

ing visions of the world and of women's place therein, have been and continue to be fought out. [p.12]

This approach better captures the complex role of law in social change. It creates a space that brings to light new strategies for the women's movement to engage with in litigation, law reform and legal literacy, and may prove useful and encouraging for women in India and Australia who are becoming disillusioned with the law.

In the first chapter the authors set out their theoretical argument. They draw on a wide range of western feminist critiques of dominant constructions of gender within the law. But far from simply borrowing western feminist critiques of western legal systems and applying them to the Indian situation, the authors have provided a valuable contribution to the development of the new feminist legal studies in India. Kapur and Cossman draw the points of similarity in areas where western feminist legal theory and Indian legal theory are exploring the same questions yet throughout the book ground the theory in relevant and important examples of where the law impacts on women in India today. This approach is well situated in the growing body of literature from African-American women (for example, Patricia Williams), women of colour in the West and women in developing countries who have criticised western feminist legal theory for obscuring the multiplicity of difference that exists among women.

Arguing that the law is a site of contestation, the authors explore different aspects of their argument in chapters two, three and four, focusing on the

areas of family and the law, the constitution (particularly the application of and the courts' interpretation of sex discrimination legislation) and the Hindu Right, respectively.

Special mention should be made of the chapter on *Women, the Hindu Right and Legal Discourse*, which I found particularly interesting. The Hindutva — the right wing, conservative, Hindu fundamentalist political parties of India — have been gaining increasing popularity in India in recent years. The Hindutva and the women's movement in India have become entangled over the issue of a Uniform Civil Code. The women's movement has been arguing for a single code on marriage and divorce to ensure that women are not disadvantaged and discriminated against under the guise of cultural practice.

Unfortunately for the women's movement, the Hindutva have co-opted the call for a Uniform Civil Code on the very different basis of removing recognition of Muslim minorities in Indian law. The authors examine the nature of this co-option — how the Hindutva have adopted much of the language of the women's movement, in order to access the vote of many lower class/caste women. Kapur and Cossman's analysis of this co-option and the difference between the Hindutva's rhetoric and their actions is excellent.

The authors use this issue most effectively to demonstrate their theory that the law is not necessarily a site of two adversaries against each other, as it has been traditionally thought of, but that it is a site where there are multiple players negotiating the dilemmas.

The final chapter where the authors look at positive strategies in the areas of litigation, law reform and legal theory is the most useful. The authors argue that:

Legal strategies cannot and should not be abandoned in women's struggles ... [but] any attempt to use the law must be informed by an understanding of the limitations and dangers of legal strategies. [pp.292-3]

They suggest that for legal strategies to be more effective, the law cannot be seen in isolation, that the distinction between law and politics needs to be shifted to locate the law within the realm of broader political struggles, thereby avoiding the limitation of a narrow focus on a constitutional rights discourse (p.292). Furthermore, the distinctions between legislative reform, litigation and legal education must be seen in the context of engaging an approach of multiple, integrated strategies, each having an appropriate and complementary role to play in the circumstance. The key to using the law is to see the law as *potentially transformative*. Thus legal strategies such as law reform are a means to an end, and we cannot assume that the battle is won if the legislation is enacted.

It is refreshing to see a book, that not only uses the tool of feminist legal theory to deconstruct the law, but goes further by attempting to reconstruct and discuss useful and positive strategies for the way forward.

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Human Rights Approaches to Environmental Protection

Edited by Alan E. Boyle and Michael R Anderson; Clarendon Press Oxford 1996; 313 pp; \$120.00 hardcover.

This book was published after the Final Report of the UN Sub-Commission on Human Rights and Environment, prepared by Fatma Zohra Ksentini, the Special Rapporteur.¹ Having followed the progress of the work of the Special Rapporteur and the development of the *Draft Declaration of Principles on Human Rights and Environment* at law school, it was with great interest that I read this book. It is worth noting the events which led to the adoption of the *Draft Declaration* by the UN Sub-Com-

mission as they provide a context for many of the issues discussed in this book.

In 1989 the Sierra Club Legal Defence Fund, in conjunction with Friends of the Earth and the Association of Humanitarian Lawyers, brought two environmental cases concerning alleged violations of human rights together with the degradation of the environment in Guatemala and Ecuador before the 41st session of the United Nations Sub-Commission on Prevention of Dis-

crimination and Protection of Minorities. Submissions were heard on the subject of environment as a human right and the Sub-Commission concluded that it should study the problem of the environment and its relationship to human rights. Fatma Zohra Ksentini was appointed Special Rapporteur on Human Rights and the Environment and has prepared a number of reports on the subject. The *Draft Declaration of Principles on Human Rights and the Environment* was drafted on her behalf.

The reports of the Special Rapporteur describe the growing awareness and recognition of the environmental dimension of human rights by various human rights treaty bodies and other international organisations, and review

provisions for environmental rights in numerous international instruments, national constitutions and legislative frameworks. The Final Report of the Special Rapporteur was submitted in August 1994 and included the Draft Declaration as an annex. The Report illustrates the extent of the interplay between human rights and the environment with reference to indigenous people and the environment, the protection of the environment in times of armed conflict, and the environment and international peace and security. The Report also highlights the especially harsh impact of environmental degradation on vulnerable groups such as women, children and young people, people with disabilities and environmental refugees. The Draft Declaration aims to protect substantive and procedural environmental rights and explains the corresponding duties of individuals, states, international organisations and transnational corporations.²

Human Rights Approaches to Environmental Protection continues the interpretation and realisation of the practical links between human rights and environmental protection in both international and domestic contexts. It provides a thorough theoretical analysis of the scope and content of environmental rights, as well as a useful comparative perspective on the legal application, implementation and enforcement of such rights at both an international and domestic level. The usefulness and importance of this book lie in its deliberate emphasis on both international and domestic law. The jurisdictions discussed include South Africa, Malaysia, India, Brazil, Ecuador, Pakistan and the European Union. However, despite considerable interest in this topic in Australia,³ there is little discussion, except from a comparative perspective, of experiences in our jurisdiction.

The essays in the book identify three main approaches to the link between human rights and environmental protection: first, mobilising existing human rights to achieve environmental ends; second, reinterpreting existing rights to include environmental concerns; and third, creating new rights of an explicitly environmental character. Unlike much of the work in this area, this book also includes a chapter (by Catherine Redgwell) that attempts to address the anthropocentric (or human-centred) character of human rights and considers the case for bestowing rights on animals and other non-human entities.

It is clear from the chapters by Michael Anderson (on India), Adriana Fabra (on Ecuador), Martin Lau (on Pakistan) and Andrew Harding (on Malaysia), that the recognition of existing civil and political rights such as rights to life, association, expression, political participation, personal liberty, equality and legal redress are vitally important to enable individuals and environmental NGOs to voice their objection to environmental damage. Securing additional ratifications and campaigning for the effective implementation of existing international instruments may be more effective than developing and promoting new standards. However, it should be noted that in practice there have been relatively few cases in which the application of existing civil and political rights have successfully secured environmental goals.

The recognition of rights to education and health, to decent living conditions and a decent working environment that are included in the catalogue of second generation economic, social and cultural rights may directly affect environmental conditions. The experience of the Huaorani people in Ecuador, of the Kayan tribe in the Sarawak forests of Malaysia and of the forest peoples and tribal groups in the Narmada valley in India, show a number of instances in which indigenous and tribal peoples can be particularly vulnerable to environmental damage. The right to self-determination recognised in article 1 of the International Covenants, offers indigenous peoples the potential to gain sovereignty over the use of the natural resources on which they depend.

In the second approach to the link between human rights and the environment, established human rights, such as the rights to life, equality, freedom of speech, property and religion, may be re-interpreted and extended to protect environmental claims. The right to life, for example, might be infringed where a state fails to abate the emission of toxic pollution from nuclear waste dumpsites.⁴ The right to equality may be read widely to include equal access to environmental resources and freedom from discrimination in exposure to environmental hazards and degradation — sometimes referred to as 'environmental racism' in the literature.⁵

However, as Michael Anderson points out, despite their usefulness, established human rights standards approach environmental questions obliquely, and lacking precision, pro-

vide clumsy tools for urgent environmental tasks. Thus, a number of the authors emphasise the importance of developing a specific environmental right. Different approaches to the content of such a right are evident in the chapters. For example, Francois du Bois, Jan Glazewski, Michael Anderson, Adriana Fabra and Martin Lau are optimistic about the role of specific environmental human rights, while Andrew Harding, Alan Boyle and Catherine Redgwell are more cautious.

The contributors also differ on the question of whether environmental rights should be mainly procedural or substantive in character. Influenced by considerations of cultural difference and the practical difficulties of codifying a 'right to environment' into legal language, Alan Boyle, Sionaidh Douglas-Scott and James Cameron, and Ruth Mackenzie, argue that environmental rights should be principally procedural and participatory in character securing rights to participate in environmental decision-making, to environmental impact assessment, to legal redress including standing in public interest litigation and a right to environmental information. On the other hand, substantive rights may provide more effective protection of the environment and play an important role in defining and mobilizing support for environmental issues. The definition of the scope and content of substantive environmental rights is important if they are to be capable of implementation and effective in practice.⁶ This book contributes greatly to defining a new environmental right that will be sufficiently precise to give rise to identifiable and practicable rights and obligations that can be realistically and effectively implemented.

It is clear from reading *Human Rights Approaches to Environmental Protection* that there is no common view of the merits of any one human rights approach to environmental protection. As the editors note, the variety of such approaches, and of the societies in which they have flourished — or failed to flourish — would make such an attempt impossible. However, it is also clear from the experiences of environmental and human rights groups in Malaysia, Pakistan, India and South America described in the case studies in this book, that many human rights claims continue to be closely affected by environmental damage such as the industrial pollution of air, water and land, deforestation, loss of biodiversity,

desertification, and the exhaustion of natural resources. It is in such circumstances that the realisation of the connection between the recognition of human rights and environmental protection becomes vital. The practical comparative and theoretical perspective that this book offers is a valuable contribution to the development of that connection.

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Victoria

KENNETT'S WORLD

On 11 November the Kennett Government received the first genuine set-back to its proposed changes to the Auditor-General's Office, with Liberal back-bencher and former leadership contestant, Roger Pescott, resigning over the changes. His very public objection to Kennett's ideas about the role of the Auditor-General has left the Government facing a by-election that may be fought over the contentious issue. Pescott's actions have received wide-ranging support: Remembrance Day may take on another significance for the ALP.

Meanwhile, Kennett's world continues as usual. Legislation which would diminish the rights of intellectually disabled tenants will be debated in Parliament in the near future. The proposed legislation would prevent tenants with intellectual disabilities from going to the Residential Tenancy Tribunal over difficulties with private landlords.

And workers in Victoria are fighting the Government's decision to abolish common law claims for injured workers. While workers could not be blamed for assuming that the worst was over when it came to the Kennett Government's industrial relations policies, the decision to abolish common law claims has left many reeling. The decision was made after the WorkCover Authority claimed that the cost of common law claims had increased dramatically. However, the accuracy of these assertions has been questioned by the Victorian Labor Opposition and the Law Institute. The abolition of common law claims will combine with a reduction of benefits paid to injured workers through WorkCover. The changes will mean that an injured worker must be at least 80 per cent incapacitated to receive the maximum payment. Under the current system workers may receive 95 per cent of their wages for the first six months they are out of the workplace. The changes will halve this period, after which payments will be reduced to just 60–75 percent of the worker's pre-injury salary. The proposals have resulted in two major demonstrations and it seems likely that the fight will continue. ● MC

DownUnderAllOver was compiled by Mia Campbell, Belinda Carman, Michelle Evans, Jeff Giddings, Francis Regan, Russell Goldflam, Sonja Marsic and Miranda Stewart.

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