

Liberating Sustainable Development From Its Non-Historical Shackles

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INTRODUCTION

In his enormously influential writings on the public trust doctrine,¹ Professor Joe Sax argued that its core idea could, and should, be expanded beyond the natural resources to which it had been historically subject. He made that point forcefully in an essay entitled *Liberating the Public Trust Doctrine from Its Historical Shackles*.² “At its heart,” he wrote, “the public trust doctrine is not just a set of rules about tidelands, a restraint on alienation by the government or an historical inquiry into the circumstances of long-forgotten grants.”³ Rather, he said, courts should resolve competing claims of public use and private ownership by examining expectations concerning the use of particular resources.⁴ “The central idea of the public trust is preventing the destabilizing disappointment of expectations held in common but without formal recognition such as title.”⁵ “Our task,” he continued, is to insulate “those expectations that support social, economic and ecological systems from avoidable destabilization and disruption.”⁶ Understanding the

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1. See Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471, 557 (1970), which is the canonical article that launched the public trust doctrine into modern environmental law.

2. Joseph L. Sax, *Liberating the Public Trust Doctrine from Its Historical Shackles*, 14 U.C. DAVIS L. REV. 185, 187 (1981).

3. *Id.* at 186.

4. *Id.* at 193.

5. *Id.* at 188.

6. *Id.* at 193.

public trust in this broader way, of course, would significantly broaden its reach and societally beneficial effect.⁷

In this essay, we argue that sustainable development⁸ is historically a much broader and more societally beneficial concept than it is often understood to be, and that it is often limited, particularly in the United States, by the supposition that it is just about the environment, or about environmental and energy law. Sustainable development, however, is a broad-spectrum conceptual framework for fostering human wellbeing by integrating environmental protection and social wellbeing with economic development and peace and security.⁹ It does so in a way that seeks to optimize all of them concurrently, instead of treating them as inherently opposing or unrelated concepts.

At its core, sustainable development would transform how Americans conceive of and pursue environmental protection—and over time the law that supports and drives development. Sustainable development has the substantive capacity to be one of the most important and potentially transformational ideas to come out of the last century. Some scholars have described it as an idea or principle of the same level of fundamental importance as freedom, equality, and justice.¹⁰ And unlike the shackles that Professor Sax described,¹¹ the attitudinal shackles hindering sustainable development in the United States have little basis in history. Instead, they result from the overly narrow understanding of sustainable development that has grown in the United States. If we really want to understand sustainable development, in other words, we need to liberate it from its non-historical shackles.

Part I of this Article provides an overview of the history of sustainable development, including the Sustainable Development Goals (SDGs) adopted in 2015, showing that sustainable development has consistently been about changing development patterns, and not simply about the environment. Part II shows the quite different and more environmentally-oriented and environmental-law-oriented way that sustainable development has been framed in the United States—sustainable development's non-historical shackles. Part III explains two key benefits of unshackling sustainable development from this limiting perspective. Sustainable development and

7. *See id.* at 194.

8. In the United States in particular, sustainability is often used as a substitute for sustainable development. We take these two terms to be synonymous but focus on the original term “sustainable development” to clarify its full meaning.

9. KLAUS BOSSELMANN, *THE PRINCIPLE OF SUSTAINABILITY: TRANSFORMING LAW AND GOVERNANCE* 24 (2008).

10. *Id.* at 57.

11. Sax, *supra* note 2, at 189–92.

particularly the SDGs can enrich and strengthen nearly all U.S. policymaking by helping to spot issues and develop law reform agendas. In addition, sustainable development can activate all stakeholders, and is already doing so—something that is vitally necessary if we are to effectively address the many challenges we now face.

I. A BRIEF HISTORY OF SUSTAINABLE DEVELOPMENT AND THE SUSTAINABLE DEVELOPMENT GOALS

The history of the sustainable development concept—from development to sustainable development to the Sustainable Development Goals—demonstrates that the concept has never been about the environment alone.¹² The core idea of sustainable development is integration of environmental protection with development.¹³ Instead of development at the environment's expense, or environmental protection instead of development, the idea is to achieve both development and environmental protection at the same time.¹⁴ Sustainable development is also normative, which means that it is designed to transform the development process.¹⁵

A. Development

Because “sustainable” modifies “development,” it is important to understand what development means. Americans, including American lawyers, tend not to have a clear understanding of development in this context, in no small part because the United States is a developed country, and we tend to take that for granted. Yet development is a framework for improving the quality of life and standard of living of people, particularly but not exclusively those living in the poorest countries of the world, which are also (not surprisingly) known as developing countries.¹⁶ While there “is no universally accepted legal definition of development,”¹⁷ its ordinary meaning can be inferred from a United Nations General Assembly resolution on the right to development, various U.N. Agendas for Development, the annual

12. See Rep. of the World Comm'n on Env't & Dev. (1987), transmitted by Note dated 4 August 1987 from the U.N. Secretary General, U.N. Doc A/42/427, at annex (Aug. 4, 1987) [hereinafter Rep. of the World Comm'n on Env't & Dev.].

13. See John C. Dernbach, *Achieving Sustainable Development: The Centrality and Multiple Facets of Integrated Decisionmaking*, 10 IND. J. GLOBAL LEGAL STUD. 247, 252 (2003).

14. Rep. of the World Comm'n on Env't & Dev., *supra* note 12, at 71.

15. *Id.* at 54.

16. *Id.* at 54–55.

17. KOEN DE FEYTER, WORLD DEVELOPMENT LAW: SHARING RESPONSIBILITY FOR DEVELOPMENT 3 (2001).

Human Development Reports of the United Nations Development Program and the indicators of development that are employed in those reports, and a considerable body of development experience.¹⁸

As an international project, development came into prominence at the end of World War II, when a series of international agreements and treaties created an architecture that supported and fostered it.¹⁹ A foundation for development is provided by peace and security, which is supported most prominently by the United Nations Charter.²⁰ Economic development as well as social development or human rights are key pillars of development.²¹ Peace and security make social and economic development possible; it is difficult to do anything else with tanks in the street or incoming artillery shells.²² The Russian invasion of Ukraine, ongoing as this article goes to press, underscores the powerful effect that threats to peace and security can have on the national psyche as well as national goals.²³ Social and economic development, in turn, are mutually dependent.²⁴ Children who are not well educated or who are not healthy are unlikely to be productive or effective workers, and economic development enables higher levels of education and public health.²⁵

The human goals of development are human quality of life, freedom, and opportunity.²⁶ “For most practitioners and theorists . . . the overall objectives of alleviating poverty and human suffering and of improving the human condition more generally are the desired end product of the development process.”²⁷ In its landmark report on sustainable development, *Our Common Future*, the World Commission on Environment and Development stated: “The satisfaction of human needs and aspirations is the major objective of development.”²⁸ Essentially, “development aims at enlarging the

18. *Id.* at 3–8.

19. John C. Dernbach, *Sustainable Development as a Framework for National Governance*, 49 CASE W. RES. L. REV. 1, 9–10 (1988).

20. *Id.*

21. *Id.* at 11–12.

22. *Id.* at 11.

23. *Id.* at 11–12; see also Robert Pszcel, *The Consequences of Russia’s Invasion of Ukraine for National Security – NATO and Beyond*, NATO REV. (July 7, 2022), <https://www.nato.int/docu/review/articles/2022/07/07/the-consequences-of-russias-invasion-of-ukraine-for-international-security-nato-and-beyond/index.html> [<https://perma.cc/X8Z8-KYPT>].

24. Dernbach, *supra* note 19, at 11.

25. *Id.* at 9–14.

26. See G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (Oct. 21, 2015).

27. RUMU SARKAR, *INTERNATIONAL DEVELOPMENT LAW: RULE OF LAW, HUMAN RIGHTS, AND GLOBAL FINANCE*, at xxi (2nd ed. 2009).

28. Rep. of the World Comm’n on Env’t & Dev., *supra* note 12, at 54.

opportunities people have in their lives.”²⁹ Amartya Sen has described development as a process that enlarges individual freedom.³⁰

The post-war development project has been highly successful in many ways. People are living longer; the global economy has grown considerably; and people are healthier.³¹ Globalization has brought economic opportunity to hundreds of millions of people throughout the world.³² And, contrary to the fears of many who grew up in the wake of World War II, and for whom the Cold War meant the ever-present possibility of nuclear annihilation, there has not been a third world war. So, while this way of using the term “development” may be unfamiliar to many Americans, it goes to the core of what Americans generally would say they care about—freedom, opportunity, and quality of life. It seeks improved peace and security, economic development, and social development—which they regard as fundamental. And it describes the very development process that the United States itself has undergone historically and continues to undergo. Just as with other “developed” countries, the United States’ development remains incomplete, with significant poverty, hunger, inequality, injustice, and environmental degradation remaining to be addressed. In that sense, all countries are still “developing” countries.

B. Sustainable Development

As the effects of environmental pollution, exploitation of natural resources, population growth, and poverty became clearer and more obvious, a second line of thinking gained prominence in the 1970s and 1980s—one focused on protection and restoration of the environment.³³ The first international conference on the environment—held in Stockholm in 1972—recognized the importance of environmental protection but did not in any systematic way try to address the relationship between environment and development.³⁴ Yet the impossibility of protecting the environment without directly addressing development was becoming increasingly apparent.

In 1980, the International Union for the Conservation of Nature and Natural Resources (IUCN) published a conservation strategy for living

29. DE FEYTER, *supra* note 17, at 32. “There also is consensus on designating the (developing) State as the actor with the primary responsibility for realising development.” *Id.* at 33.

30. AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 3 (1999).

31. U.N. DEP’T OF ECON. & SOC. AFFS., *WORLD ECONOMIC SURVEY* 2017, at 26–29, U.N. Doc. ST/ESA/365, U.N. Sales No. E.17.II.C.1 (2017).

32. SEN, *supra* note 30, at 240–42.

33. Dernbach, *supra* note 19, at 64.

34. *Id.* at 17–18.

resources that explicitly linked conservation and development in the term sustainable development.³⁵ Seven years later, in *Our Common Future*, the World Commission on Environment and Development further elaborated on this point.³⁶ It criticized the prevailing development model—which emphasized economic development, peace and security, and to some degree social wellbeing—because it generally treated environmental protection as an afterthought at best.³⁷ As environmental degradation grows in scope and severity around the world, the report said, it also compromises the wellbeing of people who directly depend on the environment for air, water, and sustenance, as well as their descendants.³⁸ The development versus environment model is deeply mistaken. “Environment and development are not separate challenges; they are inexorably linked. Development cannot subsist upon a deteriorating environmental resource base; the environment cannot be protected when growth leaves out of account the costs of environmental destruction.”³⁹ Thus: “The common theme throughout this strategy for sustainable development is the need to integrate economic and ecological considerations in decision making. They are, after all, integrated in the workings of the real world.”⁴⁰

The Commission’s report contains the most well-known definition of sustainable development: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁴¹ Significantly, this definition focuses on development and does not mention the environment or conservation.

In 1992, after this report, the United Nations Conference on Environment and Development (or Earth Summit) was held in Rio de Janeiro.⁴² More than 110 heads of state participated in the Summit, a greater number than had

35. INT’L UNION FOR THE CONSERVATION OF NATURE AND NAT. RES. [IUCN], WORLD CONSERVATION STRATEGY: LIVING RESOURCE CONSERVATION FOR SUSTAINABLE DEVELOPMENT 38–39 (1980), <https://portals.iucn.org/library/efiles/documents/wcs-004.pdf> [<https://perma.cc/474A-HSGU>].

36. Rep. of the World Comm’n on Env’t & Dev., *supra* note 12, at 159.

37. *Id.* at 48.

38. *Id.* at 39.

39. *Id.* at 48.

40. *Id.* at 71.

41. *Id.* at 24.

42. Joseph P. Hyder, *United Nations World Commission On Environment and Development (WCED) Our Common Future Report (1987)*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/environment/energy-government-and-defense-magazines/united-nations-world-commission-environment-and-development-wced-our-common-future-report-1987> [<https://perma.cc/7XBY-XC8U>]; see United Nations, *U.N. Conference on Environment and Development, Rio de Janeiro, Brazil 3-14 June 1992*, <https://www.un.org/en/conferences/environment/rio1992> [<https://perma.cc/3G9Z-BNT4>].

attended any prior international conference.⁴³ At the gathering, nations of the world, including the United States, first endorsed sustainable development and an ambitious plan to achieve it.⁴⁴ In simple and direct terms, the world's leaders described the challenge we face:

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being. However, integration of environment and development concerns and greater attention to them will lead to the fulfilment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nation can achieve this on its own; but together we can - in a global partnership for sustainable development.⁴⁵

Each nation made a commitment at the Earth Summit: to work to achieve sustainable development within its own borders and as part of its international activities.⁴⁶ One of those countries was the United States.⁴⁷

The basic idea of sustainable development is not to abandon development, but to make environmental protection part of the development process.⁴⁸ The central action principle endorsed at the Earth Summit is thus integrated decision-making—making decisions that further both development and environmental protection.⁴⁹ The Earth Summit was not about the environment alone; it was about the environment *and* development.⁵⁰ Since that time, sustainable development has become the internationally recognized framework for maintaining and improving human wellbeing, applicable to both so-called developing and developed nations.⁵¹

43. *United Nations Conference on Environment and Development*, BRITANNICA (May 27, 2022), <https://www.britannica.com/event/United-Nations-Conference-on-Environment-and-Development> [<https://perma.cc/7STR-ATHV>].

44. U.N. Sustainable Development, Agenda 21, ¶ 2.1 (1992) [hereinafter Agenda 21], <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf> [<https://perma.cc/L6EA-LJAA>]; U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, at 3–4, U.N. Doc. A/CONF.151/26 (Vol. I), annex I (Aug. 12, 1992) (referencing sustainable development in Principles 3, 4, and 8).

45. Agenda 21, *supra* note 44, ¶ 1.1.

46. *Id.* ¶ 2.1.

47. See William K. Reilly, *The Road from Rio*, EPA (1992), <https://archive.epa.gov/epa/aboutepa/road-rio.html> [<https://perma.cc/6BPK-DS74>].

48. Rep. of the World Comm'n on Env't & Dev., *supra* note 12, at 48.

49. Dernbach, *supra* note 13, at 51–56.

50. *Id.*

51. *Id.* at 102–05.

The practical effect of integrated decision-making is that decisions have more than one type of benefit. In the siloed decision-making that characterizes conventional development, projects or activities have primarily one type of benefit (generally economic), and adverse environmental and related social impacts are tolerated because the benefits are said to outweigh the costs.⁵² In sustainable development, projects or activities also have environmental and social benefits.⁵³ Sustainable development thus has more benefits, and fewer costs, than conventional development. This broader frame has another benefit as well—it expands the range of legal and policy choices available to decision makers to achieve any particular objective. Economic development or job creation tools, for example, can and should be used to drive environmental protection.

For years, efforts to move in a more sustainable direction in the United States and other countries have been weakened by uncertainty concerning the definition and meaning of sustainable development, lack of information about when particular things should be achieved, and lack of common metrics for progress.⁵⁴ These are not the only barriers; opposition from economic interests that benefit from unsustainable development (e.g., fossil fuel interests), political polarization, and simple inertia have also played a role. And it is also true that particular agreements, such as the U.N. Framework Convention on Climate Change, contain more specific objectives and processes.⁵⁵ But these treaties and agreements do not embrace the full range of issues embraced by sustainable development. In the absence of specifics, individual governments (federal, state, local) and companies drew their own conclusions about how to proceed, at what pace, and what kinds of data they would use to measure progress.

In 2000, at the dawn of the new millennium, the United Nations General Assembly adopted the Millennium Development Goals, which were directed primarily at poverty reduction and were intended to be achieved by 2015.⁵⁶ These goals laid the foundation for a profound change in which the effort to achieve sustainability would be conceived. They did so because they demonstrated that specific goals and timetables could mobilize all parts of the international community, governmental and nongovernmental, to achieve shared objectives. The final United Nations report assessing the effectiveness of the Millennium Development Goals noted that they “produced the most

52. *Id.* at 21.

53. *Id.* at 24–25.

54. Dernbach, *supra* note 13, at 254.

55. U.N. Framework Convention on Climate Change, May 29, 1992, S. TREATY DOC. NO. 102-38, 1771 U.N.T.S. 107.

56. G.A. Res. 55/2, United Nations Millennium Declaration ¶¶ 11–20 (Sept. 18, 2000).

successful anti-poverty movement in history,”⁵⁷ even though they were not fully achieved. As part of that effort, they also drove improvements in child mortality, maternal health, and free primary education.⁵⁸ They also provided the foundation for an effort to broaden the next round of goals beyond poverty to the overall sustainable development agenda.⁵⁹

C. Sustainable Development Goals

In 2015, at the 70th anniversary of the founding of the United Nations, all 192 Member States agreed upon the 2030 Agenda for Sustainable Development, which at its core includes 17 Sustainable Development Goals (SDGs) to be achieved by 2030.⁶⁰ They recognized that the scale and ambitiousness of this effort are unprecedented: “Never before have world leaders pledged common action and endeavor across such a broad and universal policy agenda.”⁶¹ Drawing on the experience of the Millennium Development Goals, the SDGs were adopted to accelerate progress on sustainable development.⁶² The SDGs do not replace the integrated decision-making conceptual framework that is the foundation for sustainable development. But they translate this framework into goals, more specific targets, a timetable, and indicators for measuring progress. The SDGs are also more comprehensive than the Millennium Development Goals because they address a wide span of sustainable development issues, not just poverty. They also focus on the critical roles that justice and rule of law play in achieving sustainable development.⁶³

Agenda 2030 is “a plan of action for people, planet and prosperity.”⁶⁴ It addresses poverty as well as the broader range of sustainable development

57. U.N. DEP'T OF ECON. & SOC. AFFS., THE MILLENNIUM DEVELOPMENT GOALS REPORT 2015, at 3 (2015) [hereinafter MILLENNIUM DEVELOPMENT GOALS REPORT 2015], [https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf) [<https://perma.cc/8LL6-SCRY>]; see also John W. McArthur & Krista Rasmussen, *Change of Pace: Accelerations and Advances During the Millennium Development Goal Era*, 105 WORLD DEV. 132, 139–42 (2018) (analyzing goals and groups of countries for which improvements did and did not accelerate).

58. MILLENNIUM DEVELOPMENT GOALS REPORT 2015, *supra* note 57, at 6–8.

59. *Id.* at 54.

60. G.A. Res. 70/1, *supra* note 26; see also *The 17 Goals*, U.N. DEP'T OF ECON. & SOC. AFFS., SUSTAINABLE DEV., <https://sdgs.un.org/goals#goals> [<https://perma.cc/XHH3-SWR2>].

61. G.A. Res. 70/1, *supra* note 26, ¶ 18.

62. *The 17 Goals*, *supra* note 60.

63. See, e.g., Olivia Kokushubila Lwabukuna, *International Rule of Law and Development: Underpinnings of the MDGs and the Post-2015 SDGs Agenda*, 11 J. PEACEBUILDING & DEV. 89 (2016).

64. G.A. Res. 70/1, *supra* note 26, at 1.

issues.⁶⁵ Agenda 2030 has four basic parts, as shown in Figure 1 below. The first part, the declaration, calls poverty the “greatest global challenge” in achieving sustainable development.⁶⁶ But it also recognizes the critical role of protecting the environment, sustaining the rule of law, and working together in partnership to achieve these goals.⁶⁷ Member States resolved by 2030:

to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources. We also resolve to create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work for all, taking into account different levels of national development and capacities.⁶⁸

Figure 1
The 2030 Agenda for Sustainable Development⁶⁹



The Agenda is operationalized through 17 Sustainable Development Goals and 169 targets that are applicable to each Member State; they

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* ¶ 3.

69. U.N. DEV. GRP., MAINSTREAMING THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT: INTERIM REFERENCE GUIDE TO UN COUNTRY TEAMS 6 (Mar. 2017), <https://unsdg.un.org/sites/default/files/UNDG-Mainstreaming-the-2030-Agenda-Reference-Guide-2017.pdf> [<https://perma.cc/L64J-2JUR>].

comprise the second part of the Agenda.⁷⁰ The United States took an active role in the development of these goals and endorsing them.⁷¹ These goals aim to integrate government, private-sector, and civil society strategies across areas such as poverty, hunger, infrastructure, education, gender and racial equity, and environmental degradation for the purpose of achieving sustainable development.⁷² Each of the Goals is accompanied by a set of more discrete targets as well as metrics or indicators for measuring progress.⁷³ They thus provide a clear lens for all countries, whether developing or developed, to identify, prioritize, measure, and report on concrete targets and indicators on making progress toward sustainability.⁷⁴ The goals, targets, and the 2030 timetable also “add detailed content to the concept of sustainable development.”⁷⁵

Implementation, as well as follow-up and review, are the remaining parts of Agenda 2030. The Agenda states that implementation within individual countries will take “into account different national realities, capacities and levels of development,” as well as “national policies and priorities.”⁷⁶ Countries are called to voluntarily publish national SDG progress reports called voluntary national reviews (VNRs).⁷⁷ There is no set frequency for submitting VNRs; instead it is incumbent on Member States to voluntarily submit their reports.⁷⁸ The United Nations posts these VNRs online.⁷⁹ To assist the SDG implementation effort, and encourage comparable reporting on outcomes among countries, the U.N. General Assembly adopted a resolution in 2017 that sets out 231 indicators for measuring performance in achieving the SDGs, and urges countries to report progress using these indicators.⁸⁰

70. G.A. Res. 70/1, *supra* note 26, ¶ 18.

71. Anthony F. Pipa & Kaysie Brown, *American Leadership on the Sustainable Development Goals*, BROOKINGS (Oct. 14, 2019), <https://www.brookings.edu/blog/up-front/2019/10/14/american-leadership-on-the-sustainable-development-goals/> [<https://perma.cc/93SV-QRY8>].

72. *See* U.N. DEV. GRP., *supra* note 69, at 12, 19.

73. *Id.* at 12–13.

74. *Id.* at 48, 53–54.

75. Norichika Kanie et al., *Introduction: Global Governance Through Goal Setting*, in GOVERNING THROUGH GOALS: SUSTAINABLE DEVELOPMENT GOALS AS GOVERNANCE INNOVATION 1, 1 (2017).

76. G.A. Res. 70/1, *supra* note 26, ¶ 21.

77. United Nations High-Level Pol. F. on Sustainable Dev., *Voluntary National Reviews*, SUSTAINABLE DEV. KNOWLEDGE PLATFORM (June 6, 2022) <https://sustainabledevelopment.un.org/vnrs/> [<https://perma.cc/A76L-CT65>].

78. *See id.*

79. *Id.*

80. G.A. Res. 71/313, Work of the Statistical Commission Pertaining to the 2030 Agenda for Sustainable Development, ¶¶ 1, 6, 11 (July 10, 2017).

Each of the SDGs has its specific focus area, which can vary from social to economic to environmental to governance.⁸¹ But they are “integrated and indivisible”⁸² in practice. This is consistent with, and furthers, the integrated decision-making framework of sustainable development, in which decisions should further multiple objectives.⁸³ Thus, actions to further one Goal should be designed and implemented to further other Goals.⁸⁴ It is possible to treat the SDGs as creating 17 separate silos, but that is not how they were intended, and not how they are treated here.⁸⁵

The 169 targets are component parts of the 17 Goals, and there is at least one indicator for every target.⁸⁶ Many indicators cut across more than one Goal.⁸⁷ The use of common indicators across countries allows for meaningful comparisons of progress or lack of progress.⁸⁸ The indicators also allow transparency, and therefore accountability, for action or inaction.⁸⁹ For many indicators, such as “proportion of agricultural area under productive and sustainable agriculture,”⁹⁰ countries may not already be using, let alone have, relevant data.⁹¹ By asking themselves to generate data on these 231 indicators, countries are making a significant step toward understanding what they need for sustainable development.⁹²

In adopting the SDGs, countries were sensitive to the possibility that they would divide sustainable development into 17 different issues, frustrating the integrated decision-making process that is at its heart. They thus insisted that progress toward any particular Goal can and should further progress toward other Goals.⁹³ Issue siloes, the basis of federal environmental law, have to be broken down to make sustainable development real.⁹⁴ The SDGs highlight the interconnections among the key elements of sustainability—environment, security, economics, and social—in a way that is actionable.⁹⁵ We tend to think of some issues and their corresponding laws as environmental, others as security, still others as social, and yet others as economic. In reality, each

81. G.A. Res. 70/1, *supra* note 26, ¶ 2.

82. *Id.* ¶ 18.

83. *See id.*

84. *See, e.g., id.* ¶ 20.

85. *Id.* ¶ 17.

86. *See, e.g.,* G.A. Res. 71/313, *supra* note 80, ¶ 4.

87. *See* G.A. Res. 70/1, *supra* note 26, ¶ 17.

88. G.A. Res. 71/313, *supra* note 80, ¶ 7.

89. *Id.*

90. *Id.* at 5.

91. *Id.* ¶ 7.

92. *See id.* at 17.

93. G.A. Res. 70/1, *supra* note 26, ¶ 74.

94. *See id.* ¶ 21.

95. *Id.* at 1.

implicates all the others, which is the very premise of sustainable development.⁹⁶ Examining the SDGs in detail reveals extensive overlap among SDGs, particularly in areas of climate change, racial and economic equity, gender, poverty, health, and infrastructure.⁹⁷ Failure to accomplish Goal 13 (Climate Action) will compromise our ability to meet nearly every other goal.⁹⁸ Accomplishment of one Goal can also further other Goals.⁹⁹ For example, increasing the availability and affordability of healthcare (Goal 3) can make dramatic impacts on poverty (Goal 1), hunger (Goal 2), education (Goal 4), gender equality (Goal 5), economic growth (Goal 8), and reduced inequalities (Goal 10).¹⁰⁰ This has important consequences in a time of limited public and private resources; use of the sustainable development framework in law and policy making can result in greater economic, social, environmental, and security benefits than conventional development.¹⁰¹

The SDGs also make unmistakably clear the broad social dimension of sustainable development; it is much more than enhanced quality of life from reduced pollution.¹⁰² It includes no poverty (Goal 1), zero hunger (Goal 2), quality education (Goal 4), gender equality (Goal 5), decent work (Goal 8), and reduced inequalities (Goal 10).¹⁰³ Reviewing the SDGs in the U.S. context highlights issues like COVID-19, economic inequality, gender discrimination, racial discrimination, lack of adequate health care, education, lack of fair wages, and other social issues, which simply reflects the importance of sustainability's social dimension.¹⁰⁴ It is not enough, for example, that there have been aggregate improvements in water quality; these improvements need also to apply to low-income people and people of color.¹⁰⁵ Thus, social issues are an integral part of environmental quality. Among other reasons, nearly anything that damages the environment eventually hurts people. This is expressed with increasing frequency in terms of environmental justice and climate justice, which, while a step forward, still fail to fully embrace sustainable development's more holistic lens.¹⁰⁶

96. *Id.* ¶ 13.

97. *Id.*

98. *Id.* ¶ 14.

99. *See, e.g., id.* ¶ 20.

100. *See id.* ¶ 26.

101. *See id.* ¶ 21.

102. *See id.* ¶ 18.

103. *Id.* at 14.

104. TONY PIPA, KRISTA RASMUSSEN & KAIT PENDRAK, *THE STATE OF THE SUSTAINABLE DEVELOPMENT GOALS IN THE UNITED STATES* 1, 26 (2022) (finding that the SDGs highlight urgent needs on the most basic measures of human development, such as poverty, educational outcomes, and gender and racial inequality).

105. *Id.* at 13.

106. G.A. Res. 70/1, *supra* note 26, at 22.

Three additional observations provide a foundation for the rest of this essay. First, the SDGs particularize the project of achieving sustainable development to a greater degree than any prior international sustainable development agenda. There are 17 goals with 169 targets, and they are all to be achieved in every country by 2030. There is an additional set of indicators for measuring achievement of each target. In 2015, when the SDGs were adopted, there was no prior comparable sustainable development agenda. Perhaps the most comprehensive prior sustainable development agenda was adopted in 1992, and it was long out of date. In consequence, many aspects of sustainable development were more easily ignored or missed. The SDGs change that by providing a checklist or menu of issues across 17 different topics that address each of those topics. And, for the most part, prior lists of needed actions on each of these topics have been less systematic than the SDGs.

Second, sustainable development and the SDGs are premised on an all-of-society approach to achieving the desired objectives. The basic idea is that each part of society needs to make a contribution toward achieving sustainability, and that sustainability cannot be achieved otherwise. At the 1992 Earth Summit, countries recognized that the achievement of a sustainable society required “the commitment and genuine involvement of all social groups,”¹⁰⁷ and they repeatedly emphasized the importance of partnerships.¹⁰⁸ The SDGs explicitly reaffirm the importance of partnerships.¹⁰⁹ While the SDGs are taken on by national governments, the General Assembly said in adopting them that they are achievable only by creating partnerships across all levels of government and with civil society, the private sector, academia, and the public.¹¹⁰ For example, the Agenda calls for:

making fundamental changes in the way that our societies produce and consume goods and services. Governments, international organizations, the business sector and other non-state actors and individuals must contribute to changing unsustainable consumption and production patterns, including through the mobilization, from all sources, of financial and technical assistance to strengthen developing countries’ scientific, technological and innovative

107. Agenda 21, *supra* note 44, ¶ 23.1. Indeed, Agenda 21 identifies many of the needed social groups: women, children and youth, indigenous people, nongovernmental organizations, local authorities, workers and their trade unions, business and industry, the scientific and technological community, and farmers. *Id.* ¶¶ 24.1–32.14.

108. *See, e.g., id.* ¶¶ 7.4, 8.2, 12.56(b), 13.18, 16.1, 20.18(c), 26.6, 27.5. & 34.19.

109. G.A. Res. 70/1, *supra* note 26, at 14 (stating that Goal 17 is strengthening the means of implementation and revitalizing partnerships for the SDGs).

110. *Id.* ¶ 39.

capacities to move towards more sustainable patterns of consumption and production.¹¹¹

Third, and finally, the SDGs are an integral part of the international understanding of what sustainable development means and how to achieve it.¹¹² In the United States and around the globe, there is a large and growing community of sustainability professionals in a wide range of disciplines, including but not limited to law, who have a working familiarity with what is described in this section.¹¹³ This community also includes governments, businesses, and nongovernmental organizations.¹¹⁴ Being an effective part of this community requires a basic understanding of what sustainable development means, based on this history.¹¹⁵ To be sure, sustainable development practitioners can and should build on this understanding and history; there is an enormous need for creativity and skill in building a sustainable future. But practitioners, including lawyers, cannot expect to be taken seriously if they ignore the foundation that has already been constructed.

II. SUSTAINABLE DEVELOPMENT'S NON-HISTORICAL SHACKLES

The sustainable development conceptual framework has been received unevenly at best in the United States, in no small part because the prior existence of a strong body of environmental law has led Americans to see sustainable development through the lens of that law and the overall policy it represents.¹¹⁶ The problem is that sustainable development is a nonbinding normative framework that grew out of international conferences and meetings; it is only partially embraced by environmental law.¹¹⁷ We are thus in an ironical place. If the United States remains stuck in seeing environmental protection largely or entirely through the lens of environmental law, or even environmental and energy law, we are not going to get the environmental protection we need.¹¹⁸ Nor are we going to get the kind of economic development, social wellbeing, and peace and security that will be essential in the decades to come.¹¹⁹

111. *Id.* ¶ 28.

112. *Id.* at 1.

113. *See id.* at 30–31.

114. *Id.* at 8.

115. *See id.* at 6–8.

116. *See* RICHARD LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* 167–68 (2004).

117. *See id.* at 56.

118. *See id.* at 168.

119. *See id.*

The so-called “Magna Carta” of U.S. environmental law, the National Environmental Policy Act (NEPA) of 1969, articulates the core concepts of sustainable development when stating U.S. policy towards development and the environment.¹²⁰ NEPA states a national policy:

to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.¹²¹

Although it can be argued that this language goes beyond a mere hortatory policy statement,¹²² courts have construed NEPA as a procedural statute, not one that applies the concepts behind sustainable development across the United States as a matter of substantive law.¹²³

With NEPA as a policy backdrop rather than a substantive mandate, the U.S. Congress undertook two decades (roughly 1970 to 1990) of creating modern environmental law focused almost entirely on pollution control.¹²⁴ Over that time, the United States developed a sophisticated set of media-based laws aimed at reducing pollution as well as risks from toxic chemicals, hazardous wastes, and abandoned hazardous waste sites.¹²⁵ The United States did not integrate these pollution control statutes, which are almost entirely based on human-health risk goals, across environmental media using a more holistic approach.¹²⁶ These are not particularly effective at integrating consideration of impacts on people, other species, the landscape, and the broader economy. They offer little opportunity to use the lens of sustainable development to consider, for example, the complex tradeoffs when removing air pollutants via filtration and disposing of them on land or in water, much less the impacts on nearby neighborhoods.¹²⁷ Instead, pollution control was to be undertaken on a medium-by-medium (air, water, waste) basis with a

120. *Id.* at 68.

121. 42 U.S.C. § 4331(a).

122. See JAMES McELFISH & ELISSA PARKER, REDISCOVERING THE NATIONAL ENVIRONMENTAL POLICY ACT: BACK TO THE FUTURE 6 (Env't L. Inst. 1995) (noting that NEPA could be interpreted as a substantive call for sustainable development).

123. See LAZARUS, *supra* note 116, at 68.

124. *Id.* at 43–68.

125. For a compelling history of this period, see *id.* at 67–165.

126. See generally John C. Dernbach, *The Unfocused Regulation of Toxic and Hazardous Pollutants*, 21 HARV. ENV'T L. REV. 1, 7–17 (1997).

127. From statute to statute, for example, there are enormous differences in which pollutants are identified as toxic or hazardous, with little if any record explanation of the basis for these differences. *Id.* at 7–17, 28–43.

goal of reducing health hazards with varying degrees of consideration of the economic and, arguably to a lesser degree, the social impacts of the regulations.¹²⁸

These limitations aside, environmental laws have had tremendous successes. The most common ambient air pollutants have decreased by almost 80% while U.S. gross domestic product increased over 250% and vehicle miles travelled almost doubled.¹²⁹ But shortcomings of this stove-piped and highly regulatory approach to environmental protection became quickly apparent to experts and policymakers. Since at least 1988, recommendations have been made to update our nation's environmental laws with a sustainability lens.¹³⁰

Perhaps the best-known of these efforts was the President's Council on Sustainable Development (PCSD), established by President Bill Clinton in 1993,¹³¹ one year after the Earth Summit, and overseen by Vice President Al Gore. The PCSD was intended to create "bold new approaches to achieve our economic, environmental, and equity goals" in part by demonstrating "policy that fosters sustainable development" in the United States.¹³² The Council produced a series of excellent reports¹³³ but had almost no lasting effect on overall U.S. policy.¹³⁴ Nor has any subsequent president, of either party, given sustainable development even this level of attention.

During and after this effort, many proposals were made to reinvent environmental law.¹³⁵ In 2000, the Congressional Research Service analyzed the previous decade's worth of "new approaches" to environmental protection and found that their proposals fell into five categories:

128. *Id.*

129. *Our Nation's Air: EPA Celebrates 50 Years!*, EPA, <https://gispub.epa.gov/air/trendsreport/2020/#home> [<https://perma.cc/D7K7-Z244>].

130. For a history of these efforts, see Scott Schang, Leslie Carothers & Jay Austin, *Ending the Tyranny of the Status Quo: Building 21st Century Environmental Law*, 32 PACE ENV'T L. REV. 524, 525–533 (2015) [hereinafter *Ending Tyranny*]. Perhaps the deepest early dive into how sustainable development law should be shaped in the U.S. was CELIA CAMPBELL-MOHN, BARRY BREEN & J. WILLIAM FUTRELL, SUSTAINABLE ENVIRONMENTAL LAW 1367–71 (Celia Campbell-Mohn et al., eds., 1993) (proposing the integration of U.S. natural resource and pollution control laws into a more coherent and comprehensive legal regime).

131. Exec. Order No. 12852, 58 Fed. Reg. 35841 (July 2, 1993).

132. *Overview*, PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT, <https://clintonwhitehouse3.archives.gov/PCSD/Overview/> [<https://perma.cc/Z8WV-S5KE>].

133. *Publications*, PRESIDENT'S COUNCIL ON SUSTAINABLE DEV., <https://clintonwhitehouse3.archives.gov/PCSD/Publications/index.html> [<https://perma.cc/7JXL-LQJT>].

134. John C. Dernbach, *Learning from the President's Council on Sustainable Development: The Need for a Real National Strategy*, 32 ENV'T L. REP. 10648, 10657 (2002).

135. JOHN E. BLODGETT, CONG. RSCH. SERV., RL30760, ENVIRONMENTAL PROTECTION: NEW APPROACHES 2–5 (2000).

information, public-sector processes, incentives, market mechanisms, and management principles.¹³⁶ In 2008, George Washington University law professor Lee Paddock examined many of these reports and distilled their conclusions into seven broad categories: (1) “[e]stablishing priorities, setting goals, and measuring progress;” (2) “[i]mproving access to information including good scientific data;” (3) “[p]ublic engagement;” (4) “[p]artnering and other forms of collaboration;” (5) “[b]ringing new financial resources to the table;” (6) “[i]nnovation in developing and deploying a broad range of approaches to solving environmental problems; and” (7) “[i]ndividual and corporate responsibility and extended producer responsibility.”¹³⁷ Common themes in these reinvention efforts thus include the need for establishing clear goals and priorities and reporting on their progress, just as the SDGs do.

Although these recommendations move the conversation somewhat beyond the boundaries of these statutes, the basic regulatory framework remains the dominant means of environmental protection in the United States. Indeed, the regulatory foundation for environmental protection in the United States is so strong that public attitudes toward environmental protection tend to strongly overlap public attitudes toward government regulation.¹³⁸ Political polarization on the environment means that the basic statutory regime governing federal environmental law has changed very little since 1990.¹³⁹

Against this background, it is not hard to see why the broader meaning and implications of sustainable development have not been heard or, if heard, have been diluted or watered down. The repeated use of sustainability or environmental sustainability as a shorthand for sustainable development obscures the meaning of the term, and often leads to an understanding that sustainability is just another word for environment or environmental law. It is thus not surprising that U.S. understanding of the SDGs is particularly weak. The great majority of Americans have never even heard of the SDGs.¹⁴⁰

What gets lost when that happens? We explain that in the next section.

136. *Id.*

137. LeRoy C. Paddock, *Green Governance: Building the Competencies Necessary for Effective Environmental Management*, 38 ENV'T L. REP. 10609, 10615 (2008).

138. See LAZARUS, *supra* note 116, at 151–52.

139. See *id.* at 192.

140. See *infra* note 196 and accompanying text.

III. ADVANTAGES OF UNSHACKLING SUSTAINABLE DEVELOPMENT IN U.S. POLICYMAKING AND PEDAGOGY

This history of sustainable development in the United States results in several anomalies. American policy around sustainability is overwhelmingly focused on environmental issues using an environmental law lens. The interconnections between social, economic, and environmental issues are less obvious and harder to address using statutes that are siloed and poorly integrated. A failure to set clear and current goals makes American environmental governance appear inefficient and ill-directed, so that Americans who once saw the dramatic effects of pollution control laws through cleaner air and water are now more easily convinced that environmental regulation is wasteful and anti-growth.¹⁴¹ Finally, retaining a traditional environmental law lens freezes stakeholders into their traditional 1970s roles of regulated, regulator, advocate, and victim, rather than using a more modern approach of all stakeholders working towards a common goal.

We demonstrate below two ways in which the sustainable development lens in general, and the SDGs in particular, can help ameliorate U.S. policymaking and legal pedagogy around environment and sustainability.

A. The SDGs Help To Spot Issues and Develop Agendas for Law and Policy Reform.

The SDGs provide a set of actions that, if successfully undertaken, would improve human quality of life and opportunity—for current and future generations. But more than that, they provide a framework for doing this work. They reframe environmental protection and law, focusing on issues that policy makers as well as legal scholars and teachers often miss.¹⁴² Because sustainable development is normative, the SDGs and their targets provide a list of sustainable development issues and objectives for consideration in any country, including the United States. Take, for example, how land is viewed through the very different lenses of U.S. law (including environmental law) and the SDGs.

Land is viewed under our legal system as real property, with various forms of ownership and use rights. These include the ability to create conservation and other easements to protect land resources.¹⁴³ Land is also subject to a

141. Cf. LAZARUS, *supra* note 116, at 91.

142. *The 17 Goals*, *supra* note 60.

143. See, e.g., Stephanie Stern, *Encouraging Conservation on Private Lands: A Behavioral Analysis of Financial Incentives*, 48 ARIZ L. REV. 541, 550–55 (2006); Melissa Waller Baldwin, *Conservation Easements: A Viable Tool for Lane Preservation*, 32 LAND & WATER REV. 89, 96–106 (1997).

wide variety of other types of law, including land use law. In an environmental law rubric, the Resource Conservation and Recovery Act¹⁴⁴ seeks to protect land from improper disposal of hazardous waste and related contamination, while the Comprehensive Environmental Response, Compensation and Liability Act¹⁴⁵ uses liability and government cleanup authorities to both remediate past land contamination and prevent future contamination. Federal natural resource agencies have significant oversight and stewardship responsibilities for over 30% of U.S. land through various land, forest and park statutes.¹⁴⁶ The Department of the Interior has trustee responsibility for many Indian lands.¹⁴⁷ Sovereign Native American nations have their own set of laws and practices toward land, many of which are poorly understood by policymakers and little covered outside select U.S. law schools.¹⁴⁸ Agricultural law provides limited support for soil conservation.¹⁴⁹ Thus, the environmental laws and other statutes provide a critical framework for environmental protection of land from contamination and preservation of soil productivity. Yet these laws are highly siloed and often without meaningful integration across them.

The most relevant SDG to land is Goal 15, which is entitled “Life on Land.”¹⁵⁰ Goal 15 seeks to “[p]rotect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.”¹⁵¹ This Goal has several targets, including Target 15.1 (Conserve and restore terrestrial and freshwater ecosystems), Target 15.2 (End deforestation and restore degraded forests), Target 15.5 (Protect biodiversity and natural habitats), Target 15.6 (Protect access to genetic resources and fair sharing of the benefits), and Target 15.9 (“[I]ntegrate ecosystem and biodiversity values” in governmental planning).¹⁵²

144. 42 U.S.C. §§ 6901–6992k.

145. 42 U.S.C. §§ 9601–9675.

146. See Federal Land Policy and Management Act, 43 U.S.C. §§ 1701–1787; National Forest Management Act, 16 U.S.C. §§ 513–16, 518, 528, 647, 1600–14; National Park Service Organic Act, 16 U.S.C. §§ 1–4, *repealed by* National Park Service and Related Programs Act, Pub. L. No. 113-287, 128 Stat. 3273 (2014).

147. See generally U.S. Dep’t of Interior, *Native American Ownership and Governance of Natural Resources*, NAT’L RES. REVENUE DATA, <https://revenuedata.doi.gov/how-revenue-works/native-american-ownership-governance/> [https://perma.cc/V246-CBMF].

148. See Elizabeth A. Reese, *The Other American Law*, 73 STAN. L. REV. 555, 557–65 (2021).

149. See 7 U.S.C. § 9206.

150. *The 17 Goals*, *supra* note 60.

151. *Goal 15*, U.N. DEP’T OF ECON. & SOC. AFFS., SUSTAINABLE DEV., <https://sdgs.un.org/goals/goal15> [https://perma.cc/LC2A-4ZZL].

152. *Id.*

Contrasting the domestic legal and SDG approaches, it is hard to miss the degree to which the Goal and its targets highlight the intricate and inseparable links between land, people, species, wealth, ecosystem health, and food. There may be piecemeal components of these issues spread across statute books, but how do policymakers and scholars (and students) understand the interrelationships of these issues without some guide and coordination? The SDGs help provide this guidance.

The SDG indicators also give citizens a set of goals and metrics by which to judge national progress toward, or backsliding from, key social, economic, and environmental outcomes. As discussed in Part II above, repeated analyses of U.S. environmental policy over the past decades have concluded that U.S. policymaking suffers from a lack of common goals and metrics.¹⁵³

Land issues are not limited to Goal 15. Most of the other SDGs apply to land in one form or another, as shown in Table 1.¹⁵⁴

153. See *Ending Tyranny*, *supra* note 130, at 528–31; see also John C. Dernbach, *Targets, Timetables and Effective Implementing Mechanisms: Necessary Building Blocks for Sustainable Development*, 27 WM. & MARY ENV'T L. & POL'Y REV. 79, 94–95 (2002). Furthermore, Americans' trust in government increases "when people have a better understanding of what government is doing," which regular reporting on the SDGs would facilitate. Joe Davidson, *American Trust in Government Near 'Historic Lows,' Pew Finds*, WASH. POST (June 9, 2022, 6:00 AM), <https://www.washingtonpost.com/politics/2022/06/09/american-trust-government-pew-survey/> [<https://perma.cc/5ET6-M8P3>].

154. *The 17 Goals*, *supra* note 60.

Table 1

Sustainable Development Goal	Land Nexus
No Poverty	Equal rights to economic resources, ownership and control over land and other forms of property, inheritance, and natural resources
Zero Hunger	Agricultural productivity and small-scale food producers, sustainable food production systems, resilient agriculture
Good Health and Well-Being	Reduce deaths and illnesses from soil pollution and contamination and other pollution
Gender Equality	Equal rights for women to resources, access to ownership to land and other forms of property, financial services, inheritance and natural resources
Clean Water and Sanitation	Restore water related ecosystems, including mountains, forests, and wetlands
Affordable and Clean Energy	Expand energy infrastructure
Sustainable Cities and Communities	Sustainable housing and urbanization, land use planning, links between urban, peri-urban, and rural areas
Responsible Consumption and Production	Sustainable use of natural resources
Climate Action	Climate resilience, carbon capture, and sequestration on land
Life Below Water; Oceans	Decrease marine pollution from land-based activities and increase coastal area conservation by 10% by 2030

The SDGs have considerable value in spotting issues or creating an agenda for action. For example, U.S. environmental and related laws are largely silent regarding equal rights to property ownership and equitable distribution of such wealth, just as they largely fail to help ensure the resiliency of agriculture and a sustainable food system.

The issue of equitable ownership of land remains underappreciated in the United States. Goal 1 and other SDGs could help ensure more public, policy, and pedagogical attention to this critical issue, both domestically and abroad. How many Americans realize that 70% of the world's population cannot

prove they own the land on which they live or work?¹⁵⁵ How many American law students learning about international trade and development grapple with this basic fact or the critical importance of communal and traditional land ownership structures across the globe?¹⁵⁶ How many policymakers grapple with the significant disadvantage women face in land tenure systems globally, where women own just 20% of the world's land but produce the majority of all food?¹⁵⁷

Bringing the issue even closer to home, the SDGs urge us to question whether land ownership is equitable in the United States. In particular, they highlight issues such as dispossession of Native Americans and the enslavement and oppression of African Americans, at first denying them land ownership and then, after the Civil War and for more than 100 years, preying on Black ownership of land.¹⁵⁸ Issues that receive little attention, such as heirs' property, can more easily come to the forefront when using the SDG lens. One particular indicator requires measurement and reporting of the percentage of adult population with secure rights to land.¹⁵⁹ Heirs' property owners hold land as tenants in common with all other heirs of the last title holder.¹⁶⁰ As a result, their tenure is highly insecure because they risk losing their land through partition sales.¹⁶¹ As much as half of the rural land owned by Black Americans may be heirs' property.¹⁶² In North Carolina alone, over

155. *Why Secure Land Rights Matter*, WORLD BANK (Mar. 24, 2017), <https://www.worldbank.org/en/news/feature/2017/03/24/why-secure-land-rights-matter> [<https://perma.cc/FV43-CTCH>].

156. Communally and traditionally held lands may comprise 65% of global land area. Peter Veit, *A New Global Goal: Doubling Community and Indigenous Land by 2020*, WORLD RES. INST. (Mar. 2, 2016), <https://www.wri.org/insights/new-global-goal-doubling-community-and-indigenous-land-2020> [<https://perma.cc/8XKY-6KH9>].

157. Monique Villa, *Women Own Less than 20% of the World's Land. It's Time To Give Them Equal Property Rights*, WORLD ECON. F. (Jan. 11, 2017), <https://www.weforum.org/agenda/2017/01/women-own-less-than-20-of-the-worlds-land-its-time-to-give-them-equal-property-rights/> [<https://perma.cc/KPJ8-QYZ9>].

158. See Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Ownership, Political Independence, and Community Through Partition Sales of Tenancy in Common Property*, 95 NW. L. REV. 505, 523–32, 542 (2001); cf. G.A. Res. 71/313, *supra* note 80, at 4 (“[Target] 1.4[:] . . . [E]nsure that that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to . . . ownership and control over land and other forms of property.”).

159. G.A. Res. 71/313, *supra* note 80, at 4.

160. Conner Bailey, Professor Emeritus of Rural Socio. at Auburn Univ., Address at the Federal Reserve Bank of Atlanta: Estimates of African American Heirs' Property in the Black Belt South (June 15, 2017), <https://www.atlantafed.org/-/media/documents/news/conferences/2017/0615-heirs-property-in-the-south/conner-bailey.pdf> [<https://perma.cc/TCR4-AUW>].

161. *Id.*

162. *Id.*

\$1.8 billion worth of land and some 4 to 5% of both rural and urban land is held in this precarious form of tenure.¹⁶³ Most of the owners are people of color, Native Americans, and low-income Americans.¹⁶⁴ While pioneering work by Thomas Mitchell in the past few years has helped to raise the issue of heirs' property,¹⁶⁵ the fate of the wealth and heritage of so many Americans should not hinge on the insight and perseverance of one legal scholar. SDG indicators help to focus our collective attention on such critical, but little recognized, issues.

A sustainable development framework can create a more searching and dynamic understanding of what the United States needs to do to make the country a better place for all.¹⁶⁶ The SDGs do not displace federal environmental law, nor should or could they. But they offer a critical lens through which to better see the many areas not addressed by our laws as well as the many potential interconnections and synergies present.

B. The SDGs Activate All Stakeholders, Rather than Relying Predominantly on the Public Sector.

The notion that in today's political atmosphere the United States could have a coherent, meaningful policy debate about domestic sustainable development goals seems beyond wishful thinking—bordering on delusional. Having said that, the United States may, someday, be able to have a more meaningful public dialogue about how to reconcile competing economic, social, and environmental priorities. Circumstances and the march of climate change may force such a conversation, at least in part if not in whole.¹⁶⁷ Transitioning to a renewable energy economy, for example, cannot happen without the use of significant quantities of land and materials as well as the

163. Data on file with authors (not publicly released to protect owner's privacy).

164. SCOTT PIPPIN, SHANA JONES & CASSANDRA JOHNSON GAITHER, U.S. DEP'T OF AGRIC., IDENTIFYING POTENTIAL HEIRS PROPERTIES IN THE SOUTHEASTERN UNITED STATES, at vii, 13–16 (2017).

165. See, e.g., Mitchell, *supra* note 158, at 508–11.

166. With the help of experts on each SDG, we have developed two such agendas. The first is GOVERNING FOR SUSTAINABILITY (John C. Dernbach & Scott Schang eds., forthcoming 2022). The other is John Dernbach et al., *Making America a Better Place for All: Sustainable Development Recommendations for the Biden Administration*, 51 ENV'T L. REP. 10310 (2021).

167. Economist Milton Friedman noted some 60 years ago that there is enormous inertia in public and private policy and that only a crisis can produce real change. “When that crisis occurs, the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies, to keep them alive and available until the politically impossible becomes politically inevitable.” MILTON FRIEDMAN, CAPITALISM AND FREEDOM, at xiv (Univ. of Chi. Press) (1962).

construction of many miles of power transmission across the states.¹⁶⁸ Thus, these conversations will likely happen, even if not in a systematic and comprehensive manner. In the interim and as a starting point, the SDGs can help U.S. policymakers measure the impacts of efforts to address climate change in a more holistic manner than using no criteria at all, as is currently the case.¹⁶⁹

The SDGs offer a framework to achieve several of the goals that the past environmental law reinvention efforts called for without needing to undertake the currently impossible task of legislating new approaches to achieving sustainable development. The SDGs meet the reinvention efforts' calls to set priorities and use management principles to help drive towards those goals. They also seek to enlist all stakeholders in the effort, rather than appointing government as the chief instigator and regulator and pitting environmentalists and industry against each other.¹⁷⁰ Instead, the SDGs see all parties as stakeholders charged with meeting common goals.¹⁷¹ This dynamic does not mean that the highly effective pollution control statutes are no longer needed. It does mean that the SDGs offer an additional framework for action. Also, rather than looking to the federal and state governments to implement sustainable development, the SDGs in essence crowdsource sustainability to engage each stakeholder in their appropriate role. The sustainable development framework can be imagined as a body where basic environmental, economic, and social laws are the bones that form the skeleton, while the SDGs create the connective tissues and ligaments that allow the bones to work in concert. The muscle is provided by the stakeholders, who animate the body by doing and acting on the Goals and implementing the laws.

One of the significant differences between the sustainable development lens—and in particular the SDGs—and U.S. environmental law is that sustainable development calls on all stakeholders to take action to achieve the desired outcome rather than looking primarily to government action. In fact, the final SDG, Goal 17, calls for a strengthened partnership among all

168. See Mark Z. Jacobson & Mark A. Delucchi, *Providing All Global Energy with Wind, Water, and Solar Power, Part I: Technologies, Energy Resources, Quantities and Areas of Infrastructure, and Materials*, 39 ENERGY POL'Y 1154, 1154–55, 1160–64 (2011); Mark Z. Jacobson & Mark A. Delucchi, *Providing All Global Energy with Wind, Water, and Solar Power, Part II: Reliability, System and Transmission Costs, and Policies*, 39 ENERGY POL'Y 1170, 1179–85 (2011).

169. See *Ending Tyranny*, *supra* note 130, at 528–31.

170. See *About*, U.N. DEP'T OF ECON. & SOC. AFFS., SUSTAINABLE DEV., <https://sdgs.un.org/about> [<https://perma.cc/3Q4N-VUUP>].

171. *Id.*

stakeholders to work towards sustainable development.¹⁷² In a time when the health of the ecosystem and the continued long-term viability of civilization as we know it are both in question, looking to solutions that call for an all hands on deck approach is a necessity.

Americans tend to look to government when looking for a solution to “environmental” or sustainability issues.¹⁷³ This tendency is somewhat variable based on political belief, with liberals predictably looking more to the government.¹⁷⁴ But even so some 45% of conservatives believe that environmental issues are more of a government rather than an individual concern.¹⁷⁵ American policy, as a result, tends to focus on what actions Congress and states have taken to address sustainability issues, seeing the government as regulator, the corporate community as the regulated, non-governmental organizations as advocates, and the public as those to be protected. Citizen participation is encouraged and supported, to be sure, but the government is the primary actor.

Over the past three decades, as public environmental law has stagnated, private environmental governance and corporate actions based on environment, social and governance (ESG) principles have proliferated. According to Michael Vandenbergh, private environmental governance is: “actions taken by non-governmental entities that are designed to achieve traditionally governmental ends such as managing the exploitation of common pool resources, increasing the provision of public goods, reducing environmental externalities, or more justly distributing environmental amenities.”¹⁷⁶

These private governance efforts range from individual companies setting publicly announced goals on which they report to industry-wide standards to entire frameworks that detail how business should manage its impact on people, places, and the environment, as discussed further below.

Today, many significant efforts at environmental improvement and sustainable development are occurring outside of public environmental law.

172. *Goal 17*, U.N. DEP’T OF ECON. & SOC. AFF.S, SUSTAINABLE DEV., <https://sdgs.un.org/goals/goal17> [<https://perma.cc/9QPM-CR8R>].

173. Fishlinger Ctr. for Pub. Pol’y Rsch., *Responsibility for the Environment: Individuals or the Government?*, COLL. OF MOUNT SAINT VINCENT (Mar. 29, 2016) [hereinafter IPSOS Poll], <https://mountsaintvincent.edu/responsibility-environment-individuals-government/> [<https://perma.cc/XA4F-DJBW>]. Tellingly, Gallup polls on the environment almost exclusively focus on the performance of government when polling about the environment. *See Environment*, GALLUP, <https://news.gallup.com/poll/1615/environment.aspx> [<https://perma.cc/7TAD-BS8A>].

174. IPSOS Poll, *supra* note 173.

175. *Id.*

176. Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 146 (2013).

Many companies see their ESG duties not just through the lens of domestic environmental law, but through the much broader framework of the United Nations Guiding Principles on Business and Human Rights (UNGPs).¹⁷⁷ Endorsed by the UN Human Rights Council, “[t]he UNGPs are the global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity,”¹⁷⁸ which includes environmental impacts.

Using the UNGPs as a basic framework, major multinationals are engaged in a variety of voluntary sustainability standards and similar multistakeholder actions designed to address the economic, social, and environmental impacts of business activities.¹⁷⁹ These range from commodity-based, pre-competitive, peer-to-peer standards such as the Roundtable for Sustainable Palm Oil and Bonsucro to voluntary standards such as LEED, the Sustainable Forestry Initiative, and many others.¹⁸⁰ Depending on how you count them, there are 300 to 500 voluntary sustainability standards to date.¹⁸¹

These efforts do not supplant traditional environmental law,¹⁸² but they do often go far beyond it by bringing a sustainable development lens to a corporation’s impacts.¹⁸³ They seek to balance corporate activities with impacts to the environment, communities, labor standards, human rights, and local economies, not just comply with domestic environmental law.¹⁸⁴

A critically important element of many of these new approaches is that they shuffle the traditional roles of stakeholders in public environmental law.¹⁸⁵ Many of these commodity-based efforts are organized by non-

177. John Ruggie (Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

178. *OHCHR and Business and Human Rights*, UN HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/business-and-human-rights> [<https://perma.cc/XUY5-FUYR>].

179. See Axel Marx et al., *Voluntary Sustainability Standards: State of the Art and Future Research*, 2 STANDARDS 14, 15 (2022).

180. *Id.* at 20. Environmental groups, in conjunction with some human rights and other groups, have worked with multinationals to create larger frameworks as well, such as the Accountability Framework, which is meant to provide “[a] common approach for ethical supply chains in agriculture and forestry.” ACCOUNTABILITY FRAMEWORK, <https://accountability-framework.org/> [<https://perma.cc/2LJT-VYM2>].

181. Marx et al., *supra* note 179, at 14.

182. In some contexts, where national laws are contrary to international norms, these approaches may in fact displace national laws or at least put companies in the unenviable position of needing either to comply with international norms or national law. *Id.* at 14–15.

183. *Id.*

184. *Id.* at 14.

185. Lars H. Gulbrandsen, *Accountability Arrangements in Non-State Standards Organizations: Instrumental Design and Imitation*, 15 ORG. 563, 578–79 (2008).

governmental organizations (NGOs) such as the World Wildlife Fund (WWF), the Nature Conservancy, and Proforest.¹⁸⁶ Others, such as the Roundtable for Sustainable Palm Oil, have significant participation by campaigning NGOs, such as Forest Peoples Programme, in the multistakeholder efforts.¹⁸⁷ The U.S. Roundtable for Sustainable Beef, to take just one of many such commodity groups, counts as members not just several state cattlemen's groups and ranchers and their input suppliers like Syngenta, but corporate brands Nestle and Cargill, retailers Costco and Walmart, and NGO heavyweights Ducks Unlimited, The Nature Conservancy, and WWF.¹⁸⁸ Thus, NGOs are helping to design the voluntary standards and protocols that companies adopt to bring more sustainable outcomes to their supply chains. Although NGOs retain their autonomy to campaign against companies, they find themselves having a direct hand in the construction of these multistakeholder initiatives without the intervening influence of government and bureaucracy.¹⁸⁹ And they find themselves collaborating with peers in other organizations whose political perspectives and priorities might put them on quite opposite sides under traditional public environmental law.¹⁹⁰

The one party that is often noticeably absent from such efforts is government. Indeed, while domestic environmental law revolves around

186. WWF has initiatives on beef, dairy, soy, and several farmed seafoods and fish stocks. See *Food*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/initiatives/food> [<https://perma.cc/P4A7-HA8P>]; see also *Coalition for Sustainable Livelihoods*, CONSERVATION INT'L., <https://www.conservation.org/projects/coalition-for-sustainable-livelihoods> [<https://perma.cc/E9GG-QRMU>]; *Provide Food & Water Sustainability: Food & Water Stories*, THE NATURE CONSERVANCY, <https://www.nature.org/en-us/what-we-do/our-priorities/provide-food-and-water-sustainably/food-and-water-stories/> [<https://perma.cc/K5DT-AF8N>]; *Zero Conversion and Commodities Strategy Launches Video Celebrating Its Flagship Project Conservation and Markets Initiative (CMI)*, THE NATURE CONSERVANCY (Sept. 10, 2021), <https://www.nature.org/en-us/about-us/where-we-work/latin-america/brazil/stories-in-brazil/estrategia-de-zero-desmatamento-lanca-video/> [<https://perma.cc/RT2V-QMJN>].

187. *Our Organization*, ROUNDTABLE ON SUSTAINABLE PALM OIL, <https://rspo.org/about/our-organisation> [<https://perma.cc/HY8A-WUYD>]. These NGOs have significant participation on voluntary efforts around palm oil, among other commodities.

188. See U.S. ROUNDTABLE FOR SUSTAINABLE BEEF, <https://www.usrsb.org/> [<https://perma.cc/2HPC-CD3W>].

189. U.S. ROUNDTABLE FOR SUSTAINABLE BEEF, FRAMEWORK OUTREACH 17 (2020), https://www.usrsb.org/Media/USRSB/Docs/usrsb_toolkit.pdf [<https://perma.cc/ACR6-2AKC>]; see also Eric F. Lambin & Tannis Thorlakson, *Sustainability Standards: Interactions Between Private Actors, Civil Society, and Governments*, 43 ANN. REV. ENV'T & RES. 369, 370–77 (2018).

190. Michael Vandenberg and colleagues pointed to the “revolving door” that has developed between environmental groups and industry. Michael P. Vandenberg et al., *The New Revolving Door*, 70 CASE W. RES. L. REV. 1121, 1148–49 (2020). The development of these multistakeholder groups allows significant interaction between advocacy groups and business, which may help accentuate some of the dynamics pointed to in that article.

government, these voluntary initiatives are remarkable for the nearly complete absence of regulators and legislators.¹⁹¹ This significant new face of sustainability governance is alien to the American domestic experience of environmental law and sustainable development.¹⁹² U.S. policymakers are often significantly out of step with their corporate peers when it comes to this world of sustainability governance.¹⁹³ While many U.S. regulators focus on compliance with environmental laws as their main metric, most large companies seem to assume compliance as a given baseline, while focusing on broader targets such as the UNGPs and SDGs for most of their public-facing effort.¹⁹⁴ A hopeful exception to this lack of government involvement surfaces among U.S. cities looking for sustainable development. Los Angeles, New York, and Pittsburgh, among other major cities, have looked to the SDGs as guiding principles for organizing urban sustainable development.¹⁹⁵

Similarly in our experience reviewing the legal academic literature and in discussions with our academic peers, we find that many legal scholars seem largely unaware of these private governance and sustainable development efforts. Polls suggest that 60 to 80% of Americans had never heard of the SDGs or knew nothing about them.¹⁹⁶ It is unclear that awareness of the SDGs in academia is significantly higher. By contrast, over 70% of adults globally are aware of the SDGs,¹⁹⁷ and in some countries they have

191. *Id.* at 1124.

192. *Cf. id.* at 1136–37.

193. *Id.* at 1136.

194. GRI, UN GLOB. COMPACT & WORLD BUS. COUNCIL FOR SUSTAINABLE DEV., *SDG COMPASS: THE GUIDE FOR BUSINESS ACTION ON THE SDGs* 10–27 (2015), https://sdgcompass.org/wp-content/uploads/2015/12/019104_SDG_Compass_Guide_2015.pdf [<https://perma.cc/CE8Q-J8N5>].

195. *See, e.g.*, Anthony F. Pipa, *Can US Cities Help the World Achieve the Sustainable Development Goals?*, BROOKINGS (Nov. 29, 2018), <https://www.brookings.edu/blog/future-development/2018/11/29/can-us-cities-help-the-world-achieve-the-sustainable-development-goals/> [<https://perma.cc/UA77-EMLF>].

196. *Sustainable Development Goals: Awareness, Priorities, Impact on Business*, MORNING CONSULT 8 (Aug. 2021), https://s3.amazonaws.com/media.unfoundation.org/2021/12/MorningConsult_UN-SDG-Presentation-Deck-D3-MPR_JJM_CB-.pdf [<https://perma.cc/8PRW-AH4A>] (noting that 61% polled are not familiar at all and 20% don't know any details); Alem Tedeneke, *Global Survey Shows 74% Are Aware of the Sustainable Development Goals*, WORLD ECON. F. (Sept. 23, 2019), <https://www.weforum.org/press/2019/09/global-survey-shows-74-are-aware-of-the-sustainable-development-goals/> [<https://perma.cc/LA94-PP64>]; *What People Know and Think About the Sustainable Development Goals*, OECD DEV. COMMC'N NETWORK (June 2017), https://www.oecd.org/development/pgd/International_Survey_Data_DevCom_June%202017.pdf [<https://perma.cc/5MYU-JDYU>].

197. OECD DEV. COMMC'N NETWORK, *supra* note 196.

become quite popular.¹⁹⁸ While it remains critically important to educate students about the baseline federal environmental statutes, most students are far more focused on sustainability topics and efforts rather than implementation of public law.¹⁹⁹ When environmental law students in a recent exercise were asked to imagine the next generation of environmental protection governance, they did not mention public environmental governance at all and instead focused on approaches such as addressing environmental issues locally, individual responsibility, effective communication about environmental issues, environmental education, and integration across environmental, social, and economic realms.²⁰⁰ Likewise, an informal review of student notes in five top environmental law journals over the past five years found that less than 15% of the articles focused on public environmental law; roughly 85% focused on energy, climate, and social justice issues.²⁰¹ Moreover, these students will be called to work in a world where familiarity with the SDGs, voluntary standards, and common human rights benchmarks are every bit as much the currency of conversations among corporate personnel as U.S. public environmental law.

Embracing the insights and energy of corporate environmental, social, and governance (ESG) leaders can dramatically scale the sustainability movement within the United States. Using the frame of sustainable development as the main focus of environmental efforts, and the SDGs as the goals and metrics to measure progress, can help to leapfrog many of the infirmities identified in the current domestic legal framework by past reinvention efforts. This also pulls in all stakeholders to act together on a common purpose, if past and present prejudices about traditional stakeholder roles can be overcome among policymakers and academics. This is a marked change from the 1960s and early 1970s, when companies were more apt to be fighting environmental regulation than embracing it.²⁰² Just as companies are capable of terrific harm, so too are they capable of spreading significantly

198. Ben Dooley & Hisako Ueno, *Why Is This Colorful Little Wheel Suddenly Everywhere in Japan?*, N.Y. TIMES (Aug. 25, 2022), <https://www.nytimes.com/2022/08/25/business/japan-sdg.html#:~:text=the%20main%20story-,Why%20Is%20This%20Colorful%20Little%20Wheel%20Suddenly%20Everywhere%20in%20Japan,United%20Nations%20Sustainable%20Development%20Goals>.

199. *Cf. Ending Tyranny*, *supra* note 130, at 536–37.

200. *Id.*

201. We consulted the UCLA Library's Environmental Law Research Guide and reviewed published student notes from the past two years of the five environmental law journals that were first listed: Harvard, Columbia, Stanford, Berkeley, and Lewis & Clark. *Environmental Law Research Guide*, UCLA SCH. OF L., <https://libguides.law.ucla.edu/environmental/journalsnews> [<https://perma.cc/7XVH-594Q>].

202. See Adam Rome, "Give Earth a Chance": *The Environmental Movement and the Sixties*, 90 OXFORD J. AM. HIST. 525 (2003).

better sustainability practices across their supply chains and customer bases. Query whether American policymakers and others have caught up to this potentiality.²⁰³

IV. CONCLUSION

More than a decade before the world's nations endorsed sustainable development at the Earth Summit, the United States Congress declared it the national objective "to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."²⁰⁴ Properly understood, sustainable development embodies this American vision. The SDGs implement this vision of a sustainable America in terms that have already been agreed to by the United States and virtually all other governments. As such, the SDGs offer a set of actionable goals, metrics, and indicators that are already in use today at America's major corporations and some local governments. It is past time for American policymakers to join the rest of the world in implementing and reporting on these Goals and for academics to teach and write about them to accelerate U.S. sustainable development.

The goals and ideals expressed through the SDGs were negotiated and crafted by the United States and provide a beacon for all countries seeking to improve human well-being, economic security and wealth, and environmental resilience. They offer a modern lens to what in the past were discussed as "environmental issues," but are in fact sustainability issues that we must urgently face in order to fulfill the needs of Americans today and tomorrow.

The blindness of American policymakers and academics to the SDGs and the role of sustainable development speaks poorly for American competitiveness in the decades to come. We have had conversations with American regulators who bemoan the fact that they have no authority to work towards sustainable solutions or only limited understanding of what

203. The spate of private activity here has led to proposed rulemakings by the Securities and Exchange Commission to require consistent reporting of climate change risks and ESG claims. The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334 (proposed Apr. 11, 2022) (to be codified at 17 C.F.R. pts. 210, 229, 232, 239, 249); *SEC Proposes To Enhance Disclosures by Certain Investment Advisors and Investment Companies About ESG Investment Practices*, U.S. SEC. & EXCH. COMM., (May 25, 2022), <https://www.sec.gov/news/press-release/2022-92> [<https://perma.cc/6JZD-WP5F>]. Thus, this is not just about private governance. But it does signal that the usual environmental agency actors, especially EPA, are no longer the only key actors.

204. 42 U.S.C. § 4331(a).

“sustainability” means today. We have had conversations with American corporate leaders who see government as either largely irrelevant to or a barrier to achieving sustainable development. We work with corporate ESG leaders at major companies who more often are young Europeans than young Americans. We see academic colleagues who seem largely unfamiliar with the SDGs and sustainable development’s applicability to the United States. They teach law students who may walk into new positions underprepared for what they will face in the current world of environmental law—which is informed as much by ESG, human rights, and SDGs as it is by pollution control statutes.

We write this not to chide or condemn, but to invite a reexamination of the role of sustainable development in U.S. policymaking and pedagogy. The beauty of the SDGs is that they do not need American legislators to act nor a public dialogue to coalesce around these issues to start using them. They are ready-made for putting in place today by all stakeholders to help accelerate progress towards a more sustainable America.

In his 1981 essay, *Liberating the Public Trust Doctrine from Its Historical Shackles*, Joe Sax called for a broader understanding of the public trust doctrine so that its central idea could be fully understood and released from the narrow confines to which it had been relegated.²⁰⁵ As we have argued in this essay, our task is not to release sustainable development from its historical shackles, but rather to release the historical blinders placed on our own eyes by the American experience of environmental law. Sustainable development and the SDGs are directly applicable to U.S. policy as a guide and gauge, and ones that Americans had a significant hand in crafting. We should use the tools we have and get to work making America a better place for all.

205. Sax, *supra* note 2, at 186.