Using law to advance to sustainability: the law of sustainable development

Carla D. Aceves-Ávila
Universidad de Guadalajara, CUCEA, Mexico

IUCNAEL 10th Colloquium, July 1-5, 2012, “Environmental Law at a crossroads”
Francis King Carey School of Law, Maryland, USA.
Long discussion and debate over:

• **Existence of the Law of Sustainable Development (SD)**

• **Recognition of SD as a legal principle**

• **International recognition of the Principle of SD within international law**

• **The evolution of the “environmental state of law”**

• **The evolution (or creation) of law and legal systems based on a sustainability approach**
Law as an instrument of SD

- It has an instrumental character for SD and must include, embrace and promote sustainable practices.

- Law is an instrument of social behavioral change as well as for social trend-setting to the extent that it enables and enforces public policy (or disables and hinders its strength), also applies to SD policies.

- Also, law should consider and contribute to the satisfaction of social needs: nothing more social and collective as the environment.

- Law and the rule of law act as conscience breakers and promoters on decision makers and members of institutions by inducing ethical conducts. Environmental law should particularly promote an environmental ethics based approach.

- Ideally speaking, and given the effect of law in environmental conservation and its linkages to life conservation, all modern legal instruments should be oriented to the enhancement of sustainable development, transforming law into a “sustainable development law”.

Social issues embedded in environmental legal issues

• Current environmental problems (EP´s) cannot be considered as nuisances or mere administrative conflicts given their impact on human life.

• There is no minor EP, rather its effect may not be evident at a regional or global scale, but it affects the environment as well as the society and persons associated to it making it equally important to law from an environmental justice standpoint.

• All EP´s are social and collective since we all depend on environmental elements. No environmental problem is “individual” and some may have regional, transboundary or even planetary effects.

• Current EP´s include both issues on legal equity and distributive justice based on the scarcity or degradation of certain resources as well as life threatening issues. More often they involve human rights issues as they deprive or impair persons of different types of human rights.
Legal issues embedded in environmental problems

• All EP´s are social since the impairment of the rights of one, implies the impairment of the rights of all direct or indirect consumers of the same resource. There are no “individual” or merely civil controversies when analyzed from an environmental perspective.

• Our **legal paradigm conditions** us to follow:
  – **ownership** law (private property) even over collective elements as is the case of environmental elements,
  – **damage** which is completely incompatible and irrational to environmental law,
  – **tangible or easily measurable elements**, excluding conditions, circumstances or hard to measure or follow objects, as is our case.
All law should be sustainability based

• Given current planetary conditions, all legal instruments should have a sustainability based approach, regardless of their orientation. All other legal branches should be primarily based on human rights and sustainability approach as previous conditions of any sort of modern justice administration.

• Environmental law everywhere should strive environmental elements protection.

• The integrity and soundness of human life and its conditions should be enabled by environmental law but clearly reinforced and supported by the rest of the legal system to guarantee efficiency and success as well as congruency. The law of sustainable development should be reinforced by entire legal systems.
Transboundary or planetary issues must be addressed differently

• Given their impact on human life and wellbeing, the protection of life-enabling resources, conditions, or non-tangible elements should be actively considered and considered as important as life or liberty issues in every legal system (natural elements as object of legal protection).

• Planetary issues such as Climate Change and a mitigation approach or environmental safety should be a constant considered in all law making, not only environmental law.

• Given their planetary impact, the commons should have a specific strategic EIA assessment and precautionary treatment under international law as well as from a local perspective considering common but differentiated responsibilities.
Transboundary or planetary issues must be addressed differently (II)

• Common concern of mankind issues and elements should receive specific environmental and cultural treatment through environmental law given the collective interest they represent.

• The correct role of environmental law as a prevention instrument should be considered in every legal system given that environmental justice (redress and remedy and/or adjudication or due process and procedure) are only the end of the legal process and cannot alone guarantee access to a healthy environment.
Constants that should be applied by current environmental law

• **Reality principle (reality based approach) must prevail all law making**, based on a scientific perspective (mitigation practices). Environmental law making, amending and decision making should be based on science and law.

• **Striving to SD should be a permanent goal of all legal instruments.**

• **Attention to colectiveness (common interest) should prevail over attention to majority (democracy perversion) or greatest economical interest.**

• **Particular enforcement of law considering strategic EIA, enhancement of the three dimensions of Rio principle 10, and precautionary principle.**
Constants that should be considered by current environmental law (II)

- Liability or responsibility should also consider environmental remediation, restoration or cleanup strongly emphasizing insurance law throughout the globe.

- Environmental decision makers, including public and private actors should prove a science and legal based decision making process. Specific liability should be considered in omission or fault.

- Environmental auditing for results and efficiency must be integrated to legal systems for transparency, accountability and decision making.

- Greatest pitfall to avoid: the monetarization of the environment.
THANK YOU!

Carla D. Aceves Ávila, LLM, PhD Candidate
Full time professor and consultant,
carla.aceves@cucea.udg.mx
Skype: cdaceves

Universidad de Guadalajara
Centro Universitario de Ciencias Económico Administrativas (CUCEA)
Head of Department of Social and Legal Sciences
www.cucea.udg.mx