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CARLA SBERT, *THE LENS OF ECOLOGICAL LAW: A LOOK AT MINING*
(EDWARD ELGAR PUBLISHING LIMITED 2020)

Reviewed by: Roopa Madhav, PhD Scholar, SOAS, University of London

BOOK REVIEW



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Environmental jurisprudence, a piecemeal response over time, to several ecological disasters and specific environmental concerns, is working towards a more holistic, eco-centric (as opposed to anthropogenic) rethink. There is steady movement within environmental jurisprudence to a more cohesive whole in response to the global ecological crisis, not dissimilar to the trends witnessed in economics towards a degrowth economic theory. Sbert's work is to be read against this background. In the way ecological economics sought to address the limitations of environmental economics, the rule of ecological law attempts to rethink contemporary environmental law.

Ecological law is not an evolution from environmental law. Rather, it is departure from law's role in mitigating the negative effects of economic activities to addressing its root causes: a paradigm shift from anthropocentricity to interconnectedness and ecocentrism.¹ Ecological law rests on the assumption that infinite economic growth is not possible because it is incompatible with a finite planet, and therefore ecological law prioritizes respect of the planet's ecological limits.² The rethink was triggered by the Club of Rome's introduction of the Limits to Growth debate and the response of the UN WECD in putting together the idea of Sustainable Development.

The book is divided into three parts – in Part I the author builds an argument for a shift towards ecological law as new legal paradigm for an ecologically just society. This section also explores the close links between indigenous legal systems and the Green Legal Theory. In Part II, the author proposes an analytical tool to help improve the understanding of what such a shift would entail. A more focused exploration of the normative underpinnings of ecological law helps the author identify three core principles – ecocentrism, ecological primacy and ecological justice³ – as being critical for building an analytical framework i.e. the lens of ecological law.

In Part III, the author applies the analytical framework to three critical mining case studies, testing and laying bare the strengths and weaknesses of the approach, to point towards the hurdles in shifting to the ecological paradigm. The first case study explores the use of the lens of ecological law to probe current law governing mining in El Salvador. El Salvador banned all metal mining becoming the very first country in the world to ban all sub-surface mining and this key legislation is analysed from the ecological lens. The second case study examines the legal framework for mineral extraction proposed in the Ring of Fire, Ontario, in particular Treaty 9 and provisions of the Constitution, with the lens of ecological law and sustainability. The third and the final case study examines the two key concepts recognized in Bolivian law – the concept of living well (*bien vivir* – an Andean concept) and the rights of Mother Earth – to glean their significance for ecological law with a particular focus on Bolivia's lithium industrialization project in the Salar de Uyuni.

In building the analytical framework of an ecological lens, the author draws support from a range of key thinkers in the field. The author relies on Cullinan's Wild Law to build arguments a new kind of jurisprudence – the Earth Jurisprudence (EJ). EJ, through a multi-disciplinary approach from the fields of theology, philosophy and the law, aims to develop a jurisprudence that is consistent with the laws of the universe. Cullinan's limitation, however, is that he does not engage with a critique of the economic growth paradigm. That critique is offered by Samuel Alexander who argues that EJ, by placing itself outside the growth paradigm, provides an 'alternative conceptualization of 'nature' in law, especially property law, where human-centered economic analysis dominates'.⁴

It is Graver who attempts to find a middle path by choosing the term 'ecological law' to emphasize the primacy of ecological integrity over economic and social concerns and argues that this term avoids the ambiguity associated with the term 'sustainability'. Bosselmann argues for ecological integrity to be the *grundnorm*.⁵

1 Pg 42.

2 Pg 32.

3 Pg 78.

4 Pg 26.

5 Pg 40.

The author takes forward and builds on the work of Graver and Bosselmann. The lens of ecological law proposed in Chapter 9 builds on the core principles identified as important to ecological law and on an approach proposed by Graver as the 'rule of ecological law', a tool in constraining economic growth as an initial goal but more long term as an ecological approach to the law itself. In sum, the author views the ecological lens as a new and effective jurisprudential approach in law, to address today's ecological crisis.

Admittedly the analytical tool is too broad and needs further narrowing down and sharpening for it to be effective. But then there are deeper issues to tackle. For instance, the understanding of mineral resources as property needs a fundamental shift for it to be considered from an ecological lens and the case studies demonstrate the difficulties of rethinking the underlying grid which is primarily economic to one that is ecological. In other words, fitting the ecological lens onto existing frameworks without undoing the entire economic frame is the primary challenge before this analytical tool. The task, therefore of counter-mapping the existing (largely economic framework) approach with the ecological lens, is only partially successful as the author's beginning point of study is not the dismantling of the existing approach to lay bare the fault lines and the more entrenched conceptual roots that need uprooting. In other words, for Graver's ecological lens to be operational, must engage with Cullinan's *Earth Jurisprudence* at some point, chipping away at existing paradigms to build alternative paradigms.

Aside from the lack of effective counter-mapping, the author also highlights the issue of implementation. For instance, in the Bolivian case study where ecological integrity is the basis for the framework law, the author concludes that there is a bigger challenge of implementation of such a framework, as the institutional shift to an alternative paradigm should also coincide with the larger paradigm shift globally as the interlinking of economies is an inescapable reality in a globalized world. The other identified issue is that the principles are too broad, general, and at times overlapping, making its application difficult and imprecise. The author also falters in drilling down the core contents of the principles into several workable sub-components so as to be an effective enquiry.

The opportunities for examining or re-examining the ecological values underpinning our laws to promote ecological justice, is at the heart of the author's exploration. It is a commendable effort. This book is a useful addition to the emerging discourse on ecological law and offers a new methodological tool to explore and further refine.

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