

Jakob von Uexkull, MA Oxon.

Founder, The World Future Council (WFC)

Keynote Speech

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Your Excellencies,

Hon. Chief Justices,

Ladies and Gentlemen,

Dear Students,

We live in unique times. We are today the guardians of all future generations of life on Earth. Never before did decisions and actions have such profound and long-term consequences as ours. We face a huge responsibility for we are, for good or evil, the most powerful generations ever.

The destabilisation of our global climate will, if allowed to continue, make increasing parts of our planet increasingly uninhabitable over the next fifty years. Climate scientists are now finding that they have under - rather than over - estimated the speed of global warming and climate chaos...

Our destruction of biodiversity is also unprecedented. Half the tropical and temperate forests are already gone, species are becoming extinct at 1000 times the normal rate and ocean acidity threatening marine life is the highest in 20 million years. We are clearly on a collision course with our own future!

So why are political leaders not responding to this emergency? One reason is that they trust economists who believe that we can eat money. This is, unfortunately, not a joke! The pioneering US economist Prof. Herman Daly has investigated the views on climate change of those orthodox Anglo-Saxon economists whom political leaders trust, including the often-quoted "climate economist"

William Nordhaus, the recipient of the Nobel Memorial Prize in Economics, Thomas Schelling etc. They argue that climate change will only seriously affect agriculture, which today only represents ca. 3% of GDP in a country like the USA. Therefore, even a 50% collapse in agricultural production would only reduce economic "growth" there by 1.5%, which can easily be compensated for in other areas. Thus, they believe that, if we just produce more computers and mobile phones, then a collapse in food production does not really matter!

Some years ago, another US economist sent out a planned publication for peer review in which our natural environment was shown as a subsystem (box within a box) of our economy. He was told that it is of course the other way round, that the human economy is completely dependent on a functioning natural environment, but he did not accept this. His name is Lawrence Summers, former World Bank Chief Economist, former President of Harvard University (where he still teaches) and most worryingly, long-time key economic advisor to Presidents Clinton and Obama. Thus, a man who has held some of the most powerful positions on the planet actually believes that our economy controls our natural environment - a belief not just mistaken, but mad, comparable to the belief that the Earth is flat!

Another propagandist of this madness is Bjørn Lomborg, a Danish statistician who is very popular in the Western media because he argues that there is no need for rich countries to change politically and economically, in order to protect future generations from environmental disasters. Lomborg claims that economic growth will make us all rich enough in future to deal with the consequences of climate chaos, biodiversity loss etc., so there is no need for the rich to inconvenience themselves now... Yes, he says, Bangladesh is likely to be submerged by rising sea levels in the next century. But, based on its current GDP growth rates, it will then be as rich as Holland today and able to afford to build sea walls to protect itself...

Environmental disasters hit the poor first and hardest. To avoid the rich having to face up to their responsibilities, economists in their service have come up with another accounting trick. As

poor Bangladeshis (or Indians) cannot afford to pay as much as Americans to protect themselves from rising sea levels, their lives are valued at much less, resulting in environmental cost-benefit analyses showing that drastic action to slow climate change cannot be justified economically...

As governments are ruled (and policy-makers intimidated) by such calculations, there is only one source of power in our societies which can challenge this discounting of the lives of the poor and of future generations - and that is you, the Judiciary! It is on you as judges that the responsibility now falls to redirect our societies before they disintegrate in climate wars and resource conflicts. It is on you that our hope now rests, the hope that you will decide to become lawyers and judges for life, protecting wherever and whenever you can, the survival, peace and security of present and future generations!

For these are all now being sacrificed in deference to short-term cost-benefit calculations, to which elected leaders have handed ultimate power, betraying their voters and peoples. They legislate to protect and increase the assets of the richest, forcing austerity on everyone else. During the Clinton presidency, 45% of new wealth created in the USA went to the richest 1%. During the pre-crisis Bush years, it was 73%.

There has never been a stronger argument for judicial activism, interpreting laws and rights to protect the key values of our societies, building world law from the bottom up. The desire to hand over a healthy planet to future generations is probably the most globally shared moral value.

I am well aware of the concerns and counter-arguments against judicial activism to protect minority rights and promote social change. After all, it was judicial activism by US Supreme Court judges which stopped the counting of votes in Florida after the 2000 Presidential election and handed the most powerful post in the world to the loser, George W. Bush...

But today, we have no choice, for democratic politics is failing to protect the basic right to life of the huge silent majority of future generations against the tyranny of short-term economics.

Judicial activism can re-frame our public debate and narrative into one of global citizenship duties and responsibilities, as UNESCO tried (but failed) to do in 1998-2000 with the proposed Valencia Declaration of Human Duties and Responsibilities, which was blocked by vested interests.

Most of us are citizens first, and consumers second, but fearful and confused politicians today only represent us as consumers, hoping that we will accept their sacrificing our children's future in exchange for more shopping opportunities!

Judicial activism can uphold the value of trusteeship, ensuring that scarce resources are re-directed from further enriching the richest to serving the common good. In our age of confused values, laws and institutional regulations are increasingly ambiguous, reflecting the conflicting pressures facing law-makers. The judiciary is therefore called upon to interpret them to protect not just minority rights but majority rights sacrificed by politicians who believe that there is no alternative to the ruling ideology of neo-liberal economics.

In many countries, gambling is not illegal but seen as immoral. Accordingly, gambling debts are not regarded as legally enforceable contracts. Until recently, the same often applied to financial gambling, bets on future prices not backed by real assets (e.g. a farmer hedging the price of his next harvest). Thus, German law until 2002 contained a "financial gambling reservation", making such bets legally un-enforceable. In 2002 the German government, under pressure from financial institutions, abolished this "reservation". The World Future Council found that similar changes and re-interpretations of the law took place in Austria and Switzerland - and no doubt in other countries.

Soon afterwards, banks started selling complex financial betting instruments to savers, local authorities etc. in these countries which caused huge losses. Our interviews with policy-makers in the "red-green" government ruling Germany at the time made it clear that they had not understood the implications of the change, believing it to be merely "technical".

Our world has been globalised without a functioning global governance. Even multilateral frameworks are in decline. This would require an active judiciary even in normal times.

But, as we know, times are far from normal. We cannot have a healthy environment and a peaceful world with current resource consumption levels. Institutions, structures and norms which promote these consumption levels need to be changed. Full cost accounting needs to become the norm. Externalising production costs onto nature and future generations needs to be banned as unfair competition.

Judicial activism is required today to expand democratic space into the economic / financial arena.

As in the financial gambling example above, the current rule of bankers over governments is only possible because it is backed by legislation. Without judicial activism, the bankers cannot be de-throned before our societies collapse. As more and more public goods become privatised and scarce, only the law has the power to re-design our societies responding to these new hierarchies of risk and danger. We can hopefully avoid "eco-dictatorship", but we cannot avoid building "ecocracies", i.e. democracies operating within ecological realities. Today economic "growth" is increasingly becoming un-economic growth, consuming its foundations.

We need neither naive optimism ("technology and markets will somehow overcome all limits"), nor doom-and-gloom pessimism. The law cannot solve all our problems. But it can ensure that rights and responsibilities go together. It can inspire collective change, including sacrifice, by sending out a strong message, challenging the moral vacuum of market rule.

Countries victimised by climate change (like the small Pacific Republic of Palau) are now contemplating legal action against the countries mainly responsible. This will not substitute political action, but it will help highlight the evidence...

The World Future Council works to spread "the best" i.e. exemplary laws and policies, which we identify, research and test against criteria developed by the International Law Association. We honour such exemplary policies with our annual Future Policy Award, presented in close collaboration with the United Nations and the Inter-Parliamentary Union.

Our latest project is the Global Policy Action Plan (GPACT) which for the first time brings together the key policy changes we believe are required to change course in time.

The plan presents a coherent policy response to the interlinked global crises. Threats from climate chaos, ocean acidification, water shortages and weapons of mass destruction etc. are mutually interdependent. With the right legal incentives, there is overwhelming evidence that we can still mobilise human inventiveness and entrepreneurship to tackle them.

Today, urgent reform proposals are usually met with the claim that they are "unaffordable." So the Global Policy Action Plan identifies the policy changes required to ensure that we can "afford" to continue living on this planet!

Some are well-known, but increasingly urgent, e.g. the progressive shifting of global military expenditures, to fund human and ecological security. We also need a radical tax reform, shifting the main tax base from work (which we need) to resources (which we need to save), taxes on land value increases etc. But we need to complement such (necessarily slow) re-distribution with (quick) "pre-distribution", i.e. the interest- and debt-free creation of new money by central banks to fund a crash programme to ecologically modernise our production and consumption systems. As this new money will only be created to fund the production of new goods and services, it will not be inflationary.

The plan includes policies to tackle the major threats facing us, including the progressive abolition and re-direction of fossil fuel subsidies while protecting the poor, legislation to maximise the use of renewable energies and provide for full-cost energy accounting. Whenever possible, the

plan refers to existing successful policies, which can often be found in a certain country or region, but are unknown elsewhere.

Exemplary laws to protect biodiversity, forests and oceans (from Costa Rica, Rwanda and Palau respectively) included in the plan have all received the WFC Future Policy Award, as have the laws to promote food security and disarmament (both nuclear and conventional).

But we do not just need laws to prevent global collapse. We want a peaceful, sustainable and flourishing global civilisation. So we need a legal framework mandating e.g. :

- "Cradle-to-cradle" circular systems of production, as designed by Prof. Michael Braungart and William McDonough.
- The "Top Runner Principle" (Japan), progressively banning the least efficient products.
- Corporations with broader social mandates, as the "B" or "Benefit" corporations now legal in several US States and in Chile.
- The testing of new financial instruments before they are giving legal validity, to ensure that they serve the real economy.
- An international divestment treaty, favouring sustainable investments, so that our savings do not threaten our future.

We want a world safe for our children and future generations. So the plan outlines how crimes against future generations, including ecocide, can be criminalised and prosecuted. We also propose (and already work) to institutionalise Guardians ("Ombudspersons") for Future Generations on all political levels, including the UN.

The plan includes guaranteed access to contraception, for all women, so that every child born is wanted. It also proposes an enforceable right to education, to protection against violence and to access legal services.

This all requires responsible governance. So the plan includes policies to ensure that elections cannot be bought, including public funding and free media access for all candidates who have demonstrated public support. It proposes that candidates for public office, as well as economics and business school graduates pass ecological literacy tests. It demands that natural and social capital be given equal weight with GDP in government decision-making.

Many of these policies are not new but their combination in a joint plan will offer the foundation for successful common action. In times of crisis, big steps can be easier to implement than small ones - because they are seen as problem-realistic and thus able to inspire and mobilise. And, as Martin Luther King said, while laws "*may not change the heart, they can restrain the heartless.*" For further information, see our websites, including www.futurepolicy.org, our dedicated website on exemplary policies for jurists and policy-makers.

Judicial activism is today indispensable to moderate the global rule, not just of markets but of transnational corporations. In many sectors, e.g. energy, there are no functioning markets, due to the massive subsidies, enabling a small number of corporations to threaten our common future. According to recent studies, global warming is overwhelmingly caused by 90 big companies...

Never before has leadership been more urgent - and more lacking! The so-called leader of the world's most powerful nation, President Obama, recently declared that "*political leaders will not take any risks as long as the people do not demand that of them.*" So, as we cannot expect political leadership to save human civilisation, who will do it, if not the judiciary?

Over 200 years ago, one of Obama's predecessors, President Thomas Jefferson, wrote, after travelling through pre-revolutionary France: "*Whenever there are in any country uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural rights.*"

Today we face an even more drastic conflict between the laws of nature and the laws of property and money. Ultimately, of course, the laws of nature will win. We can negotiate with financial debtors but we cannot negotiate environmental debts. Melting glaciers and spreading deserts do not negotiate!

The alternative to judicial activism is nature's activism. The alternative to the rule of law is the rule of nature - with no higher Court to appeal to! When political leaders - whether democratically elected or not - fail to understand these basic hierarchies of risk and danger, then the guardians of the law are called upon to protect the foundations of life.

We have externalised the costs of our activities for so long that internalising (i.e. paying for) them will be very costly and hard. For example, abolishing subsidies on fossil fuels is a widely agreed upon goal in theory. But politicians who actually attempt it face violent opposition, as happened recently in Nigeria, Jordan and Sudan. However, the devil is in the legal detail. For example, Indonesia is managing this process much better with a gradual, integrated approach.

For almost every challenge we face there already exists somewhere tried and tested policy solutions. The World Future Council works with policy-makers worldwide to spread these. I look forward to working with you to expand this work and secure our common future!

As Winston Churchill said, *"in times of crisis, it is not enough to do our best. We have to do what is necessary."*