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## Industry and Social Responsibility (Introductory Remarks for the Second Panel)

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## **INTRODUCTORY REMARKS FOR THE SECOND PANEL**

### **INDUSTRY AND SOCIAL RESPONSIBILITY**

MARY L. LYNDON\*

The next panel will address the question of corporate accountability for the environmental and social effects of the way we produce goods in our society.

Before introducing our speakers, I would like to make a few comments. First, I want to call attention to the juxtaposition of the basic concepts in this panel's topic. The title of this segment of the symposium, "Industry and Social Responsibility," implicitly poses the question, what is the nature of firms' accountability for the effects of their operations? This is a question that is familiar to people who are involved in day-to-day environmental issues.

Environmental law has been designed to address pollution as a by-product of technologies, such as applied chemistry or automotive transportation. The major sources of pollution are technologies and industries that were in place before environmental law was established as a body of doctrine and jurisprudence. The law is a reaction to them; it both contains and accommodates them.

Since our major industries constitute a substantial social investment, perhaps we must treat environmental control as a management task, a question of how to handle the costs of society's chosen methods of production. In any case, much of environmental law and policy uses this framework and language, that is, the language of microeconomics. Pollution is an "externality," an unwanted and unlooked-for burden that society bears.

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Given this starting point, it is only natural that the rhetoric of environmental law should draw heavily on the tradition in liberal thought that views the market as a civilizing institution and contemplates our major social issues as problems of achieving greater cooperation and exchange. How can we as a community best manage our environmental problem? Legal discussion of environmental policy issues usually frames the issue in this way. The assumption is that most of "us" are distressed by pollution and want to work together to achieve a result that is best for everyone. I expect that much of the discussion on this panel will talk about the problem in this way. We are accustomed to this framework and, also, it expresses our views in a hopeful and optimistic way, an attitude which certainly has great value.

The language of civil rights, the language of justice, is different, as it works from a different starting point. It does not address "management" issues, but confronts the misappropriation of resources and abuses of power. It brings to the foreground a fundamental issue—wealth distribution—which economic debates usually treat as already settled or as more suitable for resolution under other government programs, like taxation.

Before environmental justice was recognized as a legal issue, the phenomena most like it in the environmental arena were the actions of Greenpeace, Earth First, and the groups who protested the production and readiness to use nuclear weapons, such as the Plowshares activists and the women of Greenham Common in England. But these groups, and especially the latter, have been barely visible and accorded little credibility in policy debates.

The jurisprudence of civil rights is having a more visible impact on environmental law. There are some apparent reasons for this. The language of civil rights is clearly legitimate and its authority is not based on either the presumptions of ownership or the mystifications of expertise. It has been developed through vivid and often violent struggles that we have seen and to which the law has had to react and respond. We have to respect this mode of discourse now, because we know that it conveys a message that contradicts easy sentiments about community and cooperation. It is therefore a welcome event that it enters the environmental arena.

Still, the influence of civil rights concepts on environmental law may turn out to be limited. Today, the "market" is offered as the answer to many policy problems. In the context of environmental

justice, it is even argued that there is really little or no discrimination, just big producers doing what comes naturally in the market. But a market is not a natural phenomenon. The law helps structure it, and we can choose to have a market that supports the kind of society we want.

The economic questions that we face, if we want a healthier, more just and more beautiful way of life, are difficult questions. We cannot answer them easily. We cannot change without a great deal of imagination, cooperation, and serious effort to remove the inequities of wealth and power that permeate and corrode our would-be community. Simply applying the standard economic arguments, treating injustice as an externality, a regrettable social cost that we want to keep to a manageable level, is a good deal easier than making this kind of evaluation and acting on it.

One step in the right direction would be to recognize and articulate the existing power issues whenever we talk about environmental problems. Indeed, we do not really have a way of doing this yet, but we can begin by asking some new questions when we analyze environmental cases. Who is bearing risks, getting sick, losing property value, and who is managing to avoid these burdens? Who is profiting and who is losing? The widespread use of the community metaphor in discussions of environmental law and policy should be questioned.

A second step would be to expand and refine our use of economics and economic concepts. This is not a simple matter, but if we take the task seriously, we can find new options. We need to question current ideas about how the economy should be managed and build on the work of alternative approaches, such as ecological economics. Pollution prevention must be taken seriously as a necessary strategy to redesign how we handle production.

This panel will no doubt address some of these issues. It presents speakers who have experience in several of the segments of society that shape environmental law: industry and its counselors, government, the media, and community leaders and activists. I would like to pose this question to the panel: Does industry have responsibilities beyond the rules that are expressed in written laws? If so, should we try to identify these and codify them or articulate them as doctrines of common law, or should we keep them as unwritten social guidelines?

