Interview with Michael Gerrard*

1. *When you joined the Editorial Board of the Carbon & Climate Law Review, you had just published the first major anthology on US climate change law¹. Politically, it was not an easy time for federal action on climate change, and many of the chapters consequently focused on developments at state or municipal level and in the private sector. Following the 2016 election, an observer might say that the situation has not changed much – how would you respond to that view?*

Actually, I think the situation has become worse. In 2008 both the Republican candidate for President (John McCain) and the Democratic candidate (Barack Obama) favoured cap and trade legislation, and a bill to adopt it passed the House of Representatives in 2009 (though it died in the Senate). Since then, climate change has become a highly partisan issue, and few elected Republicans will publicly say they believe in anthropogenic climate change, much less want to do anything about it. Thus, barring some unforeseeable event (eg the sudden emergence of a Donald Trump of the left?), climate legislation seems much more distant now than it did in 2007.

2. *In 2009, you joined the faculty of Columbia Law School and launched the Sabin Center for Climate Change Law, which has established itself as a leading hub of research and education on the legal dimensions of climate change. Almost a decade later, what would you consider the most important development(s) in the field? And what do you see as the new frontiers for emerging scholars interested in climate change law?*

With the collapse of Congressional efforts to enact a climate bill in 2009 and 2010, and Trump's efforts to dismantle the climate actions of the Obama Administration, the most important development is the rapid decline in the cost of renewables – especially wind and solar – and the rapid and ongoing development of new technologies essential for the transition from fossil fuels, especially storage and electric vehicles. The technologies of clean energy must be nourished and their deployment must be expanded on a massive scale. The current legal system needs to be

adjusted to facilitate – and at least not impede – this transition. Laws also need to change to cope with the terrible climate disruptions that are likely to happen, especially if the transition is delayed.

3. *For much of your career, you were a very successful attorney in the area of environmental law. You not only have the perspective of a leading scholar, therefore, but have also seen how environmental law operates in practice. Where do you see the greatest potentials and shortcomings of law – as a social institution distinct from other mechanisms to alter human behaviour, such as policies more generally or moral norms – to achieve the large-scale transformations needed to avert catastrophic climate change?*

In the absence of a constitutional right to a clean environment (which some cases are seeking to establish), and with Congress paralysed by partisan divisions, the legal tools at the federal level to fight climate change must mostly be found in existing legislation. This is severely limiting, especially since industry – and now also the Environmental Protection Agency and the Department of Justice, reporting to a climate-denying and fossil fuel-loving President – will ferociously fight any effort to use the current statutes for this purpose. The courts will not move much further than the ballot box. However, they will uphold and enforce the statutes already in place. And the progressive states will continue to be trailblazers, as will the cities that must bear the brunt of much climate change. Until there is a change in either the White House or Congress – preferably both – environmentalists will mostly use the courts to compel the implementation of existing statutes; to try to block specific projects, like coal plants and pipelines; and to seek to hold accountable those who fail to disclose or prepare for coming climate change.

* Michael Gerrard, Andrew Sabin Professor of Professional Practice and Director of the Sabin Center for Climate Change Law at Columbia Law School. The interview was conducted by CCLR Editor-in-Chief Michael Mehling in August 2017. DOI: 10.21552/cclr/2017/3/10

1 Michael Gerrard (ed), *Global Climate Change and U.S. Law* (1st edn, ABA Publishing 2007).