

Book Notes: The Philosophical Foundations of Environmental Law: Property, Rights and Nature, by Sean Coyle and Karen Morrow

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Citation Information

Chaisson, Michelle. "Book Notes: The Philosophical Foundations of Environmental Law: Property, Rights and Nature, by Sean Coyle and Karen Morrow." *Osgoode Hall Law Journal* 43.3 (2005) : 350-350.
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol43/iss3/8>

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THE PHILOSOPHICAL FOUNDATIONS OF ENVIRONMENTAL LAW: PROPERTY, RIGHTS AND NATURE. BY SEAN COYLE & KAREN MORROW. OREGON: HART, 2004. Pp. XV + 228.

BY MICHELLE CHAISSON

Sean Coyle and Karen Morrow challenge the modern conception of environmental law as perceived by many lawyers as merely instrumental—a political response to problems raised by contemporary living. In the view of the authors, environmental law is the product of a distinctly moral theory, one that attempts to address the significance of property, rights, and nature. The foundation of this moral theory rests in the writing of seventeenth-century natural rights theorists, from Grotius to Locke, who viewed individual rights to property as intrinsically valuable and originating from man's relationship to the rest of Creation.

By contrast, in the eighteenth century and beyond, the authors contend that the notion of property as one grounded in nature was destroyed. Instead, through the legal scholarship of Blackstone and Bentham, a positivist attitude toward property rights developed. Throughout this period property rights were determined by reference to the tension between individual and collective interests rather than the relationship between man and nature.

The authors examine the case law and statutory developments of the eighteenth- and nineteenth-centuries, which displayed a general responsiveness to the impact of human actions upon the environment, but note that environmental protection was characterized as instrumentally, rather than intrinsically valuable. It is argued that these judicial and legislative responses have shaped the current conception of environmental law as set of policy-driven, statutory limitations on private entitlement to property that serve to protect collective interests.

In the final chapter, Coyle and Morrow advance the argument that natural rights theory is not completely lost in modern environmental law. In particular, sustainable development is portrayed as a high-profile political attempt to alter the way humanity views its relationship with the natural world. In this sense, the authors connect recent environmental law developments with the deeply historic philosophical conception of environmental responsibility and intrinsic value and demonstrate that environmental law may be viewed as a coherent doctrine with surprising antiquity.
