



*LAW FOR SUSTAINABILITY:
THE GROWING ROLE OF
LEGAL EDUCATION*

John Dernbach
Widener University Law School
January 9, 2009

Overview

- 1. Law for Sustainability*
- 2. Sustainability at colleges and universities*
- 3. Sustainability at law schools*
- 4. What should we do next?*





Good news, bad news, and question

- ✧ Good News: Law Schools are already doing a lot of good work for sustainability.
- ✧ Bad News:
 - ✧ Much, much more remains to be done.
 - ✧ We are not doing this work in a particularly organized or systematic manner.
- ✧ Question:
 - ✧ How can we do a better job?



Climate change is a major driver

- ✧ For better and for worse, climate change is the public face of unsustainable development. Climate change/energy issues are probably the primary drivers for sustainability at universities and law schools.
 - ✧ For better: because climate change draws attention to sustainable development, an issue that is often too abstract for people to understand.
 - ✧ For worse: because sustainable development raises other issues, like biodiversity, resource consumption, and land use, that can be ignored if the entire focus is on climate change.



1. Law for Sustainability

Conventional Development

PROGRESS:

- Peace & security*
- Economic
Development*
- Social Development/
Human Rights*
- Supportive National
Governance*

PRICE OF

PROGRESS:

- Environment &
Natural Resources*



Sustainable Development

PROGRESS:

- Peace & security*
- Economic development*
- Social development/human rights*
- Environmental protection/restoration*
- Supportive national governance*



Challenge: Building the necessary legal structure

- ✧ Sustainable development requires a legal framework at all levels of government.
- ✧ Only fragments of that framework now exist.
- ✧ Sustainable development is interdisciplinary, but law is a needed discipline.



Engaging Law on Behalf of Sustainability

- ✧ Engage academic and practicing lawyers on behalf of sustainable development in variety of contexts
- ✧ Includes “use-inspired basic research”
- ✧ Design, testing, and implementation of appropriate legal instruments
- ✧ Not limited to litigation or traditional environmental law



“Law for Sustainability” borrows key ideas from sustainability science

- ✧ “the field seeks to facilitate what the National Research Council has called a ‘transition toward sustainability’”
- ✧ these efforts include
 - ✧ advancing cleaner energy and manufacturing systems
 - ✧ mitigating the human health impact of pollution and environmentally mediated disease
 - ✧ making more effective use of environmental and natural resources to promote poverty alleviation
 - ✧ devising practical protections for the earth's key life-support systems (Clark 2007)

Fig. 1. Research characterized by the motivations that inspire it

Beyond basic vs applied research: Science in Stoke's Quadrants

Research inspired by...		Considerations of use?	
		No	Yes
Quest for fundamental understanding?	No		Applied research (Edison)
	Yes	Basic research (Bohr)	<i>Use-inspired basic research (Pasteur)</i>

Clark, William C. (2007) Proc. Natl. Acad. Sci. USA 104, 1737-1738

2. Sustainability at colleges and universities

- ✧ Overwhelming majority of law schools are operated by universities or colleges.
- ✧ Thus, university-wide or college-wide sustainable development programs or commitments also ostensibly apply to their schools of law.



Sustainability Focal Points in Higher Education

- ✧ Curriculum
- ✧ Research
- ✧ Operations
- ✧ Outreach & Service
- ✧ Student Life
- ✧ Institutional Mission, Policy and Planning
- ✧ External Stakeholders



Significant increase in recent activity across all categories

- ✧ Recent assessment of U.S. sustainability efforts in 28 separate sectors (*Agenda for a Sustainable America*, Jan. 2009)
- ✧ Higher education one of six areas showing most progress.
- ✧ Others: local governance, business and industry, brownfields redevelopment, K-12 education, and religious organizations.



American College and University Presidents Climate Commitment

- ✧ 605 college and university presidents have signed this commitment.
- ✧ 63 of the signatory universities have law schools.
- ✧ This is about 1/3 of the nation's 195 law schools (AALS member and non-member fee paid schools).



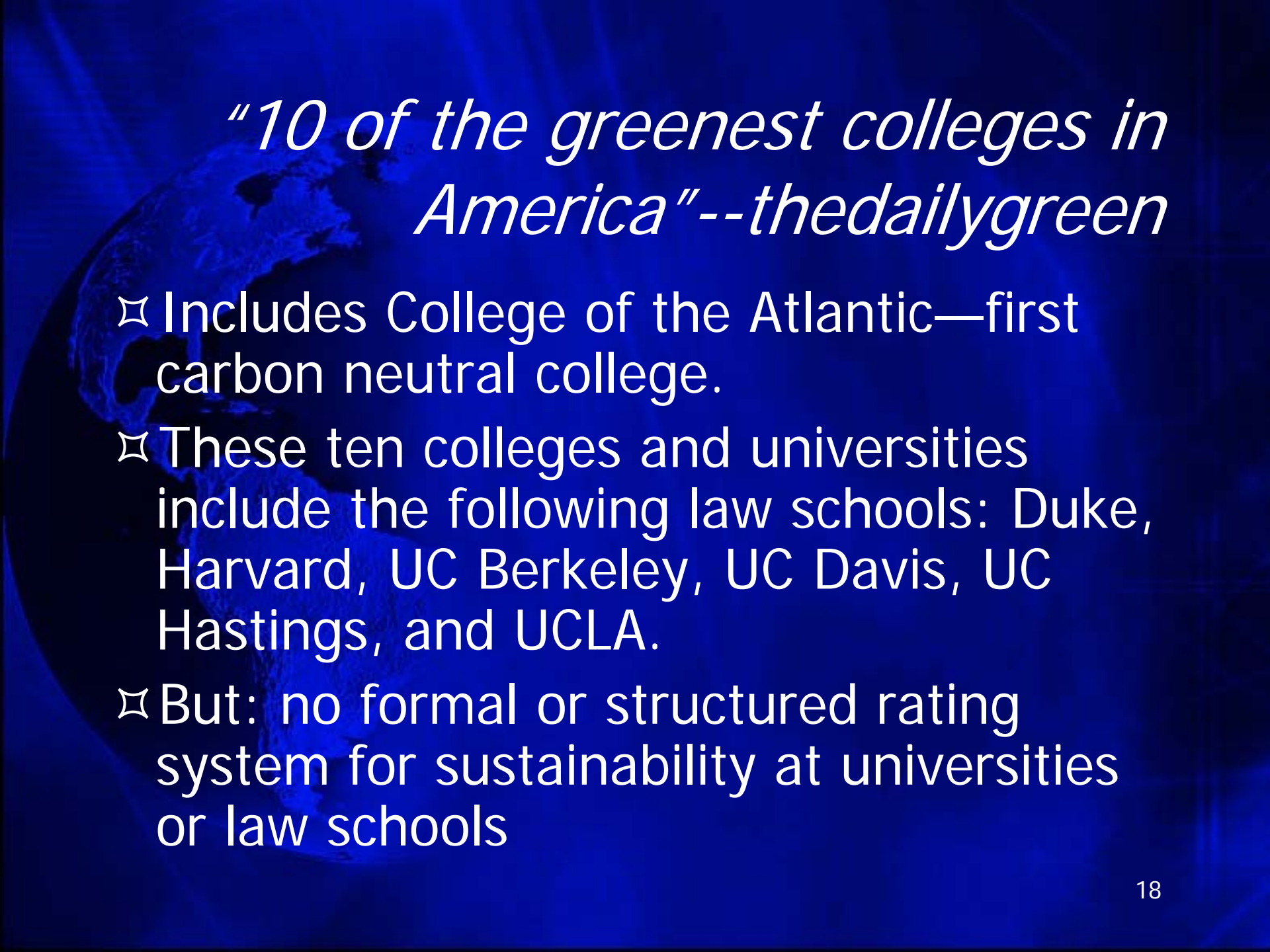
What is this commitment?

- ✧ Commits institutions to “develop an institutional action plan for becoming climate neutral,” based on a comprehensive assessment of greenhouse gas emissions at the institution.
- ✧ While this plan is being developed, institutions are to commit to taking at least two “tangible actions to reduce greenhouse gases” from a list specified in the commitment.



*Do two of the following right
away*

- ✧ a. LEED Silver certification for all new campus construction.
- ✧ b. Purchase ENERGY STAR certified products.
- ✧ c. Greenhouse gas offsets for all air travel paid for by institution.
- ✧ d. Encourage use of and provide access to public transportation.
- ✧ e. Purchase or produce at least 15% of institution's electricity consumption from renewable sources.
- ✧ f. Supports climate and sustainability shareholder proposals at companies where institution's endowment is invested.
- ✧ g. Participate in the Waste Minimization component of the national RecycleMania competition, and adopt 3 or more associated measures to reduce waste.



"10 of the greenest colleges in America"--thedailygreen

- ✧ Includes College of the Atlantic—first carbon neutral college.
- ✧ These ten colleges and universities include the following law schools: Duke, Harvard, UC Berkeley, UC Davis, UC Hastings, and UCLA.
- ✧ But: no formal or structured rating system for sustainability at universities or law schools

3. Sustainability at law schools

✧ A. Demand from legal profession

- ✧ American Bar Association House of Delegates adopted resolution in 2003 supporting sustainable development and urging "governments, including U.S. federal, state, local, tribal, and territorial bodies, as well as businesses, nongovernmental organizations, *and other entities*, to promote sustainable development, including by adopting and implementing appropriate measures with respect to their own facilities and activities."



2008 ABA Resolution on Climate Change

- ✧ House of Delegates urged “the United States government to take a leadership role in addressing the issue of climate change through legal, policy, financial, and educational mechanisms.”
- ✧ Resolution also:
 - ✧ urged the enactment of comprehensive climate change legislation.
 - ✧ Urged” the United States government to engage in active international discussions and to negotiate and ratify treaties or other agreements to address and reduce climate change.”



ABA-EPA Law Office Climate Challenge

- ✧ Law office can enroll by doing one of the following:
 - ✧ Switch to double sided copying and printing, use 30% post consumer waste, and/or initiate paper recycling (2 of 3)
 - ✧ Join EPA's WasteWise program
 - ✧ Buy 2-10% of electricity from renewable sources
 - ✧ Plan to reduce energy use by 10%

More than 130 law organizations, including 5 law schools, now participate.



*ABA Section on Environment, Energy, and
Resources Law Model Sustainability Policy for
Law Organizations*

- ✧ In pilot phase with nine large and small law firms (no law schools).
- ✧ Contains checklist of activities under economic, environmental, and social categories.
- ✧ Participating organizations would agree to some items on checklist, and add more over time.



Law firms and other law organizations:

- ✧ Are developing expertise in climate change, energy, and sustainable development because they see it as a need/business opportunity.
- ✧ Are showcasing their own sustainability efforts.



B. How law schools are responding

- ✧ Caveat: No clear boundary line between environmental law and sustainability
 - ✧ Yet sustainable development:
 - ✧ Provides an overall framework for all law.
 - ✧ Includes issues such as climate change, ecological/carbon footprint, and development.
 - ✧ Has a stronger normative component than environmental law.
 - ✧ Has a greater focus on writing new laws and designing new institutions.



(1). Curriculum

- ✧ Growing number and diversity of environmental courses
- ✧ Courses or seminars in sustainable development
- ✧ Courses that explicitly apply a sustainable development perspective
- ✧ Courses or seminars in climate change and biodiversity
- ✧ The growing use of sustainable development concepts and principles in other courses



Programs

- ✧ Interdisciplinary programs in law and sustainability.
- ✧ Graduate programs in sustainable development.
- ✧ Joint degree programs related to the environment.
- ✧ Clinics in subjects related to sustainability or that work on sustainability issues.
- ✧ Climate change/sustainability externships

(2). Research

Sustainable development

- ✧ 2008=22 articles
- ✧ 2007=28 articles
- ✧ 2006=35 articles
- ✧ 2005=25 articles
- ✧ 2004=36 articles
- ✧ 2003=43 articles
- ✧ 2002=30 articles
- ✧ 2001=19 articles
- ✧ 2000=13 articles

- ✧ WESTLAW
- ✧ Database=JLR (Journals & Law Reviews)
- ✧ Search Query=ti(sustainability "sustainable development") & da(= year inserted)



Climate change

- ✧ 2008=192 articles
- ✧ 2007=157 articles
- ✧ 2006=39 articles
- ✧ 2005=33 articles
- ✧ 2004=21 articles
- ✧ 2003=12 articles
- ✧ 2002=19 articles
- ✧ 2001=12 articles
- ✧ 2000=18 articles

- ✧ WESTLAW
- ✧ Database=JLR (Journals & Law Reviews)
- ✧ Search Query=
ti("climate change"
"global warming") &
da(= year inserted)



Centers or institutes

- ✧ Centers or institutes that focus on sustainable development or specific sustainable development issues.
- ✧ Centers that are devoted entirely or substantially to climate change.
- ✧ Collaborative interdisciplinary research and programs.



Other research

- ✧ Student journals on sustainable development or climate change.
- ✧ Symposia on climate change, sustainable development, and biodiversity.
- ✧ Research partnerships with governmental or nongovernmental bodies.

(3). Buildings and operations

- ✧ LEED certification for new buildings.
- ✧ Participation in the ABA-EPA Law Office Climate Challenge.
- ✧ Energy saving, recycling, etc.
- ✧ Student initiatives.
- ✧ Students provided with transit passes to reduce automobile use.
- ✧ Zip cars on campus



(4). Outreach and service

- ✧ Community-centered research and problem solving
- ✧ Activities of individual law professors
- ✧ Participation in litigation on climate change
- ✧ Sustainability activities of centers and institutes
- ✧ Public lecture programs, roundtables, forums, and symposia



(5). Student life

- ✧ Student-initiated greenhouse gas control efforts
- ✧ Environmental law societies, Native American student associations
- ✧ Focus the Nation teach-in on climate change
- ✧ Efforts to pair student groups with staff to generate and implement green ideas



(6). Institutional Mission, Policy, and Planning

- ✧ University commitments that affect their law schools (e.g., ACUPCC)
- ✧ Mission statement of most universities, colleges, and law schools is broad enough to include sustainable development.
- ✧ University/law school priority is climate change/energy/sustainability.
- ✧ Planning for sustainable development within existing community.



(7). Stakeholders

- ✧ Nonprofits (e.g., American College and University Presidents Climate Initiative)
- ✧ Private sector (e.g., Walmart)
- ✧ Government (climate change)
- ✧ Community (variety of issues)

4. What should we do next?

- ✧ Should we ask AALS to explicitly support some kind of resolution/criteria/checklist on behalf of sustainability in law schools?
- ✧ Should we seek to play some kind of collective and constructive role in the national climate change conversation or on other issues relating to sustainable development?
- ✧ Is “law for sustainability” a useful organizing principle for research, programs, planning, etc.?



Prof. John C. Dernbach
Widener University Law School
3800 Vartan Way
Harrisburg, PA 17106-9382
(717) 541-1933
(717) 541-3966 (fax)
jcdernbach@widener.edu
<http://ssrn.com/author=411559>
<http://www.johndernbach.com/>