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Book Review: Unnatural Law: Rethinking Canadian Environmental Law and Policy

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Book Review

David Boyd Unnatural Law: Rethinking Canadian Environmental
Law and Policy (University of British Columbia Press, 2003) 469 pp.

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Unnatural Law is one of the most significant books on Canadian environmental law ever published, and it will likely become the standard reference work in this subject for the next decade. It is also a book of *international* significance, for Canada has traditionally been hailed as one of the most progressive countries for environmental reform. David Boyd's assessment of Canada, however, suggests that international observers' confidence is seriously misplaced. David Boyd is well qualified to judge Canadian environmental law - he is a public interest environmental lawyer, professor at the Victoria University Faculty of Law, and the former Executive Director of the Sierra Legal Defence Fund.

Unnatural Law is organized into three parts, analogous to an appointment with a doctor. The first part identifies Canada's environmental problems and assesses the effectiveness of Canadian environmental law and policy. The second part diagnoses the reasons for the failures (and occasional successes) in meeting environmental challenges. And the third part prescribes legal and policy changes to solve the problems of over-consumption of resources and pollution. Boyd selectively covers federal, provincial and local jurisdictions, reviewing legislation, environmental litigation, policies and institutional arrangements.

Drawing heavily on data from the OECD and other credible sources, Boyd begins with a review of Canada's environmental record (water, air, land and biodiversity) and compares it with the situation in other industrialized countries. On this footing, he assesses the adequacy of Canada's existing laws and policies. The assessment is rather bleak. Among OECD countries, Canada is second last when ranked on a suite of environmental indicators - only the U.S. is worse. Boyd also documents some shocking *290 policy failures - from the collapse of northern cod stocks to contaminated drinking water in Walkerton. Several recurring themes transpire from this catalogue of failures, which are the subject of the second section of the book.

Canada's disappointing environmental performance, argues Boyd, is derived from a myriad of causes. Among the immediate causes, Boyd blames missing laws in key areas (*e.g.*, for wetlands and invasive exotic species), excessive discretionary legislative powers that have not been exercised, inadequate law enforcement, a failure to base policies on best available science, excessive reliance on business self-regulation, and a lack of meaningful opportunities for public participation in environmental decision-making. At first glance, it is difficult to reconcile such problems with the public opinion data discussed in *Unnatural Law* that attests to Canadians' love of wilderness and concern with air and water quality. Given Boyd's assertion that "the legal system is the mechanism by which the values of the people are expressed and our beliefs are acted upon" (at 11), it is puzzling why Canada's environmental laws are not more effective.

The answer, suggests Boyd, lies in the effect of deeper, "structural" barriers to corrective action. These barriers include powerful corporate interests, international trade liberalization, tensions within Canada's federal system, and the excessive concentration of power in the executive branch of government. These structural obstacles grew in the 1990s, when both

federal and provincial governments increasingly pursued economic deregulation and neo-liberal policy agendas that hollowed out environmental regulatory regimes. Boyd correctly argues that we need to look beyond superficial solutions to environmental problems - such as merely issuing some new laws and dressing up policy statements - as can be seen from the U.S. experience. The U.S. has some of the very strongest environmental laws on paper in the world, but its economy is also one of the most ecologically unsustainable. Boyd, therefore, rejects the American approach of merely treating the symptoms of environmental degradation, “without challenging the dominant paradigm of endless economic growth based on ever-increasing consumption of energy and resources” (at 276).

The situation is not, of course, completely bleak. Boyd documents some of Canada's success stories, such as eliminating ozone-depleting chemicals, reducing lead and sulphur dioxide emissions, and the designation of much more area for national parks in recent years. Pressure from international sources and progressive decisions from the Supreme Court of Canada are some of the reasons cited for these achievements. The establishment of the National Roundtable on the Environment, and the *291 federal commissioner of the environment and sustainable development, are among the innovative institutional reforms that have given Canadians the ability to reflect more deeply about their environmental performance.

Although Boyd offers a disturbing account of Canada's environmental laws and policies, he is an optimist and in part three of the book a treasury of possible reforms are offered. At one level, Boyd recognizes that ethical change in Canada is essential to underpin improved environmental practices. For modernizing environmental law, it is to Europe, particularly Sweden and the Netherlands, that Boyd believes Canada should look for inspiration. Although he does not use the term, the kind of reforms Boyd advocates are similar to those associated with the school of thought known as “ecological modernization.” The theory of ecological modernization, which arose in Germany during the 1980s, posits that there can be a healthy synergy between economic development and environmental protection where economies and technologies are “modernized” to allow for more efficient and less wasteful development. Thus, Boyd advocates eliminating subsidies for things that we should not encourage, such as pesticides and fossil fuel industries, coupled with imposing taxes on waste and habitat destruction. Through ecological fiscal reform and redefinition of gross domestic product accounting to incorporate environmental changes, Boyd believes Canada can achieve sustainable development and maintain high living standards. Although he does not discuss the role of the financial services sector, one could also at this point add that banks and investors need to be regulated or given incentives to become more environmentally sensitive when financing corporations.

Boyd's analysis is therefore salient not merely for its Canadian content, but for its implications for the study of comparative environmental law. In the 1970s, North America led the world in environmental law reform. Since the early 1990s, the European Union has set the pace. *Unnatural Law* can help us to understand the reasons for this shift. One must be aware, however, of the practical challenges of adopting the Swedish or Dutch “role model” for sustainability in North America. Culturally, Canada's vast size has encouraged a frontier attitude of seemingly limitless water, energy and other natural resources, which thereby impedes the emergence of an ethic of environmental restraint. Sweden also does not have to cope with the high levels of immigration and population experienced by Canada, which fuels demand for resources. These are problems that Boyd is aware of, but his discussion of the European models does not revisit the question of whether the “structural” barriers that have *292 hamstrung Canada's progress would likely impede the implementation of the Swedish model.

Whilst *Unnatural Law* is more comprehensive than other books on Canadian environmental law, it is not an exhaustive account. Notably, there is not much discussion of the environmental role of aboriginal peoples, which is a pity given the extensive environmental provisions in the comprehensive lands claims agreements negotiated since the 1970s. On the other hand, it is refreshing to see a book that does not stop at Canada's domestic situation, but aptly looks at Canada's role in alleviating international environmental problems, especially problems in developing countries.

Overall, *Unnatural Law* is a meticulously researched, informative and persuasive work. It combines careful attention to detail with an infallible eye for the big picture. The gift of this book is that whilst documenting a litany of failures, it also

is forward-thinking and optimistic about how the system can adapt to changing demands and values. *Unnatural Law* sets a new standard for scholarship on Canadian environmental law.

Footnotes

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