

## Book Note

### LAWSCAPE: PROPERTY, ENVIRONMENT, LAW, by Nicole Graham<sup>1</sup>

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THE COMMON LAW OF PROPERTY originated from English land law and has since been exported and adopted around the globe. Yet, little consideration has been given to the consequences of transplanting English land law to alternate geographical locations with different physical conditions. Prompted by this dilemma, Nicole Graham explores the relationship between property law and place in *Landscape*. Graham asserts that “the law can, should and does have a direct relationship to land and natural resources through its property regime.”<sup>2</sup>

Graham’s approach to understanding property law through paradigms and paradigm shifts is presented in the introduction. Chapter two moves on to provide the conceptual origins of property through an analysis of the paradigm of nature/culture. This dichotomy, operating via anthropocentrism, results in the classification of “things” and the determination that humans are the “masters and possessors of nature.”<sup>3</sup> The nature/culture paradigm is then used to explain the conception of a property model as a relation between persons and things, which leads to the conclusion that the power of culture over nature results in legal rights over property.

Graham discusses the material origins of modern property law in England and the application of that law in the British Empire in chapters three and four, respectively. The process of enclosure was used to appropriate land into private hands and improve lands by turning them into uniformly productive fields across the English commons. Enclosure changed the relationship between people and

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1. (Oxon: Routledge, 2011) 225 pages.
  2. *Ibid.* at Preface.
  3. *Ibid.* at 29.

place. The displacement of people from the land through enclosure is regarded as a pivotal point in the history of modern English property law.

With the establishment of modern property law through enclosure, it was possible to transplant universalized property regimes into England's colonies. Although there were some important intellectual and socio-political differences between the property laws of England and her colonies, the ideological foundations of colonial property laws were far from local. The English approach to colonization—namely, pursuing the aims of cultural progress and agricultural improvement—lacked appreciation for the local geophysical conditions.

Chapter five covers the conceptual development of property law to underscore the importance of theories of property in the development of the person/thing paradigm. The first part of the chapter looks at the shift to the person-person theory of property through “dephysicalisation”—“the removal of the physical ‘thing’ from the property relation and its replacement with an abstract ‘right’”<sup>4</sup>—using positive, utilitarian, rights-based, and political theories of property.

Having established the conceptual origins and development of modern English property law, in chapter six Graham goes on to situate the theoretical dialogue in contemporary practices of property law. The concept of dephysicalisation that defines modern property law is considered in both legal practice and cultural practice. In legal practice, property is considered in terms of ‘rights,’ which are evaluated against competing rights to determine its legitimacy, rather than in physical contexts of land use. In cultural practice, the dominant discourse of ownership as proprietorship is set against the indigenous (and non-indigenous) belief that ownership is a responsibility rather than a right. Nonetheless, it is concluded that contemporary legal and cultural practices of property have contributed to the maintenance of modern property law as placeless.

In closing, the epilogue re-emphasizes that although property law has been abstracted, it is undeniably rooted in a particular time and place. Adverse consequences result where the legal regime is maladapted to different local conditions. Graham aptly concludes by stating that “[i]f we want to know how to reshape our property law, we have to look no further than the landscape because it is the landscape that reveals our place in the world and the opportunities and limits of our connection with it.”<sup>5</sup>

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4. *Ibid.* at 134.

5. *Ibid.* at 206.