Chapter 8

Sustainable Webs of Interests: Property in an Interconnected Environment

Craig Anthony (Tony) Arnold*

Property issues arise in interconnected physical, social, and legal environments. All indications point to interconnections that are complex, far-reaching in scope, multi-scalar, dynamic, and nonlinear.1 Property institutions must adapt to these complexities and changing conditions. However, it has become apparent that the patterns and practices of our uses of land, water, and the environment are unsustainable ecologically and socially.

* Tony Arnold is associate dean for academic affairs and faculty development, Boehl Chair in Property and Land Use, and professor of law at the University of Louisville Brandeis School of Law. He is also affiliated professor of urban planning at the University of Louisville School of Urban and Public Affairs and chair of the university’s Center for Land Use and Environmental Responsibility. He worked on this chapter as a visiting scholar in the School of Planning at the College of Design, Art, Architecture, and Planning at the University of Cincinnati, 2008–2009, as the Huber Hurst Visiting Eminent Scholar at Levin College of Law, University of Florida in 2009, and as visiting professor of law and the Symposium Visiting Professor at the University of Houston Law Center in 2010. An earlier version of this chapter was presented as a keynote speech at the Conference on Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges, New Zealand Centre for Environmental Law, University of Auckland. The author thanks the organizers of the conference and the University of Kansas College of Liberal Arts and Sciences for their support of a video-cast of the speech from Lawrence, Kansas to Auckland, New Zealand. Much of the author’s research is downloadable for free from the Social Science Research Network at http://ssrn.com/author=621899. Email: tony.arnold@louisville.edu.

While both legal and sociocultural understandings of property are evolving, they remain hampered by the supposedly wealth- and production-maximizing concept that property is a ‘bundle of rights,’ based on the mental image of a ‘bundle of sticks,’ with each stick representing a different right or entitlement.² Defining property as a set of legal rights or entitlements protected by legal and political institutions for the purpose of facilitating wealth acquisition and production is far too limited to facilitate sustainable relationships between people and their environments and among people. The ‘bundle-of-rights’ concept treats both the resources that are the object of private property rights and the rights-holders as disconnected from the ecological and social environments in which both exist.

An alternative concept of property is that property is a ‘web of interests,’ in which interests are defined by the particular characteristics of the object of the property (including natural features and environmental carrying capacity) and by the interconnected relationships that people, entities, and institutions form with respect to the particular object.³ This concept, previously developed in an article in the Harvard Environmental Law Review, reflects the kind of property relationships that exist in society – that is, the ways by which people form relationships with “things” (even if intangible) and with one another with respect to “things” – and the kind of relationships that exist between people and their physical and natural environments.⁴

This chapter discusses how the ‘web of interests’ concept might facilitate a more ecologically and socially sustainable definition of property interests amid the realities of the interconnected environments in which property issues arise. While the concept can be applied to intellectual property, property interests in business organizations and financial investments, and other forms of property,⁵ this chapter focuses on property in land and water.

⁴ Ibid.
⁵ Ibid., 358–63.