



Sustainability and the Law

Adjunct Professor Rob Fowler,
Law School, University of South Australia

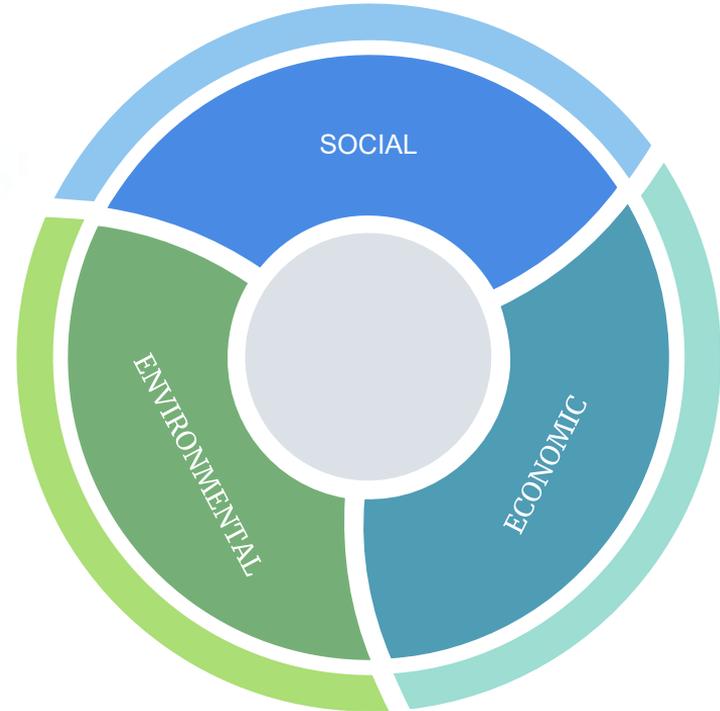
Presented at Bradley Forum, UniSA, 10/9/2019, in
conjunction with the Bob Hawke Prime Ministerial
Centre, UniSA and the Wakefield Futures Group



Sustainability: five key topics

- Distinguish **symptoms v causes** (“drivers”) of unsustainability;
- Acknowledge the prospects of global **collapse** ;
- Identify a **transition pathway** to sustainability;
- Develop a “**sustainability agenda**”;
- Recognise a new field of **sustainability law**

The three dimensions of sustainability



A watercolor illustration on the left side of the slide. It depicts two hands, one in the foreground and one slightly behind, cupping a mound of dark brown soil. A small green seedling with three leaves grows out of the soil. The background is a soft, abstract wash of light green and blue colors, suggesting a natural, earthy environment.

Understanding sustainability

- » Elaborating the social dimension:
- Communities & individuals;
 - Politics and governance; and
 - Culture (including indigenous)

A definition of sustainability



Maintaining the functionality of the Earth's dynamic systems (environmental, social and economic) to ensure their resilience and avoid their collapse.

Symptoms of Unsustainability

Environmental

Biodiversity loss

Climate change

Marine impacts
(temperature,
acidification, plastics)

Land degradation

Water shortages

Pollution/wastes

Chemical contamination

Social

Nationalism

Corporate political influence

Corruption

Religious fundamentalism

Loss of faith in
representative democracy

Discrediting of science

Urbanisation / decline of
rural communities

Affluence diseases (obesity,
diabetes)

Loss of indigenous cultures

Collapse of arms control
regime

Economic

Poverty

Wealth inequality

Government & private
debt

Five underlying causes (“drivers”) of unsustainability



CORE CAUSE: THE FAILURE TO RECOGNISE THE LIMITS TO GROWTH (cf. $I = PAT$)

Environmental

- EXCESSIVE NATURAL RESOURCE EXPLOITATION
- POPULATION GROWTH

Social

- TECHNOLOGY
- HUMAN VALUES AND ATTITUDES

Economic

- THE ECONOMIC GROWTH “PARADIGM”



Why distinguish between the symptoms and causes of unsustainability ?

- Likely **failure** in longer term of strategies focused primarily on symptoms;
- Possibly little **time** left to delay further action on the causes (possibility of imminent global collapse).



Potential consequences of the addiction to growth

» Environmental

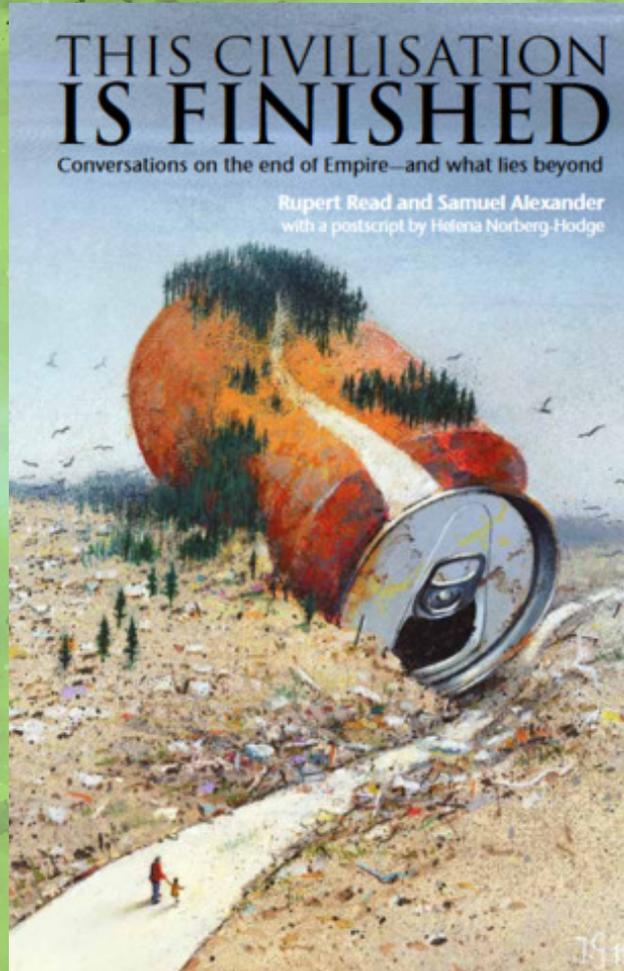
- Ecological collapse (cf., Anthropocene)
- Environmental refugees/mass immigration;
- Population decline / collapse through food shortages and epidemics;
- Resource depletion/exhaustion (cf. peak oil);

» Social

- Disintegration of social & political systems;
- Cultural collapse;
- Anarchy and attempted self-preservation by the wealthy;
- Global (possibly nuclear) conflict

» Economic

- Global economic decline/ collapse (next Great Depression);
- Collapse of foreign aid system;
- Greatly expanded poverty and hunger.



The possibility of global collapse

“ I have come to the conclusion in the last few years that this civilisation is going down. It will not last. It cannot, because it shows no sign of taking the extreme climate crisis – let alone the broader ecological crisis – for what it is: a long global emergency, an existential threat.”

Rupert Read, ecological philosopher,
University of East Anglia, March 2019



Earlier warnings of impending collapse

“ We predict that within the life time of our children, civilisation will face a crisis in survival.”

Urged investigation of:

- The population that Australia can support;
- The details of a balanced economic system; and
- The social changes needed to achieve 1. and 2.

“To Those Who Shape Australia’s Destiny” , scientists’ open letter in The Australian, May 21, 1971.

“ If the present growth trends in world population, industrialisation, food production and resource depletion continue unchanged, the limits to growth on this planet will be reached sometime within the next 100 years .”

“ ..even under the most optimistic assumptions about advances in technology, the world cannot support present rates of economic and population growth for more than a few decades from now. ”

THE LIMITS TO GROWTH,
(Meadows, Meadows, Randers and Behrens, Club of Rome, 1972):



Recent confirmations of impending collapse

- **General onset of collapse first appears about 2015** , when per capita industrial output begins a sharp decline (cf., current GDP decline as signal?);
- Club of Rome BAU scenario results in the **collapse of the global economy and environment, subsequently forcing population down (after about 2030)**

Turner , G (2014), *“Is global collapse imminent?”*, MSSI Research Paper no. 4 .

- “There is unsettling evidence that society is tracking the standard run of the original (Club of Rome) study, which leads ultimately to collapse. Detailed and recent analyses suggest that **production peaks for some resources may be only decades away .”**

Tim Jackson and Robin Webster, *“Limits Revisited: Review of the Limits to Growth Debate”*, UK All- Party Parliamentary Group on Limits to Growth, April 2016 .



Recent confirmations of impending collapse

“We are jeopardizing our future by not reining in our intense but geographically and demographically **uneven material consumption** and by not perceiving continued **rapid population growth** as a primary driver behind many ecological and even societal threats.”

Ripple, WJ et al, “World Scientists Warning to Humanity: A Second Notice”, *Bioscience*, Vol. 67, Issue 12, Dec., 2017.

“The biosphere, upon which humanity as a whole depends, is being altered to an unparalleled degree across all spatial scales. **Biodiversity** – the diversity within species, between species and of ecosystems – **is declining faster than at any time in human history** .”

IPBES, “Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services”, March 2019, available at <https://ip.panda.org/ipbes>

Is collapse avoidable?

“Doomsday preppers head underground as bunker economy enters mainstream society”, ABC News, 21 Feb., 2019

➤ - 99.5% conservatives

➤ - half of Silicon Valley’s tech billionaires

➤ See: [https:// www.abc.net.au/news/2019-02-21/doomsday - preppers - head - underground - bunker - economy - mainstream/10815984](https://www.abc.net.au/news/2019-02-21/doomsday-preppers-head-underground-bunker-economy-mainstream/10815984)

➤ See also: [https:// www.youtube.com/watch?v=mn0229zWnos&feature=youtu.be](https://www.youtube.com/watch?v=mn0229zWnos&feature=youtu.be)



A view of Vivos xPoint, a community of 575 bunkers designed to accommodate up to 5,000 people in a former army munitions site in South Dakota.



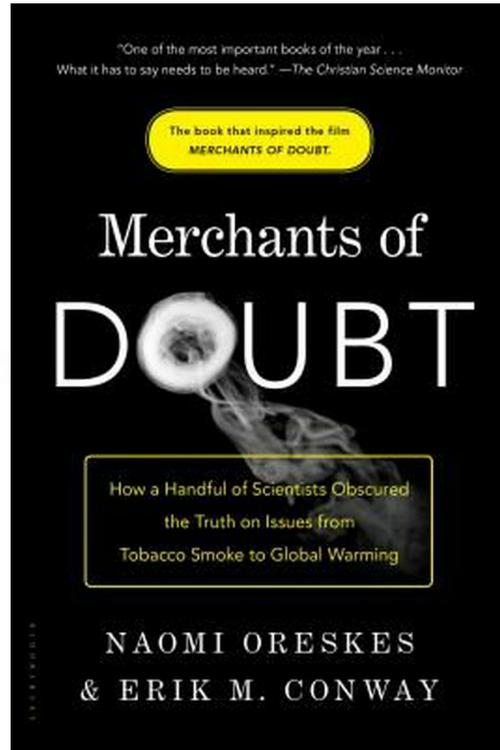
Is collapse avoidable? The need for a “Great Transition” to sustainability

- Jeremy Bendell : *“Deep Adaptation: A Map for Navigating Climate Tragedy”* , IFLAS Occasional Paper 2, 2018 (www.iflas.info)

- Rupert Read, in *This Civilisation is Finished*, 2019: three scenarios:
 - Utter and terminal collapse
 - Collapse followed by a much reduced successor- civilisation
 - Deliberate, radical and rapid transformation (the “Great Transition”)

Barriers to a “Great Transition” to Sustainability

(1) The Excuse of Lack of Scientific Certainty



Oreskes, N, Oppenheimer, M and Jamieson, D, *“Scientists Have Been Underestimating the Pace of Climate Change”*, Scientific American, 19 August, 2019, available at:

<https://blogs.scientificamerican.com/observations/scientists-have-been-underestimating-the-pace-of-climate-change/>

A watercolor illustration on the left side of the slide. It depicts two hands, one above the other, cupping a mound of dark brown soil. A small green plant with several leaves is growing out of the soil. The background is a mix of light green and blue washes, suggesting a natural, outdoor setting.

Barriers to a “Great Transition” to Sustainability

(2) The reluctance of most scholars to discuss collapse scenarios

“...most academics are concealing from their students the dire realities and probabilities and possibilities that hang over them. We ought to be frankly teaching our students at every opportunity about the extremity of the ecological crisis...”

Rupert Read, 2019, p.50.



Barriers to a “Great Transition” to Sustainability

(3) The “disconnect”

“There’s a disconnect in our culture separating what people do from what they really care about.”

Kathleen Dean Moore, in “If Your House is on Fire: Kathleen Dean Moore on the Moral Urgency of Climate Change”, *Minding Nature*, Vol. 12, No.2, 2019.

See also, Rolls, JM, “Why we Delay: How Human Cognition Impairs Our Response to Climate Change”, *The International Journal of Climate Change: Impacts and Responses* Vol. 4, 2013.

➤ “Humankind cannot bear very much reality” – TS Eliot.

The pathway to sustainability: collective and individual action

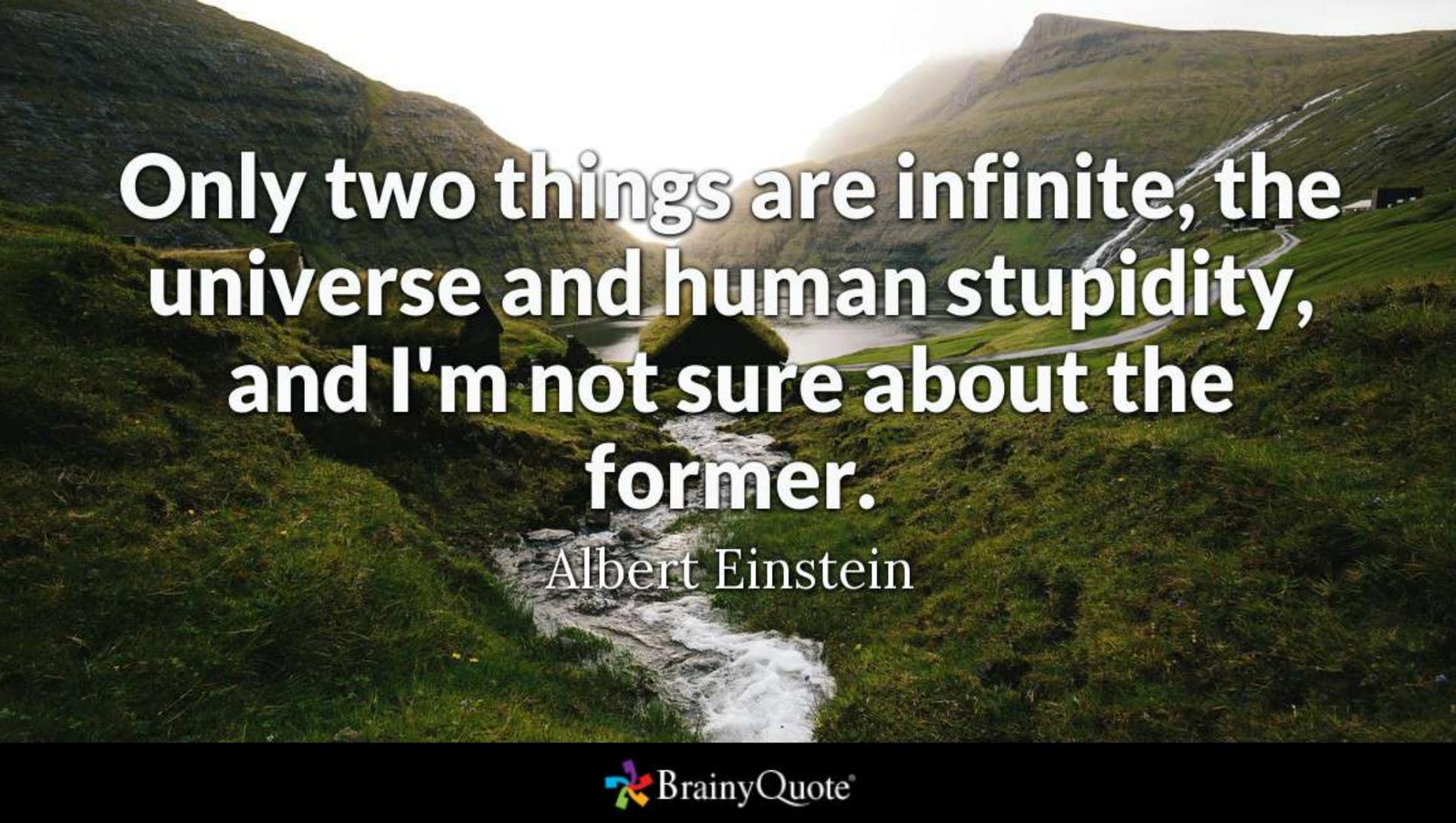
Three propositions re the pathway:

- 1. Sustainability transition will not be driven by our current political and legal systems;
- 2. A global, societal rebellion/revolution is required through collective and individual action ;
- 3. To be driven by human values and attitudes based on sharing, collectivism and respect for nature.

"I used to think that the top global environmental problems were biodiversity loss, ecosystem collapse and climate change...but I was wrong. The top environmental problems are selfishness, greed and apathy, and to deal with these we need a spiritual and cultural transformation"

- Gus Speth, founder NRDC in the USA, speaking in UK in 2013.

But is this likely? And, what should be the transformational agenda"?



**Only two things are infinite, the
universe and human stupidity,
and I'm not sure about the
former.**

Albert Einstein

The pathway to sustainability: collective and individual action



➤ Some positive observations on human nature:

- Animals (including humans) are not inherently selfish and have an innate capacity for altruism (cooperativeness, empathy, helpfulness etc.)

Frans de Waal, primatologist, *Good Natured. The Origins of Right and Wrong in Humans and Other Animals*, Harvard University Press, 1996

- “...one thing that in this great and terrible moment gives me very real hope is that, when human beings are subject to the gravest of threats and the most unexpected of utter challenges, we really do tend spontaneously to become our best selves, selfless and creative of real community.”

Rupert Read, *This Civilisation is Finished*, 2019, p.58:

The pathway to sustainability: collective and individual action



Driving collective action against powerful opponents:

*"The ruthless few... wield formidable institutional leverage, and have built an **architecture of industrial growth** so vast that it now threatens the foundations of human society. Having accumulated this power, they have absolutely no intention of giving it up, even if it costs us the world."*

See Scott Ludlum, "The extinction rebels: Direct action protest and the rise of a new resistance movement", *The Monthly*, July 2019, available at <https://www.themonthly.com.au/issue/2019/july/1561989600/scott-ludlum/extinction-rebels>

The pathway to sustainability: collective and individual action



Driving collective action against powerful opponents:

*“A successful transition will require near - unanimity in terms of public awareness of the crises facing us, and of willingness to sacrifice for the good of society as a whole...Currently, **social media (and corporate media generally)** drive us in the opposite direction – towards tribal allegiance and suspicion of outsiders.”*

Richard Heinberg , “Could a Green New Deal Save Civilisation?”, Post Carbon Institute blog, Feb., 2019, available at <https://www.postcarbon.org/could-a-green-new-deal-save-civilization/>

The pathway to sustainability: collective and individual action



Collective action: the case for non-violent, direct action

Recent examples linked to a sustainability agenda:

- Extinction Rebellion (XR);
- School Strike 4 Climate

➤ Need “to achieve widespread, cross-cutting and decentralised mobilisation”

See Chenoweth, E & Stephan, MJ, “Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict”, International Security vol.33, no.1, 2008, available at

<https://www.mitpressjournals.org/doi/10.1162/isec.2008.33.1.7>

➤ *“Somewhere out there lies the critical mass beyond which the high - risk denial of reality becomes politically impossible. And the key to reaching that scale is to find and welcome those people who, while supportive, are yet to find a way to meaningfully gather the wave.”*

(Scott Ludlum, 2019)

The pathway to sustainability: collective and individual action

The Waking Up Syndrome: 6 stages

Sarah Ann Edwards + Linda Buzzell, 2008

<https://www.resilience.org/stories/2008-05-01/waking-syndrome/>

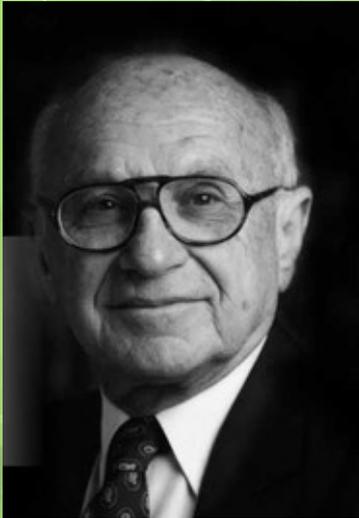
1. Denial (Q? apathy, unawareness)
2. Semi-consciousness
3. Moment of realization
4. Point of no return
5. Despair, guilt, helplessness, powerlessness
6. Acceptance, empowerment, action (the "intelligent response")

Individual action (creative, socially and personally responsible)

1. Resist making matters worse: make personal choices re
 - energy/water consumption;
 - housing and transport;
 - diet;
 - consumables: plastics and other wastes, chemicals etc.
2. Join with others in small communities:
 - community/permaculture gardens;
 - turn neighbourhood into a sustainable "eco - hood"
 - Eco- villages
3. Re- connect with nature (cf., Common Cause)
4. Awareness - raising/activism
 - join a relevant action group
 - participate in public rallies, protests etc.
 - write to, or meet with, politicians
 - "heroic action, commensurate to the crisis" (cf., Greta Thunberg)



The sustainability agenda: vision, principles and ideas



A vision for a sustainable society

- 1. A clearly defined, fundamental vision must be identified by civil society;
- 2. This vision should be for a “de - growth” society/civilisation based on equitable principles;
- 3. The vision needs to be supported by radical new principles and ideas re sustainability.

“Only a crisis - actual or perceived - produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies, to keep them alive and available until the politically impossible becomes the politically inevitable.”

Milton Friedman, proponent of free- market capitalism (!)

The sustainability agenda: vision, principles and ideas

THE FOUNDATIONS OF ENVIRONMENTAL LAW

GOALS, OBJECTS, PRINCIPLES AND NORMS

TECHNICAL PAPER 1

APEEL

The Australian Panel of Experts
on Environmental Law

The principal contributions to this
paper were provided by the following
Panel Members:
Adjunct Professor Rob Fowler
Professor Zen Makuch
Professor Benjamin Richardson
Rachel Walmsley

New Legal Principles for a Sustainable Society

➤ New “directing” principles related to *ecologically sustainable innovation* :

- achieving a high level of environmental protection;
- applying best available techniques.

APEEL, *The Foundations of Environmental Law*, 2017,
available at <http://apeel.org.au/papers>

The sustainability agenda: vision, principles and ideas



New Legal Principles for a Sustainable Society

Axioms of “societal and ecological sustainability”:

- 1. Any society that continues to use critical resources unsustainably will collapse.
- 2. To be sustainable, the use of *renewable* resources must proceed at a rate that is less than or equal to the rate of natural replenishment.
- 3. To be sustainable, the use of *non-renewable* resources must proceed at a rate that is declining, and the *rate of decline* must be greater than or equal to the *rate of depletion*.

Extracted from a speech by Richard Heinberg in Greece, 25 June 2015: available at <http://www.postcarbon.org/sustainability-metrics-growth-limits-and-philanthropy>.

The sustainability agenda: vision, principles and ideas

Laws for sustainability



SUSTAINABILITY AND THE LAW

Existing legal approaches

Environmental law

Sustainable development law

Sustainability law

Laws addressing key drivers

Reform of other existing branches of law

The sustainability agenda: vision, principles and ideas

(Ecologically) Sustainable Development and the Law

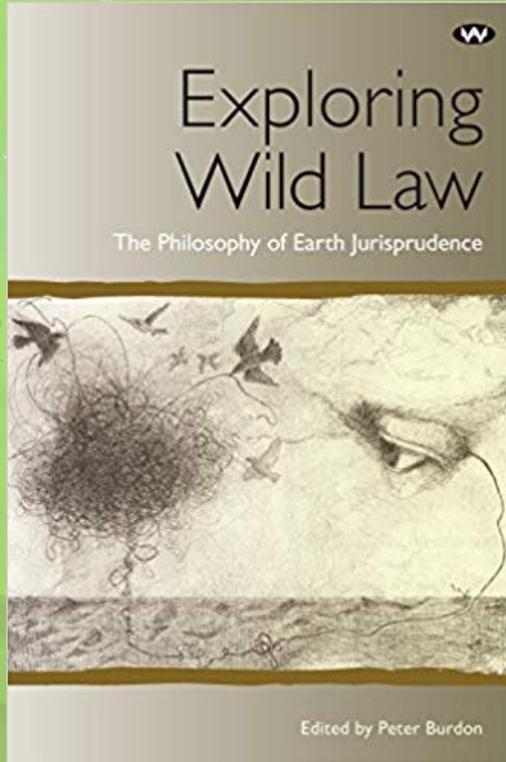
- *Bruntland Commission (Our Common Future 1987)*
- *National Strategy for Ecologically Sustainable Development (1992)*
- *UN Sustainable Development Goals (2016) and Agenda 2030*

Assessment:

- *SDGs prioritise economic growth above social and environmental concerns;*
- *Need new vision based on the concept of sustainability via degrowth.*



The sustainability agenda: vision, principles and ideas



➤ *Environmental Law*

Current state:

- *Focused on symptoms and process;*
- *Based on a balancing approach (economics and environmental quality);*
- *Has failed to address critical global threats;*

Recent developments

- *rights-based approaches*
 - *human rights and the environment*
 - *rights for nature*
 - *public trust doctrine*
- *“greening” of environmental law (wild law)*

Assessment:

- *has not addressed the key environmental drivers of unsustainability, in particular excessive resource extraction, consumption and population growth;*
- *Need to develop additional, sustainability related laws.*

The sustainability agenda: vision, principles and ideas



Ideas for a Sustainable Society

Driver No.1: Excessive resource extraction

1. Legislate for a **circular or “closed loop” economy** ;

(cf., prevent over - building: see Ness, DA, *The Impact of Overbuilding on People and the Planet* , Cambridge Scholars Publishing, 2019));

BUT: note also second law of thermodynamics re entropy: as energy is transformed, more and more of it is wasted.

2. Reverse the **extraction premise** in natural resources laws (via new sustainability principles);

3. Reform international law;

- revise concept of national **sovereignty** ;
- provide for the protection of areas as **global commons** (e.g., Amazon).

The sustainability agenda: vision, principles and ideas



Ideas for a Sustainable Society

Driver No.2: Population growth

- 1. Ensure access to **education and birth control support** for women in countries with high rates of population growth (laws to support aid programs at least at 0.7% of GDP)
- 2. In Australia – develop an **integrated national population policy**
- 3. Reduce levels of **immigration** (to match emigration), but with higher proportion for humanitarian intake (revise immigration/refugee laws).
- See further, Sustainable Population Australia, Population policy, 2005 , available at [https:// population.org.au/about - population](https://population.org.au/about-population)

The sustainability agenda: vision, principles and ideas

6th Apr
2018

Elon Musk warns of prospect for “an immortal dictator from which we can never escape”



This is in a documentary on AI and robotics out today, “Do You Trust This Computer?” Google’s DeepMind is a big step in this direction, he says.

Ideas for a Sustainable Society

Driver No.3: Technology

➤ 1. Need new regulatory systems to govern security, safety and risk management aspects of re new technologies, including;

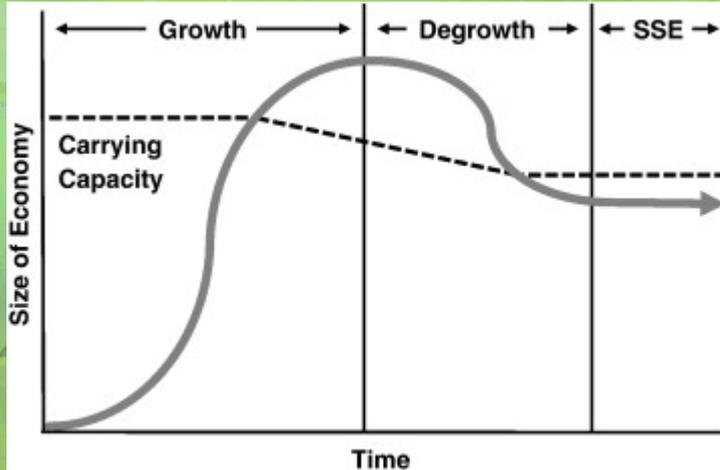
- Synthetic biology (GMOs, CRISPR- based gene drives);
- Geo- engineering (to address climate change); and
- Artificial intelligence (as a risk to democracy)

*“Altering the genetic code of wildlife is seen by some as a gross overstep by humans, echoing concerns about genetically modified crops. Others may feel that there is a moral responsibility to use a technology that could save lives or restore damaged eco- systems. These **contrasting value systems** require responsible decision - making for resolution.”*

UNEP (2019), *Frontiers 2018/19: Emerging issues of Environmental Concern*, available at

<https://www.unenvironment.org/resources/frontiers-201819-emerging-issues-environmental-concern>

The sustainability agenda: vision, principles and ideas



Ideas for a Sustainable Society

Driver No.4: Economic growth

- 1. Laws to require use of **alternative indicators** to GDP (e.g., Genuine Progress Index)
- 2. Laws to promote **social business model**
(see Muhammad Yunus, *A World of Three Zeros*, Scribe Publications, 2017)
- 3. Re-purposing **corporations** (e.g., B corporation certification laws)
- 4. Switching to a **steady - state economy** (via degrowth)
 - (see CASSE web- site, at <https://steadystate.org/>)

Ideas for a Sustainable Society

Politics and governance for sustainability

The sustainability agenda: vision, principles and ideas



- Localism :
 - urban social movements;
 - Re- ruralisation
- Representative v deliberative democracy
- *"...it is more necessary than ever to sustain a hope that humanity can unite to reject authoritarian false solutions to the climate crisis and social inequities, embrace the potential for an enhanced quality of life beyond fossil - fueled capitalism, and begin to realize the dream of a liberated and truly interdependent global community of communities ."*
- Brian Tokar, "Think Globally, Act Locally?," opening reflections for a GTI forum, *Great Transition Initiative* (August 2019), <https://greattransition.org/gti-forum/global-local>.

A final message: the importance of education and awareness raising:

- Universities and sustainability studies;*
- joining the rebellion!*

[https:// www.schoolstrike4climate.com/sept20](https://www.schoolstrike4climate.com/sept20)

PS: Janet Albrechsten, The Australian, 24 - 25 August 2019:

"I forgive Greta Thunberg. She is a young girl with a misguided sense of doom about humanity. Her mission to convince us that instruments of our magnificent progress, such as airline travel, are weapons of self - destruction would lead us back into the dark ages."





Thanks!

Any questions?

You can find me at:

rob.fowler@unisa.edu.au