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Introduction

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PACE ENVIRONMENTAL LAW REVIEW

INTRODUCTION

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On July 28, 2022, the Gray Center for the Study of the Administrative State at the Antonin Scalia Law School of George Mason University hosted the symposium, *Environmental Law for the 21st Century*. Several leaders in the environmental legal field participated in the symposium to respond to the ideas put forth in the 2021 article, “The End Environmental Externalities Manifesto: A Rights-Based Foundation for Environmental Law,” authored by Professors Don Elliott and Dan Esty.¹ The symposium’s participants included distinguished environmental legal scholars, including Professors Elliott and Esty, Jonathan Adler, Tyler Carter, Caroline Cecot, James Coleman, Robin Craig, Monika Ehrman, Jace Lington, Ricky Revesz, J.B. Ruhl, Kip Viscusi, and Adam White.

In their 2021 article, Professors Elliott and Esty proposed a conceptual reframing of environmental law that prioritizes environmental rights over economic efficiency. Elliott and Esty originated “the end to externalities principle,” under which environmental law would strive to eliminate all negative environmental externalities. Additionally, they asserted that community members have a moral as well as a statutory duty not to injure one another, in support of the idea that individuals have a right to be free from harmful pollution.

This issue is dedicated to the articles that arose from the 2022 symposium, responding to Professors Elliott and Esty’s Manifesto. In this issue, Professors Elliott and Esty expand on their original proposal and respond to critics.² They apply their perspectives as practitioners, as well as academics, to develop their vision for environmental law in the 21st century. They establish three legal duties that should apply to entities that

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^{††} *Editor-in-Chief*, PACE ENVIRONMENTAL LAW REVIEW (2023-2024).

1. E. Donald Elliott & Daniel C. Esty, *The End Environmental Externalities Manifesto: A Rights-Based Foundation for Environmental Law*, 29 N.Y.U. ENV’T L. J. 505 (2021).

2. E. Donald Elliott & Daniel C. Esty, *Environmental Law for the 21st Century*, 40 PACE ENV’T L. REV. 454 (2023).

release potentially harmful materials into the environment. Professors Elliott and Esty contend that such entities have a duty (1) of research and disclosure to assure the public that any environmental releases are not harmful, (2) to minimize harm if they fail to demonstrate the releases are harmless, and (3) to compensate those at risk of environmental harm financially. They point out that employees have all three of these elements in the workplace, and argue that the public should be no less protected.

In her article, “Natural Resource Systems and the Evolution of Environmental Law,” Professor Monika Ehrman provides a pragmatic response to Elliott and Esty’s proposal to end all environmental externalities, which she refers to as an “environmental law moonshot.”³ She examines the value of transforming environmental law and dreaming big as Elliott and Esty recommend, while discussing the practical considerations of doing so. Her considerations include incentivizing technological advancement, compensating environmentally harmed communities to address systemic issues, and breaking down silos in environmental law. In his article, “A Balanced Prescription for More Effective Environmental Regulations,” Professor Kip Viscusi advocates for continuing to use benefit-cost analysis in environmental law, while simultaneously strengthening sanctions for violations of environmental regulations to more appropriately value environmental risks.⁴ His proposal challenges the work of Elliott and Esty, by exploring how the benefit-cost approach may be compatible with a compensation system for environmental harm. Professor J.B. Ruhl observes in his article, “The End Externalities Manifesto: Restatement, Loose Ends, and Unfinished Business,” that Elliott and Esty’s proposal for a rights-centric system of environmental law focuses narrowly on a right to recover compensation for harms to human health caused by pollution. He offers suggestions for implementing that proposal, such as using the concept of ecosystem services to trace how harm to ecosystems can cause harm to human health, and he proposes how Elliott and Esty could extend their rights-centric system to a broader conception of human rights and the environment.

Overall, this issue provides an enlightening and multifaceted analysis of the critical concerns and opportunities facing environmental law in the 21st century, illuminated by the contributions of leaders in the field of environmental law.

3. Monika U. Ehrman, *Natural Resource Systems and the Evolution of Environmental Law*, 40 PACE ENV’T L. REV. 495 (2023).

4. W. Kip Viscusi, *A Balanced Prescription for More Effective Environmental Regulations*, 40 PACE ENV’T L. REV. 475 (2023).