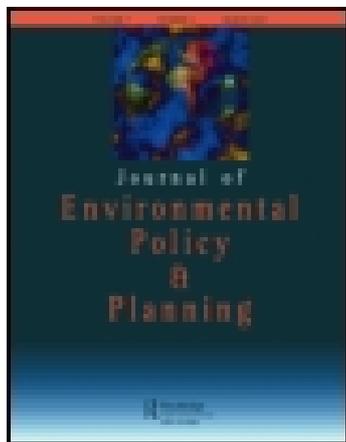


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Legal and Political Challenges of Governing the Environment and Climate Change: Ruling Nature

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BOOK REVIEW

Legal and Political Challenges of Governing the Environment and Climate Change: Ruling Nature

Gary Wickham and Jo-Ann Goodie (Eds)

Routledge, London, 2013. 154 pp., \$135.00 (hardback), ISBN 978-0-415-67464-5

This book's first author is a Professor of Sociology, and its second author is a Senior Lecturer in Law. As such this very well-written work combines a rich breadth of scholarship and erudition uncommon in the specifically legal literature on climate change, and perhaps in the wider literature on the environment also. The book as a whole is divided into seven chapters. The first chapter is concerned to delineate what the authors describe as 'legal-political government', a conception that runs throughout the chapters to come as their central motif. The work as a whole is a little light on the legal aspects of the environment ('environmental law'), and one waits some time for law and policy pertaining to climate change to be engaged directly (Chapter 6); however this provides opportunity for space to be devoted to a spectrum of other interesting, inter-related issues. In this regard, the text evokes fundamental questions pertaining to the nature and origins of law, and the functional and ethical parameters pertinent to the governance of the environment.

What, then, is to be understood by 'legal-political government'? Chapter 1 commences the development of the concept. Here, the authors proceed to identify and map out 'two rival understandings of human nature', which are

developed in such a way as to underpin two rival versions of ... law, which in turn have gone on to underpin two rival approaches to government, one of which informs legal-political government. (pp. 2-3)

The first of these two understandings is 'built around the idea of perfectibility':

By this perfectionist way of thinking, while humans are not always perfect they will always strive towards perfection because nature is ultimately perfect and is therefore always, of necessity, seeking to return that which it has produced to perfection. (p. 3)

This position cannot be reduced accurately to a simple summary here, but for present purposes it is a position that is loosely analogous to conventional notions of 'natural law' and attendant idealistic conceptions of quasi-transcendent moral value. The authors assert that this tradition is associated with

the basis of the most enduring form of opposition to legal-political government, usually featuring the idea that reason-based morality and/or religion are more powerful than law and politics, that law and politics

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have their place, but must know that their place is below morality and/or religion. (p. 3)

The second understanding that the authors seek to distinguish holds instead that:

humans are not perfect; their disquietude and constant violence make this empirically obvious ... and we should develop techniques to help us avoid the dangers of nature, especially the dangers of the uncontrolled passions of fractious humans. (p. 3)

Notwithstanding a degree of fluidity between both positions—the ‘world is too complex for that’ to be otherwise (p. 15)—this latter ‘anti-perfectionist’ understanding is favoured overwhelmingly by the authors. It is ‘[t]his tradition [that] is the basis of legal–political government.’ (p. 4)

Whilst ‘[t]he perfectionist position holds that the earthly laws of earthly rulers and the earthly politics in which they engage must always be subservient to externally sourced natural law’, the authors’ alternative view holds that ‘there can be no force superior to the sovereign’ (but provided that he/she/it seeks to use the facility to rule to limit ‘dangers posed by uncontrolled passions’; p. 5). A tension strung between these binary polarities pervades the book, and in it one sees reflected aspects of the traditional conflict between ‘natural law’ and ‘legal positivism’, as exemplified by the classic debate between HLA Hart (1958) and Fuller (1958). As the book unfolds, it progressively builds into the conception of legal–political government the notion of ‘interests’, which constitute the presence of competing norms and which extend to the overriding norm of legal–political government, described as ‘civil peace’:

the sole norm of legal–political government is: the pursuit of the widest possible appreciable spread of peace, security, well-being, and prosperity among the humans within each territory being governed (this norm is sometimes referred to simply by the term ‘civil peace’ ...). (p. 13)

Structurally the book is very clearly laid out, and stylistically it is consistently dynamic and engaging. Chapter 2 proceeds to develop the notion of legal–political government introduced in Chapter 1; Chapter 3 examines the environment with respect to aesthetics and science in the context of legal–political government, with the discussion beginning in the eighteenth century and moving towards more recent times; Chapter 4 is more overtly ‘legalistic’, engaging with ‘the private common-law mode of governing the environment’ (p. 66) and according particular attention to ‘toxic tort’, with further particular attention accorded to risk (pp. 72–89); Chapter 5 is similarly legalistic, and considers the public law government of the environment; Chapter 6 engages directly with climate change; and Chapter 7 provides a summative conclusion, making reference to two Australian case studies pertinent to climate change.

It should be clear from the above that the book possesses significant merits. This notwithstanding, the work contains a range of problematic features. Space precludes detailed exploration of these matters, but a sense of their scope and character may be offered.

Chapter 6 (concerning climate change) is consistently troubled by inadequate acknowledgement of the scientific consensus on anthropogenic global warming. The text is peppered with the following sort of commentary: a precautionary

approach to the dangers of climate change leads to policies ‘which are increasingly based on feelings and intuition rather than evidence and facts’ (p. 127, quoting Frank Furedi); ‘uncertainty has intensified “in the light of an even newer science [ecological science] . . . one that is consulted less for the knowledge it offers than the doubt it insinuates”’ (p. 120 (authors’ parentheses and insertion), quoting Francois Ewald). As a consequence of saturating the text with these sorts of points, the authors’ brief acknowledgement of the Intergovernmental Panel on Climate Change’s crucial assessment of man’s negative contribution to anthropogenic global warming (at p. 117) strikes the reader as a largely inconsequential passing note.

The concept of legal–political government itself is also pervaded by what some may consider to be an unnecessarily bleak view of humanity. Witness the miserable view of natural man drawn from the philosophy of Samuel von Pufendorf (at p. 23, drawing on Ian Hunter) wherein Pufendorf entirely edits out of the human character notions such as empathy and kindness. Similarly, witness Alfred Wallace’s glorification of the ‘positive checks’ of a natural order that ‘keeps down the population of savage races’ to the benefit of ‘more civilized peoples’ (p. 63); Wallace’s passage as fully quoted in the book is remarkable for its ability to condense imperialism, elitism and racism into so short and potent a space of words. Legal–political government is not predicated upon these ideas per se, but packing them around the circumference of its conceptual development may be suggestive of a radically bleak view of humanity at play within its framework. An ‘anti-perfectionist understanding of nature’ is an understanding ‘by which humans are naturally imperfect and more likely to be destructive than peaceful’ (p. 46), and ‘today’s citizens in law-and-politics countries are . . . controlled by fear’ (p. 27). It is argued that

nature will allow the strongest possible ruler . . . to win control and to use this control to calm the destructive tendencies of those being ruled (because nature has instilled in those being ruled a fear of death and, hence, a fear of the individual or assembly who or which can, as unchallenged ruler, impose death on them). (p. 46)

To some these sorts of ideas—in the tradition of Hobbes’ *Leviathan* and perhaps redolent of Machiavelli’s *The Prince*—may seem deeply pessimistic. Where a reader does not recognize his or her fundamental understanding of humanity in such a vision, it may make the notion of legal–political government considerably more difficult to accept.

Furthermore, the book’s thesis embeds legal–political morality within the notion of ‘civil peace’: ‘the public morality of legal–political government [is] a morality concerned only with fostering widespread appreciable civil peace’ (p. 66). Thus, climate change is understood to be ‘a governmental problem and not a moral problem’ (p. 127). Where the thesis engages the notion of morality outside of legal–political government it is to reject it; however as it does so the text displays a continual tendency to treat ‘morality’ and ‘religion’ as one part of the same whole. Thus, legal–political government is not ‘government by *religion-and-morality*’ (p. 41, emphasis added), and citizens are safeguarded by legal–political government from ‘the constant threat that they might be killed simply for their *religious/moral commitments*’ (p. 67, emphasis added); and so on. In layering up a strong rhetorical ‘religion and morality’ interconnection, the text leans towards articulating ‘religion as morality’. Consequently, sufficient

opportunity to engage with classic *areligious* notions of natural law cannot arise; for example, the argument that moral understanding can be achievable through reason, or the argument that morality exists in nature.

Lastly, Chapter 3 makes a brave attempt to address what the authors describe as ‘the story of how an unlikely intersection of aesthetics and science, formed around the notion of nature, eventually produced a particular object for legal–political government which ... we now call the environment’ (p. 45). The authors draw upon several aesthetic schools in order to develop their argument. In particular, they engage with ‘The Picturesque Tradition’ (pp. 48–50), but it is not ultimately clear how the picturesque obsession with idealized beauty intersects with rational science (nor indeed with the wider ‘anti-perfectionist’ dimension of legal–political government). The same point extends to ‘The Sublime Tradition’ (pp. 50–51), a school of a frequently metaphysical and indeed ‘moral’ character rooted in a preoccupation with sublime transcendence. Similar problems trouble an exploration of ‘The Romantic Tradition’ (pp. 51–54), a movement renowned for its reaction against enlightenment rationalism and its exaltation of individual passion. Interlinking this artistic realm with the sphere of the scientist, the authors claim that

[i]n the nineteenth century most scientists conducted the great bulk of their studies of nature in a manner very similar to that employed by those whose goal was pure aesthetic appreciation. Both groups relied heavily on observation[.] (p. 57)

To carry this sort of argument the authors would be required to devote robust attention to Realist schools of art, that is, those schools that exalted replication of the real as a chief intention of art and that employed their craft as a means of purposefully replicating nature/the environment; the romantic schools, however, largely rejected this sort of Realist manifesto. Thus, the aesthetics–science argument as formulated by the authors does not seem to hold.

Setting the book’s more problematic features aside, this is undeniably a very well-written, thought-provoking work. It will prove both interesting and instructive for scholars engaged in exploration of the political and legal aspects of the governance of the environment and climate change.

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