

## **E. Freyfogle, *The Land We Share: Private Property and the Common Good***

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Recent controversy over the decision of the Supreme Court in the *Kelo vs. New London* case, in which the Court decided that a city may seize a citizen's property to give it to a private corporation, indicates that the intense debate over the nature of property rights in the US continues to rage. Into this fray steps Eric Freyfogle's new book which describes for a mainstream audience the legal dimensions of this fight. The development of US property law is discussed from its beginnings in British common law through its radical changes of the 20th century. Two central philosophical questions recur throughout the text. First, what rights do landowners have that guarantee their liberty to use their lands as they see fit? Second, and intimately related to the first, what rights do landowners have that insure they are free from harm or nuisance caused by other landowners?

This book is a pleasure to read. Freyfogle's prose manages to be intelligent and nuanced while also being lively and easy to understand. Most engaging is the set of case histories, each of which presents a famous precedent in US property law. These case studies give the reader a view into how the abstract ideas of property law affect

real people, and provide a sense of how life in the US has changed over the last 230 years. For example, early case laws involve issues of forest use and beaver dam removal, while later ones concern coal mine pollution and subdivision zoning.

This book is also a superb introduction to US property law for landscape ecologists. Unlike many other legal scholars who write on this issue, Freyfogle has an ecological sensibility that makes his remarks very germane to readers of this journal. He discusses in detail the ecological implications of various interpretations of property rights. For instance, he writes at length about the disconnect between the small scale of private property law, where each parcel is a distinct kingdom unto itself, and the ecological reality, where all parcels are more or less connected by ecological flows and fluxes. He also writes about whether ecologically-sound land-use is a responsibility of land ownership, generally answering in the affirmative. Mixed in with all this are substantial quotations from Aldo Leopold's writings on the subject of property rights and responsibilities, which are a boon to any environmentalist.

If all this sounds like a lot to cram in one book, that is because it is! The introduction lists at least five themes that recur throughout the book. These themes appear in various proportions in each chapter. While each chapter is a self-

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enclosed unit, and would make an ideal reading for a class, it is often not clear why the chapters are in the order they are in. The overall effect is like listening to a set of musical etudes, each a masterful variation on a common theme, but lacking any sense of progression. The reader of this book is advised to study the introduction carefully, and pick one or two themes to keep at the forefront of his mind while reading.

The important exceptions to this lack of progression are the last two chapters, where Freyfogle gives his sense of where private property for the US should go. The main focus is on updating the still-applicable common law restriction on land-use, “do no harm,” to include modern ecological knowledge and environmental

sensibilities, making ecological harm as important as other forms of harm. More broadly, Freyfogle argues for a recognition in the political discourse that property “rights” are really a creation of man-made law, and have always (and will always) change in response to changing mores. These chapters are undoubtedly the most important in the book. However, I found myself wondering, how do we as a society get there? What practical political or legal steps should environmentalists take? It is perhaps unfair to expect the current book to cover such topics, given the vast terrain it already traverses, but I hope in the future Freyfogle will bring his considerable expertise to bear on these important questions, and shed farther light on the path he points to in this book.