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BOOK REVIEW

A Review of
Climate Change Law: Mitigation and Adaptation
by Richard G. Hildreth, David R. Hodas,
Nicholas A. Robinson, and James Gustave Speth

STEPHEN L. KASS*

It is not easy to teach, in one semester or one year, a subject as sprawling and fast-moving—and yet ephemeral—as climate change law. It is even harder to compile a set of teaching materials that are current, scientifically reliable, and focused on the broad range of national and international issues that tomorrow's lawyers will need to confront if they are to serve either their clients or the world at large.

The challenge is not to demonstrate a relationship between human activities and the warming of the Earth's atmosphere—that battle has been won—but to help law students think critically about subjects as diverse as: (1) the role of climate change in exacerbating the world's existing environmental crises (e.g. fresh water, depletion of the oceans, deforestation, air pollution, desertification, hazardous substances, species extinction, environmental refugees, and the urban environment); (2) the varying causes of climate change and the current scientific and technological options for slowing that change; (3) the tension between those nations principally responsible for climate change and those likely to be its principal victims; (4) the range of possible institutional responses, both nationally and internationally, to the impending changes in the Earth's environment over the next century; (5) the role of legislatures, administrative agencies, courts, and other governmental bodies in

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establishing and enforcing standards designed to curb greenhouse gas (GHG) emissions without undermining other environmental, human rights, and economic development goals; (6) the role of corporations, non-profit organizations, and individual consumers in contributing to and helping to curb climate change; and (7) the obligations of the current generation to its successors who will feel, both directly and indirectly, the brunt of climate change impacts.

To address these challenges, students and teachers alike must grapple with virtually the full range of law school subjects, including administrative law, constitutional law, corporations, securities, tax, economic regulation, intellectual property law, public and private international law, international trade, human rights law and the role of courts in both common and civil law jurisdictions. What makes this particularly interesting is that most climate change “law” is still embryonic, that the entire subject is wrapped in intense political debate both domestically and internationally, and that the gulf between carefully honed theories and action is nowhere greater than in the United States.

Climate Change Law: Mitigation and Adaptation,¹ a sparkling new “coursebook” by an exceptionally distinguished quartet of law professors, Richard Hildreth,² David Hodas,³ Nicholas Robinson,⁴ and James Gustave Speth,⁵ attempts to help

1. RICHARD G. HILDRETH ET AL., *CLIMATE CHANGE LAW: MITIGATION AND ADAPTATION* (2009).

2. Professor Richard G. Hildreth is the Dean’s Distinguished Faculty Fellow at University of Oregon Law School. University of Oregon, Oregon Law, Faculty & Staff, Richard Hildreth, <http://www.law.uoregon.edu/faculty/rghildre/> (last visited Apr. 10, 2010).

3. Professor David R. Hodas is a full-time Professor of Law at Widener Law School’s Delaware Campus. Widener Law, David R. Hodas, <http://law.widener.edu/Academics/Faculty/ProfilesDe/HodasDavidR.aspx> (last visited Apr. 10, 2010).

4. Professor Nicholas A. Robinson is the University Professor on the Environment and the Gilbert and Sarah Kerlin Distinguished Professor of Environmental Law as well as the Co-Director, Center for Environmental Legal Studies at Pace Law School. Pace Law School, Full-time Faculty, Nicholas A. Robinson, http://www.pace.edu/page.cfm?doc_id=23189 (last visited Apr. 10, 2010).

5. Professor James Gustave Speth is the Sara Shallenberger Brown Professor in the Practice of Environmental Policy as well as the outgoing Dean of Yale School of Forestry and Environmental Legal Studies. Yale Sch. of Forestry &

colleagues navigate these rapids, either in a semester or full-year law school course. Their effort succeeds because of the freshness of their material, the clarity of their organization, and the stimulation of informed thinking about this urgent but increasingly complex subject.

As a practicing lawyer, I like to begin discussions about environmental issues, especially climate change, with the facts as currently understood before proceeding to a debate regarding the relevant legal issues. Professors Hildreth, Hodas, Robinson & Speth, however, are eager to engage their students' imaginations from the outset. They therefore begin with introductory readings rich in the policy choices that face lawyers and policymakers before turning to the basic science and implications of GHG concentrations for life on Earth. They then undertake a survey of existing climate change law at the international level, focusing on the 1992 United Nations Framework Convention on Climate Change,⁶ before discussing and questioning the economic fundamentals of capitalism and its relationship to climate change.

With this background, the coursebook takes up complex subjects of sustainable energy, policy choices facing the United States as it struggles to break free of fossil fuel dependence, and the legal tools available at both the federal and state levels to encourage a shift to a renewable energy economy. The book concludes with discussions of some of the strategies and legal techniques available to coastal cities, polar regions and water-stressed areas for adapting to the inevitable effects of climate change, followed by possible techniques to encourage more responsible corporate conduct and local initiatives aimed at slowing climate change. The authors then add a plea for a broader social and international legal commitment to climate change policies that also advance overall human development. That plea is warranted and might well have been expanded.

The authors describe their book as a "work in progress," which is fair in view of the rapidly changing "climatescape," a

Env'tl Legal Studies, Faculty/Non-Ladder, James Gustave "Gus" Speth, <http://environment.yale.edu/profile/speth/> (last visited Apr. 10, 2010).

6. U.N. Framework Convention on Climate Change (UNFCCC), May 9, 1992, U.N. Doc. FCCC/INFORMAL/84, available at <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

concept introduced in each of their chapters. In the book's next iteration, there are several subjects briefly discussed in the first edition that could be expanded, including: current efforts to combat global deforestation, the legal, economic and institutional challenges of "adaptation" in developing countries (which are likely to experience the worst impacts of climate change), and the relationship between climate impacts and human rights. Two of the authors, Professors Robinson and Speth, have wide experience in international environmental law and development programs (e.g., Professor Robinson has long been a leader in the International Union for the Conservation of Nature,⁷ and Professor Speth, the outgoing Dean of Yale's School of Forestry and the Environment, formerly led the United Nations Development Programme⁸). Both students and colleagues alike would benefit greatly if additional insights from these Professors were included in the book's next edition.

Finally, in light of the rapidly evolving subject matter and growing body of law and policy, the West publishers might consider making the coursebook available in loose-leaf binders. A loose-leaf edition would allow the authors to easily update and incorporate new materials from courts, legislatures, agencies, international organizations, scientists and, of course, creative lawyers in the coming months and years.

7. International Union for the Conservation of Nature (IUCN), <http://www.iucn.org/> (last visited Apr. 10, 2010).

8. United Nations Development Programme (UNDP), <http://www.undp.org/> (last visited Apr. 10, 2010).