Chapter 13

Property Rights across Sustainable Landscapes: Competing Claims, Collapsing Dichotomies, and the Future of Property

Ann Brower* and John Page**

We explore the use of property rights as a tool for promoting sustainable landscapes through a case study of a peri-urban landscape in New Zealand’s South Island. More broadly, we take up the question suggested by Professor Joseph Sax: How can we use a tool designed to enable exploitation of natural resources to facilitate and promote sustainable use and conservation of natural resources?1

To begin exploring the question, we borrow a proposition that follows from the findings of Sally Fairfax and others: that more diverse, inter-woven, and even competing property arrangements are more effective in sustaining landscape values than simpler, unitary property arrangements. We expand on this proposition in a case study of the pastoral and coastal landscape at Taylors Mistake beach in Christchurch, New Zealand. We then use the case study to suggest several perceived dichotomies innate to the politics of property. We show the dichotomies to be real and important to the politics of landscape stewardship, even if the clarity and distinctness of the two poles are often exaggerated. Finally we look at the collapsing dichotomies of property and what they mean for the stewardship of landscapes and the future of property.

A landscape is a set of abstract relationships that together constitute the “substantive component of geography.”2 Fairfax and others observe that these landscape relationships include management relationships, the public-private partnerships in land acquisition that started to emerge as early as 1856 in the

---

* Ann Brower is senior lecturer of public policy, Faculty of Environment, Society and Design, Lincoln University, Lincoln, New Zealand.
** John Page is lecturer of property law, School of Law, University of New England, Armidale, NSW, Australia.
United States, and a web of different landowners each managing land for different purposes. The result is, even in land held for conservation purposes, that the ownership and management relationships are neither unitary (in the state) nor simple. Instead, they form a mosaic that has become more and more complex since 1780. The increasing complexity of this mosaic leads us to explore questions of property in landscapes.

To define landscape, we turn to one of the founders of modern geography, Carl Sauer, who wrote in 1925:

Landscape is the English equivalent of the term German geographers are using that largely and strictly has the same meaning, a land shape, in which the process of shaping is by no means thought of as simply physical. It may be defined, therefore, as an area made up of a distinct association of forms, both physical and cultural…. By definition the landscape has identity that is based on recognizable constitution, limits and generic relation to other landscapes, which constitute a general system. Its structure and function are determined by integrant, dependent forms. The landscape is considered, therefore, in a sense as having an organic quality. We may follow Bluntschi in saying that one has not fully understood the nature of an area until one has ‘learned to see it as an organic unit, to comprehend land and life in terms of each other.

In this chapter, we select a case study landscape that exemplifies the intensifying and often-competing pressures brought to bear on natural resources from human action. It also symbolizes a complex mosaic of property claims and public, private, and community use rather than a simpler unitary picture of property. In this context, we examine the institutional durability of property to accommodate such pressures and complexities to achieve a sustainable preservation of the landscape and its component natural resources. In so doing, we make wider observations as to the future direction of property in challenging times.

1. Methods and case study

To start examining our proposition, we will structure a case study borrowing from the rural sociology’s methodological toolkit “rapid rural appraisal.” We will adapt the appraisal framework to our research questions, by conducting a not-so-rapid landscape appraisal consisting of:

---