

Book Review

Benjamin J Richardson

***Time and Environmental Law: Telling Nature's Time*
(Cambridge University Press, 2017)**

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At a time of accelerated global change, Benjamin Richardson at the University of Tasmania offers a beautifully crafted reflection on the role of time in environmental law. Far more than an academic tome, Richardson's *Time and Environmental Law: Telling Nature's Time* is a masterful call for society to align itself with "nature's time". As Richardson observes, society immersed in its pursuit of the future has lost track of both the rhythms of the past and of our present embedded in the ongoing cycle of the seasons and the flow of tides. In our pursuit of technological progress, we are sacrificing our connections with the environment that have nurtured and nourished the human species for millennia.

This book is not an environmental elegy. It is a carefully researched study that calls upon individuals to reassess what role law has played in contributing to ecological losses and human disconnection with "nature's time". It presents an argument that is at once intuitive but also profound. Time does not just influence law through concepts such as causation, but existing law also influences how time is perceived by social actors.

Two examples illustrate how time has become a legal commodity benefiting short-term ends at the cost of long-term objectives. First, environmental laws such as the US Clean Air Act¹ and New Zealand's Climate Change Response (Moderated Emissions Trading) Amendment Act² have grandfathered certain activities and facilities that are contributing to emission problems.³ What this

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1 42 USC §§ 7401 et seq.

2 Climate Change Response (Moderated Emissions Trading) Amendment Act 2009.

3 The US Clean Air Act exempted pre-1970 facilities. The New Zealand Climate Change Response (Moderated Emissions Trading) Amendment Act permitted a

means is that a present political situation ultimately dictates future possibilities. Communities become locked in to certain types of development because of decisions to grandfather even when the activities being grandfathered do not present environmentally viable futures.

Second, legal systems often allow for a process of relicensing that may include fast-tracking of decisions that should engage the community in an exchange. As with the political process of grandfathering, fast-tracking for relicensing or in some cases for environmental assessment reviews operates to protect certain community interests over other community interests by compressing the time available for law-making or project review. As *Time and Environmental Law* argues, even though there may be the legal ability to revisit conditions on licences after they have been issued, it is a rare practice. The New Zealand Resource Management Act 1991 (RMA) provides an interesting case study of this phenomenon. Even though the RMA has provisions allowing for the review of resource consents to address unexpected environmental impacts or changing environmental impacts, the resource consent authorities must take into consideration the financial implications of new conditions and must not impose conditions that would make the original activity for which the consent was obtained untenable.⁴

To respond to mechanisms that lock in government actions, the book calls for more “deft and nimble” governance to match “nature’s time”. Professor Richardson calls for reimagining what our planning tools can do and for pragmatic reforms to existing processes that take into consideration “nature’s time”. As he writes:⁵

We must set overarching environmental quality standards, with regard to biodiversity, water quality, climate, and more, coupled with clear and measurable performance markers which if not met would trigger adaptive responses. Within such parameters, the planning system should be more strategic and scaled around bioregions, and include allowances for future changes. Review mechanisms must be incorporated into natural resource allocation regimes, such as forestry and water, to enable timely adjustments to reflect changes in the quantity and health of resources. The licensing process should include a longer probationary phase, in which development approvals are phased over time with graduation to higher steps contingent on meeting performance outcomes. This stepped development approval process would,

six-year delay for the agricultural industry in complying with the Act and gave farmers additional emissions allowances.

4 Benjamin J Richardson *Time and Environmental Law: Telling Nature’s Time* (Cambridge University Press, Cambridge, 2017) at 166–177.

5 At 185.

by limiting initial investment in new facilities, reduce path dependence in governance.

Each of these proposed reforms offers real possibilities for more objective planning processes that acknowledge that change within governance systems is inevitable. If environmental conditions are changing faster than we expect, governance systems must also react. Fixing the planning system for extraction and development will not, however, be enough to restore human connection with “nature’s time”. As our economies and our lives accelerate, we are out of step with the slower tempo of the global systems that we depend on for our survival including food production systems. Professor Richardson calls for multiple levels of restoration. First, he calls for a broad programme of ecological restoration to help us overcome our ignorance of our environmental past. Living in the “ever-present now” with limited “rear vision”, human communities have forgotten about our connection with the landscapes and seascapes that have shaped our human experience. *Time and Environmental Law* sagely calls for a reunion between the twins of “ecological restoration” and “sustainability”.⁶ Without reinvigorating and improving declining environmental systems, it becomes increasingly unclear what society is attempting to sustain for future generations.

Second, Professor Richardson calls for a restoration of human beings as social beings. In his chapter entitled “Rallentare” after the Italian word for “slow down”, he raises salient points about “business” as “busyness”. Community sustainability depends on communities having the time to respond to speed of projects. The book offers a fascinating example from Tasmania where a fast-track law called the Pulp Mill Assessment Act was deployed to secure quick development approvals for a large pulp mill without public hearings or the ability for public appeals.⁷ Having deliberately fenced out the public from the development process and ignored the need for social licence to operate, the project was eventually abandoned due to financial institutions refusing to “fast-track” their financing without a better understanding of the social and environmental impacts of the mill.⁸

If we are to understand “nature’s time”, we cannot maintain our status quo for speed where the implications of decisions become blurred. In order to restore our connection with “nature’s time”, Professor Richardson describes two significant social movements that citizens can easily connect to in their lives. First, he describes the movement for Slow Food and calls upon states to create a legal framework that prioritises the values behind Slow Food including “good,

6 At 197.

7 Pulp Mill Assessment Act 2007 (Tas).

8 Richardson, above n 4, at 293–297.

clean, and fair” food.⁹ Second, he offers insights from his previous research on Slow Money and socially responsible investing calling for entities to consider the long-term social and environmental consequences associated with project financing.¹⁰ The book offers insightful recommendations for how to implement specific governance mechanisms that encourage the support of values behind Slow Food and Slow Money. The book does not make out these transitions to be simplistic, but calls for an acknowledgement of how embedded our “need for speed” is in existing law and the need to take steps to slow down the law.

He closes the book by writing: “Restoring ecological damage, responding to a dynamic future, and relaxing the pace of life can help align us with Earth’s complex temporalities much better than the ever-present now.”¹¹ These are not simply aspirational words. Nested in the book, readers learn that Professor Richardson “walks the talk” and endeavours to live his own life in alignment with what he writes. He directly invests in restoration and building a dynamic future through his own activities as a private steward of “Blue Mountain View”, an ecosanctuary in Tasmania, Australia, that cooperates with both public and other private landowners to protect a significant Tasmanian ecosystem.¹² Pragmatic visionaries like Professor Richardson offer hope that we can slow down in order to sustain a different vision of how we want to live within our human communities and on this earth. *Time and Environmental Law: Telling Nature’s Time* reminds us of Mahatma Gandhi’s dictum: “There is more to life than simply increasing its speed.”

9 At 319–329.

10 At 339–346.

11 At 404.

12 <<http://www.bluemountainview.com.au/>>.