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# After a Decade: "Theory as Practice" at the Center for Environmental Legal Studies

NICHOLAS A. ROBINSON*

A scholarly center, with an ethically premised mission to further the remedial objectives of Environmental Law: this conception inspired establishment of Pace's Center For Environmental Legal Studies in 1982[1] when Professor Donald W. Stever, Jr., joined me in launching this new focus through which the Pace University School of Law's Environmental Law Faculty could use their expertise to further, refine, and fashion environmental protection and the conservation of natural resources. In the Center's first decade, our Environmental Faculty managed to exceed our Center's imagined goals, and as the Center enters its march to the year 2002, we are rethinking our tasks.

Our Center has grown in the common law tradition, with an unwritten constitution. The Environmental Law Professors at Pace co-direct the Center. We define law reform or research projects, seek funding, contribute our own time and expertise *pro bono publics*, and hire our J.D. and LL.M. can-

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1. *See* Nicholas A. Robinson, *Pioneering Legal Education In Environmental Law*, TIMELY NOTICE (DECENNIAL ISSUE: 1976-86) 6-8, 10 (Pace University 1986).



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didates to join us in our endeavors. Our greatest joy has been to welcome our graduates, such as Professors Hodas,[2] Kennedy[3] and May,[4] back as colleagues and co-collaborators in our on-going Environmental Legal Studies. As Texas Public Utility Commissioner Karl Rabago observed at the Center's 10th Anniversary, we do not preach, but hope to lead by example. When our students exceed us in their accomplishments and commit their work also to environmental protection, the Center measures its success.

Over the decade, the Center has sponsored numerous Colloquia, many of which the *Pace Environmental Law Review* has published.[5] Pace law students learn much by meeting with colloquia participants, sharing in their deliberations, and editing their remarks for publication and outreach to a wider audience. In Energy Law Reform and in Comparative Law studies of Environmental Law in the former Soviet

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2. Professor David R. Hodas, Pace LL.M. 1989, Associate Professor of Law, Widener Law School (Delaware).

3. Professor Robert F. Kennedy, Jr., Pace LL.M. 1986, Clinical Professor of Law, Pace Environmental Litigation Clinic (New York).

4. Professor James R. May, Pace LL.M. 1991, Assistant Professor of Law, Widener Law School (Delaware).

5. These include Symposia on a wide range of topics. *See, e.g.*: Hazardous Waste: Carol E. Dinkins, *Enforcement of the Statutes Governing Disposal and Cleanup of Hazardous Wastes*, 1 PACE ENVTL. L. REV. 1 (1983); Land Use Planning: Arthur E. Palmer, *Environmentally Based Land Use Planning and Regulation*, 2 PACE ENVTL. L. REV. 25 (1983); Animal Welfare Law: David Favre, *Laboratory Animal Act: A Legislative Proposal*, 3 PACE ENVTL. L. REV. 123 (1986); Constitutionality of Municipal Zoning: John R. Nolon, *A Comparative Analysis of New Jersey's* Mount Laurel *Cases with the* Bernson *Cases in New York*, 4 PACE ENVTL. L. REV. 3 (1986); New York's State Environmental Quality Review Act (SEQRA): Gail Bowers, *New York's SEQRA in the Courts*, 5 PACE ENVTL. L. REV. 25 (1987); Peter R. Paden, *DEC's Part 617 Regulations, As Amended: A Guide to the Implementation of SEQRA*, 5 PACE ENVTL. L. REV. 51 (1987); Environmental Law in the USSR: Nicholas A. Robinson, *Peristroika and Priroda: Environmental Protection in the USSR*, 5 PACE ENVTL. L. REV. 351 (1987); Nicholas A. Robinson, *Soviet Environmental Protection: The Challenge for Legal Studies*, 7 PACE ENVTL. L. REV. 117 (1989); I.A. Iconitskaya, *Legal Protection of Land in the USSR*, 7 PACE ENVTL. L. REV. 161 (1987); SLAPP Suits: George W. Pring, *SLAPPs: Strategic Lawsuits Against Public Participation*, 7 PACE ENVTL. L. REV. 3 (1989); *Lucas v. South Carolina Coastal Council*: Cotton C. Harness, III, Lucas v. South Carolina Coastal Council: *Its Historical Context and Shifting Constitutional Principles*, 10 PACE ENVTL. L. REV. 5 (1992).

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Union, the team-work of the Center and the *Pace Environmental Law Review* has produced scholarly analysis never before undertaken and published.

In book publishing, the Center has served its Law School in preparing and publishing the *Annotated Bibliography of The Pace Law School Library's Environmental Law Collection.*[6] It researched and published the internationally acclaimed study *The Environmental Costs of Electricity*,[7] and most recently prepared a six volume library set of proceedings of the 1992 UN Conference on Environment & Development in Rio de Janeiro[8] and one volume paperback edition of Agenda 21.[9] The latter publications were released under the auspices of IUCN-The World Conservation Union.[10]

Pace's Center became a member of IUCN shortly after being established. The IUCN's Commission on Environmental Law is a cooperative network of specialists from around the world. The Center assists IUCN's research, most recently providing an analysis in Perth, Australia, in 1990, of comparative law trends in Environmental Impact Assessment (EIA),[11] and for January 1994, in Buenos Aires, Argentina, on EIA in Puerto Rico (a bilingual edition).[12]

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6. Nicholas A. Robinson, ANNOTATED BIBLIOGRAPHY OF THE ENVIRONMENTAL LAW COLLECTION IN THE PACE UNIVERSITY SCHOOL OF LAW LIBRARY (Associated Faculty Press 1982).

7. RICHARD L. OTTINGER ET AL., ENVIRONMENTAL COSTS OF ELECTRICITY (Oceana Publications, Inc. 1991).

8. AGENDA 21 AND THE UNCED PROCEEDINGS (Nicholas A. Robinson et al., eds., 1992-93).

9. AGENDA 21: EARTH'S ACTION PLAN (Nicholas A. Robinson, ed., 1993) (IUCN Environmental Policy & Law Paper No. 27).

10. IUCN was founded in 1948 by NESCO, France, and the Swiss League For The Protection of Nature. Its headquarters are in Gland, Switzerland. IUCN's Commission on Environmental Law is the internationally leading network of Environmental Law specialists. The Commission's secretariat is situated at IUCN's Environmental Law Centre in Bonn, Germany.

11. Nicholas A. Robinson, *Comparative EIA Abroad: The Comparative and Transnational Experience in*, ENVIRONMENTAL ANALYSES: THE NEPA EXPERIENCE (CRC Press 1992).

12. Jose Ramirez, EIA IN PUERTO RICO: THE EXPERIENCE IN AN HISPANIC LEGAL CONTEXT (published by Pace Univ. for IUCN Centre For Environmental Law 1993).

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Pace's international work has advanced through inviting lawyers to spend a year at Pace as Feldshuh Fellows. These individuals now work in Environmental Law in the European Community's Environmental Directorate in Brussels,[13] at the Russian Center For Environmental Law in St. Petersburg,[14] in the Forest Ministry of Nepal,[15] and most recently at the Environment & Natural Resources Foundation in Buenos Aires.[16] All have been based in the Center and furthered its work. The current Feldshuh Fellow is an attorney with the Environmental Quality Board of the Commonwealth of Puerto Rico, in San Juan.[17] The Center benefits from the counsel of Adjunct Professors Andronico Adede and Roy Lee, both of the UN Legal Advisors Office at United Nations headquarters in New York City.

As the challenges of environmental protection become increasingly international, the Center inevitably will increase its comparative law and international law focus. In 1992, the Center co-sponsored an international symposium with the Catholic University of Salvadore, in Bahia, Brazil.[18] The Center continues its cooperation with the growing Environ-

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13. Jose Martinez Aragon, Pace LL.M., is an attorney in Directorate-General XI, Brussels.

14. Konstantin Nickolaevich Ryabchihin, Pace LL.M., is the President and chief attorney of the Russian Center For Environmental Law, *Jurists Za Ecologia* (Lawyers for Ecology), St. Petersburg, Russia. Mr. Ryabchihin, in December, 1993, won a significant Russian Supreme Court ruling and a St. Petersburg court decision enforcing Russia's environmental laws; Pace's Center and Environmental Litigation Clinic assist this new endeavor.

15. Diwaker Chapagain, Pace LL.M., is an attorney in the Forest Ministry of the Kingdom of Nepal and has helped teach Environmental Law in the Law Faculty in Katmandu.

16. Horatio Paya, Pace LL.M., is a staff attorney at the *Fundacion Ambiente y Recursos Naturales* (Environmental and Natural Resources Foundation), Buenos Aires, Argentina.

17. Jose L. Ramirez De Leon, is Principal Attorney in the Environmental Quality Board of The Commonwealth of Puerto Rico, San Juan, Puerto Rico.

18. Symposium in Environment & The Quality of Life (unpublished 1992). The symposium was organized by Pace Law Professors Jeffrey Miller and Nicholas Robinson and by Dr. Jordan Young of the Pace Brazilian-U.S. Business Institute.

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mental Law community in Brazil, as well as with Dundee University in Scotland.[19]

Without doubt, the Center's greatest success to date is its nationally recognized Energy Law Project. Led and inspired by Professor Richard L. Ottinger, this project attracts extensive support from foundations, state and federal agencies and others. Its aim is to promote the more efficient use of electricity, to protect the environment by pricing impacts formerly considered "externalities," and to promote less consumption and more environmentally benign production of electricity. The four annual reports of the Center's Energy Project;[20] the many favorable decisions of the New York State Public Service Commission and other agencies, based on submissions in many of the proceedings to which the Pace Center is a party; and expansion of the Energy Project into Florida[21] are testimony to the careful research of Pace J.D. candidates led by Professor David Wooley and Research Associate Terry Black, Esq., with the Project's economist, Thomas Bourgeois.

Acknowledgement of the effectiveness of the Pace Center's Energy Project is illustrated by the New York State Senator Suzi Oppenheimer's observation that "The Pace Energy Project . . . has become a pioneer in establishing energy policies that promote energy efficiency as a substitute for ex-

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19. In 1993, Center associates will teach a course on Current Developments in Environmental Law at Dundee University.

20. *See* ENERGY LAW PROJECT, PACE CTR. FOR ENVTL. LEGAL STUDIES, SIXTH ANNUAL REPORT, FISCAL YEAR 1992-93 (1993) (accounting period of Sept. 1, 1992 to Aug. 31, 1993); ENERGY LAW PROJECT, PACE CTR. FOR ENVTL. LEGAL STUDIES, FIFTH ANNUAL REPORT, FISCAL YEAR 1991-92 (accounting period of Sept. 1, 1991 to Aug. 31, 1992); ENERGY LAW PROJECT, PACE CTR. FOR ENVTL. LEGAL STUDIES, FOURTH ANNUAL REPORT, FISCAL YEAR 1990-91 (accounting period of Sept. 1, 1990 to Aug. 31, 1991); ENERGY LAW PROJECT, PACE CTR. FOR ENVTL. LEGAL STUDIES, THIRD ANNUAL REPORT, FISCAL YEAR 1989-90 (accounting period Sept. 1, 1989 to Aug. 31, 1990).

21. *See* Florida Power Corp. In re Petition for Determination of Need for a Proposed Electrical Power Plant and Related Facilities, Polk County Units 1-4, by Florida Power Corporation, Docket No. 910759-EI; TECo In re Petition for a Rate Increase by Florida Power Corporation, Docket No. 910883-EI; Florida Power Corp. Rate Case, Docket No. 910890-EI; Conservation Cost Recovery Docket for Fla. Utils., Docket No. 920002-EV (all formal hearings before Fla. Public Serv. Comm'n).

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isting or new polluting power plants."[22] The New York State Public Service Commission, in a 1990 Order, found that Pace led coalition "suggestions are sound, and we expect the utilities to fully assess the apparently useful and creative suggestions from the parties, and not require us to take prescriptive action to improve utility OSM [Demand Side Management] programs . . . ."[23] Professor Richard Ottinger found himself lecturing to Swedish utilities on how to use the Pace research findings in that nation.[24] Robert Repetto of the World Resources Institute praised the Center's "very fine work on the leading edge of electric utility regulatory policy"[25] and Congressman Philip R. Sharp in like vein observed that "research of this type is really on the cutting edge of solutions to resolving the conflict between our energy and environmental needs. The better we can integrate those costs into our regulatory system, the less conflict we will have."[26]

In addition, Center research has been relied upon by the Pace Environmental Litigation Clinic. For instance, the Center's study of thermal discharges in water courses from electrical generating facilities prepared for the book *Environmental Costs of Electricity* helped identify the preventative measures necessary to protect fish from impingement and entrainment in cooling waters intake systems.[27] This data was used to frame the Clinic's Clean Water Act § 316 enforcement action, which resulted in a recent national precedent in *Hudson Riverkeeper v. Orange & Rockland Utilities*.[28]

Center projects have addressed a number of other subjects as well, from the law and science of reintroducing oyster

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22. OPPENHEIMER REPORTS TO WESTCHESTER 2 (Dec. 1989).

23. N.Y. Public Serv. Comm'n (Order, Nov. 27, 1990).

24. *The Swedish Electricity System Can Change, But How Fast?*, VATTENFALL ELECTRICITY CONGRESS: THE ELECTRICITY REPORTER (June 2, 1989) (on file with Center).

25. Letter from Robert Repetto, Director of Economic Research Program, World Resources Institute, to Richard L. Ottinger, Co-Director, Pace Center for Environmental Legal Studies (Oct. 24, 1989) (on file with Center).

26. Letter from Rep. Phillip R. Sharp, Chairman, House Subcommittee on Energy and Power, to Richard L. Ottinger, Co-Director, Pace Center for Environmental Legal Studies (Apr. 11, 1990) (on file with Center).

27. See OTTINGER, ET AL., *supra* note 7, at 309-15, 436 (Op. Cit.).

28. 835 F. Supp. 160 (S.D.N.Y. 1993).

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cultivation in the Hudson Estuary,[29] to the methodology for conducting environmental impact assessment in the City of New York,[30] to an analysis for the Federated Conservationists of Westchester County regarding how the County government could reorganize its environmental protection programs.[31] Visiting scholars have worked at the Center;[32] and the Center has encouraged law students at Pace to serve as visiting scholars abroad.[33]

These myriad undertakings serve to strengthen and enrich Pace's Environmental Law Programs. J.D. candidates participate in most of the Center's work, which in turn contributes to Pace's J.D. curriculum, to its *Environmental Law Review*, to its National Environmental Moot Court Competition, and its LL.M. and S.J.D. degrees. If research is a University's highest calling in our society, the Pace Center For Environmental Legal Studies has become a beacon to lead all the Pace programs toward rigorous and useful scholarly analysis. Each of the Center's undertakings constitutes "theory as practice." The Center studies and formulates an innovative, reflective environmental jurisprudence, combining the opportunity to test theory through its application. The Center's engagements of "theory as practice" seek to bring the laws of natural science and society into synchrony.

Since the early struggles of the Hudson's John Burroughs and the Sierra's John Muir, and the later successes of

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29. *See* Roxanne Torres Beecher, Colloquium on the Law & Science of Oystering in the Hudson Estuary, No. 13 (unpublished 1993). Ms. Beecher, J.D. from Pace Univ. and M.S. from Fordham Univ., based her colloquium on research begun for a course on Science & Technology in Environmental Law taught at Pace University.

30. NEW YORK CITY MAYOR'S OFFICE OF ENVIRONMENTAL COORDINATION, DRAFT TECHNICAL MANUAL ON IMPACT ASSESSMENT IN NEW YORK CITY (1993).

31. NICHOLAS A. ROBINSON, WESTCHESTER COUNTY'S ENVIRONMENTAL MANDATES (Pace Center for Envtl. Legal Studies 1987) (prepared under a grant by Edith Read).

32. Professors David Hodus (Widener) and Katherine Tinker (Montana) have used the Center's facilities for special research; short-term visitors include Professors O.S. Kolbason (Moscow, Russia), Robert J. Fowler (Adelaide, Australia), and Jose Augusto Tavares (Bahia, Brazil).

33. For example, for the summer of 1993, J.D. candidate, John Garrison, was a Legal Intern with the *Fundacion Ambiente y Recursos Naturales* (Environmental and Natural Resources Foundation) in Buenos Aires, Argentina.

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New York's Teddy Roosevelt, both conservation and environmental protection have advanced through an altruistic campaigning on behalf of nature. Humbly, but proudly in that spirit, those of us in the Center For Environmental Legal Studies carry on the same cause. Today's legal tools are considerably more complex and widespread than those of a decade ago, or a century ago, and this is all the more reason for us to take on extra work above and beyond our normal academic loads. It is likely that as we look back in the year 2002 at the Center's work today, our current endeavors will seem small and barely adequate. Our challenge is to further build the Center to attain that adequacy.

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