Moral Obligation, Generational Rights, & the Burden of Inaction

Pumped-up climate change is the biggest thing to happen to Earth in thousands of years. I commend the Bar for today’s gathering.

My remarks circle three quotations. The first is from *Ishmael*, Daniel Quinn’s fantasy of a gorilla, Ishmael, who becomes mentor to a young idealist whose hopes for a transformed world have sunk beneath the horizon.

Ishmael thought for a moment. “Among the people of your culture, which want to destroy the world?”

“Which want to destroy it? (the young man replies). As far as I know, no one specifically wants to destroy the world.”

“And yet you do destroy it, each of you. Each of you contributes daily to the destruction of the world.”

“Yes, that’s so.”

“Why don’t you stop?”

The second is from *The New York Times* Energy Challenge series, the segment entitled “Budgets Falling in Race to Fight Global Warming.” A 1931 conversation finds Thomas Edison saying to Henry Ford and Harvey Firestone, “I’d put my money on the sun and solar energy. What a source of power! I hope we don’t have to wait until oil and coal run out before we tackle that.”

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The third is Thomas Berry’s dedication in *The Great Work: Our Way into the Future*:

*Future:*

To the children
To all the children
To the children who swim beneath
The waves of the sea, to those who live in
The soil of the Earth, to the children of the flowers
In the meadows and the trees in the forest, to
All the children who roam over the land
And the winged ones who fly with the winds,
To the human children too, that all the children
May go together into the future in the full
Diversity of their regional communities.  

My glosses will follow a word about ethical analysis.

The subject of all ethical analysis is the same: ways of life, their logic, practices, problems, and achievements. All of us are, ny nature, moral animals. I. e., we can imagine different worlds—and better ones. We thus live our lives across an is/can/ought gap. The tension of living across this gap is what gives rise to choice, act, responsibility, indeed the law itself. (For better or worse, no other species has lawyers.) And it gives rise to modification of our environment in accord with our answers and abilities. Ethical analysis is thus analysis of the moral ecologies embedded in the ways we live, move, and have our being. It is the sort of analysis interrogating our explicit or implied answers to questions like: what makes human lives go well? What is the good life? Given the

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possibilities and constraints of reigning circumstances, what ought we to do, how ought we to live, where do we go from here and how do we get there? And finally, when dying day comes, how do we wish to be remembered? What do we want to pass on for all the children who have yet to make the journey of life?

*The ascendency of ethics* is a distinctive, though not unique, signature of our time. Why? Because modernity, with modern science and technology married to a dynamic economy powered by stored energy in the form of fossil fuels, has vastly amplified human powers and choice. The fallout of these powers has been extended in time, space, and to such degree that they have fundamentally altered not only the continents but the oceans, not only the biosphere, but the atmosphere as well. We *can* do more, more than ever before, and we *do* do more, from splitting atoms to splitting genes to splitting timbers, mountains, and rivers. Humanity in fact moved more rocks and soil in the 20th c. than did volcanoes, glaciers, and tectonic plates. Moreover, and for the moment at least, we are living amid a rare season of simultaneous economic growth worldwide that carries with it unprecedented transformation of both biosphere and atmosphere, with cumulative effects that are not benign. Changes associated with geological time seem to be occurring in the lapse of a human lifetime; if the climate change scenarios play out, they will surely do so. In a mood usually reserved for religious apocalyptics, some climate scientists even call present and projected trends a slow-motion tsunami.4

The planet is, in a word, in jeopardy at human hands. A slow tsunami is still a tsunami.

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4 See, for example, the article in the New York Academy of Sciences’ *Update*, “The Slow-Motion Tsunami: How Climate Change Could Change the World”, March, 2005: 2-7.
All this shoves ethical questions to the fore: we can do more, we do do more. But ought we to do all we can? Ought we to have done what we have? What ought we to do now, when what humans throw at the rest of nature is as fateful as what the rest of nature throws at humans.\(^5\)

To the citations. Ishmael says to the young idealist: Since each of you “contributes daily to the destruction of the world,” “why don’t you just stop?” Preponderant scientific evidence says we are wreaking havoc on innumerable lives and their habitats. Some of it happens via accelerated and extreme climate change, with more in store. But much of it was already in place before overheating the lower atmosphere got some traction. In the sixth great wave of extinction—and the first at human hands—we awake to find we have become imperial unCreators in the Community of Life, terminators who deal death to birth itself, even though none of us “specifically wants to destroy the world.” Certainly we have a moral obligation to present and future generations not to be serial killers.

But why this uncreating by good and smart people who are usually not as good and smart as they think? The reason is not shrouded in mystery. No giant meteor has struck recently and no Krakatoa\(^6\) explosion from middle earth has blotted out both sun and life. Species disappear now for other reasons: encroaching human habitat and the toxic consequences of industry and corporations on steroids. Since good ethics requires the best causal description we can muster, two questions quickly surface: how did this violent way of life come about, and why do we have so little in the way of moral emotion

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\(^6\) The largest volcanic explosion in modern times, in Indonesia (1883).
about the forced death of non-human birth? Indeed, why so little real feeling at all for non-human life, other than our pets and gardens?

But to the second citation. Edison’s comment to Ford and Firestone, i.e., to cars and tires, smokestacks and tailpipes, about putting money on the sun before oil and coal run out was a poor choice of audience on his part. He badly underestimated what oil, coal, and that other fossil fuel, natural gas, made possible and irresistible, and the sun did not.

Fossil fuels mean compacted, stored energy. Armed with appropriate technologies, they meant that humans no longer needed to live in sync with the rhythms of the renewables and their requirements—solar cycles, hydrological cycles, the imperatives of fickle seasons and lazy flora. With stored, compact energy we could conjure up a built environment to replace the more immediate dependence upon the unbuilt environment, which, in that great and fateful split-off of modernity, we came to refer to as “the natural environment” (as though the built environment were of another order, and not equally nature). “Organization” displaced “nature” as our environment, our habitat and home (Dietrich Bonhoeffer’s distinction).7

All this greased the skids for what Karl Polanyi famously described as “the great transformation,”8 the transformation from “an organic, ever-renewing, land-based economy to an extractive, nonrenewing, industrial economy”, the one that now reigns as “a controlling presence throughout the entire planet.”9 I will forego arguing the benefits and burdens of the transition from fuedalism to mercantilism, the rise of the bourgeoisie.

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9 The formulation, not by Polanyi, but Thomas Berry in Evening Thoughts: Reflecting on Earth as Sacred Community, Mary Evelyn Tucker, ed. (Sierra Book Club, 2006), 107.
and, before long, the Industrial Revolution of both industrial capitalism and socialism, including high-energy, industrial agriculture, until today we have the global triumph of corporate capitalism flattening the planet. I only want to say that we, Ford, Firestone and, yes, Edison, too, are enamored with industrial/post-industrial civilization because no other system, including that organic, ever-renewing, land-based economy of feudalism, has even begun to generate wealth and address basic human needs of food, shelter, transport, work and leisure on a mass scale. Of the three fundamental, nagging problems that every economy must address—production, distribution, and sustainability—none has come close to solving the problem of production for so many people as industrial/post-industrial capitalism. None has been so successful in harnessing the Promethean spirit and using Prometheus’ gift of fire for mastering nature (and subjugated cultures) for human well-being (some humans far more than others, to be sure). And none has so effectively channeled other forces—science, technology, culture, and the law itself—into a way of life whose very understanding of the good life is the life of goods created and used in a world of our own making. On this end of the great transformation, the universe is, to paraphrase Thomas Berry, no longer a communion of subjects, as it was in the primordial vision of humans. All of it now is a collection of commodified objects at the ready for human use.10

But turbo-capitalist civilization on a global scale has not solved the other essentials: distribution and sustainability.

I will address distribution soon. Here I leapfrog to climate change and sustainability, i.e., unsustainability.

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Many have pointed out that climate change exemplifies the classic market failure of capitalism (and industrial socialism as well). That is, externalities in the productivism of the economy are not internalized so that true costs are reflected in the price of goods and services. Damage is done without paying for it up front or providing for clean-up and restoration later. On traditional terms, letting the market take its course on climate change would thus be the equivalent of “Forget about topsoil! Let the market take care of it.”

But pumped up climate change lays bare more than grand market failure. It exposes the crunch of “the Big Economy” with “the Great Economy” (Wendell Berry), what I will refer to as a fateful mismatch of metabolisms.

Nature’s economy is the first, fundamental and sustaining condition of our lives and all other lives. Every human economy is always, everywhere, and absolutely dependent upon nature’s economy. Yet the embeddedness of the big (human) economy in nature’s great economy hardly makes an appearance in classic or neo-classic economic theory or practice. Take Benjamin Friedman’s acclaimed volume, *The Moral Consequences of Economic Growth*. 549 pages, published in 2006, and referred to by one reviewer as “Better than church, economics [as the] joyful science,” your grandkids will be baffled that brilliant economists can worry mightily over economic growth without worrying over water or paying any attention to habitat or a warming atmosphere. They will be baffled that the causes of global warming in the mismatch of metabolisms of the big and the great economy never found the economists who said, “but the emperor of modern empire has no clothes.” The metabolism of dynamic global corporate capitalism,

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12 James W. Picht’s review, available in the customer reviews of Friedman’s book on Amazon.com.
with its outsize appetite, its focus on short-haul gains, its hyper-active product innovation and turnover, its ever-renewing, growth-seeking markets, and its Midas lust, works in ways that consistently outstrip nature’s enormously intricate, without beginning and without end, complex, interlaced, slow, long-haul metabolism. Nature has earned all its rights to its fabled resilience. But it also has limits and demands for regeneration and renewal on its own non-negotiable terms. *Exactly this mismatch of metabolisms is the cause of that accelerated climate change which follows from the unconstrained human use of fossil fuels.* The Industrial Revolution was indeed a revolution in Earth-human relations, not just human-human relations. But it fell “very far outside nature’s presumed Plan.” Still, nobody except the victims paid attention to any but the consequences for the built environment of humans.

That last sentence begs qualification. Two books of lasting note were published in 1944. One, Polanyi’s *The Great Transformation*, has been cited. The other was Friedrich Hayek’s *The Road to Serfdom*. Polanyi finishes with a crucial chapter on “Man and Nature” and the revolution in Earth-human relations at the heart of industrial civilization. Hayek reasserts his theme of distrust for concentrated political power, his praise of a free competitive economic system, and the virtues of laissez faire capitalism. No premonition of Friedrich Engels’ words a century earlier can be found in Hayek, just as they cannot be found in Benjamin Friedman: “To make the earth an object of huckstering—the earth which is our one and all, the first condition of our existence—was the last step toward making oneself an object of huckstering...It was and is to this day an immorality surpassed only by the immorality of self-alienation. And the original

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appropriation—the monopolization of the earth by a few, the exclusion of the rest from that which is the condition of their life—yields nothing in immorality to the subsequent huckstering of the earth.”14 Yet it was not Polanyi but Hayek who reigned in both economic theory and practice, not least by way of another Friedman, Milton, and his case for untrammeled market freedom.

Still, the point is the disembodied nature of the Big Economy. Theologians give the name “docetism” to this particular heresy. That is, the body has all the *appearances* of a real material body, incarnate in earth. But they are just that—appearances—and the true essence is an earth-transcending spirit, not earth itself. So it is that the human Economy came, via fossil fuels, to conceive itself as somehow transcendent of nature’s economy, just as human beings in this self-enclosed world came to conceive themselves as an ecologically segregated species.

With that heresy now exposed by global warming and accelerated climate change, the ethical question becomes, Can these metabolisms be aligned? Can corporate capitalism be “ecologized?” Can industrial/post-industrial civilization be genuinely Earth-honoring? I hope so, but we have yet to grow investors who use the seven-generation rule to determine their investment decisions. In fact, I know of none who consider investment decisions that don’t promise a positive return within five years. Five years is much too fast for the Great Economy that is “the first condition of our existence” (Engels) and our sole sustainer.

And the beat still goes on. One neighbor in Texas, the TXU Corporation, has plans to build 11 coal-fired utility plants by 2010 with a total capacity of 9,000

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megawatts. TXU leviathan earth-movers and sky-high cranes are rushing construction in order to beat anticipated regulatory limits on global warming gases. Are these good neighbors mean-spirited ogres who, to remember Ishmael, specifically want to destroy the world? No. The clue to their malevolence is in the The Times report, “Committed to Coal, And in a Hurry, Too”: “Whatever the cost [of burning coal is] to the ecosystem, [the rush to build] could be an immensely profitable bet. Company executives say the plants will provide cheap electricity for Texas, make lots of money for shareholders, conserve more valuable natural gas and reduce the pollutants that make smog.”15 The report goes on: “Perhaps in a recognition of the growing concern over emissions, TXU also said Monday that the new plants would have room for [future] construction of additions intended to capture carbon dioxide. Moreover, it said it was conducting research on oxygen firing, chilled ammonia and other technologies to capture carbon.”16 The very same pages address our impending fall from the top spot among global emitters: “China to Pass U. S. in 2009 In Emissions.” Emerging markets in the Big Economy now account for 30 percent of the total world economy and 50 percent of the economic growth last year.17 China and India are constructing 650 coal-fired power plants (the U. S. has 135 scheduled). “[China’s and India’s] combined carbon dioxide emissions will be five times the total savings envisioned by the Kyoto accords.”18 And remember, when all 865 plants go on line, they stay on line 30-40-50 years. Fareed Zakaria, who reports the datum about laying Kyoto waste, says in conclusion: “There is no way to turn off this

16 Ibid., C4.
global economy, nor should one try” even though “[g]rowth is also producing environmental degradation on a colossal scale.”

In other words, stay the course, despite the havoc it wreaks. It’s an odd conclusion, but the kind held in place by minds that cannot imagine a different way of life and how to get there via another great, and needed, transformation. Indeed, the chief tax incentives of the 109th Congress continued to go to oil, gas and nuclear. We’re still herding the last great transformation like a litter of good border collies.

In sum, accelerated climate change is the eerie yield of badly mismatched metabolisms whereby the Big Economy visits rack and ruin on the Great Economy in which the Big Economy is utterly embedded. Neither Edison and his progeny, to say nothing of Ford, Firestone and theirs, seriously considered putting their money on solar and other renewables. The outcome is not only the failure to address what every economy must, namely, sustainability. The outcome, via extreme climate change, is to give unsustainability a leg up and render sustainability far more difficult, far more expensive, and far more problematic for future generations. Once again the true burden of inaction falls on the victims, not the perps.

But what about intergenerational obligation? I chose the third citation, Berry’s dedication, to help locate your assumptions and those of the law in the modern period. When I read “To the children” and even “To all the children”, chances are the categories you think with when you think about obligation to future generations are unrelentingly anthropocentric. I.e., the moral universe you and I inhabit as moderns embraces future generations of humans only, as do our reigning notions of justice, including John Rawls’

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famous theory of justice as fairness. But a moral community of one-species-only isn’t a fixed imperative of the human mind, heart or psyche. It’s not your genes talking. Many cultures have construed their moral universe differently from us moderns, just as they have had other kinds of economies and other ways of life. They might echo the ancestral Zuni declaration so widespread among indigenous peoples: “We are of the earth. We emerged from the earth. We replenish the earth. We grow old. We return to the earth.”

Alternatively, there is the Earth Charter of very recent origin. It says: “Humanity is part of a vast evolving universe. Earth, our home, is alive with a unique community of life.” And then four categories follow in careful order, each with numerous principles: Respect and Care for the Community of Life, Ecological Integrity, Social and Economic Justice, and Democracy, Nonviolence, and Peace.

But this only says we can populate the moral universe with all God’s children. It doesn’t yet say we ought to.

I offer this example as a platform for discussion of obligation. Take the No. 2 yellow lead pencil some of you use to draft legal briefs. Try making one on your own, from scratch. How will you know what ore to seek for that crinkled little band on top, if it’s ore at all? How will you find it, mine it and process it until it’s pliant enough for the thin small circle around eraser and stem? Where will you get the rubber for the eraser? Who will explain rubber and lead you to its unlikely place in just the right tree’s innards? When you do find the right tree, how will you get an eraser from that sticky, whitish substance dripping into the pail? And what makes your pencil write? If it doesn’t write

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22 The full text can be found at www.earthcharter.org.
by itself, how do you get it to do so? Who invented alphabets anyway? And speech? Then there is the stem. What’s best for that, plastic or wood? But there is no such thing as plastic ore or smooth pentagonal wood 23/100ths inch in diameter. And don’t forget to paint it. With what? What is paint, anyway, and how do you get just the right shade so that the No. 2 pencil is yellow rather than dirty chartreuse? How do you get the paint to stick rather than run all over your brief?

This pencil is obviously not a task for you by yourself! If you took a day or two to think it over, you’d tally the work of thousands, tens of thousands, over centuries, engaging vast systems of local and global knowledge, invention, mechanics, trade, and Wal-Mart or Office Max.

Still, if No. 2 yellow lead pencils were the product of human cooperation alone, you would still have nothing, nada, zip. How was the ore formed over eons? What about the tree for wood or petroleum for plastics? If your professors assigned you to create a tree, what elements would you gather, and how would you fix the mix to arrive at life in this specific botanical form? The same holds for the rubber and graphite. By what nigh-eternal forces and processes did these come along? For your humble pencil, then, you can thank what St. Augustine called “the standing miracle” of land, air, water, sunlight and endless minute and enormous transactions ages in and ages out, over millions, even billions, of years. You and your No. 2 pencil, like your opposed thumbs, were born long ago to a fierce ontology of evolving communion. Incidentally, if you need further persuasion of this fierce communion, utter dependence and interdependence, climate change offers it in dramatic form.
The moral point is twofold. (1) You are fundamentally and forever indebted to past generations for every morsel you eat, every breath you take, every tool you use, every word you write, every song you sing, and, yes, for the condition of the Earth passed along to you that makes your life possible. (2) Unless you pass the torch of life along in sustaining ways, reality will head toward that of “every child left behind.” Do we have an ethical obligation to future generations? Only if the children matter. More precisely, it is not that they matter to you. (“What has me progeny done for me?” Robert Heilbroner famously asked.)\(^{23}\) It is that you matter to them. And on that score, there is no doubt whatsoever. They depend on you in the manner of all things born to belonging. Nothing is what it is apart from all else.

How should we conceive this relationship? The notion of “rights” seems best, from a moral and practical point of view. A right is a moral claim made a legal one. It is a legitimate claim or entitlement, the recognition of which is acknowledged by all. It is thus universal and binding within its given frame of reference.

Edith Brown Weiss’ discussion of “generational rights” is suggestive as the way to answer her own question: What obligation our generation owes the next?\(^{24}\) The core of the discussion turns on intergenerational equity, for which she posits three principles. (1) Each generation “should be required to conserve the diversity of the natural and cultural resource base” so that future generations have the means to exercise their values and solve their problems. This is the “conservation of options” principle. (2) Each generation should also be required “to maintain the quality of the planet so that it is

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\(^{23}\) In Robert Heilbronner, *Inquiry into the Human Prospect.*

passed on in no worse condition than that in which it was received.” This is the “conservation of quality” principle. Lastly, (3) each generation should provide its members with “equitable rights of access to the legacy of past generations and should conserve this access for future generations.” This is the “conservation of access” principle.  

Some might object to this helpful schematic because it does not effectively satisfy Berry’s moral universe of all the children. Instead, it slides back into the species apartheid world of human children only. The religiously-minded, especially, might well prefer full-bore biotic rights and argue, in the name of nature’s inherent value, for both moral standing and legal claims. “As independently good expressions of divine activity, all creation has moral standing before God” would be one possible formulation of grounds for such biotic rights.

Yet very similar outcomes are available via Weiss’ proposal, provided we feel the force of the underlying reality that nothing is what it is apart from all else. That is, even if claims for nature’s welfare rest in nature’s instrumental value for human well-being, the larger courses of nature must be respected and conserved. The well-being of our own and future generations would thus trade in the coin of legal claims that allow nature its own regeneration and renewal on its own terms. A kind of biospheric Golden Rule is thereby proposed, whether for self-interested reasons or in honor of nature’s inherent value and right-to-life.

With this discussion of intergenerational equity, we have already moved to the issue of distribution. Further comment is in order, however, this time out of due

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consideration for our preferred polity, democracy. Democracy rests on three classic values: liberty, equality, and community (or “fraternity”). Most moral reasoning about the second of these, equality, and about distributive justice, goes like this, in broadstroke fashion. “In that which is most basic…the value of each human life, we are all equal.”

This root conviction means that no human group should be excluded from a reasonable share of the benefits of any human economy, and nature’s, nor should any be exempted from shouldering a reasonable share of the burdens. Thinking about burdens and benefits thus begins with the idea of an equal sharing. It goes on to say that any contemplated inequalities may be justified if and only if, they can be shown to serve the common good (instead of private interests only). In the face of climate change, this common good now must of necessity include the biosphere and atmosphere; it intersects all four of the classic elements of life: earth (soil), air, fire (energy), and water. It is secondary whether this imperative good is approached as a matter of collective human self-interest or from the conviction of nature’s inherent value.

Not that generational rights are lodged with future generations only, and with climate change at some distant point in time. In November, 2006, Kofi Annan addressed the 10th Conference of Parties to the United Nations Framework Convention on Climate Change. He spoke of a “frightening lack of leadership” on global warming and he underscored that those least responsible for climate change may well suffer most from it. The meeting was in East Africa, which had record drought in 2005 while 2006 saw deluge—the heaviest rains in 50 years. The meeting also drew attention to malaria’s recent surge because of rising temperatures. It is one of Africa’s leading killers (2000 African children a day.) At the same time, the Sahara is expanding farther into the Sahel,
contributing to the growing ranks of environmental refugees.26 While the nature of something so huge and complex as climate change makes it nearly impossible to trace a tight one-to-one causal relationship between global warming and specific climate events, these developments are in keeping with what is expected, given the warming trends. What we can be certain of is that none of this as yet bothers apartment dwellers on the Upper West Side or East Side, near the UN, in the way it “bothers” these populations, who are all subsistence farmers immediately in touch with raw nature in the “unbuilt” environment. For them, it’s apocalypse. Some peoples, lands, and eco-systems are far more vulnerable to climate change than others, even when all are affected.

Differently said, climate change does not, and will not, play fair. Name the sector—food, health and disease, land, water supply and safety, species survival, coastal flooding, ocean fisheries, housing and shelter, forests, flora and fauna—climate change won’t play fair. Precisely because of this, sharing benefits and burdens, with those most responsible for the sins of emissions bearing proportional costs, climbs to the top of the list of moral issues. Inaction is immoral, since by all our best scientific bets, staying the present course will fuel more extreme and far-reaching dislocations in both the present and future, and will make repair more costly and difficult. It is a failure to exercise equality as a value, i.e., it is undemocratic, not to press generational rights. Granted, it’s a slow tsunami, but size matters: Is it Small or XXL, and for whom?

I applaud your concern and wish all of us well. We know “the great work” incumbant upon us. It is to effect another great transformation, the transition on this

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“garden planet of the universe”27 from “a period of [cumulative] human devastation of the Earth to a period when we humans [are] present to the planet in a mutually beneficial manner.”28 The law in the modern era has, to date, been most effective where you would expect—in aiding and abetting, protecting and preserving the generation of wealth. This was given a huge boost by extending the protection of individual human rights and limited liability to industrial-commercial corporations plundering the planet, with little or no recognition of [any] inherent rights of nature and precious little defense of the natural world. 29 The law has also consistently attended to matters of both procedural and distributive justice. But that justice has been the justice of species apartheid, with both a very limited moral and legal universe. And that means, in turn, that the third great issue and enduring problem, sustainability and what Earth requires for its own regeneration and renewal, has limped badly and never caught up in the practice of law. This may change in the face of climate change—your presence here today is a good sign. I hope so, for we need something like parity, since production and distribution have no future whatsoever apart from nature’s economy and its health. Just as the preservation of the health of the planet must be the first commitment of the medical profession, and the viability of the planet the first law of economics, so, too, the conservation principles of options, quality, and access, are the proper mandates of the law and legal profession. Earth’s well-being is primary; human well-being, present and future, is derivative.30

Larry Rasmussen

27 Berry, The Great Work, ix.
28 Berry, The Great Work, 3.
29 Berry, Evening Thoughts, 109.
30 These last sentences merge my comments with a paraphrase of Swimme & Berry, The Universe Story, 243.