

ENVIRONMENTAL LAW-MAKING OPINION DURING THE GREEN INDUSTRIAL REVOLUTION: REDEFINING DICEY'S 'AGES' OF COLERIDGE AND BENTHAM

ABSTRACT

It is increasingly clear that law and its enforcement in Victorian Britain was quite effective in tackling formative industrial environmental problems. What is unclear is the political philosophy, if any, underlying this achievement. Dicey's analysis of nineteenth century law-making public opinion with reference to the 'age' of Coleridge being superseded by that of Bentham focused attention on factory safety regulation. It thus ignored exceptionally important common law and statutory provisions applicable to industrial pollution and nature conservation, through which the first industrial nation (Britain) established itself as the pioneer of modern environmental law. Those who have explored this lacuna have argued that environmental laws expose a fundamental weakness in Dicey's historiography. Environmental statutes, it is claimed, show little evidence of being shaped by intellectual ideas of any kind. By contrast, in this article it is argued that Victorian-era environmental laws support Dicey's thesis of ideas-driven legal intervention. However, some adjustment is needed in relation to the ideas that are to be understood as being dominant. Contrary to Dicey, the age of Coleridge was not eclipsed by that of Bentham; the two co-existed. The principal conduit through which Coleridge's organic, natural law theory enjoyed its extended afterlife was Disraeli's 'Young England' movement.

1. Introduction

In recent years it has become increasingly apparent that the law offered broadly adequate protection of the environment against industrial threats in Victorian Britain – the 'workshop of the world'.¹ The achievement was in part a function of the common law, which dynastic proprietors were willing and able to enforce so as to protect flora and fauna on which the value of their estates rested. It also depended on parliamentary enactments which laid down 'public interest' standards for the control of pollution affecting air, water and land,² as well as the protection of wild (and indeed domesticated) animals.³ In these ways the first industrial nation (Britain) established itself as the pioneer of a comprehensive range of modern environmental laws which cleaned production processes and conserved natural landscapes. However, what is unclear is the current(s) of philosophical thought underpinning these laws and their positive enforcement outcomes, if indeed there is any. Were formative environmental laws the result of chance or design, and if design, whose?

The question of the existence of a philosophical seam underpinning the various laws of the nineteenth century was first raised by A V Dicey in the

¹ B Pontin, 'Nuisance Law and the Industrial Revolution: A reinterpretation of Doctrine and Institutional Competence' (2012) 75 MLR 1010; and 'The Common Law Clean Up of the First Industrial Nation: More Realism about Nuisance Law's Historic Environmental Achievements' (2013) 41 Journal of Law and Society (forthcoming).

² E.g Alkali Act 1863, and the Rivers Pollution Prevention Act 1876. For a general overview, see D Vogel, *National Styles of Regulation: Environmental Policy in Great Britain and the United States* (Ithaca 1986).

³ E.g the Sea Birds Preservation Act 1869. For a history, see C Reid, *Nature Conservation Law*, 3rd ed, (W Green 2009). On laws protecting animals generally, see B Harrison, 'Animals and the State in Nineteenth Century England' (1973) 88 *English Historical Review* 786.

seminal study of ‘law making public opinion’.⁴ According to Dicey, it is in the nature of both common law and statute law that each is shaped by intellectual opinion that ‘arises from individuals; generally at first from *some* individual’.⁵ Laws of the initial Georgian third of the century are understood by Dicey as having reflected the influence of a philosophy of humanitarian conservatism which Dicey summed up at one point as the ‘age of Coleridge’ (with reference to political philosophy of Samuel Taylor Coleridge (1772-1834)).⁶ Thereafter, the Victorian era is considered to have been dominated by the utilitarianism of Jeremy Bentham (1748-1832), first in its individualistic variation, and then in its collectivist guise.⁷ Nineteenth century environmental law is not touched on in Dicey’s analysis,⁸ yet there is no reason why the thesis of utilitarianism eclipsing Coleridgean conservatism cannot be applied, and tested, in this setting.

Historians writing within sub-discipline of ‘government growth’ in relation to the environment have interpreted Victorian-era law as a fundamental challenge to Dicey’s thesis.⁹ Environmental law, it is argued, was not shaped by the ideas of Bentham or indeed anyone, but rather by the necessity of an immediate response to the unforeseen problems arising from steam powered industrialisation.¹⁰ For instance, according to Roy McLeod, fisheries conservation legislation was a hasty attempt at reconciling new and old trade uses of rivers that consisted of a ‘series of legislative and administrative compromises which exhausted the amateur inspectors, frustrated their scientific successors, annoyed fishery interests, and cast unfamiliar problems upon ill-equipped secretariats’.¹¹ Alkali legislation, likewise, is portrayed by this historian as less a product of grand design than an ‘admixture of personal imagination, difficult goals and internal momentum of administration’.¹² K T Hoppen goes as far as to single out this area of legislation as *the* exemplar of the indifference of nineteenth century laws to intellectual ideas.¹³

Lawyer-historians have tended to share this scepticism towards the existence of a philosophical underpinning to nineteenth century environmental law. Richard Burnett-Hall qualifies his suggestion that ‘Britain can be rightly proud of the pioneering legislation it introduced in the mid-19th century’¹⁴ by pointing to a legacy of ‘uncoordinated regulation [which] persisted right up to

⁴ A V Dicey, *Lectures on the Relationship between Law and Public Opinion in England in the Nineteenth Century* (Macmillan 1905).

⁵ *Ibid.*, 22-23.

⁶ *Ibid.*, 114.

⁷ Its individualistic variation (defined at 63) is considered to have lost influence from about the 1870s in favour of a more collectivistic variation (at 64).

⁸ By contrast, factory legislation protecting workforces is addressed in detail, at 108-10, and 219-39. The closest reference to environmental law is the briefest of allusions to the Public Health Act 1875 (at 290).

⁹ O O G MacDonagh ‘The Nineteenth Century Revolution in Government: A Reappraisal (1958) 1 *History Journal* 52; R McLeod, ‘The Alkali Act Administration, 1863-84: the Emergence of the Civil Scientist’ (1965) 9 *Victorian Studies* 85; R McLeod, ‘Government and Resource Conservation: the Salmon Acts Administration, 1860-1886 (1968) 7 *J British Studies* 114.

¹⁰ MacDonagh refers to ‘legislative-cum-administrative process which [a] concatenation of circumstances set in motion’ (*ibid.*, 58); and the ‘impulses towards [legal] action inherent in particular situations’ (*id.*, 55).

¹¹ McLeod (1968), n 9, 150.

¹² McLeod (1965), n 9, 113.

¹³ K T Hoppen, *The Mid-Victorian Generation 1846-1886* (Clarendon Press 1998), 95.

¹⁴ R Burnett Hall, *Environmental Law* (Sweet and Maxwell 1995), v-vi.

the 1980s'.¹⁵ In the first textbook devoted to the topic of environmental law, David Hughes placed the discipline ('environmental law') in inverted commas by virtue of what he considered its unconvincing historical origins.¹⁶ His powerful comment is that Victorian-era environment law was 'not a coherent, logical body of principles and rules'.¹⁷ Thus it denied modern law a historically grounded normative foundation. A recent study on behalf of the United Kingdom Environmental Law Association echoes Hughes' sentiment that the law's intellectually banal historical development hampers the present quest (of the legislator, practitioner and the public at large) for coherence.¹⁸

An important exception to the view that nineteenth century environmental law lacks intellectual depth is provided by Sean Coyle and Karen Morrow in their book *The Philosophical Foundations of Environmental Law*.¹⁹ Without explicitly engaging with Dicey's schema, this book nevertheless promotes a broadly similar intellectual approach to the history of the law which is considered by the authors to be tailored around shifting philosophical conceptions of property in land. In particular, nineteenth century environmental law is understood as the fruit of two contrasting philosophies. First, a natural law philosophy in which property reflects a moral view of the limits on the human entitlement to exploit the environment (considered to be developed most fully in the writing of John Locke). Second a more instrumentalist philosophy, in which it is taken for granted that anything that promotes human welfare is necessarily good environmentally (e.g Bentham's utilitarianism).

The present article defends this essentially Diceyan approach to environmental law's nineteenth century past, albeit with some important adjustments relating to the identity of the philosophers and their ideas that are to be considered most influential. Section 2 examines the idea of Bentham's influence which is common to both Dicey's and Coyle and Morrow's accounts. It is argued that Bentham was indeed influential, in two distinct ways. First, *procedurally speaking*, through his science of legislation that underpinned the voluminous social and environmental inquiry data generated prior to the enactment of almost every major piece of statutory environmental law at this time. Second, in terms of the content of the law, as Bentham's utility calculus shaped important details of statute and common law in this field. The Benthamism at work here is of the individualist variety, for whilst many of the statutory laws involved a degree of centralised control through 'expert' government inspectorates, they are not municipal socialist, as per Dicey's understanding of Benthamism in its more collectivist facet.²⁰

Section 3 begins an examination of the extent to which Dicey underestimated the lasting influence of the ideas of Coleridge, with reference to environmental law. Coyle and Morrow do not engage with Coleridge, but they do attach importance to the natural law tradition of which he was part. Crucially, they see this tradition as co-existing with the instrumentalism of Bentham's ideas. The natural law theorist they focus on is John Locke, whose work is

¹⁵ Ibid.

¹⁶ D Hughes, *Environmental Law* (Butterworths 1986), 3.

¹⁷ Ibid.

¹⁸ UKELA, *Environmental Law 2011/2012: Is there a case for statutory reform?* (UKELA, 2012).

¹⁹ S Coyle and K Morrow, *The Philosophical Foundations of Environmental Law* (Hart 2004).

²⁰ n 7.

(rightly) seen as offering a zero-waste theory geared around markets that resembles what today is called ‘sustainable development’.²¹ But sustainable development is different from the ‘deep green’ philosophy that Coleridge’s natural law theory encapsulated, as part of a critique of Locke’s thinking.²² Three relevant facets of Coleridge’s philosophy that illustrates this critique of Locke are examined in this section, *viz*: the proto-ecological scientific theory of life on earth that emphasises species evolution as a response to habitat; the ‘green’ liberal idea in which humanity is grounded in a co-operative relationship with nature; and a territorial constitutional theory geared around keeping in check the potentially harmful capitalistic industrial forces with reference to a mixture of counter-balances provided by landed ‘permanent hereditary senators’ and intellectuals.²³

Section 4 examines the impact of these ideas of Coleridge on environmental law of the Victorian period. Disraeli’s ‘Young England’ movement is argued to be the chief conduit through which Coleridge’s ideas shaped mid-to-late nineteenth century law. Historians have tended to dismiss this ‘silly ass’²⁴ group of privileged young men who advocated neo-Chaucerian values as a way checking the vulgarity of capitalism as of little importance to the development of *any* area of law.²⁵ Yet it is increasingly apparent that the movement shaped common law and statutory interventions in the field of the environment in at least as large degree as the familiar utilitarian purveyors of Bentham’s ideas.²⁶ This part of the discussion connects with the revisionist thesis of David Lloyd Smith,²⁷ where it is suggested that ‘Young Englanders’, led by Benjamin Disraeli (1804-1881), deployed medieval notions of hierarchy descending from the crown to produce a uniquely centralised (Smith does not go so far as to suggest environmentally-attuned) brand of property theory geared around conservation.

It is concluded (in section 5) that Bentham’s and Coleridge’s ideas converged around the cause of environmental protection to provide a diverse and resilient philosophical foundation for nineteenth century environmental law. That is not to say that the two philosophical streams have proved equally enduring, for they have not. It is clear that ‘age of Coleridge’ was of a more lasting duration than Dicey contemplated, but not indefinitely so. The changing political realities of the twentieth century brought a quite abrupt end to the romance of environmental law which Young England articulated. This romantic tradition today exists as a counter-current rather than a dominant influence. It is latent in particular in the ‘wild law’ critique of idea of focusing environmental

²¹ On the suggestion of Locke as the most important theorist of property in relation to the environment, see Coyle and Morrow, 215.

²² See P Edwards, *Statesman’s Science: History, Nature and Law in the Thought of Samuel Taylor Coleridge* (Columbia University Press 2004) for an extended analysis of Coleridge’s critique of Locke for his ‘atomistic’ natural law conception of property, and preference for a more ‘organic’ one (working within a common law, natural law tradition).

²³ These ideas are expounded through an array of literary genres – prose, poetry, letters, notes, and polemic included – which make his thought challenging to access.

²⁴ A N Wilson, *The Victorians* (Random House 2003), 65.

²⁵ See e.g. E T Raymond, *The Alien Patriot* (1925) and Wilson, *ibid*. See further n 155 and associated text.

²⁶ Notably Edwin Chadwick and Thomas Southwood Smith: see MacDonagh, n 9.

²⁷ David Lloyd Smith, *Young England – A Medieval Spirit in an Industrial Age, 1842-1850* (MA Thesis, University of British Columbia, 1984) < <https://circle.ubc.ca/handle/2429/25231>>.

protection around greening the economy.²⁸ Wild law promotes a Coleridgean idea of the environment as a thing of beauty and deep moral significance, of intrinsic value as well as of instrumental value in satisfying human needs.

2. The Utilitarian Dimensions to Nineteenth Century Environmental Law

Dicey formulated his concept of ‘law-making opinion’ as applicable to statute *and* common law.²⁹ The critique of his analysis within the ‘government growth’ literature typically overlooks this in focusing exclusively on purported problems with Dicey’s account of statutory regulation. Parliament’s interventions did not at this time replace common law, but operated alongside of unmodified judge-made rules. Indeed, environmental law is one of the best illustrations of Dicey’s legal pluralism and thus an excellent test of his thesis. By way of illustration, the enforcement of the common law of nuisance functioned to stimulate investment in clean technology which, in turn, made it feasible for parliament to enact legislation putting clean technology on a statutory footing.³⁰ The value of Coyle and Morrow’s study is that it recognises the reciprocal context that common law and statute provided one another, and also the diversity of the philosophical ideas shaping these legal interventions (albeit within a constraint that is discussed in later regarding the role of what is argued to be the pivotal ideas of Coleridge).

This section examines the influence of the ideas of Bentham. Coyle and Morrow share common ground with Dicey in this respect, in acknowledging Bentham as a major influence on mid-Victorian era law. Coyle and Morrow see Bentham as supplying the philosophical justification for legislative remedies for environmental problems insofar as these problems were an obstacle to delivering ‘the greatest happiness’. The Alkali Acts imposed controls on the chemical industry aimed at protecting vegetation in the vicinity of works on the basis that a population depended on ‘greenery’ for food, clothing, fuel and shelter. Another example is that of the Rivers Pollution Prevention Act 1876, which was aimed at making rivers more useful to many aspects of the population by removing solid and liquid pollution. Public health legislation (notably the Public Health Act 1875) was aimed at tackling other causes of insanitary conditions which

²⁸ C Cullinan, *Wild Law: A Manifesto for Earth Justice*, 2nd ed (Green Books, 2011). On the current materialism in environmental law, see the focus on building a ‘green economy’ of the UN Conference on Sustainable Development, in Rio (June 2012) (as critiqued in K Morrow, ‘Rio+20: A Critique’ (2013) 4 *Journal of Human Rights and the Environment* 1). For a reflection on three decades of modern materialism more generally, see T Judt, *Ill Fares the Land: A Treatise on Our Current Discontents* (Allen Lane 2010). See further below, n 180.

²⁹ On Dicey’s views here, see n 3, 359-360 (‘As all lawyers are aware, a large part, and many would say the best part of the law of England is judge-made law – that is to say, consists of rules to be collected from the judgments of Courts...The amount of such judge-made law is in England far more extensive than a student easily imagines’).

³⁰ Pontin (2013). On the extent to which late eighteenth and nineteenth century country estates were nature reserves protected through common law property rights and statutory game laws, see the Report of the Committee, ‘Nature Conservation and Nature Reserves’ (1944) 32 *Journal of Ecology* 45, 49 (‘In the age of large private estates, which frequently included beautiful scenery, destructive development was often effectively prevented by the pride of owners in their possessions and their frequent refusal to part with or lease their land even when this would have been extremely profitable’).

threatened human health, particularly in growing towns and cities. This section elaborates on Bentham's role in the process and substance of the law.

Regarding process, the statutes mentioned immediately above were the upshot of social scientific inquiry on a grand scale and epitomise Bentham's ideal of measured legislation based on facts.³¹ The House of Lords Select Committee on Noxious Vapours 1862 derived its recommendations for alkali legislation from ten sessions of oral testimony given by 48 important witnesses drawn from landowning, manufacturing, and scientific ranks.³² That produced 240 pages of transcribed testimony which was made open to the public to assure everyone interested that law reform was evidence-based. The Royal Commission on Noxious Vapours 1878 was more painstaking still in its coverage of data. This heard evidence over a period of fifteen months,³³ during which 198 witnesses answered a total of 14,205 questions, generating 561 pages of transcribed oral testimony.³⁴ The Rivers Pollution Prevention Act was based on no less than *five* major public inquiries.³⁵ By contrast, the Sea Birds Protection Act 1869 was the product of moral outrage, but that was exceptional.³⁶

In terms of the substantive content of the law (on which critics of Dicey's idea of a Benthamite influence focus), it is not at all clear that historians of Victorian-era bureaucracy have been right to dismiss the role of Bentham's ideas in relation to alkali legislation. McLeod's argument that Alkali Acts 'owed little or nothing to the ideological discussions of the Benthamites'³⁷ cites in support an article in *The Times* where it is reported that 'Chadwickians' (read Benthamites) were hostile to this area of statutory intervention.³⁸ Yet the same paper at a similar time suggested that utilitarianism was pivotal to those who campaigned for this legislation. Lord Stanley (later the 15th Earl Derby) was the lead campaigner, who *The Times* considered 'inclined to the side of what is commonly called utilitarianism and *laissez faire*':³⁹

He [Lord Derby] takes by preference the economic and common sense view of public questions and he is, perhaps, the man in all England who is least likely to propose any measures which would embarrass our manufacturers for the sake of preserving or restoring the beauty of the landscape in Lancashire and Cheshire.

³¹ J Bentham, *Introduction to the Principles of Morals and Legislation* (Burns and Hart ed, 1970). See further Lieberman, *The Province of Legislation Determined* (Cambridge University Press 1989).

³² These evidence sessions were held between 16 May and 4 July 1862. Witnesses included one of the top 100 wealthiest rural proprietors (Gerard of New Hall), some of the wealthiest industrialists (e.g. David Gamble) and the leading chemist (Dr Lyon Playfair).

³³ 3 August 1876-3 November 1877.

³⁴ Witness included not only landowners, industrialists and scientists, but also religious leaders, notably the Archbishop of Canterbury (Q. 9543 et seq).

³⁵ Three from the Rivers Pollution Commissions (eg Rivers Commissioners of 1868, First Report, British Parliamentary Papers XXXX (1870)) and two from the Royal Sanitary Commission (e.g. Royal Sanitary Commission, Second Report, British Parliamentary Papers XXV (1871)).

³⁶ n 154 and associated text. Subsequent legislation in this field was more 'considered': see for example, the Report of the Select Committee on Wild Birds Protection (PP XIII) (1873).

³⁷ n 9, 111.

³⁸ *Ibid*, regarding an article of September 2 1878 (102 (n 49)).

³⁹ *The Times*, 22 November 1878. Lord Stanley sponsored the 1863 Act, which the 1862 House of Lords Select Committee, chaired by his father (Lord Derby) had recommended.

In similar terms the specialist chemical industry press praised the ‘hard-headed’ regulatory approach of the Chief Inspector of the Alkali Acts, Angus Smith.⁴⁰ The contrast being drawn is with the ‘sentimental’ ideology of romantics, and implicitly the ideas of Coleridge discussed later.

Utilitarian influences were not confined to pollution control legislation. Additionally they extended to certain aspects of nature conservation legislation and the welfare of animals more generally. In the *Principles of Penal Law*, Bentham anticipated that ‘the time will come when humanity will extend its mantle over everything which breathes’.⁴¹ The Sea Birds Preservation Act 1869 is a formative wild species protection measure that criminalised the shooting of over thirty species of sea bird during the breeding season. A romantically inclined moral outrage concerning the destruction of ‘nature beauty’ that owed nothing to Benthamism lay behind the campaign for the Act.⁴² But its passage through Parliament was eased by utilitarian arguments concerning the usefulness of sea birds to humankind. It was reasoned that sea birds helped sustain fisheries and also protected shipping interests (assisting with coastal navigation).⁴³ Later extensions of this legislation emphasised the utility of wild birds as controllers of insect populations (and thus of value from an agricultural perspective).⁴⁴

A final group of utilitarian influences on the substance of law worthy of elaboration concerns relevant common law. Every statute mentioned above was premised on the limitations of the common law in delivering the consistent and widely accessible measure of environmental protection that utility demanded. However, the pertinent point is not that Bentham favoured code over common law (which he clearly did); rather, that the common law survived through embracing utilitarian ideas at crucial junctures. Consider for example how judges exercised their discretion to award a nuisance injunction on a suspended basis.⁴⁵ The ‘jurisprudence’ here was that suspension to an injunction would give the defendant time to adopt, and if necessary invent, a considered mode of compliance with common law’s neighbourhood obligations, rather than close down, relocate or indeed do anything in haste (which may result in a net loss to utility). For example, the injunction awarded to Sir Charles Bowyer Adderley in *AG v Birmingham*⁴⁶ requiring Birmingham Corporation to cease the disposal of raw sewage into the River Tame. The injunction appeared on its surface a ‘drastic measure’ which was indifferent to ‘public misery’.⁴⁷ Yet by virtue of the use of suspensions the court ultimately reconciled the welfare of Adderley and the

⁴⁰ ‘Dr Smith, in addition to his extensive knowledge as a chemist, has brought with him from the other side of the Tweed a stock of the well known plant called Scottish hard-headedness, which has thriven and borne abundant fruit in spite of all the noxious vapours of Widnes...’ (*Chemical News*, Sept 27 1878, 159)).

⁴¹ Quoted in Harrison, n 3, 816. In 1831 Bentham donated money to the Royal Society for the Prevention of Cruelty to Animals (*ibid*, 815).

⁴² Below, n 155 and associated text.

⁴³ O Stanley, HC Debs, 5 March 1896, vol 194, col 775 (navigation); C Sykes. *Ibid* (fisheries).

⁴⁴ n 36, Evidence, Cordeaux, Q 2429-2434.

⁴⁵ Pontin (2012), n 1.

⁴⁶ *Attorney General v Birmingham Corporation* (1858) 4 K & J 528.

⁴⁷ S Tromans, ‘Nuisance – Prevention or Payment?’ (1982) 41 *Cambridge Law Journal* 87, at 91.

20,000 residents of his estate with that of the town and its need for drainage to cater for a quarter of a million citizens.⁴⁸

A further noteworthy utilitarian aspect to the common law concerns the dictum in *Tipping* regarding amenity nuisance being defined with reference to the character of the neighbourhood.⁴⁹ Industry was attracted to the idea that pollution was defined with reference to its local context. A contrast was drawn with the more rigid statutory code:

The most unsatisfactory feature in the ‘Alkali Works Regulation Act’ is that its provisions are equally stringent in all places. A person who should start some offensive manufacture in the midst of the hop gardens of Kent, in the Isle of Wight, at Bournemouth, or Ilfracome, would encounter no more severe regulations than if he went to work where all vegetation had been extirpated, or where there are no inhabitants to complain.⁵⁰

Here it is the common law that is being portrayed as utilitarian, in juxtaposition to a dogmatic statutory scheme.

Coyle and Morrow make the crucial point that utilitarianism did not treat environmental protection as of ‘intrinsic’ value.⁵¹ It is clear that the above justifications for law are largely directed at securing environmental protection ‘only’ insofar as it is useful to people or, put with difference emphasis, where environmental harm got in the way of human happiness.⁵² In this respect Coyle and Morrow draw a contrast between utilitarian and natural law theory. Natural law is understood as a tradition of legal philosophy which engages with the physical environment as something worthy of protection in its own right. John Locke (1632-1704) is seen developing ‘intrinsic environmental law’ to its most sophisticated extent within this philosophical framework. Particular significance is attached to Locke’s assault on waste, as expressed in the aphorism that ‘nothing was made by God for man to spoil or destroy’.⁵³ In the section that follows, it is argued that there is a deeper green strain of natural law theory.

3. ‘Deep’ Environmentalism within the ‘Age of Coleridge’

Coyle and Morrow are interested in natural law theory as supplying the normative foundation for those instances where environmental law ‘sometimes exceeded a purely instrumental approach’.⁵⁴ Modern terminology is used by

⁴⁸ Through the use of periodic suspensions to the injunction, the defendant corporation was given a window of thirty seven years to invent a satisfactory means of providing a service for townsfolk without destroying property in the countryside. Pontin (2013), n 1.

⁴⁹ See the distinction between amenity nuisance and property damage mooted *obiter* in *Tipping v St Helens Smelting Ltd* (1865) 11 HLC 642 and applied to the ratio in *Sturges v Birdgman* (1879) LR 11 Ch D 852. Of course, the result of these authorities is that physical damage to property is actionable in any circumstance, regardless of wider utility, and this is one of a number of aspects of the common law.

⁵⁰ *Chemical News*, December 26 1884, 307.

⁵¹ n 19, 109.

⁵² *Ibid.*

⁵³ *Ibid.*, 64.

⁵⁴ *Ibid.*, 109

these scholars to explain Locke's relevant position, as follows. Locke is understood as advancing an early form of 'sustainable development' which embraces economic growth within environmental constraints.⁵⁵ No-one from roughly this period is identified as promoting a deeper green, 'steady state' approach where the environment is protected not simply as a material resource but for 'non-material' reasons.⁵⁶ Yet in Coleridge's ideas we can discern a deep green paradigm of considerable originality, sophistication and, as explained in a later section, enormous practical influence.⁵⁷

My suggestion that Coleridge is a thinker of philosophical stature pertinent to environmental law must be situated in the context of a more general revisionist literature relating to this man of ideas, beginning in the 1920s with the study of Coleridge by the idealist philosopher John Henry Muirhead.⁵⁸ Muirhead set out an appreciation of the 'multifarious and miraculous' writing of Coleridge on the meaning of life and of humankind's place on earth that went against the grain of opinion at this time (which did not hold in esteem the thought of Coleridge). Lots of philosophical literature relating to Coleridge's writing has subsequently been published in this vein, but it is only recently that the significance of Coleridge's political philosophy for law has received sustained scholarly treatment. In particular, Pamela Edwards monograph depicts Coleridge as an organic natural law theorist of unsurpassed rigour and originality.⁵⁹ This is not a work that was available to Coyle and Morrow for it was published in the same year as *Philosophical Foundations*. It serves to highlight a natural law tradition that is critical of Locke's shallow engagement with nature which is central to the present concerns.⁶⁰

Three aspects of Coleridge's organic natural law theory are examined in this section (later to be explored for their impact on environmental law). First, the proto-ecological scientific idea of life on earth as the product of evolution in response to habitat. Second, the green liberal idea that the wellbeing of the individual is defined by a co-operative relationship with nature. Third, the neo-territorial constitutional idea of a 'steady state' in which capitalist interests in material progress are balanced against 'non-material' values of 'permanence' promoted by trustees of landed estates, intellectuals and theologians. These interlocking ideas are quite different from those of Bentham (and indeed Locke) but need not be understood as inconsistent with them. Rather, as J S Mill explained, Coleridge articulated ideas that complemented others.⁶¹

⁵⁵ Ibid 207-208. The classification of Locke as pro-development is compelling, for Locke is quoted (51) as understanding that man is commanded by God 'to subdue the earth, that is improve it for the benefit of life'.

⁵⁶ Coyle and Morrow define 'deep green' as a 'laudable' but politically unrealistic 'steady state economic policy leading to a sustainable society in which resources are recycled and a state of equilibrium, designed to echo an "ecological equilibrium of nature"' (209).

⁵⁷ 'Deep' was something Coleridge explicitly embraced, as in his comment in a letter to Poole in 1801 that 'deep thinking is attainable only by a man [or woman] of deep feeling' (quoted in R Williams, *Culture and Society* (Chatto and Windus 1958), 69).

⁵⁸ J H Muirhead, *Coleridge as Philosopher* (Allen and Unwin 1930), preface.

⁵⁹ Edwards, n 22. See also Douglas Headley, *Coleridge, Philosophy and Religion* (Cambridge University Press 2000) 21.

⁶⁰ Edwards, *ibid*, 120-122.

⁶¹ F R Leavis, *Mill on Bentham and Coleridge* (Chatto and Windus 1950). Romantic and utilitarian ideas sometimes conflicted in practical environmental settings: see e.g. Harriet Ritvo, *Dawn of Green* (University of Chicago Press 2008).

Coleridge's Ecological Theorising

After graduation from Cambridge University, Coleridge was a major part of the Pneumatics Institute of the Clifton and Hotwells district of Bristol.⁶² For a year he lived under the roof of medic-landlord (and founder of the Institute) Thomas Beddoes. Beddoes housed Coleridge and a wider group of what Mike Jay has evocatively described as Britain's 'sons of genius'. Erasmus Darwin (1731-1802), Humphry Davy (1778-1829), and James Watt (1736-1819) were among those who worked with Coleridge within this setting on fields of natural scientific inquiry of one kind and another. Coleridge was recognised by his peers as the most energetic, informed, and inspirational member of the institute, and indeed the scientific question he posed was the most ambitious imaginable. What could the totality of science teach us about the meaning of life on earth? In that endeavour he combined an interest in biology (Beddoes had just coined the term),⁶³ zoology, botany, geology, physics as well as chemistry.

Coleridge's scientific ideas were developed in 1816 into a major synthesis, *Hints Towards a More Comprehensive Theory of Life*.⁶⁴ This combined the insights he had gained from his Clifton experience with lessons from his later sabbatical in Germany (when he collaborated with leading continental philosophers of nature).⁶⁵ A distinctive feature of Coleridge's thought in this work is its rejection of any appeal to a primordial 'state of nature' popular throughout Europe at the time.⁶⁶ According to Coleridge, humankind does not rise from, or lead into, a natural state; rather, it *evolves*, and continually so. Life is the moment-to-moment fruit of perpetual change within complex parameters provided by the earth as a whole. More specifically, life arises from interactions among organisms, chemicals, minerals, and magnetic forces.⁶⁷

Coleridge's theory of evolution has been plausibly considered an early contribution to ecological theory.⁶⁸ Humans are depicted in nascent ecological fashion as part of a 'multeity' characterising a 'union of opposites'.⁶⁹ Vegetables, insects and animals are classes of living being whose identity is defined by a process of individuation, in an oppositional dynamic that is

⁶² M Jay, *Atmosphere of Heaven: The Unusual Experiments of Dr Beddoes and his Sons of Genius* (2011), 114-121. The 'pneumatics' were housed in a very substantial terraced property, 3 Rodney Place, in Clifton, complete with a library of over a thousand books (which suited Coleridge *qua* 'library cormorant' (117)). See further L Katritzky, 'Coleridge's Links with Leading Men of Science' (1995) 49 *Notes and Records of the Royal Society of London*, 261.

⁶³ 'Biology, n', first used by Beddoes in 1799 (Oxford English Dictionary (Oxford University Press, 2011)).

⁶⁴ Seth Watson (ed), *Collected Works: Hints Towards a More Comprehensive Theory of Life*. (J Churchill 1868). Coleridge worked alongside German Idealists, notably Schelling: see G Orsini, *Coleridge and German Idealism* (Southern University Illinois 1969).

⁶⁵ Coleridge's scientific writing demonstrated 'exceptional competence' according to at least one eminent German scientist (Von Hinuber) (see Katritzsky, n 62, at 263).

⁶⁶ E.g T Hobbes, *Leviathan* (Yale University Press 2010); J Locke, *Second Treatise on Civil Government* (Prometheus Books 1986); J-J Rousseau, *The First and Second Discourses: Discourse on Science and Arts and Discourse on the Origins and Foundations of Inequality* (St Martin's Press 1964).

⁶⁷ Orsini, n 64, 231.

⁶⁸ Orsini, 233; Jim McKusick, 'Coleridge and the Economy of Nature' (1996) 35 *Studies in Romanticism* 375.

⁶⁹ S T Coleridge, *The Friend* (Collected Works vol 4, ed B Rooke) (Princeton University Press 1969), 351.

applicable to all organisms, 'from molluscs to man'.⁷⁰ The mollusc is prominent in the work of Karl Mobius, whose 'Biocoenose' (depicting evolution of oysters in response to habitat) is considered by some to provide the modern origins of the science of ecology.⁷¹ Coleridge's influence on Mobius is unclear, but what *is* clear is that he was a considerable influence on two of the most celebrated mid-Victorian scientists, Richard Owen and Charles Darwin (the son of Erasmus).⁷²

The extent to which Coleridge's theory is to be understood as a break from the Christian stewardship doctrine of Matthew Hale (1609-1676) is uncertain.⁷³ Erasmus Darwin considered that Coleridge's Christian reflections disguised a brilliantly radical, godless view of evolution which was quite distinct from anything that would have occurred to Hale.⁷⁴ However, Coleridge did not see God as a superstition (as did Darwin). Rather, he embraced what Davy called the 'meta-metaphysical' idea that there is a divine order within natural life.⁷⁵ This brought Coleridge closer to Hale's view than would otherwise have been the case. Each shared a view of humans as moral agents, guided by spirituality, with a noble responsibility for the consequences of actions within the wider order.⁷⁶ Coleridge and Hale thus occupy a place on the spectrum of Christian stewardship thought.⁷⁷ Spirituality is as crucial as natural science to Coleridge's influence in the field of environmental law.

Coleridge's 'green' liberalism

Coleridge advanced a theory of what can be termed 'green' liberalism principally through the medium of poetry. Poetry is not the typical material of the scholar of political philosophy, less still the scholar of law, but the scholar of Coleridge has no choice but to engage with this medium. Coleridge did not consider it was possible to express his 'deep' ideas in any other literary form. 'Poetry', Coleridge once said, is 'the best words in the best order'.⁷⁸ His belief was that poetry gave access to truths about nature that were beyond prose. As Percy Shelley later observed in connection with romantic poets more generally, the perceived force of poetry was bound up with that of 'reverie':

⁷⁰ Shedd, I, p 338; Orsini, 233.

⁷¹ K Mobius, *The Oyster and Oyster Farming* (1877, tr 1880, the US Commission Fish and Fisheries Report 1880).

⁷² See C U M Smith, 'Coleridge's Theory of Life' (1999) 32 *Journal of the History of Biology* 31 (in which it is asserted that Coleridge was 'almost alone' in understanding the full depth of the connection between physical sciences and humanities and his rejection of specialisation in science (32)). Coleridge's pantheism is considered to have influenced debate between Richard Owen (who until 1859 overshadowed Charles Darwin as the eminent scientist) and Charles Darwin himself (ibid).

⁷³ M Hale, *The Primitive Organisation of Mankind* (William Shrowsbury 1677)

⁷⁴ Mary Anne Perkins, 'The Religious Thinker', in L Newlyn (ed), *Cambridge Companion to Coleridge* (Cambridge University Press 2002).

⁷⁵ Jay captures this well in his description of the 'social chemistry' between Coleridge and Davy ('By creating space for an ineffable vital force behind the visible world, they enabled science to shake off the taint of godless materialism that had become so damaging to it' (n 194).

⁷⁶ Newlyn, 'Introduction', in Newlyn (ed) (n 74) (referring to Coleridge's acceptance of the notion of the nobility of man).

⁷⁷ Albeit a different place, with Coleridge's evolutionary theory appealing to the radical Christian movements of the Victorian era, notably the Oxford Movement and Christian socialism (J Cromer, 'Editors Introduction', *Church and State*, Collected Works vol 10 (Princeton University Press 1976).

⁷⁸ H N Coleridge (ed), *Specimens of the Table Talk of the Late Samuel Taylor Coleridge* (1901).

Those who are subject to a state called reverie, feel as if their nature were dissolving into the surrounding universe, or as if the surrounding universe were absorbed into their being. They are conscious of no distinction.⁷⁹

This section focuses on the articulation of deep truths about mankind's relationship with nature in Coleridge's poetic work.

By contrast to Locke, Coleridge took it as given that humankind depended on nature for 'material' sustenance (for food, shelter, clothing, fuel, transport, defence). That was Locke's preoccupation, but it is considered trite by Coleridge. More significant is the subtle contribution of nature to 'non-material' aspects of humanity - emotionally, intellectually, spiritually, and politically. A helpful starting point is the extraordinary poem 'Eolian Harp' (an early composition of 1795). In this poem Coleridge contextualised his loving feelings for a woman (Sara Fricker, whom he was later to marry and have four children) in relation to his feelings towards the earth as a whole. The lover and the loved are 'one Life'.⁸⁰ This holism is reflected in the sounds of the eponymous wind instrument playing in the background of the domestic scene:

And what if all of animated nature
Be but organic Harps diversely framed,
That tremble into thought, as o'er them sweeps
Plastic and vast, one intellectual breeze,
At once the Soul of each, and God of all?⁸¹

Oswald Doughty aptly describes these difficult lines as expressing a 'rare fusion of reflective thought and sensitivity to peaceful nature beauty'.⁸²

Published in 1798, 'The Nightingale' approaches the liberal significance of nature beauty from the different perspective of those who (mistakenly) see nature as enslaving of humans.⁸³ The poem re-defines the song of the nightingale, traditionally treated as melancholy, as a source of joy (which 'gladdens green earth').⁸⁴ The message is that everywhere in nature there is something positive for the individual. This is repeated in 'Frost at Midnight' (again written in 1798). The poem tells the story of the poet's wakeful infant son, Hartley. His experience of anguish is eased by the looking up at the moon and its lunar light cast over the land. Coleridge depicts himself as a 'child of

⁷⁹ P B Shelley, 'On Life', in J Shawcross (ed), *Shelley's Literary and Philosophical Criticism* (Froude 1909) 56, quoted in R A Forsyth, 'The Myth of Nature and the Victorian Compromise of Imagination' (1964) 31 ELH 213, 215.

⁸⁰ Line 26.

⁸¹ Lines 44-48.

⁸² O Doughty, *Perturbed Spirit* (Farleigh Dickinson University Press 1981) 81. Elsewhere it is pointed out that the poem is a unique attempt to capture 'environmental form' as part of a groundbreaking 'environmental art' (T Morton, 'Of Matter and `Meter' (2008) 5 *Literature Compass* 310, 311).

⁸³ On the enlightenment historical origins of nature as a threat to human kind, see C Merchant, *The Death of Nature* (Harper Collins 1983).

⁸⁴ Line 10.

nature' who can empathise with his son, and expresses the hope that his son will be retain this affinity for nature.⁸⁵

Beyond the family unit, nature beauty is understood by Coleridge as being inextricably linked with political liberty and the institutions of a free society. 'France: An Ode' (another composition of 1798) contrasts the political architecture created to liberate a (French) people with the protagonist's experience of personal liberty within an alpine mountain-scape. The liberty aspired to by French revolutionaries is realised as superficial when compared to the authentic liberty the protagonist derived from communing with nature. 'Oh Liberty, my spirit felt thee there!', is the rousing denouement of this work which can fill the reader's mind with the liberating sensation of high-altitude air.⁸⁶ Lucy Newlyn is convincing in her interpretation of this poem as one that 're-defines liberty in terms of the mind's harmonious interaction with the natural world'.⁸⁷

The poem 'To a Young Ass' (a very early composition, of 1794) addresses the important matter of inter-species relations. This is a comic composition, which treats the equine subject as the poet's equal. Nevertheless, it connects with the quite serious political scheme Coleridge and Robert Southey hatched of communal living embracing all the beings within the world. The two coined the name for this of 'pantisocracy'.⁸⁸ 'I call even my Cat Sister in the Fraternity of universal Nature', wrote Coleridge, to illustrate the meaning of pantisocracy and its comedy.⁸⁹ Bentham and Coleridge shared *some* common ground here. They each embraced to idea of animal suffering, in a dismissal of Cartesian materialism.⁹⁰ Yet Coleridge went far deeper into this idea of a universal community of species. He did not stop, as did Bentham, at extending the fraternity to all sentient beings (capable of feeling pain).

Predators exist in this 'Fraternity', but the process of predation is benign, or at least it is when it is structured through a natural law provision which Coleridge expresses in the maxim: 'all creatures obey the great game-laws of Nature, and fish with nets of such meshes as permit many to escape, and preclude the taking of many.'⁹¹ There are elements of Locke's zero waste theory in this,⁹² but Coleridge is not simply concerned with conserving material resources across generations. He is concerned with mental well being of the individual and its dependence on a co-operative relationship with nature. The poem 'The Rime of the Ancient Mariner' (yet another of Coleridge's 1798 opus) illustrates as well as any this point that nature for Coleridge is food for *thought*. It begins with a sailor shooting a sea bird (an albatross) in a gratuitous,

⁸⁵ On Coleridge as a 'child of nature', and 'son of the Earth', see R Holmes, *Coleridge: Early Visions* (Hodder 1989), 2

⁸⁶ Line 195.

⁸⁷ n. 74, 4.

⁸⁸ In 1794 (see 'Pantisocracy', letter to Southey, in Holmes, n 299).

⁸⁹ R Holmes, *Coleridge: Early Visions 1772-1804* (Pantheon Books 1989), 82). Dicey recognised this aspect of Bentham's thought and its influence on statute (n 4, 122).

⁹⁰ See Garner, *Animal Ethics* (Polity, 2005), 12-13.

⁹¹ S Hartley, *Anima Poetae from the Unpublished Notebooks of Samuel Taylor Coleridge* (William Heinemann 1895) 94

⁹² n 53.

impulsive act of nature harm.⁹³ That is followed by an imagined environmental catastrophe. The ship is beset by foul mist, wind changes and scorching heat. Mutant animals ('slimy things did crawl with legs')⁹⁴ emerged from polluted water ('The water, like a witch's oils/ Burnt green, and blue, then white').⁹⁵

This is of course redolent of the water environment Tocqueville and Engels were to separately describe relating to early Victorian Manchester, whilst Coleridge's concern with climate change and hideous species mutation readily resonates with anxieties of the present day in relation to the Climate Change Act 2008 and the Environmental Protection Act 1990 (Part VI). However, Coleridge is not describing a real environmental catastrophe, or otherwise a prophecy of one in future. The pollution referred to in the poem is a reflection of mental breakdown occasioned by neglect of nature and its beauty. Wanton injury to nature is a *bad idea*; it is wrong. A person who carelessly harms nature may end up in a state of despair (like Coleridge's mariner).⁹⁶

Neo-Territorial Constitutional Theory

Coleridge's third pertinent area of thought relates to the ideal constitutional arrangements for a society that co-operates with nature. This is the subject of a late work – one of his most celebrated - called *On the Constitution of Church and State*.⁹⁷ The work is a defence of a mixed constitutional settlement involving power being shared between the trustees of leading family estates, the capitalists who leased land from these estates, the intellectuals who worked in churches and universities, and the population at large through a degree of electoral representation. Rather like Dicey was to attempt a generation later, Coleridge in this work constructs an idea of 'constitution' with reference to first principles.⁹⁸ Coleridge approached the constitution as existing as an idea, comprising principles which are comprehensible to actors, and which are reflected in laws.⁹⁹

The central principle identified by Coleridge is that of 'equipoise' or 'equilibrium'. This is with respect to the balancing of the two most fundamental competing interests within any given modern civilization, namely, those associated with 'permanence' and those with 'progression':

⁹³ 'Why look'st thou so?' – "With my crossbow I shot the albatross"). In a similar vein is 'The Raven' (1798), in which a woodsman fells an oak for a war ship in which an avian family has made its home.

⁹⁴ Line 115.

⁹⁵ Line 119-120.

⁹⁶ See a helpful comparison with Mary Shelley's *Frankenstein*, considered partly inspired by this composition of Coleridge: Beth Lau, 'Ancient Mariner and Frankenstein' in N Roe (ed), *Samuel Taylor Coleridge: The Sciences of Life* (Oxford University Press 2001), 210 (each work is understood to be addressed to the devastating *emotional* consequences of neglect of the importance of a 'loving, harmonious co-existence with people and other living things').

⁹⁷ S T Coleridge, *On the Constitution of the Church and State, According to the Idea of Each* (Hurst, Chance and Co, 1830).

⁹⁸ Ibid. On the place of ideas, and the idealist philosophical method of Coleridge, see Newlyn, op cit, Ch 11. This is in contrast with Burke's emphasis on expedience (see Newlyn (ed), n 74) (Ch 10).

⁹⁹ n 97, 19 ('[A] constitution is an idea arising out of the idea of a state... We speak... of the idea existing... as a *principle*... existing in the only way in which a principle can exist – in the minds and consciences of the persons, whose duties it prescribes, and whose rights it determines' [Coleridge's own emphasis]). The quotation from Shakespeare's *Troilus and Cressida* regarding 'mystery in the soul of the state' which prefaces the work creates an expectation of mysticism which is soon dispelled through the attempt to build a constitution from first principles.

Now, in every country of civilized men, acknowledging the rights of property, and by means of determined boundaries and common laws united into one people or nation, the two antagonist powers or opposite interests of the state, under which all other state interests are comprised, are those of PERMANENCE and PROGRESSION.¹⁰⁰

Coleridge is here applying the polarised method noted above in connection with his theory of life.¹⁰¹ The idea of a constitution is to mediate between these extremes, to guard against too much progress (which is a threat in an industrialising society), as much as too little of it (which is a threat in an agrarian society).

Coleridge conceives of the opposing interests as having their institutional reflection within an ideal bicameral legislature.¹⁰² Permanence is an interest that is promoted through a hereditary chamber consisting of substantial, ancestral proprietors of land.¹⁰³ Under the illustrative British constitution, peers within the House of Lords occupy the position Coleridge referred to as 'permanent hereditary senators'.¹⁰⁴ This is by virtue of their connection with landed estates that are regarded by Coleridge 'as offices of trust'.¹⁰⁵ Youthful Coleridge advocated trust-based conceptions of property in land of a different kind, inspired by Hebrew constitutionalism.¹⁰⁶ Later Coleridge promoted a hierarchical trust-based conception of property in contrast to his early levelling thought. It is clear that he came to broadly accept the idea fostered by the aristocracy 'that the owner of an estate for the time being was steward of a trust for unborn generations and a temporary recipient of the fruits of his forbears' endeavours'.¹⁰⁷

The competing interest in progress is associated with commerce and industry. Representatives from this 'interest grouping' are seen as suitably

¹⁰⁰ *Church and State*, 24.

¹⁰¹ n 69 and associated text.

¹⁰² These social orders occupy a similar role to 'rationalities' in the work of Weber a century later: see M Weber, *Economy and Society*, ed G Roth and C Wittich (University of California Press, 1978).

¹⁰³ Coleridge's rationale for associating permanence with reference to land stems from the idea of land as 'something' which makes *everything* possible: see generally Newlyn (ed), *Cambridge Companion to Coleridge* (2002) (Ch 10); Walsh, *Coleridge: the Work and its Relevance* (1969), p 148-153. Coleridge held to the view that the protection of hereditary estates in land was 'the chief object for why men formed themselves into a state.' (*The Friend*, p 199, as reiterated in *Church and State* (82-83)). On the scientific foundations of the claim to the privilege of land, geologically and botanically, see Katritzky, n 62.

¹⁰⁴ *Church and State*, 29.

¹⁰⁵ *Ibid*, p 29. On estates as public trusts, see *Church and State* (51), quoting Leviticus, 25.23.

¹⁰⁶ Coleridge was in his young adult life sympathetic with the idea of the Hebrew jubilee by which land was to be restored to its original owners every 49th year (Leviticus XXV 8-17. See further B Bracewell-Milnes, *Land and Heritage* (1982), p 32ff. On the continuity of Coleridge's early and later thought, see Edwards, n 59.

¹⁰⁷ F M L Thompson, *English Landed Society in the Nineteenth Century* (Routledge 1963), 6. Coleridge opposed a tax on landed property on the basis that proprietors took their public duties seriously; by contrast, capitalists ought to be taxed in order to secure some public benefit from an otherwise self-serving enterprise (see *Table Talk*, n 78). Coleridge did not think that individual members of the aristocracy were inherently any better than any other individual, but the aristocracy *qua* institution was something he came to embrace.

contained in a second, elected legislative chamber.¹⁰⁸ Within the context of the British constitution, Coleridge sees an ideal House of Commons as comprising minor hereditary landed interests alongside a multiplicity of ‘personal interests’ – ‘the [elected] representatives of the commercial, manufacturing, distributive, and professional classes’.¹⁰⁹ Coleridge does not rule out a wide franchise in respect of this chamber. However, he substantially departs from Bentham (who advocated universal adult suffrage on a yearly electoral cycle) in his advocacy of a broader bicameralism in which an unelected chamber limits what the elected chamber can achieve.¹¹⁰ Bentham, on Coleridge’s scheme, lacked adequate respect for the interest in permanence; he was too eager for change and not sufficiently mindful of the price of change.

There is on Coleridge’s scheme a third institution, given a name which he coined of ‘Clerisy’.¹¹¹ The role of this institution, whose members comprise scholars and church people, is to act as the ‘beam of the scales’.¹¹² In one of the most famous passages of *Church and State*, its function is expressed as follows:

to preserve the stores, to guard the treasures, of past civilization, and thus to bind the present with the past; to perfect and add to the same, and thus to connect the present with the future; but especially to diffuse through the whole community, and to every native entitled to its laws and rights, that quantity and quality of knowledge which is indispensable both for the understanding of those rights, and for the performance of the duties correspondent.¹¹³

Raymond Williams places emphasis on ‘guarding the treasures of the past’ in what he interprets as a critique of a world increasingly dominated by the ‘dehumanising’ claims of capital. However, for our purposes it is important to note that Coleridge’s clerisy is concerned equally with avoiding too little progress. It is *not* reactionary, in the sense of anti-industry, or in opposition to material advancement. Rather, it is about striking a balance, guarding against *dominance* of the materialism of capitalist industry without denying the palpable importance of material things in life.

Coleridge’s commitment to the balance between permanence and progress is well illustrated by his writing on the subject of the legal regulation of working conditions in factories. Coleridge did not consider that there was anything intrinsically wrong with producing goods in factories on a larger scale than the cottage industries of antiquity.¹¹⁴ What he objected to was an overly commercial approach to the management of factories in which the pursuit of material self-interest was assumed to be inherently conducive to public welfare.

¹⁰⁸ Coleridge identified four classes, *viz* the mercantile, the manufacturing, the distributive, and the professional (*Church and State*, 25).

¹⁰⁹ *Ibid.*

¹¹⁰ Cf J Bentham, *Rights, Representation and Reform: Nonsense upon Stilts and other writings on the French Revolution* (Oxford, 2002).

¹¹¹ *Church and State*, 77ff. Coleridge uses this neologism interchangeably with others, notably ‘National Trust’ (77), ‘National Church’ (78), ‘National Clergy’ (74).

¹¹² n 30 (The King, in whom executive power vests, shares this role (29), and is at one point described as the ‘Head of the Clerisy’, or the ‘Supreme Trustee of the NATIONALITY’ (83))

¹¹³ *Ibid.*, 43-44. See the discussion in Williams, n 40ff

¹¹⁴ An early benefactor of his was the Wedgewood family, of midlands industrialists: see Newlyn, n 76.

According to Coleridge, by ‘look[ing] at all things through the medium of the market...to estimate the worth of all pursuits and attainments by their marketable value’,¹¹⁵ society would become poorer and less equal. Coleridge resisted ‘a contemptible democratical oligarchy of glib economists’¹¹⁶ which he saw Adam Smith and the wider Manchester School espousing.

Coleridge thus disagreed with laissez faire objections to factory legislation and was so articulate in his support of statutory intervention that Robert Peel looked to him to rescue the Factory Bill of 1818 from Smith’s Manchester School criticisms. Coleridge’s pivotal extra-parliamentary contribution is discussed by biographer Richard Holmes.¹¹⁷ Coleridge’s intervention consisted of three polemics in defence of the principle of criminal-administration regulation of factory conditions.¹¹⁸ ‘The Grounds of Peel’s Bill Vindicated’, the third of the trilogy, is summarised by Holmes as follows:

This was largely a briefing paper, clarifying and summarizing the medical conditions in the cotton factories, much of it hidden away in a Commons Select Committee report of 1816...It is not literary, but it is impressive in its detail, covering the specifics of shop floor temperatures (up to 85 degrees), air pollution, and recorded diseases among children (debility, rickets, scrofula, mesentic obstruction). It is notable for the ‘eminent medical authorities’ it cites, including several doctors that Coleridge knew personally...¹¹⁹

This is possibly the only occasion that Coleridge explicitly mentioned industrial pollution. Even here, the issue is touched on in passing, and not as of intrinsic importance. That has been interpreted as a symbol of Coleridge’s quiescence regarding environmental problems.¹²⁰ But it is more likely a reflection of the fact that revolutionary environmental problems had not clearly presented themselves during Coleridge’s lifetime.¹²¹ His achievement was not to have campaigned for environmental law, but to have supplied a multi-layered philosophical justification for future law (when industrialisation became environmentally harmful).

4. The Coleridgean Dimension to Nineteenth Century Environmental law: the role of ‘Young England’

This section examines the Young England movement as the chief conduit through which Coleridge’s ideas were disseminated with respect to environmental law when, beginning in the 1840s, industrial environmental

¹¹⁵ S T Coleridge, *Bibliographia Literaria*, Collected Works, Vol 7 (Princeton University Press 1985), 413.

¹¹⁶ Quoted in Williams, n 57, 58.

¹¹⁷ R Holmes, *Coleridge: Darker Reflections* (Harper Collins 1996).

¹¹⁸ Two of these were published posthumously not long after Coleridge’s death (the other has been lost) (ibid).

¹¹⁹ Ibid.

¹²⁰ J Zaring, ‘The Romantic Face of Wales’ (1977) 67 *Annals of American Geographers* 397, 409.

¹²¹ Most cotton factories were powered by water, made of local materials, and otherwise designed to blend in with their country setting (Pontin (2012), n 1).

problems presented themselves on a significant scale. The movement was founded in the 1840s by three twenty-something aristocrats, Lord John Manners (1818-1906),¹²² George Smythe (1818-1857)¹²³ and Alexander Baillie-Cochrane (1816-1890).¹²⁴ They were led by Benjamin Disraeli (1804-1881), the litterateur-politician who hailed from a family of intellectuals who moved in Coleridge's circles. Robert Blake describes Disraeli's philosophy as Coleridgean:¹²⁵

Though superficial in comparison, Disraeli belongs to the same strand of nineteenth century thought as Coleridge...romantic, conservative, organic...who revolted against Bentham'.

The revolt created a cleft within early Victorian Britain in which:

the idealization of material growth and technical innovation that had been emerging received a check, and was more and more pushed back by contrary ideals of stability, tranquility, closeness to the past, and 'nonmaterialism'.¹²⁶

The Young England movement led this counter-revolutionary influence, helping shape seminal environmental laws.

Fellow Young Englanders did not place as much emphasis as Disraeli on environmental protection.¹²⁷ First through the medium of public health, and then as a concern in its own right, Disraeli steered Young England into the legal protection of nature beauty from the threats of industry and industrial towns and cities. In regard to the public health aspect of environmental well-being, Disraeli joined with utilitarians to form the Health of Towns Association in 1844. This was established under the direction of Thomas Southwood Smith (the Benthamite who oversaw the preservation of Bentham's body for posterity).¹²⁸ Benthamites and Young England put aside deeper philosophical differences to attack as complacent existing patrician local health structures and to secure implementation of Chadwick's proposed sanitary reforms. The fruit of this campaign was the Public Health Act 1848.¹²⁹

¹²² Lord John Manners (by then the Seventh Duke of Rutland), was born in Belvoir Castle, Leicester, to Lady Elizabeth Howard (daughter of the 5th Earl of Carlisle) and John Henry (5th Duke of Rutland).

¹²³ Later 7th Viscount Strangeford.

¹²⁴ Later First Baron Lamington.

¹²⁵ R Blake, *Disraeli* (St Martins Press 1967), 210. Wordsworth, who outlived Coleridge, saw 'Coleridge's mind to have been a widely fertilizing, and the seed' for the ideas of the highly educated of Victorian Britain (J Vigus and J Wright, *Coleridge's Afterlives* (Palgrave, 2008), x).

¹²⁶ M Wiener, *English Culture and the Decline of the Industrial Spirit* (Cambridge University Press 1981), 6. The Great Exhibition of 1851 is depicted not as the beginning of the dominance of the industrial spirit, but its end, when the romantic 'counter-revolution' became dominant.

¹²⁷ Ridley comments on how Disraeli was not as deeply committed to factory reform as other founding members of Young England, for whom it was the defining cause (J Ridley, *Young Disraeli* (Sinclair Stevenson 1995) 287).

¹²⁸ Anthony Wohl, *Endangered Lives* (Methuen 1983), 144. Disraeli was less interested than Manners and Smythe in factory reform (Ridley, *ibid*, 287). Chadwick and Southwood Smith were utilitarian sympathisers at the centre of the Association.

¹²⁹ Wohl, *ibid*. The Act created a Central Board of Health with responsibility for supervision a reformed local authority structure with new responsibilities for town drainage and nuisance.

From this platform in public health legislation Disraeli developed a more ambitious concern with intrinsically environmental matters. The Young Englander who collaborated with Disraeli to shape important early developments here was Sir Charles Bowyer Adderley (1818-1905).¹³⁰ Adderley was the proprietor of the Hams Hall estate (and the claimant in the Birmingham sewage case mentioned above). He was lampooned in the radical-liberal political press as ‘always a day behind the world’.¹³¹ This was based on his open expression of a belief in the aristocracy as the nation’s moral leaders. ‘[H]ow I longed to lounge by myself at Hams, and on summer days to be at home on the river, then clear as crystal!’, wrote Adderley, in a diary entry which explains both the romantic motivation behind the nuisance litigation and the aversion to it of Birmingham’s petit bourgeoisie.¹³² However, there was ultimately nothing reactionary about the outcome of the litigation, which resulted in the invention of a world-pioneering infrastructure for the purification of sewage.¹³³

Dicey acknowledges in rather disparaging terms the aristocracy’s aesthetic objections to the industrial bourgeoisie and the distaste for industrial development on the basis of its ugliness.¹³⁴ Likewise, the liberal press mocked the sentimentality of Adderley’s care for the aesthetics of his private estate, dismissing him as a figure who had nothing to offer a progressive Parliament.¹³⁵ Indeed, as a statesman he has been dismissed in one modern historical work as ‘simply incompetent’.¹³⁶ Yet in his parliamentary career he founded the Colonial Reform Society, which promoted self-governance of colonies and an end to transportation.¹³⁷ He sponsored some of the earliest state education legislation aimed at giving disadvantaged children the opportunity to fulfil their potential.¹³⁸ In the present field of statutory environmental policy and law his contribution was particularly important. He was the President of the Board of Health overseeing the Public Health Act 1848.¹³⁹ He chaired the celebrated Royal Sanitary Commission (which sat between 1868-1871), making wide-ranging recommendation for health and environmental law reform. He sponsored the Public Health Act 1872 (which contained provisions dealing with

¹³⁰ Conservative MP for North Staffordshire between 1841-1878, after which he was raised to a peerage as Lord Norton. On the Young England connection, see J E G de Montmorency, *Charles Bowyer Adderley*, Oxford Dictionary of National Biography (online edition, March 2006) 5.

¹³¹ N Jones, *The Plimsoll Sensation: The Great Campaign to Save Lives at Sea* (London, Abacus, 2006), 157 (quoting Henry Lucy, the political journalist).

¹³² Lord Selborne penned a lyrical ballad about the Tame, depicting Birmingham ‘invading’ a ‘consecrated’ riparian space: quoted in Childe Pemberton, 143.

¹³³ *Attorney General v Birmingham Corporation*, n 46 (see further B Pontin, ‘Attorney-General v Birmingham Corporation: The Secret Achievements of Nineteenth Century Nuisance Law’ (2007) 19 *Environmental Law and Management* 158 (£500,000 was invested by the defendant over thirty seven years of suspensions to the injunction aimed at facilitating the invention of a sewage purification infrastructure).

¹³⁴ n 4, 242 (industrious ‘mills offended the aesthetic taste’).

¹³⁵ Henry Lucy, quoted in Jones, n 131.

¹³⁶ M Pearce and G Stewart, *British Political History, 1867-2001 Democracy and Decline* 3rd ed (Routledge 2002), 79. Adderley mishandled the Merchant Shipping Bill (concerning what came to be known as the Plimsoll line), as a result of which his contemporary political reputation was damaged.

¹³⁷ E Beasley, *Empire as a Triumph of Theory* (Routledge 2005) 112-131.

¹³⁸ Montmorency, n 143.

¹³⁹ *Ibid.*

rivers pollution). And he contributed to the relevant lexicon in inventing the terms ‘local government’,¹⁴⁰ and ‘town and country planning’.¹⁴¹

It was Adderley who briefed Disraeli on his ‘memorable Conservative promise’ delivered at a speech in Manchester in 1872, entitled ‘*Sanitas Sanitatum; Onmia Sanitas*’:¹⁴²

The first consideration of a Minister should be the health of the people [defined as] pure air, pure water, the inspection of unhealthy habitations, [of] the adulteration of food.

Pure air and pure water were aspirations which accorded with the increasingly romantic spirit of the age, and Disraeli’s leadership on these matters (with Adderley’s help) was politically astute. Indeed, it is this maneuvering which is considered by Weintraub to have been the most important factor in the Tory Party’s election victory in 1874. The main legislative fruit of the collaboration between Adderley and Disraeli in this period was the Rivers Pollution Prevention Act 1876. This was based on the recommendation of the Royal Sanitary Commission, which Disraeli had appointed (under Adderley’s chairmanship) in his first administration (in 1868).¹⁴³ The original House of Lords Bill of 1875 was withdrawn in the face of industry opposition in the House of Commons,¹⁴⁴ but it was soon enacted with amendment, as a flagship measure of Disraeli’s second administration (1874-1880).

The 1876 Act has been dismissed by historians of environmental law as a legislative failure.¹⁴⁵ There was indeed some concern at the concessions made to industry, but Disraeli’s biographer (Buckle) describes it nonetheless as an innovative measure having ‘the object of preserving the bounty of nature free and uncontaminated for the people’s enjoyment’.¹⁴⁶ Blake, for the same reason, describes the Act as ‘important’.¹⁴⁷ Crucially, Disraeli himself saw it as a major test of his Young England political philosophy, and prioritized its enforcement.¹⁴⁸ For example, a government circular was issued to local authority enforcement bodies as to their new responsibilities under the Act. A number of prosecutions were authorized by Disraeli’s Attorney-General (Sir John Holker QC). Perhaps most important of all, a collateral policy of not authorizing expenditure on sewage infrastructure without satisfactory pollution mitigation measures was adopted.¹⁴⁹

In other fields of environmental law Disraeli found different aristocratic allies. In the arena of Alkali legislation, he principally collaborated with the dynastic Stanley family. Edward Smith-Stanley (14th Earl Derby) and his son

¹⁴⁰ R C K Ensor, *England, 1870-1914* (Oxford University Press 1966), 124-125.

¹⁴¹ Montmorency, n 130.

¹⁴² Quoted in S Weintraub, *Disraeli* (Hamish Hamilton 1993), 502

¹⁴³ Blake, n 125, 495

¹⁴⁴ Disraeli, HC Deb, 26 July 1875, vol 226, col 49.

¹⁴⁵ Its criminal prohibition on rivers pollution was a ‘dead letter’ (W Howath, *Water Pollution Law* (Shaw and sons 1988), 14).

¹⁴⁶ Money Penny and Buckle, vol 5, 337. It was opposed by Radicals, led this time by Dilke (id, 707).

¹⁴⁷ Blake, n 15, 553

¹⁴⁸ HC Debs, vol 239, 9 May 1878, col 1596-97.

¹⁴⁹ *Ibid.* On the invention of these technologies pursuant to common law litigation, see Pontin (2013) n 1.

Edward Henry Stanley (Lord Stanley, later the 15th Earl) were the catalysts for initial statutory intervention and subsequent reform in this field. The first Alkali Act of 1863 was sponsored by Lord Stanley, following recommendations of his father's House of Lords Select Committee (the 15 Earl was its chair). It was an unprecedented measure in reflecting Parliament's recognition of the intrinsic value of protection of rural vegetation from revolutionarily polluting industry (in ways that are discussed below). But the Act was also tentative in that it was time-limited (for five years) and confined to pollution of *one* environmental medium (air) from *one* polluting industry (utilizing the Leblanc chemical process). Disraeli's crucial contribution was - in his first administration of less than a year - to have found enough space to secure the Alkali Renewal Act 1868, which put this intervention on a permanent footing. And within months of Disraeli's second administration, the Act was extended to encompass a broader range of air pollutants and industrial processes (Alkali Act 1874). Towards the middle of this second administration Disraeli appointed the Royal Commission on Noxious Vapours to consider the case for a radical extension of the Act's coverage.¹⁵⁰

The Royal Commission provided the recommendations on which basis the Alkali and Works etc Act 1881 was enacted by Gladstone's Liberal Party administration, with cross-party support.¹⁵¹ The term 'intrinsic' is used above in relation to the environmental dimension to these enactments. Its meaning is conveyed by a comment in 'The Times' relating to the 15th Earl of Derby's justification for these measures:¹⁵²

The sanitary and the economical consequences of this state of things are frightful enough, but most people will agree with Lord Derby that as to the moral effect there is 'also something to be said'. When it can be asserted by a sober man that 'the whole natural beauty of the country is destroyed' and that 'it is disfigured to a hideous degree' we cannot refuse to agree with him 'that a man who can neither grow a flower in his garden nor keep a foul stench out of his house is not in circumstances to increase that civilization which one would like to see among the poorest classes of this country'.

This is one of the clearest expressions of the influence of Coleridge's idea of 'nature beauty' as a moral (as well as aesthetic) construct.

Clearer still is the expression of the Coleridgean idea of nature beauty underlying the first Sea Birds Protection Act 1869. The background to this Act is that in the 1860s, hats for women came increasingly back into fashion, with incredible plumage from wild birds adorning the latest in female millinery haute and indeed petite couture. That placed a strain on the migratory bird population, but a greater threat still came from the contemporary pastime of urban men taking weekend summer train excursions to the coast to shoot sea birds.¹⁵³ Dozens of species of birds which were at risk found an ally in naturalists, clergymen and landowners who, in 1868, formed the Sea Birds Preservation

¹⁵⁰ Ashby and Anderson, *Politics of Clean Air* ((Cambridge University Press 1981) 39.

¹⁵¹ *Ibid.*

¹⁵² *The Times*, Nov 22 1878.

¹⁵³ House of Commons Debs, n 43; House of Lords Debs, n 157 below.

Association (out of which the Royal Society for the Protection of the Birds later emerged).

The tone of moral outrage is captured most powerfully in a early poem written by Reverend Richard Wilton, entitled 'A Plea for the Sea Birds':

Stay now thine hand
Proclaim not man's dominion
Over God's works, by strewing rocks and sand
With sea birds blood-stained plumes and
broken pinion.¹⁵⁴

Wilton justified statutory regulation 'for the birds' sake'¹⁵⁵ and 'for God's sake',¹⁵⁶ contrasting the inauthentic 'beauty' of plumage couture with that of plumage in its god-given avian setting. That distinctly Coleridgean synthesis of aesthetics, morality and spirituality lay behind the 'masterly'¹⁵⁷ Sea Birds Preservation Act. The Act was the beginning of much legislation of this kind.

The portrayal of the Young England movement as a major influence on an important area of law in these respects departs from that offered by much of the historical literature. E T Raymond set the dismissive tone of the orthodox interpretation of the impact of the movement in his claim that Young England 'left no mark on the statute book. It produced no definitive effect on the course of social development'.¹⁵⁸ Blake conceded that the movement influenced Disraeli, but was disparaging of the way in which it was 'mixed up with a good deal of ecclesiastical flummery, medieval bric-a-brac and gothic rubbish'.¹⁵⁹ Others have cursorily disposed of the movement as 'nonsense',¹⁶⁰ or plain 'silly'.¹⁶¹ The history of environmental law is a major problem for that analysis.

Asa Briggs is exceptional in his positive analysis of the movement as a formative part of a pervasive revolt against commercialisation in which 'the Middle Ages...became the storehouse of lessons for reshaping Victorian economic life.'¹⁶² Yet the most sustained examination of this movement is that of David Lloyd Smith,¹⁶³ whose unpublished advanced degree thesis promotes the movement as both serious and influential. Smith does not mention environmental law, nor indeed does he mention Coleridge. But he does highlight its contribution to a centralised, hierarchical property theory which helps connect the movement with my subject matter:

Young England recognised that the supreme possessor of property is the State [crown] to which all owe obedience. This concept, common both to the Middle Ages and the [nineteenth] century, never completely disappeared, though, for a century, it only just survived, a small and

¹⁵⁴ In R Fisher (ed) *Flamborough: Village and Headland* (British Library, 2011) (lines 1-5).

¹⁵⁵ Line 10.

¹⁵⁶ Line, 18.

¹⁵⁷ J Gaskell, *Who Killed the Great Auk?* (OUP 2000), 186

¹⁵⁸ n 25,124.

¹⁵⁹ n 126 172.

¹⁶⁰ P J Helm, *Modern British History: 1815-1914* (Bell and sons 1968) 146.

¹⁶¹ Wilson, n 24.

¹⁶² A Briggs, *Age of Improvement* (Longman 1959), 306.

¹⁶³ n 27.

spluttering flame, fed by the Romantic and Medievalist tradition, of which Young England was in many ways the apotheosis.¹⁶⁴

We can go further and say that in the field of environmental law this hierarchical approach to property exerted a very substantial influence.

The figure who is most emblematic of the impact of this property theory in this setting is Algernon George Percy (1810-1899), who was, from 1867, the 6th Duke of Northumberland.¹⁶⁵ He was the 'top rank',¹⁶⁶ within the aristocracy, but until now, he has not been considered by historians to have left *any* mark on the statute book. Yet in the field of the environment he most certainly did. As regards the innovative system of integrated pollution control under the Alkali Act 1881, this was the fruit of a campaign by the Northumberland and Durham Association for the Prevention of Noxious Vapours, of which the Duke was president.¹⁶⁷ The Duke's 180,000 acres was double the landholding of the five other regional peers who were vice-Presidents of the organisation combined.¹⁶⁸ Earlier, the Duke sponsored in 1872 a precursor to the Rivers Pollution Prevention Act 1876.¹⁶⁹ Beyond pollution control, the Duke was sponsor of the Sea Birds Preservation Act 1869,¹⁷⁰ which set in train a broad body of nature conservation law, including the Wild Birds Protection Act 1880.

Beyond Parliament, there are certain aspects of the Duke's estate management philosophy that cast further light on the romance of the age and its influence on the environment. Like many aristocrats at this time, the Duke grew up on an estate with grounds landscaped in neo-gothic style in the eighteenth century to inspire a co-operative relationship with nature. The grounds of Alnwick Castle were landscaped at great expense to the first Duke by Lancelot 'Capability' Brown.¹⁷¹ The estate was lucrative as well as beautiful, but how the Duke invested his rental income is noteworthy. T.H.S Escott is much quoted for his comment that the Duke was among a millionaire elite which took 'pride in keeping a standing balance [in West End banks] for which they never received six pence'.¹⁷² This can be interpreted in different ways. One is to attach significance to the *amount* of wealth deposited. The suggestion here is that the Duke was ostentatiously flaunting wealth with the message that no further riches could mean anything to him. Another is to focus on the terms on which the

¹⁶⁴ n 105.

¹⁶⁵ According to the contemporary survey conducted by J Bateman, *The Great Landowners of Great Britain and Northern Ireland* (Harrison 1876). The Duke held 181,616 acres of land in the North East from which he received £161,874 in rent per annum. Only 15 landowners received over £100,000 rent per annum (p 337).

¹⁶⁶ Thompson, n 107.

¹⁶⁷ The Northumberland and Durham Association for the Prevention of Noxious Vapours from Alkali and other Manufacturers: see National Archive, MH16/1, 13280.

¹⁶⁸ Londonderry accrued £100,118 from 50323 acres (Bateman, 277); Durham of Lambton castle held 30471 acres, yielding £71671 (Bateman, 145); Grey received £23724 from 17599 acres (Bateman 195); Henry George Percy was the Duke's son, and later the 7th Duke of Northumberland; Lord Ravensworth accrued £39160 13851 acres (ibid 376).

¹⁶⁹ He took over House of Lords sponsorship of the first Bill (the Rivers Pollution Bill 1872) from Lord Shaftesbury, who was grieving his wife's death: HL debs, 30 April 1875, col 731

¹⁷⁰ Gaskell (n 157), 184.

¹⁷¹ Peter Willis, 'Capability Brown in Northumberland' (1981) 9 Garden History 157, 175 (the first Duke spent a quarter of a million pounds on Brown's gothic landscape).

¹⁷² Society in the English Country House (1907) 50, quote in D Cannadine, *Aspects of Aristocracy: Grandeur and Decline in Modern Britain* (Yale University Press, 1994), 165

deposit was made. The Duke sought not growth of investment, but security. On this interpretation, the bank's job was to safely hold the Duke's deposit, under as little pressure as possible to reinvest it in profitable, potentially environmentally exploitative developments. 'Steady state', rather than 'growth state', is what this attitude to wealth arguably symbolises.

To claim as I do that environmental law was the product of a resurgent aristocracy awaking from its Georgian complacency to grasp new (or rather old) romantic opportunities to steer the nation into an age of green industrialisation is not to ignore the potential complicity of the industrial bourgeoisie and the Manchester School of economics underpinning it. The business historian Pierre Desrocher has examined the background to corporate acquiescence with clean technology at this time in order to explore the extent to which the 'invisible hand' had a 'green thumb'.¹⁷³ Desrocher cites Dr Lyon Playfair, who asserted that 'nothing in nature [should be regarded by the manufacturer] as worthless', and that 'as competition becomes keen, these waste products may become the largest source of profit'.¹⁷⁴ However, Desrocher argues that the incentives to reduce waste were the result of 'the *institutional* structure of a market economy'. Green technology was 'not only based on price signals and resulting profits and losses, but also on private property rights and the rule of law'.¹⁷⁵ Desrocher sees rule of law best reflected in the common law (of nuisance), but that is not inconsistent with the emphasis in this article on both common law and statute.¹⁷⁶ What is key is that environmental protection was the result of an authoritative imposition of legal obligations on industry.

5. Conclusions

It is fascinating to reflect on the significant extent to which the first industrial nation valued environmental protection and the various ways in which that found expression in numerous laws. The foregoing examination of nineteenth century environmental law identifies the specific values that shaped law. It offers a qualified defence of Dicey's thesis that legal interventions were shaped by ideas, rather than the immediate exigencies arising from spontaneous problems presented by industrialisation. Dicey neglected to mention any of the common law and statutory provisions regarding pollution and nature conservation discussed above. But that was not because there was anything fundamentally difficult about these interventions in terms of his thesis. On the contrary, as Coyle and Morrow recognised, behind the veneer of a seemingly chaotic response to exigencies arising from steam powered industrialisation lies

¹⁷³ Pierre Desrochers, 'Victorian Pioneers of Corporate Sustainability' (2009) 83 *Business History Review* 703; and 'Does the Invisible Hand Have a Green Thumb: Incentives, Linkages, and the Creation of Wealth out of Industrial Waste in Victorian England' (2009) 175 *The Geography Journal* 3.

¹⁷⁴ 'Pioneers', *ibid* 705.

¹⁷⁵ 'Green Thumb', n 173, 12.

¹⁷⁶ A purely common law approach facilitated 'pollution ghettos' by virtue of the difficulty of potential claimants at this time affording litigation. Warren points to the hypocrisy of 'barons' of industry who preached 'the philosophy of material progress' from remote southern rural homes without thought for the northern workers 'who lived in...miserable homes pinched in between works near expanding waste heaps and a river which was heavily polluted and often shrouded in smoke of chemical fumes' (K Warren, *Chemical Foundations* (Oxford University Press, 1980) 8.

a body of law with firm philosophical foundations. And like Dicey, these scholars attach influence to the utilitarianism of Jeremy Bentham.

Yet the subtle adjustment that can enhance both Dicey's and Coyle and Morrow's analyses concerns the role of the seminal ideas of Bentham's adversary, Coleridge. Contrary to Dicey, Bentham's and Coleridge's ideas were not influential consecutively but, rather, they co-existed. Coyle and Morrow are right to have recognised the diversity of ideas shaping environmental laws, and in particular to have highlighted the importance of a resurgent natural law tradition. Certainly, John Locke is important to environmental law for the reasons given by Coyle and Morrow (concerning sustainable development). Nevertheless, the deepest engagement with humankind's place in the natural world is provided by Coleridge. Bentham supplied the rationale for evidence-based law promoting human happiness as far as it is connected to the environment; Coleridge provided the justification for intuitive laws concerned with recognising and safeguarding 'nature beauty'.

It is not possible to discuss in any detail the subsequent evolution of environmental law-making opinion. It is fairly clear that the 'romance' of the law examined above in regard to Coleridge (and the Young England conduit of Coleridgean ideas) is at most, now, a counter-current. Strongest echo of it can be found in school of thought known as 'wild law'.¹⁷⁷ That is a legal philosophy which stands for a radical re-orientation of human rights around common-but-differentiated rights vesting in species within the 'earth community'.¹⁷⁸ Without explicitly considering the thought of Coleridge (or Young England), wild lawyers advance an idea of 'one world' that closely resembles the pantisocratic/stewardship ideas discussed in the foregoing. What is particularly compelling about this comparison is the similarity of the political contexts of the early nineteenth and early twenty-first centuries. Each is characterised by the dominance of economics.¹⁷⁹ In 'according totemic significance to the role of the market in tackling environmental problems',¹⁸⁰ it is arguable that modern policy and law creates a climate in which romantic conceptions of environmental law can once again grow popular, whether or not that is a thing to be welcomed.

¹⁷⁷ Cullinan, n 28.

¹⁷⁸ *Ibid*, 147-149.

¹⁷⁹ n 28.

¹⁸⁰ Morrow, n 28, 2.