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Law as if the Earth Really Mattered. The Wild Law Judgements Project. Edited by Nicole Rogers and Michelle Maloney. (Glasshouse, Routledge, 2017) ISBN: 978138669086

During the unusually sunny and warm month of June of 2017 I came across Thornton and Goodman's recently published book, *Client Earth*,[1] an inspiring account of how existing legal structures can be used to generate big changes. This was indeed the reason behind what may appear on first impressions to be a peculiar choice of book to review for a journal concerned first and foremost with the subject of international economic law, even if this is understood in a loose sense.

However, a more detailed look at some of the 're-written' judgements in Rogers and Maloney's edited collection reveals that context and perspective are what separates sub-disciplines in international economic law. The standing of non-human species rises questions not dissimilar to those encountered by the international economic law scholar in respect of the standing of corporations and other private actors in international law.[2] Companies are vested by national legal systems with legal personality and the ability to hold rights while multinational corporations, an entity not defined by national legal systems is nonetheless also considered a legal person by a variety of procedural laws, resolutions and codes of conduct.[3] Mining and extractive industries are considered in Part III of the Wild Judgements Project from the point of view of communities and climate change instead of from the perspective of foreign direct investment, public procurement or transparency and anticorruption law.

In Rogers and Maloney edited collection some of the characteristics of the Feminist Judgements Project(s)[4] -especially the Australian one,[5] are incorporated; but there are differences. The Wild Judgements project goes beyond the task interpreting existing legal provisions in a way that includes and respects interests and rights other than human.[6] It imagines new legislation based on the principles of Earth Jurisprudence[7] or Wild law.[8] Elements of the natural world are vested with legal personality: the green sea turtles in chapter 3, the whole Great Barrier Reef in chapter 4 or seven lung fish in chapter 5. 'Country' is vested with a new 'ecological title' with profound implications for the doctrine of public trust in chapter 15 where the *Mabo* case[9] is rewritten. The chapters of this collection bridge reality (existing cases that could have been interpreted differently like Mabo) and fiction (imaginary cases that take place based on new legislation). The book in this respect imagines and aspires a new legal space where a different set of premises, principles and processes that are created or developed under a wild law jurisprudence inform a different outcome in diverse situations. Rogers and Maloney themselves highlight what they see as the innovative

[1] James Thornton and Martin Goodman, *ClientEarth* (Scribe, 2017)
[2] Janet Dine, *Companies, International Trade and Human Rights* (Cambridge University Press, 2005)
[3] Peter Mucklinski, *Multinational Enterprises and the Law* (OUP, Oxford, 2007)
[4] Rosalynd Hunter and Clare McGlynn, *Feminist Judgements: From Theory to Practice* (Hart Publishing, 2010)
[5] H Douglas, F Barlett, T Luker and R Hunter (eds) *Australian feminist judgements: Righting and re-writing law* (Hart Publishing, 2014)
[6] Justice Brian Preston ' Writing Judgements Wildly' in Rogers and Maloney pp.19-28
[7] Thomas Berry, edited by Mary Evelyn Tucker *Evening Thoughts: Reflecting on Earth as a Sacred Community* (Sierra Club Books a& Universtity of California Press, 2006)
[8] The term was coined by Cormac Cullinan, Wild Law (Siber Ink, 2002)
[9] *Mabo v Queensland* (No 2) (1992) 175 CLR

approach of their project –'the critique and reshaping of principle within a number of different areas of law'.[10]

It is important to keep in mind that developments that would have been considered unrealistic legal fiction some years ago are slowly becoming a reality in some jurisdictions. In March 2017 New Zealand passed legislation acknowledging the legal personality of the Whanganui River catchment,[11] the Bolivian[12] and Ecuadorian[13] Constitutions have recognised Mother Earth as a holder of rights and a legal subject. In India, the Ganges and Yarmuna rivers have been vested with legal personality in an attempt to curb pollution.[14] Trees, to paraphrase Christopher Stone, do indeed have standing.[15] As xx remarked by "Once something becomes law, it becomes actionable and enforceable. Shortly afterwards, it becomes "common sense".'

However for all efforts to break from the Cartesian mind/matter dichotomy, the binary choice between 'us' as rational law making/holding/entitled beings and 'them' as the natural, ecological other, law remains a human construct and this is where the flaws of the project slowly rise to the surface. Rogers and Maloney acknowledge this handicap in the introduction, but these become apparent in several contributions. The complexity, novelty and potential implications of this fascinating and urgent subject are not always successfully captured by the collection. While the introduction is well calibrated and promising, the judgements and the analysis around some of the subjects and issues is somehow bland. Pressing questions of legal personhood in the context of nature, representation and the abrogation of guardianship are not sufficiently supported by theoretical analysis. The public trust doctrine, for example, is mentioned in chapter xx x but only by way of a cursory analysis.

However there is much to commend on *The Wild Law Judgements Project* which will no doubt be read with interest by environmental lawyers and all those with a general interest on international development, natural resources law and litigation experts. But the book aspires to more. It aspires to inspire and include constitutional lawyers, trade layers, foreign investment lawyers for what it shows us is that other interpretations of existing laws are equally valid, possible and plausible in most if not all situations where courts need to choose and balance between competing interests. It is, thus, possible to understand and enforce international economic law as if development mattered and not only by adopting a new ontological foundation but, as Aidan Ricketts argues in the re-written *Newcrest* mining case in this collection, even by using traditional interpretation approaches.[16]

The rise of international economic law has coincided with the relentless and virtually universal expansion of neoliberalism. While the 'Washington Consensus' paradigm has propelled developing countries into the globalisation agenda, a proliferation of trade and investment agreements, with the corresponding deterritorialized tribunals where such disputes

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[10] Rogers and Maloney at 7
[11] 'Waterway of spiritual significance to Maori people is recognised as living entity with own rights' Independent 15 Match 2017
[12] Bolivian Government, *Ley de Derechos de la Madre Tierra* (21 December 2010)
[13] Art 71 of the Constitution of the Republic of Ecuador (2008) and *Ley de Derechos de la Madre Tierra* (20 December 2010)
[14] The Guardian 21 March 2017
[15] Christopher Stone, 'Should Trees have standing? – Toward legal rights for natural objects' (1972) *Southern California Law Review 450*
[16] Aidan Ricketts, 'Exploring fundamental legal change through adjacent legal possibilities. The Newcrest mining case.' In Rogers and Maloney at 183.

are resolved outside the realm of national courts and legal systems, has insidiously reduced the sphere of influence of national governments while silencing the voices of all those opposed to economic growth dogma. International financial institutions, credit rating agencies, development banks and investment tribunals have transformed from arcane organisations to everyday, well-known actors exercising a *quasi*-absolute power over not only the so called economic or financial activities of states and private corporate groups but over almost every aspect of social and economic life. States find themselves scrutinised over development choices that may impinge onto the financial interests of private foreign investors by international investment tribunals, their capacity to pass or enforce laws to protect national interests is seriously reduced while each and every national decision with potential economic consequences is scrutinised by international financial institutions.

For all the reduced and increasingly scrutinised policy space of nation states the triumph of the neoliberal dogma with its expansion of the global marketplace and the exponential growth of international economic law has not, however, been coupled by a comparable improvement of living standards in developing countries or in poorer groups within developed countries. Rather the opposite is, in most cases, true. People have been left behind. Development has been left behind. Forgotten. Economics and rationality[17]have informed all decisions and processes. The emphasis on the separate and wrongly perceived mutually exclusive characteristics of policy choices has reduced the potential of law in general, and international economic law in particular in its quest to advance human development, to encourage sustainable use of resources and to ensure the peaceful and harmonious growth of plural conceptions of life.

Former Vice-President of the International Court of Justice, Judge Christopher J. Weeramantry, formulated something similar twenty years ago: 'In an age in which we are denuding the resources of the planet as never before and endangering the very future of humanity, sustainability is the key to human survival. It is a concept which needs to be nourished from every discipline, every culture and every tradition.'[18] International economic law, as the fastest growing and expanding area of international law with tribunals, arbitration and dispute resolution bodies with direct repercussion on the daily lives of millions of people all over the world and with direct influence on the use of scarce fundamental resources has a pivotal role to play in this repolarisation of interests and reinterpretation of existing rules. Some of these desirable developments are already under way – in 2016 Aljezeera, the Qatar news agency brought Egypt to account under the Egypt-Qatar BIT (1999) pursuing a $ 150m international arbitration claim due to the enforced closure of its business in Cairo. The terms of the BIT required that investors received 'fair and equitable' treatment by the governments of both countries in 'a manner consistent with international human rights treaties' such as respecting its right to freedom of expression that was allegedly wrongfully supressed by the Muslin Brotherhood. This wasn't the first investment arbitration case where human rights were brought at the forefront of an investment dispute.[19]

As Brian Eno explained in the introduction to Client Earth's book 'Once something becomes law, it becomes actionable and enforceable. Once it is enforceable it becomes common sense.

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[17] Klaus Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*; Ashgate: Aldershot, UK, 2008. 36.

[18] Judge C J Weeramantry's Separate Opinion in the Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia) [1997] ICJ Rep 37, reprinted in 37 ILM 162 (1998).

[19] Pierre-Marie Dupuy, Francesco Francioni, and Ernst-Ulrich Petersman (eds) *Human Rights in International Investment Law and Arbitration* (OUP: Oxford, 2009)

At this point it becomes possible for a small group to trigger big changes.' Rogers and Maloney's book provides a much needed reminder that legal structures can be used to create radical change.

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