Going Global: Commencement Address to the Pace University School of Law

By Mark Malloch Brown, UNDP Administrator
Pace University, New York, 22 May 2005

Dean Friedman,
Members of the Class of 2005,
Distinguished guests,

For the rest of the world, although sometimes the subject of jokes, the American lawyer has certainly become a symbol of this country as much as the cowboy once was. Now, of course, that may not be the most flattering way to begin the address to you all. While there could never be too many cowboys, there is something of a suspicion in some places that there may be too many lawyers. Indeed, American lawyer jokes work everywhere around the world, and are as infamous as Polish or Irish jokes once were.

But I am not going to suggest to you today that the world should begin to see the back of lawyers. I am going to say that rather, while there is a debate in America about whether we have enough “lawyering” for our collective good, I can tell you the rest of the world certainly doesn’t. With a Dean such as Stephen Friedman, I suspect this is not a new idea to many of you. He was as passionate about addressing issues of development and making the law a force for good in the world in private practice as I am sure he is today as Dean of this law school.

We have seen the globalization of so much: fashion, finance, entertainment and trade, but now find ourselves running up against the constraints when the rules of the game of law are not the same everywhere, and when property, intellectual as much as physical, is global. So in this world, yes we have to improve the ports, the roads, and the telecommunications that drive global trade, but we must also build the laws to regulate it.

This global exchange of ideas, goods, and services requires a framework of laws. Everyday cross-border financial transactions amount to 2 trillion U.S. dollars. Our service and manufacturing economy in today’s world is essentially borderless, but the law remains largely national. Corporate compliance rules are not the same in New York and Paris; American intellectual property is not secure in China. Yours, and my, human rights are not protected freedoms everywhere. When our property rights or human rights are not stable and protected, this great global project of ours is endangered.

Slowly, law is sneaking its way across borders. Pace’s own work in international environmental law is a case in point. The environment does not respect national borders, so neither can the law that governs how humankind interacts with it.

Ironically, the fountainhead of so much of the international law that is emerging is American. For example, the Sarbanes-Oxley legislation on financial disclosure and accountability is forcing a new global compliance requirement on foreign companies that want to operate in the U.S.

It is ironic though because the country that most resents being subject to constraints, rules and ultimately laws posed by others, is also this country. Yet in the last century, the U.S. has contributed most to emerging international law; first with the formation of the League of Nations and then the United Nations, the brainchildren of Woodrow Wilson and Franklin Roosevelt; and then the human rights conventions whose early articulation is indelibly associated with Eleanor Roosevelt. From commerce to human rights, America has set the pace in making the law.

The United States’ inescapable role is part due to its economic muscle at home. The world trades with it, so it sets the rules; but even more important is the energy of
its ideas and fundamental liberal outlook as a society. It is a country whose origins lie in people fleeing persecution and wanting to build a new life in a republic where every person was equal under the law. That driving idea has not only built America, it has changed the world. Yet it is also an endangered idea in some ways. Lawyers have been its instruments; they must not become its jailers.

Here in the U.S., this state’s attorney general, Eliot Spitzer, is demonstrating anew why the law can be an instrument for keeping America the most open and competitive economy in the world. As the scourge of insider-trading and corrupt practices, he gives every foreign investor confidence. Yet on the other hand, over-regulation, too many rules in the workplace, and compliance systems that overburden, are a disadvantage that can deter that very same investor as much as it will squash innovation at home.

And it’s clear that abroad, President Bush’s push for democracy and freedom will run aground on the shoals of American exceptionalism if the United States keeps apart from this emerging international legal system. While the U.S.’s involvement has made the World Trade Organization a powerful facilitator of free trade and global growth, elsewhere, America stands apart. The United States is the country that has opposed the International Criminal Court, the Kyoto Protocol on the environment, and even UNICEF’s convention on the rights of the child.

Because this great, ungainly, magnificent giant of a nation has led the world in advancing freedom, democracy and decency cannot quite accept membership of the global neighborhood association, and the principle of all neighborhoods: that it must abide by others’ rules as well as its own. It certainly doesn’t want to paint its picket fence the same color as the neighbors and won’t turn down the dance music at a sociable hour. But nor, admirably, will America accept other compromises in the pursuit of freedom and liberty.

For a nation of lawyers, the U.S. is in that sense much less comfortable with the law than old Europe, which recognizes its military limits in the classical sense and so seeks its security in a framework of predictable treaties and laws at whose apex is the United Nations.

Yet respect for law, and for other people’s laws, as a basis for building shared international law, is not only a calculus of foreign policy, it is also a reflection of respect for other cultures and points of view and therefore as relevant to the United States as to others.

The scandals about the abuse of Afghan and Iraqi prisoners reflect both the admirable refusal by the U.S. to cover-up scandals, and the determination to expose and punish misbehavior, whatever the public relations costs. On the other hand, the individual soldiers who participated in such crimes demonstrated a profound lack of respect for other cultures.

This is something that is not unique to America – we have our own problems of sexual exploitation among UN peacekeepers. Nevertheless, this example does serve as a reminder that law is not written in a vacuum or a social abstract. It must be based on a culture of respect for the individual and institutions. So, if we are to build the framework of international law that the world needs, it will begin with respect and tolerance between peoples.

No nation gains more from predictable law than this one. Because of its global reach, its citizens, its products, its ideas everywhere need the protection of universal law. The economy of the U.S., as much as the political commitment to promoting democracy and freedom, cannot be sustained by unilateral assertion. Rather, they rest first on mutual acceptance, and then on a framework of laws that protect international exchange at all levels; that offer common protection for human rights as much as the right to do business; for the right to speak up as much as the right to own; the right to change one’s government and equally the right to keep it; the right to trade and the right to conserve one’s way of life; the right to put aside differences; and even the right to preserve them.

So I have a small final prediction for you, the graduating class here at Pace 2005: America may or may not have enough lawyers, but the world certainly doesn’t. In the age of the cowboy, they told young Americans, “Go West, young man” to seek your future. Today I say “Go global, young man and young woman” as you join in our world’s great opportunity, where innovation and change, from economics to technology, are changing our world faster than ever before.

What makes change progress and not chaos is a framework of law. And the men and women who develop and apply those laws play an indispensable role. So to you, Pace’s newest lawyers, I say go forth. The world needs you.

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**The United States is the country that has opposed the International Criminal Court, the Kyoto Protocol on the environment, and even UNICEF’s convention on the rights of the child.**
China’s Cities and Sustainable Development

By Edward H. Ziegler, Professor of Law, University of Denver

China’s economic growth (nearly a 10 percent GDP increase annually) during the past twenty-five years may be the largest and most sustained economic expansion in modern history. As China has become the manufacturer for the world, its growth has significantly transformed China’s built environment. Over 300 million people have moved from the countryside to the cities during this time – the largest migration in world history. New towns are springing up in rural areas and existing cities are booming. Much of China’s growth has been either uncontrolled or poorly planned – and the growth is far from over. China’s urban areas will have to be developed to accommodate upwards of 500 million more rural peoples (nearly twice the population of the USA) who are expected to move to China’s towns and cities by midcentury. Planning efforts will be crucial if China wants to manage its growth and encourage sustainable development. A key focus in planning with respect to the environment will certainly be energy, which will be needed in increasing amounts to fuel the growing economy.

The development of China’s urban areas during the last twenty years, both in the creation of new towns and the expansion of existing cities, may have involved the largest construction and expansion of the built environment in the history of the world. Aside from the infrastructure that has been built, China is now building nearly 6 billion square feet of new residential buildings each year, surpassing the United States as the world leader in construction and expansion of the built environment.

To manage the growth related problems involved in this expansion, China’s government in Beijing recently adopted initiatives that provide the first steps toward the creation of a national land use planning and sustainable development policy framework for managing urban growth. These policy initiatives provide an integrated hierarchy of tiered planning for growth by establishing national goals and policies followed by implementing provincial regional plans. Regional plans are then implemented by the adoption of mandatory, detailed local municipal, district, and village plans, including local comprehensive plans, zoning maps and development codes. The initiative also provides for integrated land development review and the adoption of land information monitoring and assessment systems.

The major goals of these growth management and sustainable development initiatives are to provide for economic development through the efficient use of land and resources; minimize waste; curtail the excessive infrastructure costs of uncontrolled urban sprawl; promote rational and efficient infrastructure and transportation systems; and promote sustainable development policies involving historic and natural resource conservation and environmental protection, particularly with respect to water supply and productive farmlands.

The need to address environmental issues through the initiatives stems from a history of enormous environmental problems. The cessation of river flows and availability of potable drinking water is a serious problem in some parts of the country and water shortages have affected economic development and production in some areas. Other problems include the loss of productive farmland in recent years as grain production has continued to decline and as China has had to become a food-importing nation.

Despite what some believe, China is not a country rich in natural resources. China needs to feed about 22 percent of the world’s population with only 7 percent of the world’s arable land, some of which is rated “poorly productive.” China has continued to lose farmland through soil erosion, loss of soil fertility and ever expanding urban encroachment, and China’s forest and water resources on a per capita basis are far below world averages. While China has large coal reserves, they are below the world average in terms of immediately exploitable deposits on a per capita basis. Oil and gas are even less abundant.

Energy is a key issue in China’s planning efforts. China now produces only about 80 percent of the energy its present economy needs and imports about half of its oil supply. Recently, China has begun to import increasing amounts of natural gas and coal from Australia. Oil consumption will surely increase substantially in China as industrialization and urbanization escalate automobile ownership and use. In the past ten years China’s oil consumption has doubled, with an increase of 1.2 billion barrels a year, compared to an increase of 1.1 billion barrels a year in the United States, which sells nearly 18 million new cars each year. China also faces the challenge of constructing and expanding its infrastructure and transportation network to handle increased energy production and increasing imports of coal, oil, and gas to accommodate future growth. However, the growth management and sustainable development initiatives link, for the first time in China, the conservation and efficient use of capital, labor, and natural resources in the expansion of the built environment to the development of a more rational framework for future growth.

In both China and the United States, alternative energy sources, such as solar, wind, and

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A Summer in Costa Rica: Not the Average Desk Job
By Jorge Figueroa

Upon my arrival in Costa Rica to work for the International Union for the Conservation of Nature (IUCN), I was taken by a cab driver to a house in San Jose with rooms to rent. The house was occupied by me, a Pace environmental law student, and a 22-year-old U.S. Iraq War Veteran who was on vacation. San Jose was impressive with its inerminable stream of taxis and buses swarming the arteries and capillaries of the city at all times. It was like Rio Piedras, Puerto Rico, but about twelve times bigger, and like New York City, but without the skyscrapers or subway system.

Even though I loved the hustle and bustle of San Jose, every morning while walking to the bus stop, my mind would always think about the volcanoes, white water rivers, and forests full of monkeys, anteaters, and jaguars that inhabited the land beyond the traffic fumes and the San Jose Valley. After two weeks, I had had enough of the city, and moved to a small house in the mountains with a river running behind it. I lived in Patio de Agua (Backyard of Water) in Coronado during my last month working at the IUCN Regional Offices of Meso America, while I researched the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) for the IUCN and Professor Paddock.

My work on the DR-CAFTA and its prospective effects on the Costa Rica environment threw me into the eye of a hurricane. Although Costa Rica has signed the DR-CAFTA, it has not yet ratified it. While it represents arguably the most significant socioeconomic program for the region, the latest publications on the subject in Costa Rica have not been informative. The analysis is normally filtered through only one of the lenses of the highly polarized debate. DR-CAFTA is either passionately demonized, or regarded as a providential salvation for the country.

Coming back from work, I would stop most nights to eat at a restaurant called Tacoticlan, whose owners, Miguel and Fernando, lived in a cottage at the edge of the river behind my apartment. Sometimes when walking from Tacoticlan to the Patio de Agua bus stop, fog flooded the plaza, making the gothic church and Coronado look like a Van Gogh painting. The path from the bus stop into Patio de Agua would be illuminated every night by fireflies and the roar of the river. Neither Julian, my friend from the IUCN, nor his wife, both brought up in Coronado, had ever been to Patio de Agua. They had never seen the strawberry farm, the rustic classic rock bar named La Quinta Nube (The Fifth Cloud), or La Antigua, the dairy farm converted into a restaurant where you eat the fish that you use a bamboo pole and bait to catch. The whole restaurant is a rustic art gallery, and has a spectacular view at night of the glow of San Jose peering from the horizon below.

With a deep respect for its mission and the hard, dedicated work of its professionals, I left the IUCN offices, and Patio de Agua, with a backpack and my fiancée. I left to find the birds of the Rio Tempisque, the surfer forest towns of the Pacific, the tapirs and pumas of Corcovado, the turtles and sloths of Cahuita, the birds of the Rio Tempisque, the surfer forest towns of the Pacific, the tapirs and pumas of Corcovado, the turtles and sloths of Cahuita, and the boulder-spewing thunderous Arenal, before returning to Pace to encounter, yes … the dreaded but very important environmental skills course.

Reflections

China’s Cities and Sustainable Development
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geothermal energy sources, now produce less than one percent of energy consumption, and it is highly unlikely that these alternative, carbon-free energy sources will have evolved by mid-century to be the major sources of energy in either country. To meet future demand for energy, both China and the United States, the world’s largest sources of greenhouse gases, will likely build hundreds of traditional coal-fired and CO2 greenhouse gas emitting power plants. Both countries are investing (though critics argue not nearly enough) in the research and development of coal gasification and carbon sequestration technology to attempt to mitigate issues of global warming and climate change.

Beijing recently took a step in the right direction when it created a new high-level State Energy Office to monitor energy resources and to advise the government on resource and energy security issues, with the hope of developing a more rational framework for future growth. For example, China is aware of the fact that over 80 percent of the crude oil consumption in the United States is associated with the low-density “sprawl” pattern of land development. China’s future urban plans increasingly attempt to maintain alternative (non-motor vehicle) transit modes in its cities, with urban densities in China typically ten to twenty times greater than densities in America’s suburban areas. China will use both of these tools, transportation and urban density planning, to try and prevent it from becoming a completely automobile dependent economy and culture. Plans for many of China’s new towns, for example, provide for residential parking and private car ownership, but allow most daily trips to be by other transit modes, such as walking, cycling, and public transit – forms of travel usually impractical in the hypersprawl neighborhoods of the United States.

China’s government hopes that these new urban planning and growth management initiatives will provide regulatory mechanisms better able to address some of China’s development and environmental problems. According to recent reports, there has already been significant success in protecting farmlands through widespread local downzoning of earlier economic development and industrial zones, and by curtailing the development of golf courses and upscale low-density villa projects on the fringe of urbanizing areas. This shift toward more “green” policies and programs appears to be rooted in official China’s need to continue to promote the future creation of jobs and economic development that is widely believed to be necessary to maintain long-term social stability within the country.
On the International Front: Sandra Brown’s UN Externship Experience

Working at the United Nations (UN) means a world of opportunities. From walking the hallway of flags to attending UN General Assembly meetings, navigating the Secretariat Building is truly a surreal feeling. As an intern you get to experience all this and more.

Through the Environmental Diplomacy Practicum, students from Pace Law School and Yale School of Forestry and Environmental Management intern for the mission of a small, developing country. The countries are provided with extra support, and the student is given the opportunity to serve as a representative of a country. It also provides a chance for students to perform much needed research for the country on important environmental issues. From researching energy conservation, water issues, or disaster prevention, the student plays a vital, and often an unprecedented, role in serving his or her mission.

As an intern for the Grenada Mission to the UN, I was assigned to attend meetings of the Third Committee, to which Grenada is a member state. The Third Committee is the Social, Humanitarian, and Cultural Committee, and is one of the six major committees of the United Nations in which Permanent Missions of the General Assembly choose to be members. The meetings introduced me to international human rights issues and the added difficulties that developing countries often face in tackling complicated international problems.

Working closely with Grenada’s ambassador, and other interns, students developed a Web site for the mission that includes information on treaties to which Grenada is a member, what obligations Grenada has under these treaties, and recommendations on how Grenada can go about addressing these obligations. Each intern also completed an individual research project on an environmental law issue of interest to Grenada. My research project focused on a compilation of land use regulations that would fulfill local, regional, and international needs in Grenada.

The Environmental Diplomacy Practicum offers a once in a lifetime chance to participate in an internship program that is both personally fulfilling and internationally important.

Energy Project Focuses on Photovoltaic Systems

The Pace Energy Project has been working to accelerate the transition to clean, efficient, and renewable energy alternatives such as photovoltaic (PV) systems, which enable consumers to convert solar energy into electricity. While the number of PV systems being installed in New York State is steadily increasing, installers often cite local permitting as a barrier to the growth of the PV industry. To assist both local building code officials and PV system installers in interpreting the National Electric Code (NEC), Pace’s Energy Project has been working with the Interstate Renewable Energy Council (IREC) and New York stakeholders to develop the “Inspector Guidelines for PV Systems.” In March of 2006, the guidelines were featured in a four-hour course titled “National Electric Code Compliance for Photovoltaic Systems” that was approved and accredited for four hours of code enforcement in-service training by the New York State Department of State Division of Code Enforcement and Administration.

Environmental Litigation Clinic Takes on Exxon Mobil and Others

Pace’s Environmental Litigation Clinic continues to represent citizen-plaintiffs, including Riverkeeper and Peconic Bay Keeper, in a multitude of lawsuits. For instance, in their representation of Riverkeeper, clinic students have brought suit against Exxon Mobil for contaminating Newtown Creek by way of an underground oil spill that has been migrating since the 1950s. This case is still in the discovery phase, and students are working diligently to gather information from Exxon and investigate the potential for additional defendants. Further, clinic students continue their representation of Peconic Bay Keeper in its case against Suffolk County for ditching wetlands and spraying mosquito pesticides into the Peconic and South Estuaries.

A Nation on Edge Gathers at Pace Law School

In an effort to explore why America builds and rebuilds on the edge of disaster-prone locations, Pace’s Land Use Law Center and the University of San Diego School of Law joined together to host “Nation on Edge,” a project consisting of a series of six presentations on the history, current status, and future of building in vulnerable areas. Specifically, expert speakers from across the country delivered insightful commentary on the policy behind disaster mitigation; the roles of the federal, state, and local governments in managing disaster-prone areas; innovations in disaster mitigation, and the prospects for policy change. Pace Law School hosted the April 18th presentation on planning and zoning tools as well as the project’s final presentation on the future of decision-making and policy change.
The Real Estate Law Institute

Pace Law School is fortunate to host the country’s largest and most active Land Use Law Center, which assists industry and community leaders in promoting best land use practices through its publications, events, and trainings. The Land Use Law Center has focused on expanding its real estate curriculum and recently created the Real Estate Law Institute.

The mission of the Real Estate Law Institute is “to produce law school graduates who are practice ready and to serve the educational needs of practitioners, the private sector, governmental officials, and citizen leaders involved in real estate development, land use, and natural resource conservation.” In order to carry out its mission and satisfy the educational needs of the real estate industry, practicing attorneys, and Pace Law students, the Real Estate Law Institute will host annual national conferences, regional seminars, clinics, and continuing legal education events.

On November 17, 2005, the Real Estate Law Institute hosted its inaugural conference entitled, “Reinventing Redevelopment Law” at the Association of the Bar of the City of New York. The conference highlighted, evaluated, and advanced the innovative legal strategies that have made private and public partnership development projects successful, and featured presentations by lawyers, including keynote speaker Richard Ravitch; planners; developers; and politically appointed officials.

Given the Land Use Law Center’s distinction as a “model program for the nation” and the success of the Real Estate Law Institute’s inaugural conference on urban redevelopment, Pace Law students, local governments, and practicing attorneys across the country have reason to expect great things from the Real Estate Law Institute. For more information, please visit http://law.pace.edu/reli/index.html.

Chauncey L. Walker is a prominent real estate lawyer and a partner at Cuddy and Feder, where he represents developers, buyers, sellers, lenders, borrowers, and landlords in commercial real estate transactions involving shopping centers, office buildings, apartment buildings, and golf courses. Walker is a practitioner-in-residence at Pace Law School, and is assisting in the creation and organization of the Real Estate Law Institute. The center’s mission is to produce law school graduates who are practice ready and to serve the educational needs of practitioners, the private sector, governmental officials, and citizen leaders involved in real estate development, land use, and natural resource conservation. The Real Estate Law Institute is a program of Pace Law School Land Use Law Center.

On the academic side, Walker will analyze and evaluate the current curriculum; assist in developing seminars and courses; teach a course and work with students on cutting-edge issues in real estate; and advise the faculty and center staff in creating materials for these courses. On the program side, he will assist in developing advisory groups of developers and attorneys, in planning a major CLE program, in conducting a high profile conference on the lawyer’s role in public and private partnership projects, and in planning future programs and events.
2005 Kerlin Lecture

“Reconciling Science and Public Engagement in Environmental Policy Making: European Attitudes Towards the Release of Genetically Modified Organisms”

By Malcolm A. Grant, President and Provost, University College London

On November 17, 2005, Professor Malcolm A. Grant presented Pace Law School’s Sixth Annual Gilbert and Sara Kerlin lecture. Professor Grant spoke on the impact of public opinion on the European Union’s regulation of genetically modified organisms (GMOs), the gap between regulatory instruction and practice, and new ways to engage the public in the debate. Grant shared his personal confessions with the audience of students and academic and legal professionals, about his experience as chair of a government created commission. He admitted that chairing the committee was an intimidating experience due to the nature of the conflict surrounding the release of GMOs. A conflict, which he pointed out, has completely passed by the United States and Canada, but which is “sharp and enduring in Europe.”

Addressing why the argument against GMOs was so strong in the European Union (EU), Grant explained that it was the regulatory approach under the European paradigm that had failed. A regulatory approach that is based on scientific risk assessment – that regulates how products are generated, but not the safety of products. This approach has failed because the European public is left questioning who the decision makers are, what measure of trust they can be granted, and what level of accountability exists. Specific fears include the feeding of GMOs to livestock, as the organic industry in Europe continues to grow.

The strength of the conflict has led to a trade dispute between the United States and Europe, which culminated with the U.S. filing a complaint with the World Trade Organization, and the European Union filing a moratorium against the importation of GMOs. “Science is paraded by both sides,” noted Grant, but for different reasons and with different results.

He explained that public opinion is important in the debate surrounding GMOs because politicians by their very nature need favorable public opinion and actively seek it, and also, where a product is produced, public support is necessary for the production system to survive economically. Further, it is the “process of transferring DNA between species that has most enflamed public opinion.”

After discussing the background of genetically modified (GM) crop cultivation, including where and why it is occurring in the world, Grant discussed his role on the United Kingdom’s Royal Commission on Agriculture and Environment Biotechnology. The commission was established in 2000 to study GMO trials in Europe and was the result of the pressures that were increasingly being faced by European governments. Twenty members sat on the commission and represented all sides of the debate, including industry officials, genetic scientists, continued on page 9

Campus Climate Neutral

By Ashley Dugger

This year I have the pleasure of serving as the national cochair for the National Association of Environmental Law Societies (NAELS). Following in the footsteps of Pace alumna Elana Roffman, I now have the opportunity to help unite more than 100 environmental law student groups around the country. In 2005, NAELS launched Campus Climate Neutral (CCN), a national campaign to bring together students and communities with the common goal of reducing greenhouse gas (GHG) emissions. Student leaders will help universities to “go climate neutral” (achieving 70 percent or greater reductions in greenhouse gases from typical baseline emissions), so that campuses and their surrounding communities will eventually have little or no net effect on the Earth’s climate.

CCN consists of four different components that can be implemented individually or simultaneously to meet the varying needs and resources of particular universities. The four components of the CCN project are the GHG reduction project; state climate summit; state law and policy project; and independent studies and research project.

The University of California, Santa Barbara (UCSB) held a California University Summit in February 2005 that not only brought together state climate experts but also introduced the first CCN group GHG reduction project. Graduate students from the Donald Bren School of Environmental Science and Management completed an initial “Greenhouse Gas Inventory” and an overall review of current university efforts. The next focus of the project will be to develop long-term solutions to aggressively move the UCSB campus to climate neutrality. In spring 2006, Chicago-Kent College of Law will commence the first state law and policy project through an independent research course.

CCN provides the framework for universities to become leaders in the campaign to address climate change. For more information on CCN please see the NAELS Web site at www.naels.org or contact Ashley Dugger at adugger@law.pace.edu.
Eastern Water Law Symposium:
Integrating Land Use Law and Water Law: The Obstacles and Opportunities

Pace Environmental Law Review (PELR) hosted its symposium on October 22, 2005. The event was the second of a three-part series that explored the growing interaction between water law and land use law with the specific purpose of identifying better approaches to integrating land use and water law in ways that encourage rational development, better protect water quality and help maintain water quantity. The first event, held in September at Albany Law School, was a dialogue among stakeholders in the watershed and local land use systems to identify current problems surrounding the interface of water law and land use law, and discuss how better results could be obtained.

The symposium, held at Pace Law School, explored the legal frameworks for water and land use management, commented on the results of the stakeholders’ conversation, and sought to identify novel approaches to solving water problems by better engaging the land use system. Sean Nolon, director of the Land Use Law Center, moderated the event.

The final session to be held in 2006 will focus on what is needed from the legislature to convert the dialogue and ideas from the symposium into concrete methods of change.

IUCN Academy of Environmental Law

The IUCN Academy of Environmental Law continues to grow as a major force in international environmental legal education. The academy links environmental law faculty worldwide through annual colloquia and a developing research agenda designed to support the evolution of environmental law and undergird the concept of sustainable development. The academy, founded and chaired by Pace Law School Professor Nicholas Robinson, recently established its secretariat at the University of Ottawa Faculty of Law with the support of the Canadian government.

Third Annual Academy Colloquium

Macquarie University in Sydney, Australia hosted the Third Annual Academy Colloquium examining the issue of “Biodiversity Conservation, Law & Livelihoods.” In his message to the academy, United Nations Secretary-General Kofi A. Annan stressed the “sobering look” that the 2005 Millennium Ecosystem Assessment I presented of “how human activities are causing environmental damage on a massive scale.” He welcomed the colloquium’s studies “as to how environmental law can bring about the policy, institutional, and behavioural changes needed to deal with the root causes of environmental degradation.”

In his two public lectures as the academy’s 2005 Distinguished Lecturer in Environmental Law, Professor Joseph Sax (University of California, Berkeley), identified a key root cause for the inadequacies of conservation, and environmental law in general, as deriving from legal functions arising from narrow legal definitions of property. He explored the legal consequences when property concepts disengage commodiities from ecosystems that produce them, or from wider natural and human communities, which sustain them and which they in turn sustain. The colloquium concluded by adopting the Macquarie Statement.

The Macquarie Statement

Human activity, including anthropogenic causes of climate change, is contributing to an alarming rate of species extinction that is reducing the diversity of the biosphere to the detriment of present and future generations.

Environmental law must focus on redressing the factors that contribute to the reduction in biological diversity at their sources by creating appropriate incentives for changing behavior. Further, environmental law must develop and put into effect the legal tools that will turn established and evolving scientific and policy recommendations into enforceable norms, institutions, and procedures. At a global level, this must build on the established principle of common but differentiated responsibilities.

The establishment and maintenance of protected areas on a national, regional, or global basis can play an important role in protecting endangered species and preserving biodiversity by conserving ecosystems and natural habitats on which species depend.

Recognizing the complex interdependencies of living organisms in ecosystems, efforts to preserve biodiversity must emphasize a broad ecosystem approach, rather than focusing primarily on preventing extinction on a species-by-species basis or park-by-park basis.

As globalization spreads concepts of private property, it is important that concepts of property law be reconceptualized to ensure the protection of public values and to prevent the destruction of the economy of nature and the environmental services that ecosystems provide.

Measures that promote the conservation and sustainable use of biodiversity ultimately will contribute to a more peaceful and prosperous world for the benefit of both current and future generations. All countries should follow sustainable development paths, learning from and avoiding the mistakes of the past.

As knowledge of the causes and consequences of environmental problems continues to improve, it is imperative that legal concepts be adapted to take into account new information and to improve the capacity of law to respond to environmental imperatives. The considerable expertise possessed by members of the Academy of Environmental Law can be leveraged to make significant contributions to improved public policy through collaborative and comparative law research projects. These projects can help improve our understanding of what policies work and why and enhance our ability to employ law to achieve our shared goals.

Special and deliberate efforts should be made to develop a critical mass of expertise and institutional arrangements in developing countries, paying particular attention to the interests of minority, indigenous, and marginalized peoples to ensure equitable national and regional sustainable development. Every country and regional entity must put into place legal and policy mechanisms as well as institutional procedures that protect their rights in relation to their settlements, knowledge, customary law and access to justice, ensuring that they have priority in benefits derived from sustainable use of biodiversity.
AZERBAIJAN
In April 2005, Professors Nicholas Robinson and Ann Powers traveled to Baku, Azerbaijan on the Caspian Sea to consult with Baku State University Law School regarding its environmental law program. Azerbaijan and the other countries around the Caspian have serious environmental problems, which contribute to the pollution of the sea. In addition, poorly regulated fisheries and the demand for caviar are driving Caspian sturgeon to the brink of extinction.

The trip was made at the invitation of Professor Razim Isayev of the Baku Law School, who was a scholar in residence at Pace, and Professor Rustam Mamedov, the head of Baku State University’s Department of International Law, in order to work with university officials to improve their capacity to train lawyers in environmental law.

While in Baku, Robinson and Powers also established a working relationship with the Caspian Partnership for the Future, a non-governmental environmental organization seeking to protect the Caspian Sea and its watershed. Since their return, the professors, assisted by first year law student Sean Dixon who has an extensive background in fisheries management, have continued to provide advice and support to the partnership.

SMALL ISLAND DEVELOPING STATES
As part of her sabbatical semester, Professor Ann Powers worked with the United Nations Environment Programme (UNEP) on a project involving small island developing states (SIDS), which are parties to various Regional Seas and other environmental treaties. The project focused in two regions, the Caribbean and the South Pacific. Professor Powers joined with the UNEP staff to design and present workshops in Kingston, Jamaica and Suva, Fiji for officials from countries in each region to ascertain the efforts that the countries have made to comply with their treaty obligations, and to identify the resources necessary to achieve compliance. The goal of the workshops was to build institutional capacity, and establish the legal and legislative framework necessary for compliance. The materials which were developed for these workshops will be a model for efforts in other regions.

2005 Kerlin Lecture
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consumer representatives, farmers, and non-governmental organizations. In a somewhat controversial move, the commission decided that all of its meetings would be open to the public and its papers available on the Web.

The crop trials were important because, for the first time, GM crops had a spatial place in Europe, although there were no studies of the ecological consequences, and Grant argued that they largely turned into trials of weed killers, and not GM crops. At the same time, Greenpeace swung into action, invading fields and destroying crops. Crop-destroying activists were even found innocent at trial, as public opinion was still very much against GMOs.

Professor Grant discussed that the most important recommendation that the commission made to the government of the United Kingdom was to engage the public. It is vital, he explained, to get to the basis of public opinion in order to understand and resolve conflicts. Over 600 public meetings were held across the U.K., to try and reach the broad public, and not just those with strong views.

The commission left the government with the recommendation that what needed to be studied further was whether the organic industry and genetically modified crops could coexist, what degree of economic liability should be established for those who contaminate non-GM crops, and the public opinion concerning genetically modified nonfood crops, for things such as pharmaceuticals and biofuels, which the commission found to be less divided than the opinion concerning food crops.

Professor Grant concluded by stating that GMOs were a missed opportunity in Europe, and that lessons should be learned from the experience to prevent public opinion from hurting other industries, such as nanotechnology, that could have serious impacts on the EU. To bring public opinion upstream, governments need to ensure that there is an association between public concerns about technology and the way that industry goes about its design. The bottom line is that a more independent approach to intelligent political decision making can be accomplished by engaging articulate points of view in debates—an approach that Grant describes as a “cross matrix approach for better government decision making.”

Malcolm Grant was appointed as the ninth president and provost of University College London in 2003. He was previously pro-vice-chancellor of Cambridge University and a fellow of Clare College. He is an internationally acknowledged specialist in environmental and planning law and has written several books and papers, including as editor since 1981 of the Encyclopedia of Planning Law and Practice and consulting editor of the Encyclopedia of Environmental Law. He was also chairman of the Steering Board for the U.K. National Public Debate on Genetic Modification and he chaired the Agriculture and Environment Biotechnology Commission from 2000 – 2005.
Learning Across Borders
A Profile of Gayl Westerman

“Have you ever thought of bays?” asked her professor and mentor at Yale University. “Not for a single moment,” replied Gayl Westerman. And thus began Westerman’s career in international maritime boundaries.

Westerman has an extensive educational background – she obtained her BA in History from Stanford University; her MS in Secondary Education from University of Pennsylvania; her JD from Pace University School of Law; and her LLM and JSD from Yale University.

Over the years, Westerman has published several books concerning maritime delimitation in international law. Today, Westerman is working on her most recent book, The Problem with Islands in International Maritime Delimitation.

In 1995, Westerman accepted Emeritus Dean Ottinger’s invitation to become the director of International Programs at Pace. Since then, Westerman has made every effort to ensure that Pace’s International Programs provide each student with a strong educational foundation for international public and private practice. Refusing to take full credit for the ever-growing success of the international programs, Westerman praises Pace’s “excellent international law faculty” and maintains that “[t]he international program is the program that the students made.” Indeed, student participation in the many international internships, moot courts, and student organizations offered at Pace has never been better.

Westerman insists that it is essential for students to leave “planet U.S.” in order to see how the rest of the legal world operates, and Pace students are taking her advice. Each spring, thirty to forty students from Pace and other law schools participate in the London Law Program at the University of London, where students study and intern abroad with barristers, international trade firms, and international firms in countries such as Argentina, Korea, Japan, Spain, France, Italy, Austria, Portugal, Greece, and Russia.

Every summer, Pace also offers its Comparative Brazilian Environmental Law class, a unique study-abroad program in Brazil where students learn about the Brazilian approach to environmental protection, while enjoying the Brazilian countryside and culture. The class highlights what Westerman describes as “the natural overlap between international and environmental law.” According to Westerman, more and more Pace students are pursuing both international and environmental law certificates, a curriculum that, with the proper planning, can be as manageable as it is rewarding.

Pace Welcomes Visiting Professor Irma S. Russell

Pace Law School is fortunate to have Irma Russell as a visiting professor for the 2005-2006 academic year. Russell, who comes to Pace from the Cecil C. Humphreys School of Law, University of Memphis, was first introduced to Pace through its National Environmental Law Moot Court Competition. After coming to Pace as a moot court team coach, Russell was invited to run a continuing legal education program that is held each year in conjunction with the competition, and eventually interviewed for a visiting professorship. Russell is teaching Environmental Justice, Advanced Professional Responsibility, and Administrative Law while at Pace.

Russell’s educational background includes a BA in Liberal Arts, a BS in Education, an MA with honors in English Literature, and a JD – all from the University of Kansas. Always on the go, Russell has taught at seven law schools, including an upcoming visiting professorship at Lewis & Clark College teaching administrative law this summer – an opportunity that came about after teaching the subject at Pace.

“Teaching administrative law has been great,” noted Russell, who had always wanted to teach the subject but had never previously had the opportunity. When asked about her experience thus far at Pace, Russell commented that “being around so many people who have the commitment to the environment and environmental law, both professors and students alike, has been invigorating and inspiring,” and teaching environmental justice to Pace LLM students from other countries and students with practising backgrounds, made the course “as much a forum as it was a seminar.”

The Sierra Club helped spark Russell’s initial interest in environmental law, and teaching an environmental law course to undergraduate environmental studies students while still in law school launched her interest in teaching law. She worked in private practice doing primarily superfund negotiations and wetlands mitigation work before leaving to teach. The courses she has taught range in topic from International Human Rights and Environmental Law, to Sales and Leasing, and Appellate Practice and Procedure. Before earning her JD, she taught English at both the college and high-school level.

Extremely active in the ABA, Russell has served as vice-chair and chair of the ethics committee, member of the executive committee, council member, and most recently, education officer of the ABA Section on Environment, Energy and Resources. Her involvement extends to other ABA sections as well. “Good things happen,” Russell noted, as she explained that her ABA involvement arose out of a paper that she authored on ethics in environmental law.
The Socratic Method Lives On in Jeffrey Miller

You know the answer is somewhere within the assigned reading – it always is. You blindly flip through the case again, still shocked that the only words that stand out are the three prepositions you somehow neglected to highlight. You could ask your professor to repeat the question – after all, third time’s a charm – but, then again, the sooner you throw something out there, the sooner you can go back to trying to blend into your chair. So, you take a deep breath and give the most intelligent answer you can muster, to which, your professor responds by asking you another question, and then two more after that. Do law professors get their jollies by torturing students, or is something else going on here?

The professor in the above scenario is likely employing a teaching tool known as the Socratic Method, whereby he or she leads students through the proper analysis of a legal issue by asking them a series of questions. At Pace, Professor Jeffrey Miller is recognized by students, and professors alike, as a highly skilled practitioner of the Socratic Method.

Because he is sensitive to how intimidating most students find the Socratic Method, Miller does his best to make his students feel comfortable. “I use a lot of self-deprecating humor,” Miller explains. “If it’s OK [for students] to laugh at me, it’s OK if other students laugh when a student goes up. Humor really helps.”

Comparing the effectiveness of the Socratic Method to that of lecturing, Miller believes that the Socratic Method forces students to “internalize the analytical process” rather than simply memorizing the black letter law. Miller describes lawyers as “problem solvers” and explained that by listening to their professors’ questions, students learn the kinds of questions they should be asking themselves when confronted with a legal problem.

When asked how Pace students have fared in the job market, Miller observed that Pace students are “extremely practice-ready” and that when “they come back from summer jobs at the EPA they say that they were really prepared for what they had to do.”

Jeffrey G. Miller
Publication

Professor John R. Nolon was appointed to the executive committee of the Real Property Section of the State Bar Association.


Professor Nolon was appointed to the executive committee of the Real Property Section of the New York State Bar Association and to its Task Force on Eminent Domain Law Reform. He also presented a paper on Kelo v. New London at the annual meeting of the Environmental Law and Municipal Law Sections of the New York Bar Association and at the annual meeting of the law secretaries and clerks of the New York Court of Claims.

Publications


Professor Nicholas A. Robinson participated in and chaired a session of a major United Nations environment program on “Envisioning the Next Steps for Compliance with and Enforcement of Multilateral Environmental Agreements” in Colombo, Sri Lanka.

Publications


Pace Law School will host the International Union for the Conservation of Nature (IUCN), Academy of Environmental Law Worldwide Colloquium from October 16–20, 2006. The topic of the fourth annual colloquium is, “Implementing Environmental Legislation: The Critical Role of Enforcement and Compliance.” Pace hosted a planning meeting for the fourth colloquium in December 2005 that included law professors from Brazil, Peru, Mexico, Canada, South Africa, Fiji, China, Vietnam, India, and representatives from Ukraine and Egypt. The colloquium will be held at the New York State Judicial Institute on the Pace Law School campus with a concluding session at the United Nations headquarters in New York City. For more information on the event, please contact Lee Paddock at lpaddock@law.pace.edu.