

Cambridge University Press

978-0-521-12785-1 - Ending Dirty Energy Policy: Prelude to Climate Change

Joseph P. Tomain

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ENDING DIRTY ENERGY POLICY

Climate change presents the United States, and the world, with regulatory problems of a magnitude, complexity, and scope unseen before. The United States, however, particularly after the midterm elections of 2010, lacks the political will necessary to aggressively address climate change. *Ending Dirty Energy Policy* argues that the country will not adequately address climate change until we transform our fossil fuel energy policy. Yet there are signs that the country will support the transformation of our country's century-old energy policy from one that is dependent on fossil fuels to a low-carbon energy portfolio. A transformative energy policy that favors energy efficiency and renewable resources can occur only after we have abandoned the traditional fossil fuel energy policy, have redesigned regulatory systems to open new markets and promote competition among new energy providers, and have stimulated private-sector commercial and venture capital investment in energy innovations that can be brought to commercial scale and marketability.

Joseph P. Tomain is Dean Emeritus and the Wilbert & Helen Ziegler Professor of Law at the University of Cincinnati Law School, which he joined in 1987 and where he held the deanship for fifteen years. He practiced general litigation in New Jersey before beginning his teaching career at Drake University School of Law. Dean Tomain has also held positions as visiting professor at the University of Texas Law School; distinguished visiting energy professor at Vermont Law School; visiting scholar in the program of liberal studies at the University of Notre Dame; visiting Fellow at Harris Manchester College, Oxford University; Fulbright senior specialist in law in Cambodia; and visiting environmental scholar at Lewis & Clark Law School. His most recent book is *Creon's Ghost: Law, Justice, and the Humanities* (2009).

Dean Tomain is chair of the board of KnowledgeWorks Education Foundation, founder and principal of the Justice Institute for the Legal Profession, and a board member of the Greater Cincinnati Foundation. He is also a Fellow of the American Bar Association, is actively involved with the ABA Section on Legal Education and Admissions to the Bar, and is a member of the American Law Institute. He has published widely in the field of energy law and policy.

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*To the students and teachers of
Christian Brothers Academy,
Lincroft, New Jersey,
from a member of the Class of 1966.*

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Preface

In both the *Apology* and the *Republic*, Plato has Socrates issue the Delphic command: “Know Thyself.” Throughout the dialogues, Plato, for himself as well as for his teacher Socrates, issues another command: “Question everything.” I had the great good fortune of attending Christian Brothers Academy, CBA to its devotees, in Lincroft, New Jersey, where both commands were embedded in our education. CBA was, and is today, an all-boys high school that offered a college prep curriculum and so much more. As I remember our second day of classes, our homeroom teacher, Brother Brian, rolled up the sleeves of his cassock, which always meant business, stared at us for a moment, then asked: “How many of you were taught by the nuns?” From where I sat, all hands were raised. He paused and then said: “Well forget everything they taught you.”

Forget? What did Brother Brian mean? How could we forget? After all, we just graduated from primary school. And, isn’t the purpose of education to remember all that we had learned? Was he simply taking a not-so-sly dig at the nuns? Was he otherwise preparing us for a different regimen of thought, a regimen taught by the Christian Brothers? Or did he have a deeper purpose? Was he challenging us to unlock the psychological mysteries of education, which, as revealed by Milan Kundera and Jorge Luis Borges, require memory *and* forgetting? Perhaps all of the above.

After his shot at the good sisters, there was a bit of nervous laughter in the classroom; these guys were pretty tough, and we were awfully young, so we were wary. Still, I felt that the message Brother Brian was delivering was crystal clear: “Question everything.” Indeed, as we attempt to know ourselves, we should be prepared to question everything our new teachers were about to teach us as well; otherwise, they would have failed their central mission as teachers.

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As a 14-year-old, I was unaware that Brother Brian's comment constituted the two Socratic commands. CBA was a laboratory of learning. It was, as the Persian scholar Avicenna said of libraries, a school of many rooms, and our core curriculum opened many doors to those many rooms. I dedicate this book to CBA because of the Socratic injunctions and because it was a high school that instilled in us all a great passion for learning through various guises. Brother Bernadine chastised us in French class for not knowing who Jean Paul Sartre was the day Sartre won the Nobel Prize in Literature. Brother John taught us advanced calculus and physics and Brother Andrew taught us advanced biology for no credits because these after-school classes were offered before Advanced Placement courses were invented. Brother John took us to Manhattan for a Federico Fellini film festival. Who knew that the reforms of Vatican II included *La Dolce Vita*? My education at CBA was decidedly not another brick in the wall. Hopefully, *Ending Dirty Energy Policy* is written in the spirit of Socratic inquiry and is, then, true to the spirit of CBA.

The book was written both at the University of Cincinnati and at Lewis and Clark School of Law. At Cincinnati, I bothered our librarians endlessly and thank them for their unstinting help. I thank Jan Smith, Lisa Britt Wernke, Alan Wheeler, Bill Kembelton, and Ron Jones especially for all of their help finding books and reports and keeping the technology working. I also owe special thanks to two classes of Cincinnati law students in my course *Energy Policy and Climate Change* for letting me test out the ideas of the book. I owe a special thanks to James Sproat and Christine Flanagan for their superb research assistance.

I also acknowledge with great appreciation the kindnesses shown to me by the faculty, students, and staff at Lewis and Clark School of Law where I was appointed the Visiting Distinguished Scholar of Environmental Law for the spring 2010 semester. Linda D'Agostino was immeasurably helpful in getting me oriented and guiding me through the university. Faculty members Melissa Powers and Chris Wold were particularly supportive as was Visiting Professor Francine Rochford, who had the unfortunate experience of having the office next door to me and hearing me either curse at the computer or talk about "the book" way too often. Thank you all.