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Book Review: Earth Jurisprudence: Private Property and the Environment

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Earth Jurisprudence: Private Property and the Environment. By Peter D. Burdon. Abingdon, Oxon: Routledge, 2015. xv, 171 pages. Includes bibliographical references and index. ISBN: 978-0-415-63317-8 (Hardback) \$131.00.

Almost every day we hear reports describing another environmental disaster or extreme weather event reminding us that the climate change alarm bells are ringing loud and clear. However, despite this awareness, we remain daunted by the seemingly impossible challenge of changing the course of a future fuelled by economic growth and our misguided view that the Earth, and everything on it, is here for human beings to develop and exploit.

This is the starting point for Peter D. Burdon¹ who has been writing about the environmental crisis and the role of law in its unfolding since about 2007. In *Earth Jurisprudence: Private Property and the Environment* he explores the “evolving social institution” of private property in relation to Western cultural biases toward nature and the environment. He outlines a theoretical framework and presents an “alternative description of private property that is consistent with the philosophy of Earth jurisprudence.” (p. 101)

Burdon draws from many sources in this work but admits his primary influence is the philosophy of theologian Thomas Berry, the self-described cosmologist and “Earth scholar.” Writing from the context of an “Earth community” Berry has observed that “law is central to the present environmental crisis” and believed that what we are experiencing is part of a broader “crisis of culture.” At the root of this cultural crisis is an “anthropocentric assumption” that human beings have been given dominion over the Earth.

Burdon equates this human centred paradigm with the historical view that the Earth was situated at the centre of the universe. The current environmental crisis reflects the need for what David Suzuki has called a “second Copernican revolution,” a revolution demonstrating that “human beings are not the centre of the Earth community.” (p. 47) As Klaus Bosselmann also states in the foreword: “The only realistic perspective is to see ourselves as a small part in an evolutionary process of life.”

It is perhaps then not surprising to read that Burdon believes, “our law is deeply anthropocentric and directed toward maintaining hierarchical structures for the protection of property and economic growth.” (p. 5) However, it might be somewhat more startling to learn that he considers that the law of private property not only contributes to our environmental problems it actually “promotes environmental harm.” (p. 10) It’s a strong opinion and an argument Burdon supports clearly in this book.

He begins by describing how the “myth of *dominium*” has been reinforced by the scientific revolution which had characterized nature as a “lifeless machine.” And he notes that, in the context of current liberal and neoliberal political theory, property owners are invited to “live as isolated individuals concerned only with their own self-interest.” (p. 11) It is this perspective that produces a reduced sense of responsibility for one’s actions which can potentially generate environmental harms.

The proposed alternative is to adopt an “ecocentric” basis for law; essentially an “ecological natural law.” Placing the Earth at the centre of our law making would enable the reconceptualization of our place in an interconnected Earth community which Burdon describes as follows:

¹ Peter D. Burdon is a senior lecturer at the Adelaide School of Law, a member of the Ethics Specialist Group, International Union for the Conservation of Nature and active with Friends of the Earth.

“At the top of the hierarchy is the ‘great law’, which represents the principle of Earth community and the scientific concept of ecological integrity. Beneath the great law is human law, which represents rules articulated by human authorities, which are consistent with the great law and enacted for the common good of the comprehensive Earth community.” (p. 13)

He argues that “the anthropocentric paradigm that has characterised the Western idea of private property is in a period of crisis and needs to be replaced by a sustainable ecocentric paradigm” (p. 49) and asserts that “all components of the Earth community have value.” (p. 10)

Although Burdon touches on the wisdom of indigenous peoples as “a necessary component of any genuine transition toward an ecocentric era” and notes that “the liberation of the Earth community is commensurate with the liberation of indigenous people around the world” (p. 119) it would have been useful to learn more about how Western culture can learn from the experience of indigenous peoples. Also conspicuously absent was any reference to the impact of colonialism, something that might have been brought out as part of Burdon’s discussion of Francis Bacon’s views on “mastering nature” cited as an influence during the scientific revolution of the 16th and 17th centuries.

Despite the notion that we are at a critical juncture where the “capacity of human beings to inflict environmental harm has increased in proportion to developments in technology” (p. 114) Burdon leaves us with a somewhat optimistic outlook. In his concluding remarks he notes the potential for law to have a positive influence on the future,

“While property rights would still be limited by the competing rights of other human beings, they would also be limited by the integral responsibilities we have to the Earth community. Thus, property rights would be shaped, restricted and given formal content by reference to the common good of the comprehensive community. If this position were adopted in the vernacular law of individuals, communities and eventually formalised by the state, it could change the role of private property, from being a fundamental cause of the present environmental crisis, to being an agent for its mitigation.” (p. 118)

Aside for a smattering of annoying typographical errors², for example, ‘dispute’ instead of ‘despite’, ‘though’ instead of ‘through’ and many missing conjunctions, this is a well written and researched study of law in an ecocentric context. It will be of interest to anyone interested in expanding their understanding of our role in the environmental crisis and learning more about the Earth jurisprudence movement. A great addition to your environmental law collection and a nice companion to both Paul Anderson’s *Reforming Law and Economy for a Sustainable Earth*³ and Klauss Bosselmann’s *Earth Governance: Trusteeship of the Global Commons*.⁴

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² The best example occurs on page 129 in reference to Wisconsin Supreme Court decision *Just v. Marinette County*. It’s referred to as *Mariette County* in the text and *Marietee County* in a footnote. All intellectually jarring like a skip in a vinyl record or a scratch in a DVD.

³ Published by Routledge in 2015 (ISBN: 978-1138013865).

⁴ Published by Edward Elgar in 2015 (ISBN: 978-1783477814).