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# The Many Paths of Environmental Practice: A Response to Professor Bonine

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## ESSAY

# The Many Paths of Environmental Practice A Response to Professor Bonine

KENNETH A. MANASTER\*

### I. INTRODUCTION

Environmental law professors often try to evaluate their teaching's relevance to what their students eventually will be doing if they practice environmental law. Some of those students, we hope, will have careers in public interest practice. In

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Tijana Martinovic, a law student at Santa Clara University, provided skillful research assistance for the preparation of this article.

environmental law, public interest practice usually refers to jobs with citizens groups. Such groups include national, well-established organizations such as the Natural Resources Defense Council, Environmental Defense Fund, and Earthjustice. These organizations, as well as regional and local environmental groups, employ full-time or part-time lawyers. For more than 40 years, lawyers in these groups have made enduring contributions to the development and enforcement of environmental law and policy.

These contributions are recognized by Professor John E. Bonine in his article entitled "Private Public Interest Environmental Law: History, Hard Work, and Hope."<sup>1</sup> Bonine's emphasis, however, is on a different type of public interest practice.<sup>2</sup> His article urges young lawyers to seriously consider "a way to integrate public interest law into private practice,"<sup>3</sup> and "to establish a law practice whose paying clients' interests are not in conflict with clients in pro-environmental cases."<sup>4</sup> In support of his advice, Bonine offers specific examples of such firms and their accomplishments as well as a partial census of such lawyers, who number approximately 250.<sup>5</sup>

Bonine's admiration for this type of work, and his urging that this career route be considered, are praiseworthy. I agree with him about the many accomplishments of such practitioners. I also concur that this is a challenging and risky career path, but one with the potential to be profoundly satisfying. I add my applause in print here to the applause he undoubtedly and deservedly received when he presented the thoughts underlying his article at the 2007 Garrison Lecture at Pace University Law School.

However, in some respects I disagree with Bonine's perspectives. In at least two, overlapping ways, Bonine's message to law students and young lawyers is misleading and thus

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1. John E. Bonine, *Private Public Interest Environmental Law: History, Hard Work, and Hope*, 26 PACE ENVTL. L. REV. 465, 478-79 (2009).

2. See John E. Bonine, *The New Private Public Interest Bar*, 1 J. OF ENVTL. L. & LITIG. xi (1986).

3. *Id.* at 480.

4. *Id.*

5. *Id.* at 475 n.42.

disserves these audiences. First, the article paints an incomplete picture of worthwhile career paths in environmental law, both past and present. Second, to the extent that the article does touch on the fuller picture, it substantially and discouragingly distorts it.

## II. THE BIGGER PICTURE—THEN AND NOW

Professor Bonine begins his article with a look at the early history of public interest environmental law. He summarizes a few of the exciting, important cases from the halcyon days of environmental law in the 1960s and 1970s.<sup>6</sup> Landmarks like the Storm King Mountain<sup>7</sup> and Mineral King Valley<sup>8</sup> cases were inspiring examples of determined, creative efforts by a small assortment of private lawyers. Most of the early controversies the article mentions were cases involving rural or wilderness areas—efforts to protect pristine natural resources.

As important as those efforts were, they are only one part of the early history of the field. In what might at first appear to be just a quibble, I note that legal activity for protection of urban environments is underemphasized in Bonine's article, which includes only passing references to "suits against highway construction" and attempts to halt pesticide spraying in various communities in the 1950s and 1960s.<sup>9</sup> Those cases, however, are representative of another important focus of early activism and lawyering for environmental protection. Major proceedings, both in courts and administrative forums, were pursued to address air pollution, water pollution, and other problems in and around our cities.<sup>10</sup> Looking back, these proceedings and the lawyers' work on them do not have the same inspiring aura that accompanies descriptions of the battles Bonine mentions for protection of

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6. *See id.* at 466-72.

7. *Scenic Hudson Pres. Conference v. Fed. Power Comm'n*, 354 F.2d 608 (2d Cir. 1965).

8. *Sierra Club v. Morton*, 405 U.S. 727 (1972).

9. Bonine, *supra* note 1, at 468, 471.

10. *See, e.g.*, *Huron Portland Cement Co. v. City of Detroit, Mich.*, 362 U.S. 440 (1960); *United States v. Republic Steel Corp.*, 362 U.S. 482 (1960); *United States v. Standard Oil Co.*, 384 U.S. 224 (1966); *Boomer v. Atlantic Cement Co.*, 257 N.E.2d 870 (1970); *Ill. v. Milwaukee*, 406 U.S. 91 (1972).

treasures such as Storm King Mountain,<sup>11</sup> Mineral King Valley,<sup>12</sup> Hells Canyon,<sup>13</sup> or Mount Greylock.<sup>14</sup> For example, one of the first major environmental cases I worked on was aimed at stopping air pollution from a filthy asphalt batch plant in a largely low-income, minority neighborhood in Chicago Heights, Illinois.<sup>15</sup> This gritty case did not involve “purple mountain majesties” from “sea to shining sea,” but it was one of many struggles around the country to protect the environment of people living in America’s cities.

Why is this more than a quibble? By concentrating on the efforts of a few private lawyers to protect unique natural resources, Bonine underemphasizes other major areas of past environmental concern and achievement. He also gives short shrift to other kinds of environmental practice both then and, most importantly, now. In view of Professor Bonine’s own practice in the U.S. Environmental Protection Agency early in his career, this imbalance in the article is a bit surprising. The article, of course, does not purport to present a full history of environmental law’s early years, but rather to highlight private public interest practice. Nevertheless, Bonine’s assertion that the “early history of environmental law begins with private public interest work” seems overstated.<sup>16</sup>

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11. Bonine, *supra* note 1, at 460.

12. *Id.* at 470.

13. *Id.* at 471.

14. *Id.* at 469.

15. Dale H. Moody v. Flintkote Co., Nos. 70-36, 71-67 (Ill. Pollution Control Board 1971).

16. See RICHARD J. LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* (2004) (offering the following perspectives: “It is an oft-repeated fiction that environmental law spontaneously began in the late 1960s and early 1970s. Environmental law no doubt had its first, most formal, expression during that time, but its historical legal roots are far deeper and broader. They extend to the nation’s natural resources laws, which played such a dominant role in the country’s first 150 years. Environmental law in the United States also stems from the statutory and public policy precedents in the areas of public health and worker safety that were steadily established throughout the twentieth century.” *Id.* at 44. “Two of the most visually unsettling events, however, both occurred in 1969. These were the burning of the Cuyahoga River in Ohio and the Santa Barbara oil spill off the coast of California. . . . The immediate, visual confirmation of threats to the environment intensified public demand for environmental protection.” *Id.* at 59.

Certainly lawyers in the federal government were early, major contributors to environmental protection. Consider, for example, *United States v. Republic Steel Corp.*<sup>17</sup> and *United States v. Standard Oil Co.*,<sup>18</sup> two water pollution cases brought by the Justice Department in the 1960s, which led to the Supreme Court's drastic expansion of the reach of nineteenth century legislation for protection of navigable waters. Even the resulting ambitious effort by the Army Corps of Engineers in the early 1970s to develop a vast permit program to control water pollution discharges was in large part the product of government lawyers.<sup>19</sup> Well-justified skepticism about the Army Corps's attempt to be the fox guarding the chickens led to the program's demise.<sup>20</sup> Nonetheless, the proposal set the stage for the National Pollutant Discharge Elimination System and dredge and fill permit programs in the Clean Water Act.<sup>21</sup> The NPDES program, in turn, became the model for the Title V permit program in the 1990 Clean Air Act Amendments.<sup>22</sup> Even earlier, it was lawyers in the Justice Department under President Johnson who sought to pursue creative antitrust proceedings against the major automobile manufacturers for their coordinated decisions to delay the development of emission control devices.<sup>23</sup>

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"Prior to 1970, environmental protection was evident in only a handful of fledgling regulatory efforts scattered across offices in the federal government and a relatively few state governments. . . . Within just a few years in the 1970s, the federal government brought together and dramatically expanded many of these programs in an effort to forge a comprehensive legal regime for environmental protection. The fifty states, some preceding and some following the efforts made by the national government, began to do the same." *Id.* at 67.) See also Terry R. Bossert, *The Practice of Environmental Law Rediscovered Its Roots*, 27 PENN. LAW. 12, 14 (2005) ("The environmental movement did not start on April 22, 1970, as many of us think. Rather, what we now call the environmental movement started as the conservation movement at the turn of the last century.").

17. See *Republic Steel Corp.*, 362 U.S. 482.

18. See *Standard Oil Co.*, 384 U.S. 224.

19. See JOHN QUARLES, CLEANING UP AMERICA 97-116 (1976).

20. See generally *Kalur v. Resor*, 335 F. Supp. 1 (D.D.C. 1971).

21. See QUARLES, *supra* note 19, at 97-116 (1976).

22. Clean Air Act, Pub. L. No. 101-549, 104 Stat. 2399 (1990).

23. See, e.g., *United States v. Auto. Mfrs. Ass'n*, 307 F. Supp. 617 (C.D. Cal. 1969), *aff'd per curiam*, 397 U.S. 248 (1970). For discussions of the controversy over the Nixon Administration's settlement of the litigation, see Ralph Nader,

These examples remind us that federal government lawyers, both as litigators and as participants in program development, were key players in environmental protection at least as early as the 1960s. With the creation of the U.S. Environmental Protection Agency in 1970, under the leadership of lawyers like William Ruckelshaus, John Quarles, and Russell Train,<sup>24</sup> and with the energetic contributions of young lawyers like John Bonine, the vast national environmental protection effort took off with a major boost from lawyers in federal service.

Collaboration among private environmental lawyers and federal government lawyers was common. I recall, for example, that while working at the Natural Resources Defense Council, I litigated a case alleging Clean Water Act violations by a major sewage treatment plant at Lake Tahoe.<sup>25</sup> The case was tried for the EPA by a Justice Department attorney and for NRDC by me. An additional moving force in the case was a state agency, a California Regional Water Quality Control Board, and encouragement from the sidelines came from a local group, the League to Save Lake Tahoe. Partnerships of this sort among citizens groups and federal and state governments are not unusual and should be remembered in order to have a more complete picture of the history and landscape of environmental practice.

The role of environmental lawyers in state government also should not be underestimated. State attorneys general were

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*Law Schools and Law Firms*, 54 MINN. L. REV. 493, 500 (1970); Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069, 1070 n.3 (1970).

24. See generally QUARLES, *supra* note 19; RUSSELL E. TRAIN, *POLITICS, POLLUTION, AND PANDAS: AN ENVIRONMENTAL MEMOIR* (2003).

25. Order Denying Motions for Preliminary Injunction, *United States v. Douglas Cnty Sewer Improvement Dist. No. 1*, No. 78-0123 (D. Nev. 1979). Another earlier, and much more important, example of collaboration among federal, state, local, and citizen organizations is *Reserve Mining Co. v. EPA*, 514 F.2d 492 (8th Cir. 1975), which is explored fully in John S. Applegate, *The Story of Reserve Mining: Managing Scientific Uncertainty in Environmental Regulation*, in ENVIRONMENTAL LAW STORIES 43 (Richard J. Lazarus & Oliver A. Houck, eds., 2005). See also DANIEL A. FARBER, *ECO-PRAGMATISM: MAKING SENSIBLE ENVIRONMENTAL DECISIONS IN AN UNCERTAIN WORLD* 16 (1999) (describing *Reserve Mining* as “[t]he first major judicial confrontation with environmental risk. It raised troubling issues regarding scientific uncertainty, the difficulty of balancing cost against public health, and the long-term nature of environmental harms.”).

major players in the development of the field, with aggressive and creative efforts in states such as Illinois, Minnesota, New York, Massachusetts, and California.<sup>26</sup> For example, *Illinois v. Milwaukee*,<sup>27</sup> which involved interstate water pollution of Lake Michigan, was one of a number of major suits and administrative proceedings filed by the Attorney General of Illinois, William J. Scott, in the late 1960s and early 1970s.<sup>28</sup>

That litigation also brings to mind another group among the early players in the development of environmental law: law professors. Part of the impetus for application of the federal common law of nuisance concept to the above-cited Lake Michigan controversy came from the Illinois Attorney General's former law professor, Fred Herzog, who argued the first of the cases to a successful outcome in the Supreme Court.<sup>29</sup> Of more enduring significance were contributions of academics such as David Currie of the University of Chicago Law School. He was the principal drafter of the Illinois Environmental Protection Act of 1970, a statute whose basic approach and structure are still in force. Currie also served as the first chairman of the Illinois Pollution Control Board, the legislative and adjudicative body created by that Act.<sup>30</sup> In other states as well, professors were active contributors to the law's growth, through work with environmental groups and government agencies; assistance in the design of new statutes; the scholarly revival and reinterpretation of concepts; and litigation.<sup>31</sup>

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26. For a discussion of past and present efforts of attorneys general in many states, see Symposium, *The Role of State Attorneys General in National Environmental Policy*, 30 COLUM. J. ENVTL. L. 335 (2005).

27. *Ill. v. Milwaukee*, 406 U.S. 91.

28. See generally Kenneth A. Manaster, *Early Thoughts on Prosecuting Polluters*, 2 ECOLOGY L.Q. 471 (1972).

29. *Ill. v. Milwaukee*, 406 U.S. 91.

30. See DAVID P. CURRIE, *POLLUTION: CASES AND MATERIALS* xii (1975).

31. See, e.g., LAZARUS, *supra* note 16, at 47-48 (2004) (listing David Currie, Joseph Sax, A. Dan Tarlock, and other law professors active in environmental law as early as 1969); see also CHRISTOPHER D. STONE, *SHOULD TREES HAVE STANDING? TOWARD LEGAL RIGHTS FOR NATURAL OBJECTS* (W. Kaufmann 1974) (originating the standing theory later adopted in dissent by Justice Douglas in *Sierra Club v. Morton*, 405 U.S. 727 (1972), as discussed in Bonine, *supra* note 1, at 470); Holly Doremus, *The Story of TVA v. Hill: A Narrow Escape for a Broad New Law*, in ENVIRONMENTAL LAW STORIES 109, 120-21, 129 (Richard J.



Two other groups of lawyers deserve emphasis as well: plaintiffs' tort lawyers and local government lawyers. Regarding the former, Bonine accurately states, "[t]he important work done on a daily basis by plaintiffs' tort lawyers also can serve as a force for environmental and health protection."<sup>32</sup> He barely mentions local government lawyers. Yet they too were early contributors to the effort and continue to be important, whether working in cities and counties or in special districts such as regional air pollution agencies, sewage treatment districts, water supply agencies, agricultural control boards, or others.<sup>33</sup>

All of these types of environmental lawyers—private public interest lawyers, environmental group lawyers, federal government lawyers, state government lawyers, local government lawyers, tort lawyers, and even law professors—have helped from early on and continue to help to make and implement law in the service of environmental protection goals. Stated otherwise, public interest environmental law has been practiced by all of these types of lawyers and, fortunately, opportunities continue to exist for new lawyers to do so as well.

Omitted from this list, of course, is the group Bonine aptly refers to as "business environmental lawyers."<sup>34</sup> He does not mention them in the initial, historical portion of his article, and the omission there makes sense: he is highlighting practitioners squarely on the plaintiff's side of the controversies he discusses.<sup>35</sup> Presumably, in his view, the lawyers on the "defense" side, representing polluters and developers, did not contribute to the

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Lazarus & Oliver A. Houck, eds., 2005) (discussing the work of Zygmunt Plater in the "snail darter" case, *Tenn. Valley Auth. v. Hill*, 437 U.S. 153 (1978)); Zygmunt J.B. Plater, *Environmental Law in the Political Ecosystem: Coping with the Reality of Politics*, 19 PACE ENVTL. L. REV. 423 (2002). These are just a few of the law professors who made major contributions to the early development of the field in a variety of ways beyond teaching.

32. Bonine, *supra* note 1, at 478.

33. See, e.g., *City of Northlake v. City of Elmhurst*, 190 N.E.2d 375 (Ill. App. Ct. 1963); *Metro. Dade Cnty v. Fla. Processing Co.*, 218 So.2d 495 (Fla. Dis. Ct. App. 1969); *Orange Cnty Air Pollution Control Dist. v. Pub. Utilities Comm'n*, 484 P.2d 1361 (Cal. 1971); *Cnty of Milwaukee v. Veterans Admin. Ctr.*, 357 F.Supp 192 (E.D.Wis. 1973); *Metro. Sanitary Dist. of Greater Chi. v. U.S. Steel Corp.*, 332 N.E.2d 426 (Ill. App. Ct. 1975).

34. Bonine, *supra* note 1, at 474-75.

35. *Id.* at 467-72.

public interest in the field of environmental law. From a historical perspective, and depending on how “public interest” is defined, there may be room for argument as to whether his view is correct.<sup>36</sup> But that argument need not be explored here, as my objective is not to fine-tune the history of environmental law. Instead, with respect to business environmental lawyers, my primary goal is to convey an accurate message about their work, i.e., what it is, what it is for, and how it relates to the values, aspirations, and career options of our students as they enter environmental practice.

### III. GOOD GUYS AND BAD GUYS—STILL?

After his brief look at the early history of environmental law, Bonine poses a few questions: First, he asks whether his stories of “innovative private lawyers from the 1960s and 1970s”<sup>37</sup> have much relevance to environmental practice now. He also asks, “[i]s it best to gain experience in a corporate law firm before going into public interest work?”<sup>38</sup> Can a lawyer stay at the corporate firm while fighting for environmental protection—paying off debts, earning a high income, and doing good while doing well?<sup>39</sup> These questions, and others he poses about pursuit of private public interest work, are good ones. So are some, but not all, of his answers.

I agree with Bonine’s typology of three general categories of environmental lawyers: Business lawyers, government lawyers, and public interest lawyers.<sup>40</sup> I also agree that “[g]oing to work directly for government or a non-profit organization . . . provides a useful range of experiences and responsibility, as well as the opportunity for rapid growth and almost immediate application of creativity.”<sup>41</sup> Similarly, I find largely indisputable his observation that new associates in large law firms usually are not given responsibilities that are as broad as responsibilities given

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36. *See infra* text accompanying note 77.

37. Bonine, *supra* note 1, at 473.

38. *Id.*

39. *Id.*

40. *Id.* at 474-75.

41. *Id.* at 474.

to rookie lawyers in government or citizens group service.<sup>42</sup> The latter employers, he notes, are virtually always so strapped for resources, in both money and personnel, that even a newly minted lawyer is likely to be called on to quickly bear much greater responsibilities than he or she would get so soon in a large corporate firm.<sup>43</sup> When I made the transition from such a firm to a public office (the Illinois Attorney General's office), this difference became immediately—and intimidatingly—evident to me. As Bonine points out, these quicker burdens are an opportunity for great professional growth.

Bonine makes a persuasive case for careers in private public interest environmental law. As he does so, however, he disparages the other career paths he mentions. This disparagement is unnecessary and erroneous. It disserves his intended audience of students and young lawyers. It misinforms them about worthwhile, satisfying, and honorable career options. It especially mischaracterizes, to the point of demonizing, the practice of business environmental law. Bonine's perspective is particularly disconcerting because, as he expressly recognizes, business environmental practice is the route that the vast majority of American law students will follow if they practice environmental law at all.<sup>44</sup>

With regard to environmental lawyering for government agencies, Bonine does not say a lot. He slights it a bit, but the comment seems to be incidental and half-hearted, presumably in

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42. Bonine, *supra* note 1, at 474.

43. *Id.*

44. *Id.* While describing this phenomenon, and offering statistics to document it, Bonine does not try to explain it. He just says that “a hydraulic force sucks environmental law graduates into careers serving business and industry.” *Id.* I suspect he and I would agree that three streams in that force are money (high salaries juxtaposed with high student loan repayment obligations), prestige (the traditional, elitist cachet that attaches to big “name” firm practice in large cities around the country), and training (the opportunity to gain experience in law practice under the tutelage of veteran lawyers with a range of practice specialties). On this last factor, as noted above, Bonine makes a good case that there are limits to the breadth, depth, and pace of the training young associates receive, at least as compared to government service or non-profit group legal work. As I will explain more fully below, an additional part of the attraction of environmental business law is that most of the work done by lawyers in that practice is constructive and interesting; Bonine would not seem to agree.

part because of his own substantial government service and his justifiable pride in it. Nonetheless, he writes that a young lawyer can try to get a job as a lawyer at a government agency and “try to maintain your ideals while representing the bureaucracy.”<sup>45</sup> This dismissive comment seems at a minimum to suggest that the idealistic environmental lawyer is likely to be squelched by most any government agency that hires him. Fortunately, Bonine does not expand on this suggestion, which he probably would agree is overly general and overly negative.

Indeed the bald reference to “bureaucracy” seems to make the wrong point about the challenge of being an environmental lawyer in government. Although occasionally there is small-mindedness, obstructionism, paper-pushing, and nit-picking in environmental agencies, on the whole I have found a remarkable and inspiring level of intelligence, common sense, cooperation, and expertise in public servants in these agencies at all levels of government. In comparison to the squelching of ideals by the bureaucrats, a bigger problem, in my experience, is overly cautious, uncreative, or cynical political leadership at the highest levels in and above agency staff members.

Although Bonine does not tell us much about his view of government lawyering, he does not hold back in expressing his low regard for the practice of environmental law for business and industry clients. Almost all of his references to that practice are pejorative, as illustrated by the following examples: “[t]ry to join a corporate firm and convince yourself that the work is not overly harmful . . . ;”<sup>46</sup> and

The companies that are the clients of business environmental lawyers are not asking for a priest or moral counselor to tell them how to protect the environment. They are asking for advice on how they can protect the profits of businesses while navigating the complexities of environmental law. They are more likely to be asking their lawyers how to strip-mine mountains, register new chemicals, or plan a development adjacent to a wetland.<sup>47</sup>

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45. *Id.* at 466.

46. Bonine, *supra* note 1, at 475.

47. *Id.* A similar but more nuanced statement can be found in Cameron Jeffries, *The Ethical Obstacles of Environmental Law: Assessing the Need to*

Most of the unnamed lawyers Bonine quotes also express dim views of environmental work for business clients. For example,

There are many good people on the dark side who compartmentalize their work from the rest of their lives to save their humanity. It is probably not a very healthy thing to be in a situation where your work is hurting people, but you isolate that from your sense of who are so you remain human and wonderful.<sup>48</sup>

Bonine does present brief, contrary views from two lawyers, one expressing pride in his environmental compliance, counseling and litigation work in a firm and the other describing his satisfying and constructive in-house environmental practice.<sup>49</sup> Bonine, thus, acknowledges that there are differing views on business practice, yet he immediately undermines those views by saying, “[l]awyers have a great ability to believe in, or rationalize, what they are doing. They can become quite comfortable from the incomes that business environmental law work earns.”<sup>50</sup>

Scholars have studied the cognitive dissonance faced by lawyers in many realms of practice, which can be caused by awareness that their clients’ objectives and values may be in considerable tension with the lawyers’ own values.<sup>51</sup> This tension is often exacerbated by financial incentives and commitments—“dollars and mortgages”<sup>52</sup> and other personal constraints and social expectations—which press the lawyer to remain confined in an unsatisfying career niche. Bonine recognizes this difficulty, but he paints it with a darker brush than other scholars: he

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*Effectively Incorporate an Environmental Ethic into the Practice of Environmental Law*, 20 J. ENVTL. L. & PRAC. 61, 67 (2009) (“In a capitalistic, competitive, bottom-line driven marketplace, environmental concerns often manifest as obstacles to business rather than important aspects of appropriate business practice.”).

48. Bonine, *supra* note 1, at 477.

49. *Id.* at 475-76.

50. *Id.* at 476.

51. See, e.g., DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 403 (1988) (“The cognitive dissonance interpretation . . . is particularly appropriate for lawyers . . . whose entire work life consists in furthering [values contrary to one’s own personal values], and who occupy the same social stratum as their clients, so that it is harder for them to distance themselves from their clients.”).

52. Bonine, *supra* note 1, at 468.

seems to be saying that business lawyers, in common parlance, have been “bought” or have simply “sold out” and will continue to do unsatisfying work, harmful to people and the environment, as long as the paycheck, perks, and prestige are solid. Bonine concedes in passing that “[n]ot all legal work for business and industry is affirmatively harmful,”<sup>53</sup> but his overall message certainly seems to be that it is. I think he is wrong.

### An Illusory Distinction

About 15 years ago, in an article entitled “Ten Paradoxes of Environmental Law,” I pointed out how commonly and inaccurately environmental law and policy are depicted as a battle between good guys and bad guys.<sup>54</sup> Unfortunately, Bonine’s juxtaposition of private public interest lawyers with environmental business lawyers falls into that outmoded,

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53. *Id.* at 478.

54. Kenneth A. Manaster, *Ten Paradoxes of Environmental Law*, 27 *LOY. L.A. L. REV.* 917, 931-33 (1994) [hereinafter *Ten Paradoxes*] (describing “the tradition we have developed of labeling different categories of participants in environmental issues as good guys or bad guys—the cowboy-hero environmental protection types wearing the white hats versus the sinister despoilers of nature and public health wearing the black hats. The starting point for this tradition . . . is obvious: Environmental activists and prosecutors principally work for environmental protection, and they generally do not undertake pollution-causing or resource development projects. Consequently, they readily look like environmental good guys. In contrast, businesses principally work for the production of goods and services at a profit, and they do generally cause pollution and the depletion of natural resources: the bad guys label seems to fit just fine. . . .

Despite the temptation to view the major players in environmental disputes in this way, we simultaneously have recognized that the good guys-bad guys dichotomy is an oversimplification or distortion of social reality. In the early days of the environmental movement, the cartoon character Pogo expressed a more sophisticated outlook on the causes of environmental degradation when he said, “We have met the enemy and he is us.”

Not only a cartoon character, but also environmental experts have pointed out that environmental threats are a function of irresponsible patterns of resource use, consumption, and waste in which virtually all Americans have some complicity. The challenge posed then, and still posed now, is whether this country, and others as well, can fundamentally alter humanity’s relationship to the resources of nature. . . .

. . . .  
To summarize, we identify good guys and bad guys, yet we know that we distort the truth in doing so.”).

simplistic dichotomy. This is surprising, not just because Bonine has worked in the field for so long and understands so many of its subtleties so well, but also because the line between the type of practice he recommends and the type of practice he criticizes is far from clear and indeed may even be illusory.

Illustrative of this blurred distinction are some of the lawyers he praises. “Establishment attorneys”<sup>55</sup>—people like Lloyd Garrison and Stephen Duggan—made major contributions to environmental law, especially public interest environmental law, and yet they were partners in major Wall Street firms.<sup>56</sup> Are we to assume that they too had sold out? That they were schizophrenic in their approach to their day jobs, colleagues, and clients relative to their personal values and other aspects of their lives? Can we reconcile Bonine’s admiration for them and his disdain for big corporate practice?

The answer, I think, is evident. Men like Garrison and Duggan maintained private practices in areas of the law and in firms whose practices did not pose conflicts with the types of environmental and other causes they worked on in a pro bono or government service role.<sup>57</sup> Bonine states that he uses the term “private public interest practice” to put a name “on the type of practice exemplified by Lloyd Garrison.”<sup>58</sup> Garrison, to an extraordinary degree, was able to be part of a big corporate law firm while also serving environmental, civil rights, civil liberties, and other causes. Presumably, he and his firm did not represent power companies at that time, or he might not have been able to pursue the Storm King Mountain case.<sup>59</sup> Duggan’s career culminated in his leadership of his firm’s trusts and estates practice,<sup>60</sup> which presumably posed no conflict for his

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55. Bonine, *supra* note 1, at 468 n.8.

56. *Id.* at 467.

57. *But see* ALLAN R. TALBOT, *POWER ALONG THE HUDSON: THE STORM KING CASE AND THE BIRTH OF ENVIRONMENTALISM* 93 (1972) (“Duggan, a Wall Street lawyer, . . . represented the Gulf Oil Company in its controversial plan to construct an oil refinery in Narragansett Harbor.”).

58. Bonine, *supra* note 1, at 480.

59. Scenic Hudson Pres. Conference, 354 F.2d 608.

60. Wolfgang Saxon, *Stephen Duggan, Environmentalist, Dies at 89*, N.Y. TIMES, Nov. 13, 1998, available at <http://www.nytimes.com/1998/11/13/nyregion/stephen-duggan-environmentalist-dies-at-89.html?pagewanted=print>.

involvement with the Storm King litigation or with cases later pursued by NRDC, which he worked so hard to nurture.

What Bonine says about creating a private public interest practice neatly fits what these lawyers faced:

Finding a way to integrate public interest law into private practice is crucial to expanding the overall quantity of public interest work. For such work to constitute an important fraction of one's law practice, it is necessary to establish a law practice whose paying clients' interests are not in conflict with clients in pro-environmental cases.<sup>61</sup>

This challenge is essentially the same for public interest practitioners—whether in solo or small firm settings—and big corporate firms, but in the latter the presence of more clients and more lawyers raises the challenge to a more complex level. Those differences, however, do not automatically transform the corporate lawyers into bad guys or the public interest practitioners into good guys. In both contexts, the lawyer is trying to make a living in one or more areas of law by constructively serving paying clients while simultaneously, and without undermining ethical obligations to those clients, pursuing public interest legal work for nonpaying or low-paying individuals and groups.

Bonine does not see the conflicts problem this way. He understands the private public interest lawyer's need to have paying clients whose "interests are not in conflict with clients in pro-environmental cases."<sup>62</sup> In contrast, the conflict problem for the big firms, he seems to say, is fundamentally a sham:

If a lawyer in a business-oriented law firm starts to take on environmental groups as clients, the law firm's business clients soon start to raise questions about just how "loyal" that attorney (or the entire law firm) can really be to their interests. This is sometimes dressed up as a true "conflict of interest" by giving it the name "positional conflict of interest" - the idea being that a lawyer who argues both for the business community and against the business community has a conflict of interest. While such

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61. Bonine, *supra* note 1, at 480.

62. *Id.*



conflicts may occasionally exist, far more often, the conflict is simply with the marketing plans and image of the law firm with regard to its business clients. . . . In addition, the lawyer who himself or herself tries to represent “both sides of the street” is likely to soon feel torn.<sup>63</sup>

Once again, I think Bonine is mostly wrong. First of all, “positional conflicts” in my experience do not relate generally to which “community” a lawyer or firm mostly works with.<sup>64</sup> The problem is representation of a substantive “position” on a specific legal issue which conflicts with the position taken on behalf of a client or which can be anticipated to be taken by a client in future matters. This is not marketing; this is client loyalty and professionally responsible behavior.

Second, there is truth to Bonine’s view that it is hard to represent “both sides of the street” in environmental law,<sup>65</sup> but this field is not unique in that regard. As one example, labor lawyers—union versus management—have dealt with this for decades, as have tort lawyers in plaintiff or defense practices. Is this tendency just a reflection of base, self-serving marketing and imagery concerns, or is it part of building a practice, expertise, and the confidence of clientele? I believe it is the latter, and that it is not the exclusive concern of business firms.

For example, years ago I was consulting with a three-man law firm that represented a small family company, which was running into heavy-handed treatment by a regulatory agency. The treatment smacked of constitutional violations, and the firm filed a federal lawsuit against the agency. Looking for someone with relevant expertise, I asked a respected constitutional law professor to evaluate the complaint and consider rendering his assistance. He indicated that he would have to be well compensated if he got involved in the matter, just as he had been through hefty attorneys fees in some high-profile civil rights and employment discrimination cases he had worked on for other

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63. *Id.* at 481.

64. See IRMA S. RUSSELL, ISSUES OF LEGAL ETHICS IN THE PRACTICE OF ENVIRONMENTAL LAW 306 (2003) (“A positional conflict, also called an issue conflict, presents the question whether a lawyer can ethically take differing positions on a legal issue on behalf of different clients.”).

65. Bonine, *supra* note 1, at 481-82.

plaintiffs. He reviewed the facts, agreed that there probably were serious constitutional violations being committed by the government agency against the small company, but nevertheless declined to help. He claimed that his participation on behalf of a business “would hurt my standing in the liberal community.” Was that simply a “marketing” and “image” concern, or something more? I have never been quite sure, and the incident has always reminded me that these types of responses can be found in many types of practice.

While participating in my part-time Of Counsel association for over 20 years with the environmental group at a large San Francisco firm—now Pillsbury Winthrop Shaw Pittman LLP—I have been part of repeated efforts to engage the firm’s lawyers in pro bono environmental matters. I have met with some success, but not as much as my colleagues or I would have wished. We have run into real conflicts problems, not some generalized imagery or marketing concerns. In some instances the pro bono client is adverse to a client of the firm, or the specific legal position we would have to take on behalf of the pro bono client would conflict with a client’s position. When no such conflicts have appeared, however, the firm and its environmental lawyers, both veterans and rookies, have enthusiastically embraced the opportunity to apply their talents to worthy causes, in addition to those of their regular clients.

In sum, the challenge Bonine raises for lawyers considering private public interest practice is fundamentally the same—as a practical matter and as an ethical matter—as the efforts of lawyers in other types of settings, including big business-oriented firms. It is, as posed in one of Bonine’s questions, the challenge to find a way of “doing good while doing well,”<sup>66</sup> or at least well enough. Bonine emphasizes a type of private practice that will allow “good” work in the form of public interest environmental cases. The additional question his article raises is whether the environmental lawyer or firm which only serves its business clients, and does little or no pro bono environmental work, is doing any “good” at all.<sup>67</sup>

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66. *Id.* at 473.

67. *Id.* at 475-76.

### Doing Business and Good?

Bonine paints a bleak picture of business environmental practice. In his advice to young lawyers, a firm that does no pro bono environmental work, only focusing on business-oriented environmental practice, should be avoided mainly because it is doing harm to people and the environment.<sup>68</sup> This “bad guy” view does not correspond to reality—at least not the reality I have experienced in over 40 years in this field in many different capacities.

One starting point for my perspective on business environmental practice arose out of a major lawsuit I worked on with others in the Illinois Attorney General’s office.<sup>69</sup> We sued one of the nation’s largest steel companies for water pollution violations. Proudly we saw ourselves as the “good guy” lawyers and the corporate firm litigators defending the company as among the “bad guys.” As the litigation proceeded, a frustrating process of negotiation toward settlement ebbed and flowed, but gradually we began to approach a constructive, agreed resolution between the state and the company. As we saw this welcome result develop, we also began to enjoy some of those self-congratulatory “Damn, we’re good!” moments. Then, as I reflected on how the result had come about, it dawned on me that we, the lawyers for the People of the State of Illinois, were not the main catalyst for the good outcome. It was the defendant’s lawyer who had gotten the ear and respect of his client and successfully shown it the light—that there were requirements and responsibilities that had to be met.

My colleagues and I had put the ball in play, but the defendant’s lawyer had moved it way down the field. I was humbled by this realization, and ever since then I have tried not to underestimate how much good can be accomplished by an intelligent, responsible environmental lawyer representing business and industry. Later on, in the seventeen years I served on the Hearing Board of the Bay Area Air Quality Management District, over the course of approximately 1500 air pollution cases

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68. *Id.* at 475.

69. ILL. ATTORNEY GEN., ANNUAL REPORT XXI (1970).

I participated in adjudicating, I saw this same kind of effective, beneficial service by business lawyers time and time again.

In my teaching of environmental law, I have tried to invite my students to consider this type of lawyering with an open mind, rather than be stuck with the “black hats”<sup>70</sup> stereotype. I have done this for them not just because, as Bonine documents, that is where most of them will find environmental work, but because I became convinced of the importance and value of this type of work. I incorporated this approach into a book for use in the teaching of law students, graduate students, and undergraduates interested in environmental law and policy.<sup>71</sup> Among the emphases in this book, which include the environmental justice movement, I offer the following perspective and thesis:

Few, if any, regulated interests still wish to be free of all, or even most, environmental protection obligations. Whatever vestiges of such an attitude may have been encountered in the early years of environmental law now have largely disappeared, but the rhetoric of our political debates does not usually recognize this.

In this modern context, it is usually both simplistic and erroneous to see the regulated entity’s objectives as “anti-environmental,” and thus to see its lawyer as just a hired gun uncritically serving such objectives. In contrast to that view of the environmental lawyer’s role, the thesis underlying these readings is quite different. The thesis is that environmental lawyers serving regulated entities, as well as environmental lawyers serving any other type of client, seek to reconcile environmental protection goals with concepts of justice. That is the distinctive and challenging role lawyers perform in the making and implementation of environmental policy.<sup>72</sup>

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70. “[L]abeling different categories of participants in environmental issues as good guys or bad guys – the cowboy-hero environmental protection types wearing the white hats versus the sinister despoilers of nature and public health wearing the black hats.” *Ten Paradoxes*, *supra* note 54, at 931.

71. See generally KENNETH A. MANASTER, ENVIRONMENTAL PROTECTION AND JUSTICE: READINGS ON THE PRACTICE AND PURPOSES OF ENVIRONMENTAL LAW (Lexis Nexis 3d ed. 2007).

72. *Id.* at 2-3. A considerable body of literature and argument has developed in recent years about “corporate environmentalism.” In a nutshell, the debate is whether major business and industry sectors really and honestly now

Without attempting to reiterate the issues and questions presented more fully in the book, I hope it will suffice to note here

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understand, respect, and act on the need for change and leadership in their environmental practices, or whether the claimed transformations in some sectors are nothing more than window dressing, advertising ploys, public relations, so-called “greenwashing.” I will not delve into that debate here, for the perspective I am offering regarding lawyers for these types of clients basically applies whether the target for them is compliance with the law or over-compliance. See generally ASEEM PRAKASH, *GREENING THE FIRM: THE POLITICS OF CORPORATE ENVIRONMENTALISM* (2000); see also Bradley C. Karkkainen, *Environmental Lawyering in the Age of Collaboration*, 2002 WIS. L. REV. 555, 561 (2002) (“Many leading corporations and some whole industries have concluded that, for a variety of reasons, they would rather switch than fight. Taking off their black hats, they are attempting not only to achieve voluntary compliance, but to get a step ahead of the regulatory curve (“beyond compliance,” in the industry jargon) by re-positioning themselves as environmental champions in their own right.”). Compare ANDREW J. HOFFMAN, *FROM HERESY TO DOGMA: AN INSTITUTIONAL HISTORY OF CORPORATE ENVIRONMENTALISM* 217 (Stanford Bus. Books 2001) (“British Petroleum enjoyed a public relations bonanza with governments, the environmental community, and the general public following CEO John Browne’s May 1997 speech acknowledging the reality of climate change and announcing the company’s plans to take steps toward reducing carbon emissions.”), and DANIEL J. FIORINO, *THE NEW ENVIRONMENTAL REGULATION* 88 (2006) (“[T]he greening of industry should be taken seriously. The steps that many firms have taken—BP-Amoco [and others]—are so public and so much a part of their corporate strategies that they are almost certain to continue.”), with Sarah Lyall, *In BP’s Record, a History of Boldness and Costly Blunders*, N.Y. TIMES, July 12, 2010, at A1 (“Time and again, BP has insisted that it has learned now to balance risk and safety, efficiency and profit. Yet the evidence suggests that fundamental change has been elusive.”). See also SHELDON KAMIENIECKI, *CORPORATE AMERICA AND ENVIRONMENTAL POLICY: HOW OFTEN DOES BUSINESS GET ITS WAY* (2006) (discussing a related debate over the extent of “influence of business over environmental policy” and stating: “Many believe that the power business wields in American politics threatens democracy and, among other things, undermines the nation’s efforts to control pollution and conserve natural resources. Environmentalists assert that “big business” has continuously been an impediment to the formulation and implementation of clean air and water quality standards. . . .

Corporate leaders and conservative analysts strongly disagree with this assessment. They feel that environmentalists are exaggerating problems and are predicting dire consequences in order to alarm Americans unnecessarily, raise money for their cause, and shape public policy. In addition, they maintain that many present laws, regulations, and government programs are too expensive to comply with, will result in only modest—if any—improvements in environmental quality, and, therefore, are unnecessary. In their view, corporations have a great deal at stake financially (as do their shareholders), and they have every right to express their positions and lobby government to protect their interests.) *Id.* at 9-10 (internal citations omitted).

that my approach explores a variety of concepts of justice and the three types of conflicts which predominate in environmental disputes: “[c]ompeting views of environment merits; competing claims for justice; and tensions between environmental concerns and justice claims.”<sup>73</sup> My hope is that with an understanding that the difficult and unique job of all environmental lawyers is to promote both environmental goals and justice, the valuable role of lawyers for business clients in these various types of conflicts will also be more understandable.

Perhaps another way of stating this is to recall the extensive attention paid, in environmental law teaching and practice, to the need for balancing competing interests. From the traditional components of common law nuisance causes of action, to the criteria for issuance of injunctions, to interpretation of any number of statutory standard-setting provisions, to debate over the use of cost-benefit analysis,<sup>74</sup> environmental law students, teachers, practitioners, and jurists consistently address the need to balance competing considerations. This is not to deny that sometimes environmental harm or a perceived injustice can appear to be so glaring and flagrant as to make it difficult, or impossible, to credit assertions that balancing is needed. But that is not our usual context in the complicated world of environmental law. Can there be any doubt that lawyers for business and industry clients have the ability and responsibility to be helpful participants in these complex processes of policymaking and conflict resolution?

I suspect that, without much difficulty, Professor Bonine could name at least a few business environmental lawyers whose work he would admire and applaud.<sup>75</sup> I could name many. He might believe these are the exceptions, but in my view they are the rule. In thinking about who does this kind of work, it also

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73. MANASTER, *supra* note 71, at 29.

74. *See generally* DANIEL A. FARBER, *ECO-PRACTICISM: MAKING SENSIBLE ENVIRONMENTAL DECISIONS IN AN UNCERTAIN WORLD* (1999).

75. *Cf. Ten Paradoxes*, *supra* note 54, at 929 n.28 (“Because so many environmental lawyers find their work satisfying, they tend to stay in the field, often in the same jobs. Thus, lawyers for environmental groups, regulated businesses, and enforcement agencies frequently get to know one another quite well over time and develop informal lines of communication and patterns of mutual trust.”).

should be remembered that there is some significant movement of individuals among the different types of environmental practices. Business lawyers go into government; citizens group lawyers go into business practice; government lawyers go to citizens groups etc. These “revolving doors” are not unique to environmental law, but they do suggest that there is more sharing of environmental values among the different types of practitioners than is usually acknowledged by observers such as Bonine.<sup>76</sup>

Our traditional rhetoric about environmental controversies does not usually emphasize shared values. Instead, as I have observed elsewhere, “[a]s environmental policy is developed, and as disputes arise, it is common for each category of participants to assert that its perspective represents and protects the most important public values.”<sup>77</sup> It is arguably a bit unfortunate that the term “public interest practice” has gained such great traction, for it tends to obscure the benefits to the public of many government and business activities. The term is well-accepted, however, and encompasses a vast array of socially invaluable work. At a minimum, the term, in virtually all instances, simply refers to work on behalf of individuals and organizations other than businesses and government. However, for a public interest lawyer to ignore or deny that there may be important public benefits created by the targets of his efforts, is to oversimplify reality and, in many instances, to dull the ultimate effectiveness of his or her work by failing to grasp the objectives and concerns pertaining to his adversaries.

Furthermore, even while wholeheartedly advancing their clients’ causes, all types of environmental lawyers should be mindful of other potential pitfalls:

[E]ach major player in environmental policy does indeed have important and valid public interests on its agenda. At the same time we have learned that each interest group is also entirely

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76. *Id.* at 923 n.15 (citing a report on “an Environmental Law Institute seminar featuring five former U.S. Assistant Attorneys General for Environment and Natural Resources, at least one of whom earlier had practiced with a national environmental law organization. Four of the five are now associated with large, private law firms, and the fifth with a private environmental management corporation.”).

77. *Id.* at 934.

capable of clouding those laudable concerns with short-sighted, self-serving, even petty objectives and strategies. Neither environmental groups, government agencies, nor business interests have a monopoly on the public interest, or a monopoly on virtue in the methods of accomplishing their goals. This . . . simply reflects the reality that people act on a variety of shifting motives, often in ways that obscure or defeat their nobler goals. .

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Each group tends to believe it has the truest and most complete vision of how environmental policy should be made and implemented, but none does. Each tends to believe that its methods are consistently noble, yet at times each strays from the path set by its ultimate goals.<sup>78</sup>

In my view, which some might consider naïve despite my many years in this field, the vast majority of environmental lawyers—for public interest clients, for government, or for business and industry—are doing good, honest, constructive work. In each camp, as well, there are those who miss the mark: business lawyers who succumb to and support unwise, irresponsible, even deceptive stances on environmental matters; government lawyers who exalt bureaucratic form over productive substance and common sense; and public interest lawyers who undermine, exploit, or delay legal processes to the detriment of important segments of the public and, occasionally, to their own financial benefit.<sup>79</sup> These are the exceptions for all of us, including our students, to be aware of but not to emulate.

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78. *Id.* at 934-35.

79. For a discussion of abuses of bounty-hunter and attorney's fees award aspects of California's Proposition 65, a law which imposes extensive requirements for warning of public exposure to hazardous substances, see Cheryl Miller, *AG Questions Fees in Proposition 65 Cases*, THE RECORDER, May 16, 2007 (regarding a law firm which "collected more than \$15 million from approximately 200 Prop 65 complaints filed in superior court, including \$9.2 million in attorney's fees."); *Consumer Def. Grp. v. Rental Hous. Indus. Members*, 40 Cal.Rptr.3d 832, 856 (Cal. Ct. App. 2006) ("[T]his settlement represents the perversity of a shake down process in which attorney fees are obtained by bargaining away the public's interest in warnings that might actually serve some public purpose. . . . [I]nstead of \$540,000, this legal work merited an award closer to a dollar ninety-eight.").



Unfortunately, there are bad apples in all the barrels—at times more in some than in others, but in all nonetheless.

#### IV. CONCLUDING THOUGHTS

Since the early days of the environmental movement, there have been calls for fundamental improvement in humanity's respect for and treatment of the resources and environment of our planet. A major part of the effort to bring about change has been the growth of environmental law in the United States, other countries, and international assemblies. Within these developments, and going back at least 40 years, there has been increasing recognition of the potentially devastating effects of climate change.<sup>80</sup> Currently there is wider and deeper appreciation than ever before as to the presence and threat of global warming, and a fierce battle is under way in state, national, and international forums over the need for action, especially legal action.

As these battles rage, and many are eventually resolved, existing tools of environmental law will be adapted to meet the perceived needs, and new tools will be developed as well. In these developments, environmental lawyers of all three major types—public interest lawyers, government lawyers, and business lawyers—will play crucial roles. Surely, public interest lawyers will press boldly to keep the issue of global warming in the forefront of policy development and implementation. They have already begun to do so through creative, aggressive strategies in courts, legislatures, agencies, and elsewhere. Government lawyers, at least in some jurisdictions, have joined in these actions with the public interest attorneys. Government lawyers also can be expected to be key participants in the development of legislation, regulatory standards and requirements, and enforcement measures. They increasingly will be called on to find fair, effective ways to expand environmental law beyond traditional command and control methods into increased use of economic, market-based systems and other tools.

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80. See COUNCIL ON ENVTL. QUALITY, ENVIRONMENTAL QUALITY: THE FIRST ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 93-104 (1970) (discussing "man's inadvertent modification of weather and climate").

Environmental lawyers for business and industry also must be active, creative contributors to the development of climate change law as another—and perhaps soon the central—segment of environmental law.<sup>81</sup> They, of course, will continue to serve clients in the traditional roles of guiding them on compliance responsibilities and trying to make sure they receive fair treatment in accordance with understandable, sensible, and reliable legal standards under the law. Additionally, if society is to succeed in addressing the global climate change threat, and to do so in large part by developing sophisticated, complex legal and economic tools, lawyers for the business sector will be more important than ever.

If climate change forces us, sooner or later, to make basic changes in resource use, energy production, consumption, transportation, housing, and many other realms, society will be approaching more than ever the type of fundamental change in how we live that has been talked about since the modern environmental movement began, and even before.<sup>82</sup> Many, if not most, of those changes in America will have a great impact on the enterprises and institutions which provide our fuels, goods, modes of transportation, and other services. They will need, and it is in everyone's interest that they should have, the skilled services of environmental lawyers who not only understand the intricacies of the law, but also fully grasp and care about the fundamental environmental protection imperatives at hand, as well as the basic concepts of justice our society reveres.

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81. Robert Zeinemann, *Emerging Practice Area: The Regulation of Greenhouse Gases*, 82 WIS. LAW. 6, 9 (2009) (“Climate-change law will eventually become its own practice area.”).

82. See J. William Futrell, *Environmental Ethics, Legal Ethics, and Codes of Professional Responsibility*, 27 LOY. L.A. L. REV. 825, 826 (1994) (Discussing environmental law's contribution to changes in environmental ethics, and the teachings of Albert Schweitzer, Rachel Carson, and Aldo Leopold, Futrell states, “[t]his shift in environmental ethics was a powerful twentieth-century reformulation of the transcendentalist vision of Emerson and Thoreau that had inspired the earlier conservationists of the Progressive Era. Environmentalism and the hopes and expectations of the Earth Day generation cannot be understood without an acknowledgement of this ethical, indeed religious, shift . . . .”); see also Kenneth A. Manaster, *Law and the Dignity of Nature: Foundations of Environmental Law*, 26 DEPAUL L. REV. 743 (1977).

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In other words, I cannot imagine that changes of the necessary magnitude and pervasiveness can be accomplished successfully and fairly without tremendous, creative work by environmental lawyers of all types. With this thought in mind, I return to the concern raised at the outset—the relevance of environmental law teaching to the types of practices our students will enter in this field. As I hope I have made clear here, my view is that there is good work to be done in all sectors. There are pitfalls and bad examples, too, but overwhelmingly I believe respect and appreciation are due for the responsible environmental work performed by public interest lawyers (including the private practitioners Bonine emphasizes), by government lawyers, and by business lawyers.

If the examples set by these men and women are to be followed by our students, we must aim our teaching of the law, and our career advice to them, to encompass the many good paths of environmental practice. Each student will find his or her own place on these paths, and some probably will even create new variations in types of practice, perhaps in the international arena.<sup>83</sup> Whichever path any of our students choose to follow, I am sure that all of us who teach in this field hope they will approach their work with an understanding of the complexity of their tasks and the unique role of lawyers in promoting environmental protection and justice; an appreciation of the profound importance of environmental protection and sustainable development for humanity, other living things, and the planet itself; and a respect for the honest efforts of all categories of environmental lawyers in the difficult work ahead.

Having focused most heavily here on points on which I believe Professor Bonine and I disagree, I am happy to conclude by quoting something he wrote apart from his article, something with which I could not agree more. In a moving message to environmental law professors a few weeks after the horrific Earth Day 2010 oil disaster in the Gulf of Mexico, he wrote, “our

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83. See Joseph L. Sax, *Environmental Law in the Law Schools: What We Teach and How We Feel About It*, 19 ENVTL. L. REP. 10251, 10253 (1989) (asking “how shall we help our students prepare for the world of their mature years” with the “challenges of consumption and industrialism, population and technology, and the possibility of catastrophe.”).

students need to know from us that it is OK to care. We don't need yet generation after generation of law graduates who don't care. We need to redouble our commitments to teach them what it means to care. How shall we do that?"<sup>84</sup> I hope my response to Professor Bonine's article conveys my whole-hearted agreement with this statement, about what fundamentally our students need to know and we as teachers need to teach. I hope I also have conveyed that our disagreements are about *how* to do it. Nevertheless, in this work, as in so many realms of life, I prefer to believe that our agreement on the ends overshadows our respectful disagreement on the means.

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84. Posting of John E. Bonine, jbonine@uoregon.edu, to envlawprofessors@lists.uoregon.edu, (June 4, 2010) (on file with author).