

IT'S NOT THE END OF THE WORLD, BUT YOU CAN
SEE IT FROM THERE: LEGAL EDUCATION IN
"THE LONG EMERGENCY"

*Richardson R. Lynn**

You look at the Amish and you see the past but you might also be looking at the future. Our great-grandchildren, faced with facts their ancestors were able to ignore, might have to do without the internal-combustion engine and figure out how to live the subsistence life. Maybe someone will invent a car that runs on hydrogen, or horse manure, or maybe people will travel on beams of light like in old radio serials, but the realist in you thinks otherwise.¹

~Garrison Keillor, 2007

AS the most optimistic person in America,² doomsday scenarios do not interest me. Worldwide agriculture and medicine have proven resilient enough to overcome the "population bomb" and the Spice Girls did not last long enough to destroy all culture. So, it is easy for me to ignore authors like Hal Lindsey³ who find modern parallels with the apocalyptic *Book of Revelation* or any prophet who claims to know what the Dow Jones Average will be on any date with certainty. After seeing an intriguing review⁴ of James Howard Kunstler's *The Long Emergency*,⁵ however, I bought and read the book. I am, in the words of the old hymn, almost persuaded. "If he is right," my self-interest asks, "how will that affect law schools?"

* Dean and Professor of Law, Atlanta's John Marshall Law School (where the bow-tie symbolizes academic excellence and compassion).

1. Garrison Keillor, *A Case for the Simple Life*, CHI. TRIB., June 6, 2007, at C25.

2. For example, I believe that a box of cereal on the grocery store shelf is actually full of cereal, that the ABA Standards for the Approval of Law Schools are a positive force for good, and that John McCain is not too old to be President and, for that matter, Abraham Lincoln is not too dead to be President.

3. Author of twenty books, including the best-seller, *THE LATE GREAT PLANET EARTH* (1970). Not even the Spice Girls claimed to understand the *Book of Revelation*.

4. Nope, don't have a clue where the review was published, although I can rule out all foreign-language periodicals.

5. JAMES HOWARD KUNTLER, *THE LONG EMERGENCY: SURVIVING THE CONVERGING CATASTROPHES OF THE TWENTY-FIRST CENTURY* (2005).

I. PEAK OIL

Kunstler's thesis is that we have reached or will soon reach "peak oil"—the point at which new discoveries of petroleum will not replace rapidly depleting oil fields.⁶ Combine that with several other factors, including: (1) the growing internal energy demands of oil-exporting nations, which will decrease oil exports;⁷ (2) geo-political instability in many of those very nations;⁸ (3) the extent to which globalization and the American way of life depend on cheap oil;⁹ and (4) the gradual, at best, speed of advances in alternative energy,¹⁰ and the far side of peak oil is a cheerless place. Further combine that scenario with the unpredictable inputs of global climate change¹¹ and anything can happen, not much of it good. Kunstler's research and logic concludes that the Great Depression will look like a minor blip compared to The Long Emergency.¹²

Summer 2008 in America hinted at what The Long Emergency will resemble. Although a drop in discretionary driving kept the price of gasoline from reaching European heights, the impact of higher oil prices on the economy was evident.¹³ The peak-oil theory foresees a point beyond which demand cannot drop further without serious economic dislocations, both in the United States and globally, and that shortages will develop, making gasoline and heating oil effectively unavailable at any price in net oil-importing countries.¹⁴ My conversational summary of Kunstler's *The Long Emergency* is that if one-quarter of what he predicts takes place, we will live as we did in the 1920s; if one-half of his predictions come true, we will live as we did in the 1880s; and if they all come true, we will be living in a world somewhere between the frontier days of the Wild West and the darkness of the Middle Ages.

6. *Id.* at 24-25. As you may know, this viewpoint is gaining gradual acceptance, although not everyone agrees about the consequences, short or long term. *See, e.g.*, Sarah K. Odland, Strategic Choices for Managing the Transition from Peak Oil to a Reduced Petroleum Economy 2 (June 2006) (unpublished M.B.A. thesis, Mercy College), available at http://www.ldeo.columbia.edu/~odland/Odland_PeakOilMgt_Dissertation.pdf ("[T]he most reliable publicly available evidence suggests that the peaking of world oil production will occur sometime between 2004 and 2017"); Peak Oil: Life after the Oil Crash, <http://lifeaftertheoilcrash.net> (last visited Oct. 13, 2008) (discussing the prediction of Dr. Marion Hubbert, a Shell geologist, that global oil production would peak by 2000).

7. *See, e.g.*, Clifford Krauss, *Oil-Rich Nations Use More Energy, Cutting Exports*, N.Y. TIMES, Dec. 9, 2007, <http://www.nytimes.com/2007/12/09/business/worldbusiness/09oil.html>.

8. *See, e.g.*, Thomas Omestad, *Trouble Spots*, U.S. NEWS & WORLD REP., Jan. 2, 2005, at 50, 50. Or, as *Dilbert* cartoonist Scott Adams says, "At the risk of oversimplifying, our current energy policy in the United States involves shooting bearded people." So You Think You Have a Policy, http://dilbertblog.typepad.com/the_dilbert_blog/2007/10/so-you-think-yo.html (Oct. 4, 2007).

9. KUNSTLER, *supra* note 5, at 2.

10. *Id.* at 3.

11. *Id.* at 8-9.

12. *Id.* at 212.

13. Posting of Douglas A. McIntyre to 24/7 Wall Street, <http://www.247wallst.com/2008/08/the-economys-su.html> (Aug. 25, 2008, 06:19 EST).

14. Peak Oil: Life after the Oil Crash, *supra* note 6.

Even if we avoid the worst-case scenario, we could experience a crushing depression that would last until we fully develop alternative energy sources (a development period substantially lengthened by economic collapse) and rebuild our railroads (ditto) to replace dependence on long-distance trucking for commerce and retail supply chains. Even the World Wide Web depends on relatively cheap electricity¹⁵ in addition to internationally coordinated maintenance of the web of internet pipes. Eventually, the growth of alternatives to oil would allow national and global trade to resume, but Gross Domestic Product (GDP) per person might not approach current GDP figures (adjusted for Zimbabwe-style inflation) for fifty years or more.¹⁶

James Howard Kunstler was led to the peak-oil theory by his work as a social critic who decried increasing dependence on the automobile and the unsustainable rise of distant suburbs.¹⁷ His blog¹⁸ is crude¹⁹ but immensely readable. In recent months, he focused increasingly on the credit crisis,²⁰ caused in part by the housing bubble, which stemmed partly from the need to build and then fill the burgeoning suburbs that contain inhabitants facing increasingly expensive commutes.²¹

Kunstler has also written a novel set in The Long Emergency, *World Made by Hand*.²² The novel presents the worst-case scenario, including the disappearance of government at every level.²³ Vigilante justice,²⁴ growing your own food,²⁵ making your own clothes,²⁶ and bartering for what you cannot grow or make²⁷ characterize his imagined Long Emergency.

15. While the United States has an almost inexhaustible supply of coal, greater reliance on coal-fired plants will increase the already autocatalytic rate of global climate change. See *Al Gore Discusses Climate Crisis, Urges Change and Optimism*, CLIMATE PROJECT, July 7, 2008, <http://www.theclimateproject.org/tcpnews.php?id=252>. Also, Mr. Kunstler could easily debunk T. Boone Pickens's plans to base our economy on windmills and natural gas, at least any time soon. See *PickensPlan*, <http://www.pickensplan.com> (last visited Oct. 13, 2008).

16. Cf. KUNSTLER, *supra* note 5, at 147-85 (describing the devastating effect of The Long Emergency).

17. Mr. Kunstler is that rare bird—a public intellectual and renaissance man. See James Howard Kunstler: Biography and Photographs, <http://www.kunstler.com/bio.html> (last visited Oct. 13, 2008).

18. Clusterfuck Nation by Jim Kunstler, <http://jameshowardkunstler.typepad.com/> (last visited Oct. 13, 2008).

19. Not an oil pun. He talks dirty. *Id.*

20. See *Reality Bites Again*, http://jameshowardkunstler.typepad.com/clusterfuck_nation/2008/08/reality-bites-again.html (Aug. 18, 2008); *Shoulder Season*, http://jameshowardkunstler.typepad.com/clusterfuck_nation/2008/08/shoulder-season.html (Aug. 11, 2008); *Where We're At*, http://jameshowardkunstler.typepad.com/clusterfuck_nation/2008/07/where-were-at.html (July 7, 2008).

21. *Where We're At*, *supra* note 20.

22. JAMES HOWARD KUNSTLER, *WORLD MADE BY HAND* (2008).

23. *Id.* at 12, 15, 169.

24. See *id.* at 48, 88, 172-81.

25. *Id.* at 5.

26. See *id.* at 155, 315.

27. See *id.* at 16, 22, 29.

II. LAW PRACTICE IN THE LONG EMERGENCY

*I don't try to describe the future. I try to prevent it.*²⁸

~Ray Bradbury

The Long Emergency predicts the disappearance of most global trade and the increasingly local, rather than national, production and delivery of food and services.²⁹ Therefore, the rationale for large law firms disappears. Small law firms and sole practitioners representing local businesses and individuals would continue to serve a need, assuming that we avoid the total breakdown of law and order.³⁰ Rather than big salary draws and bonuses, lawyers may find themselves bartering their services for other goods.³¹ The prestige of lawyers as leaders in their communities may return, as many of the excesses leading to lawyer jokes vanish. Atticus Finch will live again.

People will need wills and a way to reliably transfer property. People will need to be defended in criminal cases, although the Sixth Amendment would become just another unfunded mandate. Divorce and family law will not go away, although The Long Emergency may have the effect of strengthening family life. Small claims still would be litigated, but there will be no large pots of insurance coverage to support major personal injury practices.

Mergers and acquisitions? In The Long Emergency, no one will merge anything larger than a bakery and no one will acquire anything larger than a tool

28. ROBERT ANDREWS, THE COLUMBIA DICTIONARY OF QUOTATIONS 359 (1993).

29. KUNSTLER, *supra* note 5, at 254-56. In *The Long Emergency*, Mr. Kunstler mentions lawyers only in passing, along with other service providers whose livelihood will be primarily local, rather than national, much less international. *See id.* at 274. The following extrapolations about law practice and law schools are mine. If proven wildly wrong, this is just a "thought piece."

30. In Kunstler's novel, which does not make that assumption, lawyers may serve as community leaders and help settle disputes, but not by using the judicial system because it, along with all government agencies protecting citizens from each other, has disappeared. *See* KUNSTLER, *supra* note 22, at 105-06 (describing a lawyer serving as councilman because all government agencies have been destroyed).

31. *See* KUNSTLER, *supra* note 5, at 274 (stating that an individual's work will be focused on making oneself useful to other individuals in the community). This reminds me of my favorite lawyer story. While a few of us were sitting in Nashville's General Sessions Court one morning, waiting for court to begin, David Rutherford told a story about his father. His father was a lawyer in Nashville during the Great Depression, a time when lawyers, doctors, and other professionals were as likely to be paid in barter as in cash. A man accused of killing his neighbor's hog asked old Mr. Rutherford to represent him. There were extenuating circumstances; the hog had been tearing up the client's garden, in this case literally a mortal sin. After repeatedly warning the hog's owner, including a threat to kill the hog if it got out again, the client saw the hog rooting around in his garden one stormy night. Bang. When the client said that he didn't have any money to pay Rutherford's fee, the lawyer said, "That's okay. My fee will be half the hog." So, the client brought him half of the ribs, half of the sausage, half of the ham, and half of the bacon, all frozen and wrapped neatly in white wax paper packages.

It was a circumstantial evidence case. The prosecution could only prove the threat and the hog's disappearance. No one else knew about the fee arrangement. Mr. Rutherford successfully referred to the thin prosecution case and argued to the jury, "Ladies and gentlemen of the jury, my client doesn't have any more of that man's hog than I do."

maker. Securities? Wallpaper. Intellectual property? While creative people can make a living furnishing entertainment locally, no one will care when the copyright on Mickey Mouse finally expires. Health-care law will be much less relevant when health insurance is rare and no one can afford industrial-scale health care.³² Overall, specialization will decrease and “sophisticated” lawyers will be those who have clients in counties across the state.

III. WHITHER LAW SCHOOLS?

*I was gratified to be able to answer promptly, and I did. I said I don't know.*³³

~Mark Twain

Recent reports and conferences on the future of legal education have focused on topics such as teaching to the different student learning styles,³⁴ preparing graduates for a global legal practice,³⁵ and the continuing need for greater diversity in the legal profession³⁶ and improving the “pipeline,” perhaps all the way back to elementary schools.³⁷ If The Long Emergency arrives, those concerns will seem quaint. Just as lawyers still will be needed in dark times, albeit in a quite different kind of law practice than we see today, law schools can also survive—but not all of them and not as large or encyclopedic as they are now.

The demand for legal services will decrease sharply after the demise of most national and international commerce. There will be substantially less need for the legal specialties mentioned earlier. So, fewer students will seek legal training and those who do will attend nearby law schools because of the greater expense of travel. Course offerings will revert to a core curriculum, plus legal skills training, to reflect the needs of small town and, in cities, neighborhood practices. In a time of economic collapse, our recent recessions will seem comparatively gentle, and current tuition rates will be unsustainable and generous loan programs will be extinct.

If law schools are to survive on greatly diminished revenues, every aspect of legal education must be slashed; programs, publications, electives, foreign study,

32. Doctors, whose Long Emergency troubles will be as great as for lawyers, will make house calls, once again.

33. MARK TWAIN, LIFE ON THE MISSISSIPPI 69 (1883).

34. *E.g.*, Sally Kift, Address at the Georgia State University College of Law International Conference on the Future of Legal Education, Integrating the Knowing, the Doing and the Practice: An Early Australian Case Study of Curriculum Renewal (Feb. 21, 2008), *available at* <http://law.gsu.edu/FutureOfLegalEducationConference/Papers/Kift-SS.pdf>.

35. *Id.*

36. Mary Lu Bilek, Address at the Georgia State University College of Law International Conference on the Future of Legal Education, A Sequenced Program to Create Access to the Legal Profession and Educate Professionals for Public Interest Practice (Feb. 21, 2008), *available at* <http://law.gsu.edu/FutureOfLegalEducationConference/Papers/Bilek/pdf>.

37. *Id.*

and tuition-discount scholarships, including those for minority students will all be cut. There will be fewer administrators and they will teach more. Faculty, including tenured faculty, will face major layoffs and, if layoffs mirror seniority, most of the new gains in faculty diversity³⁸ will be lost.³⁹

State law schools will face repeated budget cuts until the time when, if states can afford to subsidize higher education at all, undergraduate schools will be the greatest or only priority. Large law schools that do not benefit from equally large endowments have the most to lose. Smaller law schools that now have fewer enhancements (soon to be known as “frills”) can remain more or less intact. Law schools affiliated with universities will return to the bad old days when law schools were cash cows for other units. Independent law schools, whether non-profit or for-profit, probably have the greatest flexibility to contract and adapt to The Long Emergency.

Legal education from sources other than law schools will resume the prominence enjoyed in the nineteenth century,⁴⁰ including studying in a lawyer’s office or by correspondence.⁴¹ The ABA role in the accreditation of law schools will diminish or disappear, as the ABA itself diminishes or disappears along with other national industry associations.

Two questions remain. When will The Long Emergency arrive? What can legal educators do to prepare for it?

The First Rule of Economic Forecasting states, “Give them a number or give them a date, but never give them both.”⁴² Peak-oil prognosticators honor this rule. As William Gibson said, “The future is already here, it’s just not evenly distributed.”⁴³ The summer of 2008 may have been an early bump on a steady trendline that will include even larger bumps or staggering cliffs of shortage and panic.⁴⁴ Technology and the incredible adaptability of humans may smooth out the bumps or help avoid the cliffs, but the trendline of the increasing price and decreasing availability of fossil fuels⁴⁵ seems clear. The resulting impact on our economic life seems inarguable.

Preparing for an uncertain future may, by definition, be impossible. Programs can be put on five-year “sunset” cycles,⁴⁶ but we know they are always

38. See N. William Hines, *Ten Major Changes in Legal Education over the Past 25 Years*, AALSNEWS (Ass’n of Am. Law Schools, Wash., D.C.), Nov. 2005, at 1, 4.

39. Insert prayer for deanly salaries here.

40. See Brian J. Moline, *Early American Legal Education*, 42 WASHBURN L.J. 775, 801 (2004).

41. *Id.* at 798. This might include on-line law schools, if the World Wide Web survives.

42. See George Garrick, *The Evolution of Marketplace Information into the 21st Century*, J. ADVERTISING RES., Sept./Oct. 1996, at RC2. Also honored, if in the breach, by law school course syllabi.

43. *The Science of Science Fiction* (National Public Radio broadcast Nov. 30, 1999) (Talk of the Nation broadcast including William Gibson as a guest), <http://www.npr.org/templates/story/story.php?storyId=1067220>.

44. See, e.g., Peak Oil: Life after the Oil Crash, *supra* note 6.

45. Odland, *supra* note 6, at 1; Peak Oil: Life after the Oil Crash, *supra* note 6.

46. See, e.g., BLACK’S LAW DICTIONARY 1478 (8th ed. 2004) (defining a “sunset law” as “[a] statute under which a governmental agency or program automatically terminates at the end of a fixed period unless it is formally renewed”).

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renewed. Faculty, whether tenured or on long-term contracts, expect lifetime employment on good behavior, just as staff do, so cutbacks are never easy.⁴⁷ Perhaps we will be lucky and the change in our national life and the nature of legal education occurs gradually, adapting to it is easy, and we and our successors are able to live the life we have always imagined. But, like Mark Twain, I don't know.

These are daunting and even dreadful prospects. If there is any positive side to the stark changes coming our way, it may be in the benefits of close communal relations, of having to work really intimately (and physically) with our neighbors, to be part of an enterprise that really matters, and to be fully engaged in meaningful social enactments instead of being merely entertained to avoid boredom. The idea of beauty will surely return from its modernist exile, as one of the few consolations in the years ahead will be our ability to consciously craft things for reasons other than to merely shock and astonish. I believe that cases of what we label “clinical depression,” in our effort to medicalize all aspects of the human condition, will be steeply reduced, despite universal hardship. When we hear singing at all, we will hear ourselves, and we will sing with our whole hearts.⁴⁸

47. Early retirement is a painless attrition program only when law schools can afford it and potential retirees have confidence in the future, including the viability of pensions and health-care plans. None of those conditions exist in *The Long Emergency*.

48. KUNSTLER, *supra* note 5, at 304.