Part Three

Changing Conceptions of Property and the Challenge of Accommodating Principles of Sustainability in the Ownership and Use of Natural Resources
Chapter 12

Evolution, Adaptation, and Invention:
Property Rights in Natural Resources in a
Changing World

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The concepts of ‘property rights’ and ‘sustainability’ are often considered inherently in tension with each other. Until recently, it was unusual to find the topics in the same title at law conferences, in law courses, or in areas of legal practice. To some extent, this situation reflects the adherence of law schools to the traditional rigid categories of legal scholarship and teaching (such as property, equity, and contracts, etc.), in contrast to the relatively recent and developing fields of environmental and sustainability law. It also reflects the traditional division of specialization in the legal profession.

At a more general level, there is a discernable polarization of views in society regarding property rights, with one end of the spectrum asserting that such rights are sacrosanct and that the imposition of sustainability principles are a dangerous threat to the established order, and thus to economic development. Diametrically opposed to this is the belief that the elevation of private property rights to a position of primacy within legal systems is inherently incompatible with ecological integrity and the survival of life on Earth.

There is, of course, a middle ground. Most environmental conflict is essentially about the exercise of property rights over land and resources, and most would agree with the necessity of balancing those rights against the rights of other property owners, and the public interest in the protection and sustainable management of the environment at large.

The theme of this book reflects the complexity of the interrelationship between property rights and environmental sustainability. The title of this chapter reflects the dynamic nature of the common law. Legal rules and principles are not frozen in time, but rather are able to evolve and adapt to meet new challenges and changing circumstances.

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David Grinlinton and Prue Taylor (eds), Property Rights and Sustainability, pp. 275–304.