits for people’s lives?

In Illinois a few months ago, the four largest gas utilities showed up before the Illinois Commerce Commission and said, “We want \$872 million dollars of investments in new gas infrastructure.” Community Voices in Energy came into that proceeding and shared their perspective that they would like the investment to be clean. They want to make sure that it doesn’t saddle communities with higher costs. They want to be part of the conversation, and they provided expert testimony. How do you knock down some of those barriers to ensure greater transparency and equity? Don’t let there be any limits on your imagination.

This is just one example of something transformative that happened within this architecture, this duality of a framework of rigorous environmental law anchored in core values and inventiveness.

Furthermore, California reached an agreement with a number of major automobile manufacturers in the last

administration when there was an unprecedented attack on California’s long-standing authority to establish emissions standards for motor vehicles. This is hugely important for California to be able to create healthier lives for 40 million people, hugely important for California to be able to attack and address the climate crisis, hugely important for the innovation happening in California on all these fronts. The state negotiated a voluntary and enforceable and accountable agreement with a number of major auto manufacturers that said, notwithstanding, whatever happens in all of this uncertainty that is being created, we have a path forward. We’re committed to progress, to climate progress, to health protections, we are going to move forward together. That’s people inventing and creating within the core framework of environmental law.

Don’t let there be any limitations on what you think is possible. Anything is possible. A couple of weeks ago, Stellantis Chrysler said, “We want in, we want to be part of that agreement.” And they further said, “We want to be part of that through 2030 because we’re committed to a new initiative” at Stellantis Chrysler called “Dare Forward 2030: A Bold Strategic Plan”⁵—and so off they go committing to move forward in a big, bold way.

There are some dark clouds on the horizon—the darkest is the hostility that the U.S. Supreme Court has toward environmental law. We have this framework that we have depended upon in American society for decades that has been predictable and stable. Within that, people have invented and solved problems, and thank you to Professor Owen for knocking down the myth that we don’t. We do—people show up to solve problems and to improve lives. The Supreme Court heard oral arguments in a major set of cases in January, and in her presentation to the Supreme Court, Solicitor General Elizabeth Prelogar said, if the Court headed down this pathway of changing some of the core doctrines of administrative law, it would be a shock to our legal system. She is a very understated person. She called it a potential shock to our legal system. And then Justice Amy Coney Barrett said during the course of that oral argument, if the court heads in this direction, it will unleash a flood of litigation.

We have to continue to work to help protect the core framework and foundations of environmental law to find ways to solve problems and to recognize that there are serious threats to the very foundations that enormous and important progress have depended upon.

2. Sabin Center for Climate Change Law, Community Benefits Agreements Database, <https://climate.law.columbia.edu/content/community-benefits-agreements-database> (accessed June 14, 2024).

3. Blacks in Green, <https://www.blacksingreen.org/> (accessed June 14, 2024).

4. Community Voices in Energy, <https://communityvoicesinenergy.org/> (accessed June 14, 2024).

5. Stellantis, Dare Forward 2030: A Bold Strategic Plan, <https://www.stellantis.com/en/company/dare-forward-2030> (2024).