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SPECIAL CONFERENCE ISSUE: NEW THINKING ON SUSTAINABILITY

THIS ISSUE INCLUDES CONTRIBUTIONS BY

Joshua Aird	Sir Geoffrey Palmer
Klaus Bosselmann	Nicole Rogers
Peter D Burdon	Nathan Ross
Joel Colón-Ríos	Greg Severinsen
Benjamin F Gussen	Linda Sheehan
Catherine J Iorns Magallanes	Gerald Torres
Gay Morgan	

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI

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BOOK REVIEW: FROM OBJECT TO SUBJECT – THE PRACTICE OF WILD LAW

*Joshua Charles Raymond Aird**

Book Review of Michelle Maloney and Peter Burdon (eds) Wild Law – In Practice (Routledge, New York, 2014).

A community's legal system creates a framework in which it can promote desirable activities while discouraging others.¹ It reflects the choices a community has made and thus the values and morality to which the majority attest.² The structure of environmental regulation is part of this, where the values reflected are those of the majority: human superiority and domination over the natural world.³ Under these values, exploitation of the environment for human use is not only permissible, it is actively encouraged.⁴ This anthropocentric model of environmental protection has, however, failed

* LLB(Hons) student, Victoria University of Wellington. Thanks are due to Catherine Iorns who introduced me to Wild Law as well as supervised and edited this review.

1 DE Fisher *Australian Environmental Law: Norms, Principles and Rules* (2nd ed, Thomson Reuters, Sydney, 2010) at 6.

2 Ian Lowe "Wild Law embodies values for a sustainable future" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 3 at 4.

3 Thomas Berry "Rights of the Earth: We Need a New Legal Framework Which Recognises the Rights of All Living Beings" in Peter Burdon (ed) *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, Kent Town (SA), 2011) 227 at 227; Cormac Cullinan "Wild Law" (speech to World People's Summit on Climate Change and Rights of Nature, Cochabamba, 22 April 2010); and Cormac Cullinan "If Nature Had Rights What Would We Need to Give Up?" in Peter Burdon (ed) *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, Kent Town (SA), 2011) 230 at 232.

4 Cormac Cullinan "Wild Law", above n 3.

us. Waterways flood with pollution while our rivers and lakes are dying.⁵ We are losing biodiversity at an alarming rate and climate changes seem out of control.⁶ More recently the impact of environmental mismanagement on the human population is becoming increasingly prevalent, with significant problems forecast for the future security of our food, water, health and wellbeing.⁷ A new approach to environmental management and protection is sorely needed. *Wild Law – In Practice* aims to produce that new approach. In doing so it facilitates the transition of Earth Jurisprudence into a viable alternative to the current dominant model.⁸

With an impressive list of contributors including environmental activists, academics and judges, Michelle Maloney and Peter Burdon's *Wild Law – In Practice* captures the developments and challenges of implementing a new system: a system of Wild Law. *Wild Law – In Practice* succeeds in cementing Wild Law as a credible philosophy of environmental management and critical theory of law. It builds on the foundations laid by Cormac Cullinan's *Wild Law: A Manifesto for Earth Justice* and Peter Burdon's first book *Exploring Wild Law*,⁹ and continues to discuss the need for a fresh approach to environmental regulation.¹⁰

The message that catapults the reader into *Wild Law – In Practice* is that environmental laws are stagnant, environmental protection is failing and "crisis" is no longer part of the future tense.¹¹ With this introduction Ian Lowe illustrates a sombre and candid study of the way in which environmental law has been approached in the last 30 years.¹² Lowe describes how environmental laws have been

5 World Wide Fund for Nature New Zealand Beyond Rio: New Zealand's Environmental Record Since the Original Earth Summit (May 2012) at 12; and Mike Joy "Paradise Squandered; New Zealand's Environmental Asset Stripping" (2014 Bruce Jesson Memorial Lecture, University of Auckland, Auckland, 15 October 2014) at 13.

6 World Wide Fund for Nature New Zealand, above n 5, at 14; and Mike Joy, above n 5, at 4.

7 Mike Joy, above n 5, at 14, citing research which shows that 18,000–34,000 New Zealanders contract waterborne diseases every year.

8 Earth Jurisprudence is the philosophy which recognises that Earth, not human interest, is primary. It acknowledges that humans are born into an ordered and lawful universe, to whose laws we need to comply if we are to be a benign presence on Earth. Wild Law is the way in which Earth Jurisprudence principles can be introduced into the legal system.

9 Peter Burdon (ed) *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, Kent Town (SA), 2011).

10 Cormac Cullinan *Wild Law: A Manifesto for Earth Justice* (2nd ed, Chelsea Green Publishing, White River Junction (Vermont), 2011).

11 Peter D Burdon "Earth Jurisprudence and the project of Earth democracy" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 19 at 19.

12 Lowe, above n 2.

exploited by commercial interests to maximise short term gain while environmental protection has been disregarded. At best, environmental law has slowed the complete degradation of nature, not for its intrinsic value however, but for future profit.

All too often texts such as this suggest there is one silver bullet to the problems the law encounters; yet *Wild Law – In Practice* refreshingly suggests that there is no one panacea to solving the problem of environmental protection. Earth Jurisprudence and Wild Law are instead lenses through which the current model of environmental regulation is critiqued.

The text is made up of four distinct parts with contributions from a range of authors. Part one focuses on the methods through which Wild Law can be introduced, with a range of solutions being canvassed. Peter Burdon discusses adaptation from inside the anthropocentric system and developing the legal and political systems of western nations to incorporate Wild Law.¹³ The role of society and the "grassroots" in influencing the implementation of Wild Law is also canvassed by Karen Morrow.¹⁴ She examines the role and benefit of challenging existing structures through increasingly sophisticated and well organised agendas for change. The Environmental Defenders Offices—offices of non-profit environmental practices—are also argued as a way for change and implementation of the Wild Law theory.¹⁵ Full anarchy and destruction of the "growth fetish" in western capitalist democracies is argued as the only true way to build a new model and address environmental concerns in totality.¹⁶

Part two starts with chapters from two leading Australian jurists and explores how Wild Law and earth-centred principles can be implemented in the judicial and legislative systems.¹⁷ Following this, Nicole Rogers looks at the challenges facing those wanting to incorporate Wild Law into western constitutions.¹⁸ Constitutional incorporation of the rights of nature in Ecuador and protection of

13 Peter D Burdon, above n 11; and Samuel Alexander "Wild Law from below: examining the anarchist challenge to Earth Jurisprudence" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 31.

14 Karen Morrow "Peoples' Sustainability Treaties at Rio+20: giving voice to the other" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 45.

15 Brenda Sydes "The challenges of putting Wild Law into practice: reflections on the Australian Environmental Defender's Office movement" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 58.

16 Alexander, above n 13, at 31.

17 Brian J Preston "Internalizing ecocentrism in environmental law" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 75; and D E Fisher "Jurisprudential challenges to the protection of the natural environment" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 95.

18 Nicole Rogers "Who's afraid of the founding fathers? Retelling constitutional law wildly" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 113.

nature's intrinsic value illustrates that Wild Law *is* being incorporated, yet more still needs to be done.¹⁹ In many respects nature has become another tradable commodity: "Nature Inc", as Erin Fitz-Henry describes it.²⁰ Often under the guise of environmental protection, the likes of the New Zealand Emissions Trading Scheme and a variety of other biodiversity offset schemes continue the commodification of nature.²¹ A Wild Law critique exposes this contradiction of environmental protection and exploitation. While many options are canvassed as a way to implement Wild Law, the core idea of personhood remains central to the discussion.

Rights discourse has been used as one of the dominant responses in seeking to undermine the foundations of the prevailing law and to provide a vision for ending exploitation of the environment. Giving personhood and legal rights to nature is often the first thought when one considers Wild Law. It encapsulates the idea that the protection of the environment requires humans and nature to be on equal footing, and that we must turn nature from an object to a subject.²² There is, however, no sense of a one-fits-all approach. Ideas are canvassed and assessed for their impact and their conformity with Wild Law principles. Part three begins such an assessment with Erin Fitz-Henry examining the barriers currently being addressed by Rights of Nature advocates in Ecuador.²³ A more general approach to the rights of nature follows.²⁴ This is set within a broader context of how social movements can prevail against the crosswinds of structural barriers and citizen apathy. Specifically in the context of water, a dual rights approach is proposed that shares water rights between people and the natural world.²⁵ The Rights of Nature and legal pluralism is also discussed and offers insights into how the Wild Law movement can both learn and create spaces to engage with indigenous knowledge.²⁶

19 Erin Fitz-Henry "Decolonizing personhood" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 133.

20 At 133.

21 Brendan Grigg "Biodiversity offsets: a dangerous trade in wildlife?" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 213 at 225.

22 Fitz-Henry, above n 19, at 133; Mari Margil "Building an international movement for Rights of Nature" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 149; and Alessandro Pelizzon "Earth laws, rights of nature and legal pluralism" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 176.

23 Fitz-Henry, above n 19, at 133.

24 Margil, above n 22, at 149.

25 Linda Sheehan "'Water as the way': achieving wellbeing through 'right relationship' with water" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 161.

26 Pelizzon, above n 22, at 176.

This incorporation of indigenous cosmology is of particular importance and relevance to New Zealand. Indigenous peoples and their worldwide views have occupied a special position within the emerging discourse of Earth Jurisprudence from the very beginning,²⁷ and Māori cosmology is no different. Māori live in conscious awareness of the stars in the heavens, the flows of the rivers and the life force of *te taiao* (the environment).²⁸ According to Māori, humans are tightly connected to the land and to the natural world.²⁹ The theory of Wild Law is based on this idea, that humans are only one part of a wider earth community, rather than being the centre of it.³⁰ This indigenous cosmology can be further employed to encourage Wild Law ideals and create enduring environmental protection practices.

Part four of the book ends with an Earth Jurisprudence perspective of current practices in areas such as biodiversity offset schemes and carbon pricing. The idea of living within our ecological limits is excellently progressed by one of the book's editors, Michelle Maloney.³¹ Wild Law is then further employed to expose the "green washing" that is taking place in society while continued harm comes to the environment.³² Finally, Steven White provides a look at the similarities and differences in approach between Wild Law and animal law. This provides a solid base for continued discussions between these two fields.³³

Wild Law – In Practice is an empowering text exploring a range of issues that face environmental lawyers, activists and academics. It is not solely concerned with legislative change but considers other ways in which environmental protection can be improved. In this regard it is a valuable tool for policy makers and students alike. It contains both theory and practice, application and action. It illustrates

27 Pelizzon, above n 22, at 177.

28 Waitangi Tribunal Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity (Wai 262, 2011) vol 1 at 237. See also examples in Catherine Iorns "Maori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology that Protects the Environment" (2015) 21 Widener Law Review (forthcoming); and Catherine J Iorns Magallanes "Reflecting on cosmology and environmental protection: Maori cultural rights in Aotearoa New Zealand" in Anna Grear and Louis J Kotzé (eds) *Research Handbook on Human Rights and the Environment* (Edward Elgar Publishing, Cheltenham, 2015) 274 at 279–281.

29 This is expressed in the saying "E ai ki te Māori he hononga ita tō te tangata ki te whenua me te taiao." See Waitangi Tribunal, above n 28; and Iorns, above n 28, for examples of this view.

30 Thomas Berry *The Great Work: Our Way into the Future* (Bell Tower, New York, 1999) at 4.

31 M Maloney "Ecological limits, planetary boundaries and Earth Jurisprudence" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 193.

32 Grigg, above n 21, at 213; and Felicity Deane "Emissions trading and Earth Jurisprudence: will liabilities protect the atmospheric commons?" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 230.

33 Steven White "Wild Law and animal law: some commonalities and differences" in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice* (Routledge, New York, 2014) 247.

the possibilities of Wild Law while also marking its most recent successes. I fully recommend this book to environmental and legal scholars; it provides many ideas of how to adopt a different approach to law and regulation of the environment, so that we can truly make a difference and ensure that the environment that we have today will be available for generations to come.

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