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Environmental Law: A Guide to Concepts

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BOOK REVIEWS

Environmental Law: A Guide to Concepts

Bruce Pardy

Toronto: Butterworths, 1996, 293 pp.

Reviewed by Ikechi M. Mgbeoji†

By creatively subverting¹ the values and institutions underpinning pre-existing legal disciplines², environmental law has stealthily moved from the periphery of normative discourse to the centre-stage. Galvanized by issues of air and water abuse³ decline and privatization of biological diversity,⁴ biotechnology,⁵ trade and intellectual property⁶, *et*

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¹ Oliver A. Houck, "On the Law of Biodiversity and Ecosystem Management" (1997) 81 *Minnesota Law Review* 869 at 881. A critical survey of the history and undercurrents of contemporary environmental law shows that it arose and operates on the basic premise that "other legal endeavors have failed fundamentally to protect the natural world." See also; William H. Rodgers Jr., "The Most Creative Moments in the History of Environmental Law: The Who's" (1999) 39 *Washburn Law Journal* 1.

² P. Birnie & A.E Boyle, *International Law and the Environment* (Oxford: Clarendon Press, 1992). See also, Eugene Odum, *Fundamentals of Ecology* (Philadelphia: W.B Saunders, 1953).

³ Ramee Panjabi, *The Earth Summit at Rio-Politics, Economics, and the Environment* (Northeastern University Press, Boston, 1997); Luigi Campiglio, *et al*, eds., *The Environment After Rio-International Law And Economics* (Dordrecht: Martinus Nijhoff, 1994)

⁴ Lyle Glowka, *et al*, eds., *A Guide to the Convention on Biological Diversity* (Gland, Switzerland: IUCN, 1994) at 1.; U.N General Assembly, Draft World Charter for Nature, Report of the Secretary General, Thirty-Sixth Session, Agenda item 23, Doc. A/36/539/13th October 1981, Annex 1, Appendix 11, pp. 14-6.

⁵ M. Kenney, *Biotechnology: The University Industrial Complex* (New Haven: Yale University Press, 1986); R. Eisenberg, "Patenting the Human Genome", (1990) 39 *Emory Law Journal* 721. See also, T. Roberts, "Broad Claims for Biotechnological Inventions" [1994] 9 *European Intellectual Property Review* 373.

⁶ Peter Drahos, *A Philosophy of Intellectual Property* (Dartmouth: Aldershot, 1996) at xi; Stephen Brush and Doreen Stabinsky eds., *Valuing Local Knowledge: Indigenous People and Intellectual Property Rights* (Washington/Covelo: Island Press., 1996); Cary Fowler and

cetera, a more holistic and “environmentally friendly” regime of “rights”⁷ is on the ascendancy.

Diverse disciplines⁸ such as non-western ethics,⁹ global politics,¹⁰ international human rights, torts, contract, economics¹¹ have contributed ideas and concepts which have now congealed into contemporary environmental law. Environmental law is thus, in a manner of speaking, a coat of many colours. This naturally raises the problem of confusion and obfuscation in concepts hindering the clear definition and articulation of issues in environmental law.¹² The boundaries of the concepts in environmental law are vague and their definitions are sometimes elusive. This labyrinth is further complicated by the plethora of instruments on environmental law at various levels of jurisdiction – local, provincial (state), national and international. The cluttering of environmental law with ambiguous and imprecise concepts has become a “lawyer’s nightmare.”¹³ Bruce Parry’s *Environmental Law: A Guide To Concepts* attempts to rescue the bewildered scholar, practitioner and policy-maker from the confusing terminologies¹⁴ of environmental law.

Pat Mooney, *Shattering: Food, Politics and the Loss of Genetic Diversity* (Tucson: The University of Arizona Press, 1990); Simone Bilderbeek, et al eds., *Biodiversity and International Law-The Effectiveness of International Environmental Law* (Amsterdam: IOS Press., 1992)1982.

⁷ G.W.F. Hegel, *Philosophy of Right* (1821; T.M.Knor tr., Oxford University Press: Clarendon, 1952, 1967 reprint) at 151.

⁸ Editors of the *Harvard Law Review, Trends In International Environmental law* (American Bar Association, America, 1992).

⁹ Alexander Gillespie, *International Environmental law, Policy and Ethics* (Oxford: Clarendon Press, 1997); Kristin ShraderFrechette, “Environmental Ethics and Global Imperatives” in Robert Repetto, ed., *The Global Possible* (New Haven: Yale University Press, 1985) at 97.

¹⁰ Donald Kelley; et al, *The Economic Superpowers and the Environment* (San Francisco: W.H. Freeman and Company, 1976); Vandana Shiva, *Monocultures of the Mind-Perspectives on Biodiversity and Biotechnology* (New Jersey: Zed Books Ltd, 1993); Vandana Shiva, *Staying Alive-Women, Ecology and Development*, (London: Zed Books Ltd., 1988).

¹¹ Charles Perrings, *Economy and Environment – A Theoretical Essay on the Interdependence of Economic and Environmental Systems* (Cambridge: Cambridge University Press, 1987).

¹² Arhus Tansley, “The Use and Abuse of Vegetational Concepts and Terms” (1935) 16 *Ecology* at 284307. But see Clive Parry, *The Sources and Evidences of International Law* (Manchester: Manchester University Press, 1965). Parry argues that customary international law has gone past the age of child-bearing.

¹³ Parry, at ix.

¹⁴ P. van Heijnsbergen, *International Legal Protection of Wild Fauna and Flora* (Amsterdam: Ohmsha Press, 1997). See also, *Wolfgang Sachs, The Development Dictionary:*

The notorious imprecision and ambiguity in the language of environmental law is one of the major obstacles to the realization of its objectives.¹⁵ Thus, the problem with conceptual obscurantism and ambiguity in environmental law is not one of semantics but bears heavily upon the substance, constitution, and intention of the instruments on environmental law. Clarity in language and concepts in legal instruments define and determine the substance and extent of obligations and duties. This reality underscores the importance of Pardy's book.

Pardy ingeniously puts in various contexts an alphabetical definition of the most important concepts in environmental law. Although this method may be inescapable in a work of such nature, it is a credit to the author and perhaps, the book's strongest point. To make his definitions of environmental law concepts clearer to the reader, Pardy also adopts a multiple method approach. The first line in this multiple approach style is a three-tiered level of definition of the concepts in environmental law. The first tier is a grammatical definition of the concepts. The second tier is a brief but clear commentary on the concept. The third tier matches the concept (as explicated) with related terms, competing theories and concepts. By this three-tiered method of definition, Pardy's snapshots of the concepts in environmental law attain the rare merit of providing *meaning in context*.

The second line in Pardy's multiple approach style is the inclusion of a Master Chart which divides environmental law concepts into respective areas. This is an obvious and necessary attempt to acknowledge the debt which environmental law owes to other disciplines. The first group of concepts are those identified by the author as relating to the environment *per se*. The second group is made up of those concepts borrowed from legal regulations on the environment. The third covers concepts derived from the law of Tort. The last group is from Property, Contract and Corporate Commercial laws. By Pardy's architecture, this structural and normative medley, constitutes the edifice of environmental law concepts. While Pardy's basis of

A Guide to Knowledge as Power (London: Zed Books, 1992) at 35-36.

¹⁵ W. Lesser, *Sustainable Use of Genetic Resources Under the Convention on Biological Diversity – Exploring Access and Benefit Sharing Issues* (Oxford: CAB International, 1997).

delimitation of environmental law concepts in his Master Chart appears discretionary, the important issue is that the book acknowledges the peculiar reliance on, and intellectual symbiosis between diverse disciplines and the human environment. The sub-text is that interdisciplinary studies and holistic perspectives on the diversity of human knowledge and institutions is a phenomenon on the ascendancy, which has probably come to stay. However, Pardy's effort rests on shifting grounds and this is not his fault. Concepts in environmental law are still evolving. Environmental law, more than any other contemporary discipline, is value laden, controversial and its concepts are undergoing varied metamorphoses. On a more positive note, this phenomenon marks out Pardy's book as a courageous effort.

Although the concepts used by Pardy are largely drawn from the jurisdictions of Canada and New Zealand, their relevance transcends the national borders of those two countries and have global significance. Similarly, the focus of the book on domestic law does not diminish its international relevance. The issues and concepts in environmental law defy traditional notions of state sovereignty – they are inherently international and global. In sum, Pardy's book is a welcome addition to the burgeoning literature on environmental law.