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David W. Bromley  
*University of Wisconsin-Madison*



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# 6

## Property Rights and the Urgent Challenge of Environmental Sustainability

Daniel W. Bromley  
*University of Wisconsin–Madison*

I seek here to connect two prominent contemporary concerns—property rights and environmental sustainability. While the relation between these two ideas may not be apparent at first thought, they are most certainly linked in the realm of public policy. The linkage occurs because many actions taken by private landowners hold serious implications for parts of the natural world that are the subject of much concern for sustainability. And to the extent that public policies concerning sustainability seek to influence individual and group action so that detrimental impacts are avoided, individual landowners may find themselves in an unwelcome situation. The dominant myth in America is that the owner of land may do as she wishes with the land that she owns. When this belief is acted upon, and when such acts are detrimental to sustainability outcomes, perceptions of property rights come into direct conflict with the imperatives of sustainability.

In this chapter I will offer a brief overview of the concept of *rights* (and that of *duties*), I will explore the concept of *property*, and I will then spell out the idea and practice of *property rights* in the American political and legal system. I will next turn to a brief discussion of the issues that must be faced if we are to understand the essence of sustainability. The problem to be highlighted here is that sustainability cannot be discussed in the absence of serious thought about the evolving purposes of nature. That is, we learn about what is worth sustaining when we learn about how different people come to see what “nature is for.” Since the purposes of nature are continually evolving, we can only un-

derstand concerns for sustainability if we understand the nature of this evolutionary process. Finally, I will offer some insights into the problems that arise when scientific experts (or courts of law) offer up advice (or legal findings) about sustainability or about property rights. The philosophy of pragmatism helps us to understand that, in a democracy, assertions from scientists—or decrees from courts—must be justified to those who will be affected by those assertions and decrees. I explore the important implications of having public policy flow from this fact.

## PROPERTY RIGHTS

If we are to understand the role of property rights in relation to concerns for environmental sustainability, we must start with the idea of a *right*. Rights are the collective (legal) permission to be able to compel the government to come to your assistance in particular situations (Becker 1977; Bromley 1989, 1991; Christman 1994). Rights do not offer mere passive support by the state. Rather, to have rights is to have assurance of active assistance from the coercive power of the state. That is, the state stands ready to be enlisted in the cause of those to whom it has granted rights. Rights expand the capacities of the individual by indicating what one can do with the aid of the collective power. This process works because of the correlated duties on others who might wish to interfere with the individual to whom rights have been granted. Rights are not something embedded in natural law. Instead, rights emerge through the collective recognition of the legitimacy of particular interests in the eyes of the state.

With the meaning of rights in hand, we can now consider the meaning of *property*. Despite how we talk—"I just bought a nice piece of property on a lake"—what the idea and practice of property convey is *not* an object (such as land). Property is, instead, a stream of values into the future (Macpherson 1973, 1978). When one buys a piece of land one acquires not merely a physical object but rather control over a benefit stream arising from the setting and circumstances associated with that object. That is why we spend money (one benefit stream) in order to acquire property ("ownership" of a new benefit stream arising from the fact of ownership). The price paid to acquire that new benefit stream is simply the discounted present value of all future net income

flowing from ownership of the thing and its stream of values. Ownership concerns futurity—value running into the future that the owner controls (for the most part) and may now receive.

The idea of *property rights* brings these two ideas together. Property rights define the limits of the law pertaining to the income arising from the control of income-producing settings and circumstances. Trademarks, copyrights, and patents are property rights. All are forms of rights in property (the future value) and correlated duties falling on nonowners. In practical terms, the empirical content of property rights is determined when conflicting *rights claims* are brought before that legal body created to resolve conflicting claims in a democracy—the courts. As property rights disputes work their way through the court system, some of them may end up in the Supreme Court. The legal struggle, and the appeals process that keeps it moving up through ever higher layers in the judicial system, is precisely concerned with figuring out which disputant has the more compelling rights claim. We see that property rights are not some a priori concept by intuition (“this is a table”). Rather, property rights are the result of a process whose essential purpose is to determine which of the conflicting rights claims before the court seems better, at the moment, to sanctify. In other words, settings and circumstances are not protected because they are, a priori, instantiations of property rights. Rather, those settings and circumstances that gain protection from the courts acquire, by virtue of the decisions in the courts, the status of a property right.

John Locke plays a central role in the American idea of property rights. Locke worked out a theory of the *acquisition* of property, such acquisition then giving rise to several desirable outcomes, from which flow the main justifications for the *holding* of property. Locke’s necessary starting point is a creation story in which a Calvinist God gives the earth to humans *in common* and admonishes them to take dominion over that commons by, among other things, mixing their labor with it (Kreuckeberg 1999). Locke is then able to argue that by having mixed their labor with the land they deserve to become its owner. This Lockean creation story occurs in a state of nature (a pre-civil society) and hence it is necessary to have some means of protecting that which has been acquired. It is here that the state enters the picture. To Locke, the purpose of the state is to protect those who have labored as God commanded, and thereby to bestow on all the beneficial effects that arise

from this class of hard-working citizens. The state, having formed to protect those who have, out of nothing but hard work, created so much, is thus obligated to stand as a shield for those who now hold property. That protection works in two important directions. It works against others who may wish to prey on the industry of those who labor on their land, and it works, reflexively, against that very state. That is, the state itself is restrained, by the collective realization of the great benefit arising from the existence of an owning and laboring class, from interfering with those activities it finds so beneficial and compelling.

It is here that we come to the Lockean idea of *holding* land. If one acquires land in the Lockean way then it has been justly acquired, and its continued holding is justified on moral grounds. Equally important, this holding is justified on prudential grounds since the effect of individuals holding land is the production of benefits for the community at large. The key justification for the continued holding of land finds its expression in the idea that this grant is the essential assurance of liberty for those who hold land. They are assured of liberty because the state agrees to protect them from the predations of others, and they are assured of liberty because the state itself agrees to refrain from its own form of predation on the private property of its citizens (unless compensation is offered in return).

Locke recognized that as the earth filled up, and as less and less of God's Commons (to use Kreuckeberg's phrase) was available for appropriation, it was inevitable that conflicts would arise (Kreuckeberg 1999). As Locke put the matter, his theory of justified acquisition and subsequent justified holding worked only so long as there was "enough and as good" for others. This Lockean proviso brings us to Immanuel Kant. The views of Kant are important in discussions of sustainability because it was Kant who first offered a way out of the trap set by the static nature of Locke's concept of property rights.

Kant's innovation was to recognize that rights (and therefore property rights) are not tangible empirical realities but are, instead, mental constructs. The word he used is *noumena*. Those things that cannot be apprehended by the senses but are knowable only by reason constitute noumena. Kant motivates his inquiry on rights by asking what conditions are necessary for an individual to make internal something that is, by its very nature, external? Something external to an individual is made internal by understanding the idea of belonging to. And how is

it decided that something external *belongs to* an individual? The individual may declare that some particular object or situation belongs to her. Notice that this is a claim against all others to whom the object or situation might otherwise belong. Such claims are asserted by those who wish to make the point that the speaker is the rightful (justified) possessor and controller (“owner”) of the thing under discussion. The speaker is making something internal that is, quite clearly, external.

Kant recognized that such claims represent negations of the interests of others within the same community. And he suggested that while one individual may indeed announce and display physical *possession* of something external, this was not the same as having a socially sanctioned authority to make that declaration binding on others who might wish to make internal that very same thing. That is, unilateral declarations of “belonging to” are inherently unstable and therefore cannot be expected to settle the matter once and for all. Kant noticed that it is only from the consent of others that one can make internal that which is clearly external. For if that external thing can belong to *anyone* within the community, what justification can be mounted to assert that it belongs to any *particular* member of that community? Why should others willingly accept binding duties on nothing more compelling than the self-serving assertions of those already in possession of something of potential value to others?

Kant said that such assertions are nothing but the affirmation of *empirical possession*. And by being based on mere possession they confuse physical control with something much more profound. That more profound circumstance is one that Kant called *intelligible possession*. Intelligible possession comes into play when a community of sentient beings reaches agreement that indeed it is both right (moral) and good (prudential) that someone among them should be able to make internal something that has hitherto been external. The essence of empirical possession is a dog with a bone. There is not, nor can there be, recognition among the community of dogs—all of whom covet the bone—that it “belongs to” the one currently in possession of the bone. The most one can say is that they acknowledge possession. It takes Kantian reason to transcend empirical possession. In human society, what is mine depends *not* on what I say about it being mine. Rather, what is mine *becomes* mine by virtue of the assertions of all others who, by their declaration, acquiesce in their own disenfranchisement from the benefits associated

with that object or circumstance. Others grant me *possessio noumenon*, or socially justified possession—I cannot take it for myself.

We see that Locke gave us a basis for justified acquisition and holding of land (property) as long as there is “enough and as good” for others. But Locke stopped short of a complete theory of what is to be done when there is *not* enough and as good for others. That is, Locke developed a theory of acquisition and holding that works best when it is needed least. Kant helped us to see that the continued holding of land in the face of scarcity requires something very special. For scarcity raises the specter of deprivation and exclusion if Lockean acquisition and holding works against the interests of others in the community who—by virtue of coming late—find that all of God’s Commons has already been justly acquired. How are we to justify the continued holding of land once there is no more of it to be justly acquired? Or what are we to do about those who hold (own) land yet insist on using it in ways inimical to environmental sustainability?

Contemporary Lockeanes have a ready answer to this question: let the latecomers buy it from those who have justly acquired it (who have previously purchased it). Or, if the current owner is to be restrained from using land in destructive ways the government must offer compensation in order to induce the owner to stop such practices. Notice that once the initial acquisition has been transferred to another for a particular price, the logic seems compelling and without end—all future acquisitions must be mediated by due consideration to the extant holder of land (property). And what is transferred in this way is—and must be—precisely what earlier acquirers obtained. By this logic, the “just acquisition and holding” continues into perpetuity.

Such logic threatens the prospects for sustainability of certain components of nature adversely affected by traditional land-use practices. That is, the current holding of land and other natural resources often results in actions that are now found to be neither moral nor prudential. What if ownership results in wetlands—important breeding and nesting habitat for wildlife—being destroyed? What if ownership results in too much old growth timber being cut down? What if ownership means excessive soil erosion that fouls streams and lakes? Given these possibilities, on what grounds can payment then be justified in order to induce the current holder to stop using his land in an antisocial manner? In other words, what is to preclude one or more holders of land from en-

gaging in social extortion? We see that land justly acquired may evolve into land unjustly held, its current use no longer being moral or prudential. Kant recognized that the community itself must determine whether land justly acquired continues to be justly held. And Kant located this determination in *acts of reason* undertaken by a civil society (Williams 1977). It is the community itself that must set the standards by which holding of justly acquired land remains justified.

Kant forced us to work out a new theory of holding land in the face of emerging collective disapproval of the actions of the current owner. Such a theory must offer an explanation (justification) for difficult decisions about what to do with just and prudential holdings into the future. In more practical terms, this theory must address the issue of what is to be done when current land holdings—or particular uses of land—are no longer socially acceptable. Must payment to the offensive owner always be forthcoming? This is the essential “takings” question in land-use regulations (Bromley 1993, 1997).

One school of thought holds that there are no circumstances in which actions on land that has been justly acquired can be circumscribed or precluded—say through regulations—without those restrictions being accompanied by compensation (Epstein 1985). In reality, however, there are many land-use conflicts in the American experience in which particular uses of land have been prohibited and no compensation has been forthcoming. One classic case is *Penn Central Transportation Co. v. City of New York*, in which the Penn Central wanted to construct an enormous skyscraper on stilts above New York’s Grand Central Terminal, which it owns. The New York City Landmarks Commission had declared it a historic site, preventing this plan. Penn Central sued the City of New York for compensation under the takings clause and was denied. Other cases involve wetland drainage and timber harvests under the Endangered Species Act. The courts have sometimes found in the interests of a restrained land owner, and they have sometimes found in favor of governments seeking to protect natural habitats in the interest of sustainability. Why have the courts varied?

An answer to this apparent contradiction is found in the work of Charles Sanders Peirce, said to be one of the most creative and profound philosophers America has ever produced. Peirce would have us imagine the idea of property rights in the American experience as the benediction applied to those settings and circumstances that, when the dust of



consideration by various levels of jurisprudence has finally settled, are found worthy of indemnification by the state (Peirce 1934). Notice that the term *property rights* is not something known axiomatically—something whose essence is clear to us by intuition or introspection *before* a particular legal struggle is joined and its specifics emerge. Rather, the idea of property rights is worked out—created—in the process of resolving mutually exclusive rights claims before the courts. This means that the American judicial system does not seek to discover where the a priori property right lies. Instead, the courts offer a necessary forum to which, from time to time, conflicting rights claims will be brought. When the more compelling rights claim has been determined, the court will issue a decree to that effect. We see that property rights are made, not discovered.

This idea that the courts create, not discover, property rights as they dig into conflicting rights claims can be attributed to the celebrated Supreme Court justice Oliver Wendell Holmes. Louis Menand says that “it was Holmes’s genius as a philosopher to see that the law has no essential aspect” (Menand 2001). Indeed, Holmes had written in 1870 that the merit of common law is that it leads judges to decisions on the merits of the cases before them and it then allows them to determine the guiding principle secondarily. Menand describes the process thus:

A case comes to court as a unique fact situation. It immediately enters a kind of vortex of discursive imperatives. There is the imperative to find the just result in this particular case. There is the imperative to find the result that will be consistent with the results reached in analogous cases in the past. There is the imperative to find the result that, generalized across many similar cases, will be most beneficial to society as a whole—the result that will send the most useful behavioral message. There are also, though less explicitly acknowledged, the desire to secure the outcome most congenial to the judge’s own politics; the desire to use the case to bend legal doctrine so that it will conform better with changes in social standards and conditions; and the desire to punish the wicked and excuse the good, and to redistribute costs from parties who can’t afford them (like accident victims) to parties who can (like manufacturers and insurance companies).

Hovering over this whole unpredictable weather pattern—all of which is already in motion, as it were, before the particular case at hand ever arises—is a single meta-imperative. This is the im-

perative not to let it appear as though any one of these lesser imperatives has decided the case at the blatant expense of the others. A result that seems just intuitively but is admittedly incompatible with legal precedent is taboo; so is a result that is formally consistent with precedent but appears unjust on its face (Menand 2001, p. 339).

It would seem that pragmatism is a central reality of American jurisprudence. This pragmatism is particularly suited to property rights cases, which are concerned with figuring out where the most compelling property interests lie. The problem here is to blend moral and prudential arguments in search of the *best* thing to do. That best thing will comprise the “truth” in that particular setting. In fact, one way to paraphrase the courts’ approach is to say that truth is merely that which it is better, at the moment, to believe. Truth is the special benediction we bestow on our settled deliberations (Rorty 1982, 1999).

It would also seem that conventional efforts to divine the idea—the a priori essence—of property rights are flawed and prevent clear thought about environmental policy and sustainability. When property disputes arrive in the courts, justices are forced to consider and imagine possible futures and then figure out which of the claimants has the more compelling claim in light of those imagined futures. Their legal findings, or decrees, reflect this new recognition.

## SUSTAINABILITY

With this necessary background on the legal side of land-use issues, let us turn directly to the matter of sustainability. The central issue concerning environmental sustainability is to recognize that individual and collective ideas concerning the purposes of nature are undergoing constant change. Thus the problem of sustainability concerns the need to understand and to come to grips with the continual evolution in human conceptions about what nature is for. And the present-day challenge of sustainability involves the ongoing evolutionary process whereby a particular type of land cover—a particular plant and animal community—has come to be seen as much more complex, interesting, and dependent on other distant ecotypes (as well as much more impor-

tant to the well-being of other ecotypes and to us as humans) than had been previously thought.

At one level, not much about the forest has changed in a fundamental way over the past several decades. Despite dwindling in the area they cover worldwide, forests are still an evolving complex of chemical and physical properties and attributes. However, while the forest has not changed very much, the precise social *meaning* of the forest has changed profoundly. It is not the forest on the ground that we address and fuss over when we undertake management activities. It is the forest *in our minds* that we are working on and seeking to manage. Indeed it is the forest in our minds that we use when we are in it, and it is the forest in our minds that we covet and recall when we are away from it.

Modernism, grounded on Cartesian radical doubt, brought us the odd idea that the mind is—to use Richard Rorty’s phrase—simply a “mirror of nature.” That is, we are led to believe that there is a unique, tangible, and knowable reality out there (in the world) that would become available to us if we would but first, as good Cartesians, purge our minds of all existing ideas and thoughts about that reality. With this newly emptied receptacle, we could then immediately grasp and comprehend that extant reality, and then we would—at last—have an accurate and irrefutable description of it (Rorty 1979). Our knowledge of it, and about it, would be complete and irrefutable. With that durable knowledge in hand, we would then be getting very close indeed to the “truth” about that particular reality—the “thing in itself,” as Kant and his followers might put it. Some refer to this as the *representational* model of knowing. Those whose essential burden in life is to produce true descriptions of and stories about that reality are called scientists. And, as modernism drills into us at every opportunity, scientists pursue the truth.

Pragmatists are not so sure about this search-for-truth claim. Pragmatism suggests that when the collective determination of what is out there converges into a consensus and comes to be adopted by the epistemic community (the scientific discipline) whose task it is to investigate some particular aspect of the world, then this consensus becomes the accepted story—the “truth”—about that observed and apprehended “reality.” Scientific debates are not about some knowable reality. They are debates about *stories* about that reality. In other words, there is no plausible, reliable, complete, irrefutable, comprehensive, true, and ac-

curate account of a “forest” or an “ecotype” or an “ecosystem.” Indeed, that Holy Grail of environmental policy, *species*, is itself an artificial construct. To be sure, the creations of the early classifiers and categorizers have some plausible attributes. But the only thing that recommends them to us now is that these categories and their members serve to order our world—they are useful for the purposes that motivated their creation.

I hope it is now easier to comprehend my earlier assertion that what matters about forests, ecotypes, and ecosystems is nothing more than the categories, meanings, and purposes that humans attach to them. Each of these environmental assets and the species in them *become* for us what we have made of them. We will see, understand, use, manage, and revere them in ways that evolve as we figure out new ways to think about them. To put the finishing touches on this line of thought, the forest is *for us* the sum of its effects *on us*. Human interaction with forests and ecosystems can only be understood in terms of the effects those forests and ecosystems have on us. We do not manage forests and ecosystems. We manage and redefine the effects that forests and ecosystems have on us, and we manage and redefine the effects we have on them.

We know and understand a stunning sunset, a high mountain meadow, or the boreal forest, not by anything inherent in those physical settings, but rather by the effects those settings and circumstances have on us. Our conception of the effects of a sunset, a forest, or an ecosystem is the *whole* of our conception of a sunset, a forest, or an ecosystem. That is all there is (Peirce 1934). The mind is not a mirror of nature. Rather, the mind creates our conception of nature in the light of our current embeddedness in particular social, economic, and cultural settings and circumstances. An adult from an urban area sees a very different forest than does an adult from a small town surrounded by forest. She sees the forest differently because she learned about it differently, and she most certainly uses it differently. When those settings and circumstances change for us, then the construction project in our mind recreates nature in keeping with the emergent futures we think we see before us. This recreation of nature is always undertaken in light of our imagined purposes for the future.

The way in which we see nature cannot be distinguished from the way in which we imagine the purposes of nature—what nature is *for*. Indeed it is our vision of what nature is for that prefigures how we see

and regard nature. Debates about sustainability will, inevitably, bring into the discussion the testimony of scientific experts. And the use of scientific knowledge for improved decision making necessarily starts with the requirement that the scientific knowledge offered up must be pertinent to the disparate purposes for nature held by the many individuals and groups who claim to speak on behalf of nature. There is no single decision maker, and this multitude of audiences reminds us that there cannot possibly be a single bundle of scientific knowledge that will, upon presentation by the experts, be found to be decisive with respect to what shall be done about particular environmental challenges.

In the face of this multitude of audiences for scientific knowledge, we must recognize that there are two general categories of knowledge that are pertinent. The first concerns scientific knowledge that presumes to be informative, while the second concerns information that pertains to what we call *agency*. Consider the problem of global climate change. When we think of scientific knowledge that presumes to inform, we usually think of the natural sciences—paleobiology, oceanography, climatology, forestry, atmospheric chemistry, and the like. The point here is that distinct epistemic communities undertake research to gather data that, with sufficient interpretation and elaboration, will provide pertinent information about processes of interest to the rest of us. Notice that data are not information. Rather, information is purposefully reconfigured data. We will be shown long-run trends in global mean temperatures, we will be shown fossil records and maps of vegetation change. We will see photographs and maps and charts. We are being informed. Or are we? Some individuals, with different perspectives on the issue, and with different interests at stake, may well be suspicious. In other words, we must never presume that all individuals are equally open to what the rest of us might consider to be useful information.

Consider now the second category of scientific knowledge—what I above referred to as the problem of agency. Regardless of what one happens to believe about global climate change, the interesting issue is whether or not human activity—say the burning of fossil fuels—is plausibly related to this matter. That is, one can accept the natural scientific evidence that, yes, it would seem that the earth is indeed getting warmer. But admitting a warming trend and accepting human culpability in that trend are two distinct mental processes. Perhaps the trend is caused by increased activity on the surface of the sun. Or perhaps Planet

Earth is going a bit wobbly on its axis. We see that many individuals—again for a purpose that may be subconscious—draw a distinction between fate (so-called acts of God) and outcomes in which the hand of humans is seen as decisive. For many individuals, corrective action to address acts of fate is pointless; they are of the belief that only if humans can be found culpable must we confront and seek to change those implicated behaviors.

Suddenly global climate change, a matter of such overwhelming simplicity and certitude in the minds of some individuals, is seen to be multilayered and deeply confusing. In addition to this complexity, we have multiple audiences, each of which brings its own created imagining about necessity and purpose and its own particular receptivity to what the rest of us regard as informative evidence.

## WHAT TO BELIEVE?

I now turn to the process whereby individuals come to hold particular beliefs, and how they might be induced to alter firmly held convictions. I shall approach these questions from the perspective of what I call *volitional pragmatism*—the human will in action, looking to the future, trying to figure out how that future ought to unfold for us (Bromley 2004, 2005).

The central challenge in public policy for environmental sustainability is to understand the process whereby information from a community of scientists is regarded as definitive and pertinent to the problem under consideration. There are two issues here. The first is the authority with which scientists speak on a particular matter. This problem has to do with the veracity and coherence of pronouncements emanating from a particular community of scientists. The second problem involves the receptivity of the larger public to scientific pronouncements and declarations. The first problem concerns what I call *warranted assertions*; the second, what I call *valuable assertions*.

Warranted assertions are those that can be justified to most members of the discipline out of which the assertions emerge. Most economists who advise on environmental policy feel quite comfortable telling us how environmental choices ought to be considered—and that is usually in terms of benefit-cost analysis. The issue here is the extent to which

a subset of the discipline of economics has a conceptual and empirical sanction to issue prescriptive assertions, and to have those claims stand as the truth as seen through the eyes of the entire profession.

Pragmatism accords the status of warranted belief (or warranted assertion) *only* to the settled deliberations of an entire community of scholars (a discipline or a particular epistemic community). When an entire discipline speaks with clear consensus on a particular scientific matter, then the rest of us can safely regard these truth claims as constituting warranted assertions. On the other hand, when that disciplinary consensus is absent, or when it begins to dissipate over time, then the associated truth claims cannot be justified within the discipline and they thereby lose their warrantability and their legitimacy to the larger community to which they are addressed. The various audiences for these assertions from “science”—whether executive-branch agencies of government, legislative bodies, courts, or citizen’s groups—find themselves barraged by a wide array of conceptual and empirical claims. Often, the processing of those assertions takes place in a manner that might be thought irrational by those who produce scientific assertions. Such dismissive judgments are quite unjustified, and this brings us to the demand side of information.

Consider now the idea of valuable assertions. Pragmatists insist that the adjective “valuable” can only be applied by those who are the intended consumers of particular assertions (truth claims). In other words, the consumers of those assertions stand as the definitive judges of whether or not they happen to find them valuable, useful, pertinent, informative, and dispositive. For instance, when environmental economists offer specific consequentialist prescriptions about collective choice—indicating which decisions are efficient, correct, rational, best, and socially preferred—we see truth claims from a particular subdiscipline of economics projected onto disparate considerations about what is best for the future. The pragmatist would wish to know whether or not those specific truth claims can be *justified* to all members of the particular community to whom they are directed. If that justification is possible then the truth claims are valuable. They are valuable because the community into which they are projected finds such assertions helpful, useful, edifying, and instrumental to improving the working out of what seems best to do in the current setting and circumstances. If those truth claims cannot be justified to the members of the pertinent community

then such claims are unjustified. They are unjustified precisely because the community to whom they are directed finds them to be impertinent to the task they currently face.

We see that the prescriptive assertions from a community of disciplinary adherents are hardly a sufficient condition for the immediate acquiescence of the rest of us. The public may well respond, “Do not expect the rest of us to stop what we are doing and fall into line with the pronouncements from scientists just because they happen to be scientists.” Indeed, the public’s acquiescence in the alleged truth claims of science must rest on a separate set of arguments and reasons from those to which the members of a discipline alone are privileged. With the public lacking this information, disciplinary practitioners are not entitled to expect the general population to accept their particular truth claims on faith.

Notice that the issue here is not truth but justified claims or justified belief. The pragmatist would ask whether economic truth claims are capable of being justified to an audience of individuals who are the objects of our interest as we seek to improve their lot with our socially preferred, or optimal, policies. The question worth asking is, “Why, exactly, are the truth claims of environmental economics more pertinent to this particular choice setting than, say, the truth claims of psychology?” We have here a debate about the *true* and the quest to justify *claims* about the true. Recall that truth is not a property of perfect correspondence between propositions (words) and particular events and objects to which those propositions refer—between language and things. Truth is not denotative. Truth is, instead, a property of the relationship between different statements about specific events and objects—that is, between contending linguistic claims. Truth is connotative (Bromley 2005).

We now have a way to view the prescriptive assertions emanating from any number of scientific disciplines. Warranted assertions are those that can be justified to the larger disciplinary community—here the keys are that warranted assertions be coherent in their concept and plausible in their empirical claims to the larger epistemic community out of which such assertions arise. Valuable assertions are those that a community of sapient agents (that is, the rest of us) find useful and reasonable to the decision now before them. The essential idea here is that human choice and action are properly characterized as *prospective volition*—the human will in action, looking to the future, trying



to determine how that future ought to unfold. As this process evolves, individuals and groups bring contending expressions and imaginings to the task of choice and action (Shackle 1961). Individuals and groups do not know precisely what they want until they work out what they can have. Group action is more complicated than individual action because it requires reconciliation of disparate and contending individual expressions and imaginings until a consensus emerges—the properties of which are that this consensus is regarded as 1) feasible, and 2) the best thing to do at this particular time.

The two properties of that consensus—“feasible” and “best at this time”—represent judgments reached by those individuals who are responsible for collective action. In the realm of environmental policy, the first step in this process of working out an emergent consensus is necessarily confined to legislators, administrators, and judges. As we know, this process may be aided by input from economists and other scientific “experts.” It is here that the first test of valuable assertion is encountered. In a democracy, going beyond this level entails the critical step of justifying particular decisions or decrees to the larger political community. In some cases that would include polluters, victims of pollution, and others who care about nature. In other cases, it could be those who see the purpose of the forest being the production of timber versus those who see the purpose of the forest being the provision of places of solace and emotional regeneration. In either case, these are the individuals whose separate actions will be liberated, restrained, or expanded by policies that favor one purpose over another. If policies are not justified to such disparate audiences, those policies will lack legitimacy. This justification to the larger political community necessarily entails the giving of reasons for the decision reached, and those reasons must match as closely as possible the asking for reasons that is expected from the political community to whom the collective action is directed (Brandom 1994, 2000). This activity is properly thought of as justification in the service of emergent consent.

We see that even if particular truth claims are deemed coherent by the discipline—or the court chamber or parliament—from which they spring, the projection of those truth claims to a larger audience is impertinent unless there is widespread acceptance on the part of those to whom the truth claims are directed. Individuals in contemporary life retain the authority to reject, for their own reasons, truth claims from any

source (scientist or mystic). Recall that the status of *valuable belief* is a property bestowed upon prescriptive assertions (truth claims) by those to whom such claims are directed—not by those who produce the assertions. All that the producers of prescriptive assertions can justifiably affirm is that their assertions share wide agreement within the interpretive community out of which they arise—that they are warranted.

We see that the fundamental problem in much public policy is that pronouncements from scientists tend to be seen as presumptively legitimate, while the pronouncements from nonscientists are often dismissed as mere opinion, as based on emotion, as idealistic, or as predicated on sentiment. Such judgments are simply one more residue of modernist conceit.

## PROPERTY RIGHTS AND SUSTAINABILITY—AGAIN

My purpose here has been to find a way to help us escape the trap in which environmental policy (and discussions of sustainability) is usually framed. That usual framing forces us to make a choice at two levels. At the first level, we must decide if we are to invoke consequentialist choice rules or ethical choice rules. Notice that much debate gets stalled here and never moves on to the second, more profound level, where substantive issues are addressed. Even assuming that we manage to reach agreement on which path to the “correct” choice is to be followed, this second-level challenge remains fatally flawed. It is flawed because it presumes that there is some a priori right way to address either the ethical issues or the consequentialist issues.

This suggests that discussions about sustainability cannot be understood as prescriptive assertions about what must be—what ought to be—saved for the future. Nor can we make much headway by advancing prescriptive assertions concerning the optimal level of something that must be preserved. Rather, coherence in such conversations will only flow from a continual conversation—a political process—in which we work out what seems worth saving as we struggle with figuring out what we revere now and what we hope our descendants will revere as well. This conversation addresses fundamental issues about the sustainability side of our story.

While such considerations are going on, it is to be expected that owners of private land may well experience the unwelcome scrutiny of the larger community, which happens to be affected by particular land-use decisions. In response to this scrutiny landowners may well appeal to the community's understanding of what it means to have a property right. They would, it seems, be well advised not to play this card too aggressively. They might find, to their despair, that others are holding a trump card.

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# **The Economics of Sustainable Development**

Sisay Asefa  
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W.E. Upjohn Institute for Employment Research  
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