Book review

Burns H Weston and David Bollier, *Green Governance: Ecological Survival, Human Rights, and the Law of the Commons* (Cambridge University Press, New York 2013) 384 pp.

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This book undertakes an ambitious project: redesigning the way the world should be governed and providing a strategy for achieving it. Thankfully, I suggest that both the redesign and the strategy are innovative, yet well supported by what we have already and that the authors have succeeded in providing a convincing case that their proposals are achievable. This book is an excellent contribution to the debate about future human governance of the natural environment and should be read by anyone interested in the survival of humanity on earth.

The book identifies our current economic and political systems – with accumulative growth and territorial sovereignty (along with the laws designed to support them) – as being the cause of current eco-crises and outlines the need for their fundamental re-conception if humanity and the natural environment upon which we depend for our survival are to continue in the future. The book proposes both a completely new paradigm and a template for action to achieve it.

The vision is for a new society based on a human right to a healthy environment, where governments and resource management are based on a reinvention of the commons. This vision is called ‘green governance’ because, the authors argue, a key determinant of how we treat the natural world – or our relationship with it – is the system of rules within which we operate. If we want to change that, then we need to change our governance systems including the laws that support them. Weston¹ and Bollier² advocate that a ‘commons- and rights-based ecological [system of] governance’³ can produce a governance paradigm

... based on, first, a respect for nature, sufficiency, interdependence, shared responsibility, and fairness among all human beings; and, second, an ethic of integrated global and local citizenship that insists on transparency and accountability in all activities that affect the integrity of the environment.⁴

1. Burns H Weston is the Bessie Dutton Murray Distinguished Professor of Law Emeritus and Senior Scholar of the Centre for Human Rights, at the University of Iowa. He is the author of many publications on a range of fields, most notably human rights and international law, with an increasing focus on the environment.

2. David Bollier is the co-founder of the Commons Strategies Group and of the Washington organisation Public Knowledge, a Senior Fellow at the Norman Lear Centre at the University of Southern California Annenberg School for Communication and Journalism, and is the author of many publications including four books on the commons. He blogs at <www.bollier.org>.

3. Weston and Bollier, xxi.

4. Ibid.

Such a 'profound transition' will not be easy, as it addresses fundamental values and personal and social identity as well as politics and practices.⁵ More importantly, it challenges the current locus of power. Instead of the current state and corporate tyranny, the authors argue for locally-based, participatory, self-organized governance structures, which are nested within a global governance architecture that can successfully govern the global commons. While this is intensely challenging, Weston and Bollier argue that only a fundamental change in the way that we think and act, for example in relation to governance, can address the fundamental threats to our existence.

The book addresses these various aspects in turn. It does not adopt the more common approach of spending two thirds of the book on the impending disaster and the last third on hope. Instead, most of the book is devoted to the proposed solutions. Indeed, none of the chapters focus solely on problems faced; all the chapters address possible solutions.

The first chapter addresses underlying trends that suggest a new way of working. While the failings of neo-liberal (de-regulated) governance are discussed (in a section entitled 'The Tragedy of The Market'),⁶ more space is given to new governance models that already exist (for example, models provided by the Internet)⁷ and those which could be extended to 'go beyond market and state'.⁸ These are models which are said to already recognise the 'human propensity to cooperate and the right of everyone to participate in managing shared resources'.⁹

Chapters 2 and 3 focus on the human rights basis for Weston and Bollier's suggested alternative paradigm. Chapter 2 reviews the current status of the international human right to a clean and healthy environment, summarizing its key features, its growth worldwide, as well as identifying obstacles to its implementation:

[A]s long as ecological governance remains in the grip of essentially unregulated (liberal or neoliberal) capitalism – a regime responsible for much if not most of the plunder and theft of our ecological wealth over the last century and a half – there will never be a human right to environment widely recognized and honoured across the globe in any formal/official sense.¹⁰

Chapter 3 turns to attempts to extend the rights-based approach, in order to make it more effective at protecting the environment: the adoption of intergenerational environmental rights and the according of legal rights to nature. Difficulties in implementing these two approaches are also examined. In spite of these difficulties, the conclusion is drawn that they remain powerful and necessary tools to achieve environmental protection,¹¹ and that a rights-based approach is 'the most comprehensive available gateway' to green governance.¹²

Chapter 4 is a substantial chapter, tying together the first three chapters, addressing how we might make the conceptual mind shifts that will enable us to develop new 'ways of seeing, thinking and acting'.¹³ Thus the authors address our 'mental

5. Ibid.

6. Weston and Bollier, 6.

7. Ibid., 15–20.

8. Ibid., 20.

9. Ibid., 16.

10. Ibid., 48–49.

11. Ibid., 75.

12. Ibid.

13. Ibid., 79.

operating systems,¹⁴ arguing that three basic precepts are necessary, namely: first, embracing human rights; secondly, honouring the everyday or peoples' 'vernacular' law regulating the commons; and thirdly, adopting bottom-up, self-organized regulatory systems (in contrast to top-down regulation).¹⁵ Together these precepts would establish 'a new procedural human right to commons- and rights-based ecological governance',¹⁶ which would constitute a "meta-right" ... "to take precedence over other rights".¹⁷

The second half of the book focuses on the commons and on new governance structures and strategies for commons-based green governance. Chapter 5 explains the commons model of governance, covering first the histories of the commons and its legal regulation and then the work on commons management by Elinor Ostrom and others, identifying basic principles for successful commons governance.¹⁸ Chapter 6 describes and analyses the rise of the commons movement globally, both in relation to land and other resources as well as in other areas of activity such as the Internet. The examples are practical and helpful, as is the categorization and analysis provided by the authors.

Chapters 7 and 8 are the final, most creative chapters, proposing a completely new framework of laws and policies for green governance, as well as strategies for getting there. These proposals provide the authors' vision, supported by and grounded in the description and analysis in the preceding chapters.

Chapter 7, for example, proposes a set of core principles for governance of the commons and of common environmental resources based on Ostrom's work¹⁹ (as mediated by the literature building on her original work). It also proposes eight macro principles and policies – or tenets – to guide state policy relating to ecological governance,²⁰ and discusses how these might be operationalized within the state. The special challenge of governing large-scale ecological commons is recognized: the authors argue that it can be achieved if we change our focus properly to address and to manage sustainable capacity, including jettisoning the Lockean ideas that have justified the plunder of the ecological commons to date.²¹ While it might be hard to imagine such a future, helpfully the authors provide existing examples of commons management and participatory governance that could be utilized,²² such as examples of commons management across state boundaries, as well as suggestions for improvements to some of these systems.

Finally, Chapter 8 suggests practical strategies for adopting commons-based management in line with the recommendations in the book. This is an excellent addition to the ideas presented in the preceding chapter, because not many people have the ability

14. Ibid., 80.

15. Ibid., 81.

16. Ibid., emphasis in the original.

17. Ibid., 82, quoting Sam Adelman, 'Rethinking Human Rights: The Impact of Climate Change on the Dominant Discourse' in Stephen Humphreys, ed, *Human Rights and Climate Change* (Cambridge University Press, Cambridge 2010), 159 at 172.

18. See, e.g., Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, Cambridge 1990); Amy Poteete, Marco Johanssen and Elinor Ostrom, *Working Together: Collective Action, the Commons, and Multiple Methods in Practice* (Princeton University Press, Princeton, NJ 2010).

19. Ostrom, *supra* n 18.

20. Weston and Bollier, 193–95.

21. Ibid., 208.

22. See, e.g., *ibid.*, 213–23.

to understand the full import of the concepts proposed, let alone to figure out how they might be implemented. The authors thus helpfully propose nine different strategies for establishing and operating commons governance at state and local levels, as well as some multilateral ways to address global commons. I find the best part of the strategies is the use of current examples to illustrate how the features of each strategy might work. Some are very new – for example, what they call the new ‘eco-digital innovations’;²³ others utilize established strategies – for example, the use of Trusts of various different types.

One helpful feature is the collecting together of these examples in different categories, which helps to provide a vision for how they might operate under different paradigms. There is a predominance of examples from the USA but the key features that make them worthy strategies are explained, thus demonstrating their wider relevance.

Overall, Weston and Bollier have achieved their goals of providing²⁴

... a persuasive vision for ecological governance in a worldwide context, one that can break the normative, institutional, and procedural impasse imposed by conventional economic, political, and legal thought. A goal has been to outline a substantive framework and ethos for green governance and the human right to a clean, healthy, biodiverse, and sustainable environment that can help both to actualize such governance and to condition its operation.

I think readers will appreciate the mix of principled norms and rules for governing, the suggested new decision-making structures and processes, as well as the practical strategies for achieving their adoption. For example, while the 2000 Earth Charter and the 2008 Universal Declaration of the Rights of Mother Earth are approved as statements of a new ethic of stewardship, the authors recognize that proclaiming new principles will not, on their own, change the systems or methods of exploitation of resources or the governance over them. So the authors propose governance systems to implement such principles – including on a large scale – led by illustrations of current examples of legal innovations, plus possible strategies for achieving them, even at the global level.

On the adoption of new legal principles, Weston and Bollier provide, as an appendix, a proposed Universal Covenant Affirming a Human Right to Commons- and Rights-Based Governance of Earth’s Natural Wealth and Resources.²⁵ This Covenant is a product of the Commons Law Project established by Weston and Bollier to advance the law and policy thinking advocated in this book and the activism necessary to achieve it.²⁶ Weston and Bollier note that it will require not just a change of laws but also a sustained challenge to ‘the deeply ingrained, powerful, yet also powerfully contentious moral and economic worldviews’.²⁷ This will require all the vision and strategies provided in this book.

I have not provided here full details of the principles and strategies provided in the book, and I leave it to the reader to ponder and assess whether they are justified and achievable. But I suggest that the book has integrated a wide range of the existing analyses and solutions suggested in the current literature on the environmental problems

23. Ibid., 243.

24. Ibid., 261.

25. Appendix, at 269.

26. For more information on the Commons Law Project, see <www.commonslawproject.org>.

27. Weston and Bollier, 263.

we face. The approach is more holistic than many others, perhaps by standing on their shoulders, so to speak. It thereby achieves something that the more focused books cannot. For example, other recent books have looked at governance or democracy, but without the focus on the commons. There is much work on the commons but without the focus on governance or the other aspects of this book.²⁸ There are books focusing on the human rights to environment,²⁹ Earth-centred approaches to law,³⁰ and even radical social movements³¹ and cooperation.³² They certainly each provide insight into their specific topics but Weston and Bollier manage to draw on and elaborate those insights while also providing a vision that is targeted, along with strategies for achievement. From another angle, many edited collections may offer the breadth of this book but, often purely because of the nature of an edited collection, they do not present a sustained and coherent argument as Weston and Bollier do.

There are other useful aspects of this book, such as the more detailed addendum on the international legal status of the human right to a healthy environment³³ and the Bibliography of Pertinent Books.³⁴ But of course the book is most useful simply for achieving its goal, through creative yet logically presented proposals for governance systems to save humanity from catastrophe. While this book is based on a 2011 article by Weston and Bollier, which is freely available on the Internet,³⁵ the book itself is well worth reading as a whole and I suggest that it deserves the widest possible readership and subsequent action.

28. See, e.g., Giovanna Ricoveri, *Nature for Sale: The Commons versus Commodities* (Pluto Press, London 2013).

29. See, e.g., Don Anton and Dinah Shelton, *Environmental Protection and Human Rights* (Cambridge University Press, Cambridge, 2011); David Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press, Vancouver 2012).

30. See, e.g., Peter Burdon (ed), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, Adelaide 2011); David Grinlinton and Prue Taylor (eds), *Property Rights and Sustainability: Of the Evolution of Property Rights to meet Ecological Challenges* (Martinus Nijhoff Publishers, Boston 2012).

31. Lester Brown, *Plan B 3.0: Mobilizing to Save Civilization* (Norton, New York 2008).

32. See, e.g., Richard Sennett, *Together: The Rituals, Pleasures and Politics of Corporation* (Yale University Press, New Haven 2012).

33. Addendum, Weston and Bollier, 285–33.

34. *Ibid.*, 337–53.

35. Weston and Bollier, 'Regenerating the Human Right to a Clean and Healthy Environment in the Commons Renaissance', September 2011, available at <www.commonslawproject.org>.