

*Steps to an ecological jurisprudence: A review of Im Namen der Natur*¹

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In a dust-jacket comment on William Irwin Thompson's *The Time Falling Bodies Take to Light: Mythology, Sexuality and the Origins of Culture*,² Wendell Berry observed:

If [Dr] Thompson merely knew as much as he does, he would be uncommon. That he can *think* with and about what he knows makes him rare.

The importance of books like cultural historian Thompson's, and of a growing group of contemporary authors like physicist Fritjof Capra,³ historian Theodore Roszak⁴ and biologist Rupert Sheldrake,⁵ is that they reflect the need for a synthesis of the welter of current knowledge, ideas, theories and prognoses. There is simply too much to know; the possibility of being or becoming the new Renaissance person fades with the exponential growth of information. Such a Renaissance person is, in any event, at risk of becoming old news with the rapid turn-over of intellectual fashion and technological innovation. And the capacity to use what little we might have gathered together in our own corner of knowledge, in order to respond to the range of global and local crises, seems hopelessly diminished. In the circumstances, the best we might aspire too seems to be a level of competence in our own fields and of decency in our own lives.

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1 Klaus Bosselmann *Im Namen der Natur: Der Weg zum ökologischen Rechtsstaat*, Scherz Verlag, 1992, 455 pp, incl index. Forthcoming in English as *In the Name of Nature - The Concept of Eco-Law* (working title).

2 St Martin's Press, New York, 1981. See also Thompson's *Imaginary Landscape: Making Worlds of Myth and Science* (St Martin's Press, New York, 1989).

3 See especially his *The Tao of Physics* (Fontana/Collins, 1976), *The Turning Point: Science, Society and the Rising Culture* (Simon & Schuster, New York, 1982), and, with David Steindl-Rast & Thomas Matus *Belonging to the Universe: New Thinking about God and Nature* (Penguin, Harmondsworth, 1992).

4 See his *The Voice of the Earth* (Simon & Schuster, New York, 1992), *Person/Planet* (Anchor Press, New York, 1978), *Unfinished Animal* (Faber & Faber, London, 1976) and *Where the Wasteland Ends: Politics and Transcendence in Post-Industrial Society* (Faber and Faber, London, 1972).

5 *A New Science of Life* (Paladin, London, 1983), *The Rebirth of Nature: The Greening of Science and God* (Century, London, 1990) and *The Presence of the Past* (Fontana/Collins, 1989).

There are, however, those occasional individuals who, like Wendell Berry's view of Thompson, manage not only to gather together the myriad threads of our intellectual, political, moral and scientific lives, but also to do something with the material. In an age marked by increasing academic and professional specialisation and educational instrumentalism, synthesis becomes the mark of wisdom rather than of mere cleverness. More than that, in terms of the key theme for which the late Gregory Bateson⁶ is justifiably remembered, the important contribution of such writers, and the key goal of our political and educational institutions, is that of making connections. As Klaus Bosselmann makes clear in his book, as the named and other authors make clear in their work, it is a mark of our "rationality" and of our scientific-industrial culture that we have chosen the style of intellectual, personal, and moral separation; it is seen as a source of our ecological, moral and spiritual crises that we have lost any sense of interpersonal, transcendent connection; and it becomes a source of our intellectual and political renewal that we make as central the ideal of connection.

Each of us will have encountered books which have made a mark, through the elegance of writing, through the personal relevance of the message, through the introduction of new ideas or through some other kind of impact. It seems to me that the mark of many such books, whether we're talking of fiction or non-fiction, is this capacity of the writer to provide linkages, whether these are metaphoric, emotional, historical, personal or intellectual. What is important, again, in the expanding body of contemporary social criticism and philosophy, is just this capacity to provide syntheses that will in some way resonate with our own shadowy understanding of how things are. But even this, today, might not be enough: more than synthesis, the very nature of the message coming through contemporary writing is that what is required is a radical re-direction. The mark of a great deal of work in this decade is that we appear to have moved to a phase of critical maturity, reflected in the shift from denunciations of our technocratic, bureaucratic, hierarchical society through to analyses of the directions that appear to become increasingly imperative. This, in part at least, reflects the synthesizing work of the preceding couple of decades; in a larger part it reflects a shift in interpretation and explanation. The result of the synthesis, across politics, science, theology and a great deal of non-analytical philosophy, is a reconstruction of both the problems and the likely solutions in terms of the consciousness that has shaped the creation of an environmentally destructive and personally alienating late-industrial society, and will shape post-industrial or meta-industrial⁷ society.

Apart from the growing voice of critical legal theory, and especially the profound intellectual and political influence of feminist and critical race theory, much of this discussion has passed the law by. Much of it, of course, has neither been written by

6 *Steps to an Ecology of Mind* (Granada, St Albans, 1973), *Mind and Nature; A Necessary Unity* (Bantam, New York, 1980), "The thing of it is," in M Katz, W P Marsh, & G G Thompson (eds) *Earth's Answer* (Lindisfarne Books, New York, 1977).

7 W I Thompson *At the Edge of History* (Harper Colophon, New York, 1971), *Passages about Earth* (Harper & Row, New York, 1973), *Evil and World Order* (Harper Colophon, New York, 1976), *Darkness and Scattered Light* (Anchor Books, New York, 1978).

lawyers nor had much to say to them. Equally, it would be fair to say that much of the discussion in science, theology and cultural history will have seemed marginal to the more immediate concerns of lawyers and legal academics other than at a personal level (which, of course, must never intrude). We now have, in Klaus Bosselmann's book, not only an addition to the synthesizing literature; we also have one that, more than much of the imaginative work of the Critics, links an analysis of contemporary issues to the reconstruction of the legal state. This book is, on the face of it, one about ecological issues and the rebirth of the ecological legal state;⁸ but it is also far more than that: it is a book which brings together the traditional and critical lines of argument about legitimacy, the epistemological redirections of contemporary theologians and physicists,⁹ the legal issues of rights and sovereignty, a critical history of late industrial society and a comprehensive analysis of environmental issues. This is, quite simply, one of those books which I would consider that civilized people need to read and to have in their libraries. It is a study in environmental law and philosophy, in jurisprudence, in moral aspiration and in transformative politics. It is also, unlike so much of the depressing literature of environmental degradation, moral alienation and political intransigence, a profoundly optimistic book. There is also an elegance in the manner in which this book is written: given that the epistemological and ecological tasks are those of overcoming the barriers of compartmentalization and separation, given too that the ecological consciousness is one which is marked by an awareness of the reality and principles of connection, Dr Bosselmann has written a book that, in the weaving together of the threads of science, philosophy, politics and jurisprudence is itself an exercise in integration and connection.

The thesis of the book (if I can fairly reduce such a complex book to a line or two) is that the current ecological crisis is to be understood not simply in terms of the "facts" of environmental degradation and global risk but rather understood in terms of the consciousness and perceptions which underlie modern, late-capitalist societies. This consciousness has been marked by an anthropocentric epistemology of separation and hierarchy, especially in terms of the relation of humans to nature. Thus the Rechtsstaat needs to be reconstructed on the basis of a transformed, ecological ethic in which issues of rights and obligations are resolved not through the prevailing anthropocentric ideology but rather through an ecocentric ethic, in which the environment is recognised as having its own intrinsic value and not merely an instrumental value for humans (which might nevertheless be capable of grounding short-term environmental laws and controls). The heart of the thesis, again, is the imperative of the shift from the alienating anthropocentric world view to an ecological world view. In this respect, the issue is not so much the institutional and substantial presence of the Rechtsstaat - the focus of most critical theory - rather, it is the epistemology, the values, the principles that inform and shape that Rechtsstaat. In focussing on the problems and limits of the anthropocentric world view, Bosselmann is not alone: for some years it has been clear that scientists, especially in physics and biology, have expressed their views on the

8 The term Rechtsstaat will be used from now on, as it is a far more compact expression for the state which is based on principles of legality.

9 Consider especially the conversations between Capra, Steindl-Rast and Matus (above n 3).

limitations of this perspective.¹⁰ Anthropocentrism - now added to the list of sexism, racism, ageism - is not only scientifically dubious, it is life threatening. Where this author moves on from those others who have identified the spiritual, political and intellectual crises of our times is in weaving an alternative to anthropocentrism into a plausible and attainable theory of political life.

As indicated before, this starts as a book in environmental - or better, ecological - law and philosophy, but it becomes far more than that. A great deal of critical and political theory in the last couple of decades has revolved around questions of the survival and legitimacy of the formal legal state, producing conclusions ranging from the enthusiastic "trashing" of the early Critics through to the panegyric to the liberal-capitalist state by Fukuyama.¹¹ What comes out of so much of this critical debate is a sense of the all-or-nothing options when it comes to the retention or abandonment of the legal state. In starting with the critical issues in ecology, what Dr Bosselmann has ended up with is a work in jurisprudence and political theory which serves to provide a framework for the reconstruction of the state on the basis of transformed principles and priorities. The balance is struck: traditional principles of moral individualism and rights take a subordinate role to those of ecological survival; the conventions of national sovereignty are seen as irrelevant and obstructive to the reinvention of a new political and global order; but the core aspiration for legal order and controls resting on clear principles of legitimacy is preserved - with the profound difference that those principles are informed less by the Kantian, liberal criteria of individual autonomy and moral generalizability than by empirical and epistemic criteria of ecological connection and interdependence. There is in this respect, something in it for the traditionalists who might be too nervous about the more radical critical, late-Marxist aspirations for the trashing of the legitimate state, and for the radicals who aspire to a radically transformed basis for social and moral co-operation.¹²

The structure of the argument is one which reflects the necessary interdependence of jurisprudential, scientific and philosophical issues. In that respect, there is no single, isolated section that deals with the details of the reconstructed Rechtsstaat; nor any single part that enumerates all of the woes of environmental damage. Rather, the book moves through a series of stages which begin to connect these issues. The theme of the book is set in the Introduction, on the collision of two world views, in which the

10 For example, Joshua Lederberg "Medical Science, Infectious Disease, and the Unity of Humankind" [1988] *Jnl of the American Medical Association* 684:

"Human intelligence, culture and technology have left all other plant and animal species out of the competition.... But we have too many illusions that we can, by writ, govern the remaining kingdoms, the microbes, that remain our competitors of last resort for dominion of the planet. The bacteria and viruses know nothing of national sovereignties. In that natural evolutionary competition, there is no guarantee that we will find ourselves the survivor."

11 *The End of History and the Last Man* (Penguin, Harmondsworth, 1992).

12 See, for example, Roberto Unger *Passion: An Essay on Personality* (Free Press, New York, 1984), *Politics: A Work in Constructive Social Theory* (CUP, New York, 1987) Vol I, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy*.

epistemological foundation of the interpretation is established. Thereafter, the reader is taken through four Parts, each of which presents a core development, but each of which also reconstructs the argument around the core of an ecocentric philosophy or consciousness. The book begins with an intellectual history which brings the reader to the edge of contemporary knowledge and holistic theory, especially drawing on the new physics of Capra, Bohm and others. The second Part is more directly political: a discussion of the end of the industrial system, the deadly consequences for the environment of the prevailing logic of domination and the current place of environmental protection within this model. The third Part addresses the necessary changes to the political system and more specifically begins to address issues of an ecologically informed constitution and *Rechtsstaat*, the emergence of an eco-politics and the impact of Deep Ecology and eco-feminism. The final Part completes the circle back to the identification of the problem and identifies the foundations of a "new order", a post-anthropocentric legal state, an ecological politics and - especially - an ecocentric ethics.

The imperative running through all of this is that it is no longer realistic or appropriate to imagine that the depth of the environmental problems can be resolved either by the technological fix or by increasing legal controls. While each of these options might provide necessary and short term solutions, they are limited solutions in that they are also part of the problem: they are still founded on the anthropocentric ethic. The challenge for jurisprudence and for law makers is to imagine the unthinkable: in political and constitutional terms we face the reality of what has become an all too familiar term at the intellectual level - a paradigm shift. While it is one thing to see, as historians or sociologists of ideas and culture, the points at which there might have been such paradigm shifts, the point here is that we ourselves no longer have any choice about making what is bound to be a profound change. The significance of that change cannot be underestimated in that not only are some of the cherished elements of an affluent material life (for at least some part of the world's population) no longer assured, but also, more profoundly, the cherished ideological values of individualism and autonomy are up for revision. But it needs also to be made clear, lest this be seen by some as a disguised collectivism being reintroduced through the environmental door, that I do not read Bosselmann to be trashing these values of individualism and autonomy: rather, they are re-interpreted to be understood in terms of the values of interdependence and interconnection rather than in terms of isolation and competition.

What is involved, then, is a thesis about the next revolutionary shift, the coming revolution in politics and thought which, as a number of writers suggest, is already under way. The depth of the changes might make the whole exercise seem unthinkable, but that has always been the case with profound changes. It becomes part of the author's enterprise to make the unthinkable plausible and, in this case, imperative. And the pursuit of the ecological, ecocentric ethic is, in the end, not a matter of preserving or

re-legitimizing the technical-industrial society but rather a matter of its transformation.¹³

The issue is transformation rather than mere re-orientation precisely because it is the philosophical, epistemological foundations of our society which are involved. Anything less than the profound shifts in world view that are imagined would be to attempt to work within the prevailing orthodoxy. It would be to seek to persist with pragmatic rather than paradigmatic changes. No doubt, of course, parts of the world will continue to look familiar: Bosselmann is not asking us to imagine a world without law or without some of the institutional features not only of our own society but also of practically any society you can name. But those parts of the world are unlikely to feel the same on closer testing and are unlikely to produce the same results, because they are shaped by a radically different ethic. This is something that Bosselmann cannot stress too much: the solution is not just a matter of being a little bit more environmentally aware or of having greater environmental accountability. There is, in the end, no compromise between the ecocentric and anthropocentric world views. They are, like Kuhn's scientific paradigms, incommensurable.

One of the problems in the genre of literature is that it can seem hopelessly idealistic or naive, or simply and negatively critical of a world in which the authors are seen to be personally uncomfortable. The important task then is that of not only making the nature of the problem clear but also that of making the solutions accessible. It is a familiar experience in a range of settings that we will tend to opt for the apparently immediately accessible solution as soon as it appears that we have some grasp of the problem or the nature of the conflict. Yet what the author states here is the need to move beyond those immediate solutions - the technical and legal fix - simply because these address only the symptoms and not the core of the problem. But once we start to identify, as Bosselmann does, the scope of the problem and the requirements of the solution, it might appear not only optimistic but also impossible. After all, we are being asked to address conditions for changing ourselves. This is far more than the occasional adjustments that we have to make to accommodate new policy priorities, or new claims (and claimants) to rights; this is basic stuff, this goes to the heart of what we thought liberal society was all about. For that kind of reason, it becomes necessary to identify the strategies that societies, institutions and individuals can begin to adopt. It is clearly not enough just to announce that it's time for a paradigm change. Indeed, while Bosselmann continues to use the language of such a paradigm change throughout the book, he also recognises, with physicist Jeremy Hayward,¹⁴ the need for "persuasive contexts". It may well be the hardest thing to do to persuade people not merely to change some of their habits but rather to change their belief systems. New practices can, to an extent, be accommodated in existing beliefs; but at some point the contradictions become too great and we may either resist further changes in order to avoid the challenges, or make the epistemological change. In the final section of the

13 "Ökozentrische Ethik ist nämlich keine Ethik zur Aufrechterhaltung der technisch-industriellen Zivilization, sondern eine Ethik zu deren Transformation": above n 2, 279.

14 J Hayward *Die Erforschung der Innenwelt* (Bern, 1990) 251.

book, Bosselmann addresses the structures within which, and strategies through which, the changes might be made. I will return to these later in this essay.

The key to the account of the problem and the foundations of the ecological Rechtsstaat remains the anthropocentric world view. But what's the problem? And, if it is such a problem, can it be overcome? Is it not equally possible that anything else we dream up - including an ecocentric world view - will just be another expression of human priorities? In responding to these kinds of issues, one distinction is made clear and that is between an "environmental" perspective and an "ecocentric" perspective. Quite clearly, environmentalism involves an awareness of new categories of problems, the solutions to which are still perceived within existing structures of thought and politics. Environmentalism is at risk of reduction to an ethic of responsibility to nature which in itself is important but, in Bosselmann's terms, not enough. That kind of responsibility retains the existing intellectual and anthropocentric structure of rights and duties, modified by the possibility of recognising new categories of rights (a right to a decent environment), claimants (the environment itself) or new modes of making claims (through adapting models of trusteeship). All of these, again, appear laudable and important, but in the end such action serves only to legitimate existing structures and to lend an aura of environmental responsibility to the moral, industrial and commercial structures which remain the problem. The message that the author keeps coming back to throughout the book is simply that we cannot decide on a new ethic in the way we shop for new clothes; that it's not a matter of making what was a marginal environmentalism more politically mainstream. It is instead a matter of an entirely new ethic: that's what is involved in thinking the unthinkable. And what comes through strongly is the sense that this is not merely a matter of intellectual changes: what is involved is a transformation of external (social) and internal (personal) perception.¹⁵ But this unthinkable can be faced, too, when it is realised that what is now the political orthodoxy was itself unthinkably revolutionary.

What's so wrong with being anthropocentric? After all, it would appear to be just this scientific and moral philosophy which brought us many of the advances and comforts that we might now feel are threatened by hair-shirted Greenies. In response to

15 "Da die ökozentrische Ethik aber nur ein Aspekt des sich vollziehenden Paradigmawechsels ist, können wir sie nicht isoliert betrachten. Sie ist eine äußere Erscheinungsform fundamentaler Veränderungen des Denkens und Fühlens. Sie beschreibt das, was im politischen Raum überlicherweise mit der Forderung nach 'Umdenken' bezeichnet wird. Was aber genau soll da umgedacht werden? Während wir uns bisher eher mit der äußeren (gesellschaftlichen) Seite des Umdenkens befaßt haben, wenden wir jetzt der inneren (persönlichen) Seite zu. Beide Seite sind eng miteinander verknüpft.... Wir müssen uns also über die Tiefenschichten ökologischen Denkens klar sein, wenn wir die 'Sprengwirkung' der ökozentrischen Ethik erfassen wollen. Das ganzheitlich-ökologische Denken ist nicht nur Forderung, sondern gelebte persönliche Erfahrung. Insbesondere diese Erfahrung, die neue Sicht der Wirklichkeit, steht im Mittelpunkt der Deep-Ecology Bewegung, des Öko-Feminismus und der neueren Psychologie. Diese Strömungen haben wesentlich zur Profilierung des ökozentrischen Denkens beigetragen." Above n 2, 306.

this anticipated criticism, Bosselmann identifies four main limitations with the anthropocentric world view:¹⁶

First, empirical: the anthropocentric, objective perspective is increasingly demonstrated to be a false account of reality. That is, as an account of people as the centre of creation and nature, as an account founded on an epistemological separation of observer and observed, on a psychological, social and cultural separation from non-human life, it is increasingly and poetically demonstrated in the former "hard" sciences, like physics and biology, to be plain wrong.

Second, practical: the anthropocentric world view has turned out to be disastrous (*verheerend*) in practice. The liberties and comforts that we cherish are purchased at the price of potentially suicidal environmental degradation. And current attempts to develop an ecological change through politics and law must fail simply because they incorporate and reproduce the anthropocentric core.

Third, philosophical: the anthropocentric ethic is not logically coherent (*stimmig*); it is not logically possible to determine why human life, but not that of other species, should have moral significance.

Fourth: the anthropocentric ethic is a limited model of the "Self", one which, in viewing "Man" at the core of evolution or creation, is weak, trivial and tautological.

If the epistemological core of our way of life, science and politics has been so flawed, what are the alternatives? The single alternative - the ecocentric world view - is presented as the basis for moral action and agency, as the philosophy which defines the moral community and as the setting for decisions about rights and obligations. Such an ecocentric grounding for moral action proceeds not from the familiar individualism and identification of interests, nor from the kind of moral instrumentalism that can prevail in pragmatic times, but rather from a perception of the "life interests" of both people and nature. These interests are, necessarily, partly in common and partly in conflict. What is clear is that the resolution of any such conflict proceeds not from a constitution which effectively determines the (anthropocentric) answer, but rather from an ecocentric and equal foundation.

In shaping this principle of political action and dispute resolution, Bosselmann is strongly influenced by "Deep Green" philosophy. Briefly, the distinction between shallow and deep ecology is the distinction between pragmatic and anthropocentric changes on the one hand and, on the other, fundamental and epistemological changes. In pursuing and developing this distinction, Bosselmann seems to me to be in good company: parallels can be drawn with feminist and critical race theory in that the first phase of political and legal reforms, stemming from these critical sources, were of the pragmatic and institutional kind (providing greater structural equality, access and so on); the second phase is a phase of epistemological changes and of fundamental critique, in which the move is made away from accommodation within the existing structures to

16 By way of parallel, see also the books by Theodore Roszak, above n 4.

something perhaps not yet clearly envisaged. A further parallel lies in the fact that the changes are not simply about political and institutional structures, they are also personal, interpersonal and spiritual.¹⁷

Deep ecology becomes the foundation, then, of a transformed philosophy - *Ökosophie*, or ecosophy. Drawn from the Greek *oikos* and *sophia*, ecosophy becomes the wisdom of the household. The significance of this is not only in the substantive content of a critical environmentalism but rather in the indication of the necessary connection between the personal and the political, the inseparability of the ethical and the personal.

What is also intriguing in this, and a mark of the sweep of the author's understanding and research, is the fact that the shift from a politics or jurisprudence of mere environmentalism to this ecocentred constitutionalism brings in not only the conventions of legal theory but also resources from transpersonal psychology, theoretical physics (on complementarity and implicit order), eastern philosophy (especially Buddhism and Taoism), the cognitive biology of Maturana and Varela, the Gaia hypothesis of Lovelock and Margulis and Maori concepts such as *mauri*. It may also be a mark of the distinctly German educational and philosophical grounding in the traditions of Kantian philosophy that whatever is proposed here is carefully measured against the moral core of Kantian imperatives. At the very least, what needs to be drawn from this is the importance of recognising the impact of our implicit philosophies and of making them explicit and new. And what is also important in this is the affirmation that, at heart, this *is* a problem in philosophy, not philosophy in some analytical sense, but rather philosophy as a framework for making sense of the big questions.

Against this kind of backdrop of resources, *Im Namen der Natur* becomes also an exercise in re-envisioning the nature and tasks of philosophy, especially in grounding structures of political action in principles of sustainability and deep ecology, and in drawing on the personal-political dialectic of feminist theory and practice. What does become clear from this synthesis is that the intellectual and political models of objectivity and separation are to be replaced by a far more integrated holistic philosophy of personal life and political action. This is not merely a matter of reorganizing political priorities and philosophies according to some enhanced environmental sensibilities but becomes a matter of self-recognition, a re-connection both with a sense of Self that has been lost and with a kind of transpersonal identity that will allow us to comprehend a larger moral community than has been the case under a philosophy of

17 "Das Anliegen von Deep-Ecology ist die Transformation, die sich auf persönlicher und gesellschaftlicher Ebene vollzieht. Deep Ecology ist so etwas wie der Hefesatz für eine fundamentale Veränderung persönlicher, spiritueller, ethischer und politischer Einstellung." Above n 2, 307.

liberal individualism. In the end, the objective is the attainment of a sense - and not merely an abstract philosophy - of an organic wholeness ("organische Ganzheit").¹⁸

It can be seen from this much that Bosselmann's argument is qualitatively different from much of what we have read so far in environmental law or even environmental ethics. Far from being a gloss of environmental accountability on top of the prevailing, and persisting, structures of life and politics, his argument involves an experiential and epistemological shift which is no less than is required in order to respond to the realities of the threat to the planet. What seems to me to be especially important in this is the recognition that the principles of deep ecology are known at intuitive, philosophical and scientific levels. At the first, intuitive, level, there is the experience known to each of us, an experience of 'connection' with special places, people, objects and animals, which can extend to an experience of oneness with nature. It can be a spiritual experience of unity, of connection, with all of nature. At the second level, we find "religions" religious expressions of the oneness of life and of creation. This lies at the core of mystical traditions and ontological philosophies, an expression that things *are*. And at the third, scientific, level, there are increasing parallels with philosophical and spiritual expression, moving beyond the limitations of objective truth to empirical evidence of connection and for a unified theory of evolution. Much of this, especially the work of writers like Sheldrake, is certainly not yet mainstream science, but is becoming a powerful contender for the new scientific world view.

At the heart of this new work in science and epistemology is a non-dualistic world view, an attempt to transcend the methodology which has both constrained science and misled philosophy. This is not a matter of abandoning the philosophical roots but rather of building a new and non-dualistic philosophy from that basis. For the purposes of this book, the objective is one of creating an ecological morality or ethic which in turn will ground an ecocentric constitution and Rechtsstaat. The objective is to clarify the choice between maintaining the existing structures of competition and individualism, with the gloss of a couple of social obligations, and grounding political obligation in an ecocentred morality.¹⁹ Naturally, this non-dualistic, ecocentred morality is also a challenge to the cherished concepts of individualism. What Bosselmann envisages is what he refers to as a 'dynamic individualism', which reflects the complex connection and relations within which the single individual stands.²⁰ And this is not something to be achieved through law, but through a complex dialectic in which the individual, society, future generations, community of living beings and the whole of nature are involved. Clearly, this is a far larger agenda for moral agency than

18 "Für das menschliche Bewußtsein ist deshalb die Möglichkeit einer Identifikation mit allem gegeben, frei von anthropozentrischen Überlegenheitsgefühlen." Above n 2, 311.

19 "Die Verfassung muß sich entscheiden: Will sie wie bisher Gewerbefreiheit und Eigentum mit ein paar Sozialpflichten garnieren, oder will sie beide in eine ökologische (und damit zugleich auch soziale) Grundpflicht nehmen?" Above n 2, 210.

20 Above n 2, 213.

what we have had to work with to date. And it is a moral agenda which is inseparable from the non-dualistic epistemology which informs the whole enterprise.

It is a moral agenda, too, which maintains the language of rights, but does so within a very different epistemology. As recent discussion of liberal rights theory has indicated, it has been perfectly possible to add to the list of existing rights holders and at the same time to maintain the apparent integrity of the philosophy of rights. Indeed, the very capacity of the list of rights holders to expand may seem an ongoing vindication of rights and liberal ideology. But the problem raised here is whether thinking about rights for the environment (and not merely humans' rights to a decent and sustainable environment) goes beyond a further stretching of rights-membership and is rather a shift in philosophy. What Bosselmann suggests is not another extension of the protections of rights to yet another claimant hitherto excluded from rights holding (and from membership of a core moral community). Any such extension would leave us struggling with the normal criteria of being sensate, having interests, having moral capacity, being a member of a moral community, being capable of reciprocity and so on. Any such extension, to animals, fetuses and environments, has tended to founder on the rock of moral individualism or moral agency. And this is where the whole argument becomes difficult as it is that rock which has been precisely the important one and, indeed, becomes the one to which critical theory appears to return in those arguments for a kind of "super liberalism" which maintains and fulfils the promises of moral autonomy and freedom. Within that framework of moral agency and responsibility it is perfectly possible to think of duties to the environment (or to animals or other morally worthwhile but non-capable entities). But it becomes too difficult to shape the ideological and normative core of that model to include new "claimants". The rights issue thus demonstrates again the core of Bosselmann's thesis: that the existing intellectual and moral tools are inadequate to the task of reconceptualising solutions to the problems which they have been part of creating. The shift required is more dramatic than expanding our sense of moral accountability or extending the membership of the moral community, which tends to be defined in rights-oriented moral theory in terms of a capacity to claim and respect rights. The problem with this option of expanding rights is that, like golf clubs and private clubs, it becomes a matter of adding further interpretive glosses to an existing set of membership principles in order to respond to a new political environment. And the irony is that in seeking to preserve those principles, they become eroded and discredited. Thus, consistently with his argument that the tasks of achieving the environmental Rechtsstaat are revolutionary rather than evolutionary, Bosselmann's proposition involves tearing up the old intellectual constitution and starting again. In this way, rights and rights possession are not contingent upon the idea of moral agency and moral individualism but rather upon the ethic of moral connection. In the existing liberal model, agency always includes the possibility of instrumental connection but tends always to come back to the ground of moral autonomy. "Connection" includes, and may presume, the possibility of moral agency, but always remains the grounding for such agency.²¹

21 "Die Rechte der Natur stellen keine bloße Erweiterung des Kreises subjektiver Rechte dar, sondern deren Neuordnung. Sie setzen das Recht der freien Entfaltung der

The rights discussion clearly remains important: Bosselmann recognises, with authors such as Elizabeth Schneider,²² that there is a rhetorical and political significance to rights; but the question remains whether rights as currently conceived remain the intellectual and legal vehicles of the predominant paradigm. What is clear is that we are caught between expanding on a world we understand, and increasing the anomalies of usage, language and efficacy, and trying to think in entirely different ways.

So far so good, but now what? If we are to think and act in entirely different ways; if what we currently do, with all good will, by way of environmental protection is not enough; if we are not to overwhelm the population with the enormity not only of the problem but also of the solution, what strategies are available to get to an environmental politics? The point to repeat here is that these strategies are not seen merely as reform: the old logic and politics are seen as incapable of reforming themselves to the degree required; the changes required are nothing less than revolutionary, especially at the level of perception and consciousness.²³ So, if the agenda is transformative, the focus is as much internal as it is external. Contrary to the familiar patterns of both liberal and marxian materialism, what matters is a recognition of how much of the external structures we have internalised, and how much we deny the shaping of the world by our perceptions. Unlike the familiar politics of environmental politics and jurisprudence which focus on the externalities of structural change and control, the "revolution" here is concerned, in the first instance, with internal change. This much of the argument of the book turns on what the author sees as the tension between our good intentions and our bad habits, and on the view that an ecological ethic will change nothing unless that ethic is internalised. So, in a variation of the feminist "the personal is the political", Bosselmann moves to a linking of the spiritual and the political, recognising that the spiritual has been minimally political and the political has lacked a spiritual core.²⁴ The starting point of the strategies, then, is one of recognition and of self-awareness before leaping into political or legal activism. This, of course, is the revolutionary change that Bosselmann has anticipated, not simply in the fact that what is required is the shift from an anthropocentric world view, but also in the fact that the starting point of legal and political change is so closely identified with personal changes and transformation in perception. The revolution is one both of substance and of methodology. This too, is the particular challenge in presenting such an argument: it is not immediately obvious that we - readers, politicians, jurists and

Persönlichkeit - und damit die Grundrechte insgesamt - in einen neuen Kontext." Above n 2, 209.

22 E Schneider "The Dialectics of Rights and Politics" (1986) 61 NYULR 589.

23 "Das System abschaffen also? Das scheidet als Möglichkeit genauso aus. Wir haben es nicht mit korrupten Regierungen zu tun, die durch Revolution ausgetauscht werden könnten. Nichts würde sich ändern. Dem Tiger ist es völlig egal, wer ihn reitet. Nicht der Reiter, vielmehr der Tiger ist unser Problem. Wir haben ihn mit der Flasche großgezogen und dürfen uns nicht wundern, daß er erwachsen wurde. Bleibt nur, den Tiger zu zähmen, was übersetzt bedeutet, uns selber zu zähmen." Above n 2, 337.

24 Above n 2, 338. It ought to be noted, of course, that this is not a matter of the familiar and conventional spirituality, associated too readily with the orthodoxies of the established religions. Those religions too are subject to the same limitations of dualistic philosophies and metaphysics.

consumers - will accept that the problem lies at the heart of our world view and is not merely an expression of the manageable excesses of a particular life style. For that kind of reason, the argument as to the centrality of our self perception and perception of nature is consistently and repeatedly woven through the rest of the substantive narrative.

The image and the plan that Bosselmann presents - an image of a "new order" - is one which is bound to seem daunting because of its utopian or authoritarian implications. Yet if the argument is followed consistently through the book, it will be seen that it is both less than utopian and founded on a liberating vision that cannot be authoritarian. Indeed, it is more likely that the persistence along current lines of increasing environmental controls is a more promising path towards compelling people to ecological virtue.²⁵ What remains as a familiar core of legality is the principle of the Rechtsstaat and the political value of rights. What changes, as is stressed throughout, is the ethic which informs those core institutions. What is recognised is that neither the compulsion of formal controls nor the autonomy of the market have sufficed to respond to the risks of an ecological end-game. This is because both compulsion and liberty rest on the assumptions of the anthropocentric paradigm of the relation of people and nature. The ecological Rechtsstaat is intended to retain the requirements of legitimacy, thus avoiding the peril of mere authoritarianism, and to avoid the other *bête noire* of current economic libertarians, the planned economy, because the economy, in the new model, will not be the measure of personal freedom.²⁶

The thesis rests, too, on a recognition of the need to deal still with the basic Kantian principles of subjective right and generalisability (ie the foundations of the moral imperative). It is clear that in recent years the basic principles of subjective right have been challenged by new claimants, especially by the claims by, or on behalf of, those who (or which) have not been part of the conventional model of the moral community. Such claims and claimants include collective or people's rights, environmental rights, rights of animals, rights of future generations and so on. This is the shape of the third generation of rights, following the liberal first, and the social second generations. And it is clear that the individualistic paradigm can no longer hold out against such developments. Can, then, human freedom/rights be understood in some other way through, for example, an ecological ethic? Bosselmann's suggestion is that the whole concept of subjective right, responsibility, and individuality becomes absurd if one sees its consequences on nature.²⁷ Therefore, any theory of the rights of nature cannot be measured against the theory of subjective rights.

25 See, for example, R O Brooks "Coercion to Environmental Virtue: Can and Should Law Mandate Environmentally Sensitive Life Styles?" (1986) *American Jnl of Jurisprudence* 21.

26 "Daß der Markt nicht das Maß wirtschaftlicher Freiheit setzt, bedeutet nicht, den Markt durch den Staat zu ersetzen....Die Verpflichtung des ökologischen Rechtsstaats besteht darin, eine ökologieorientierte Politik mit entsprechender Gesetzgebung zu verfolgen. Das macht ihn keineswegs zum Staat der Planwirtschaft." Above n 2, 375-376.

27 Above n 2, 359.

Given all of this, how do we arrive at an ecological Rechtsstaat and a politics of rights? I take two main points as the criteria for this model: first, the development of non-anthropocentric tests of environmental danger and the environmental suitability of products and actions; and second, the specification of "intrinsic value" as a criterion of worth and protection. Bosselmann is, understandably, well aware that there will be disagreements with interpretations, priorities and policy imperatives, but he is equally aware that his is not an attempt to lock up moral discourse in some limited and authoritarian set of criteria. Rather, what comes through this book is its consistency with long traditions of personal and political liberty, and with the linking of the "liberation" of nature with human freedom,²⁸ it is also consistent with the goals of wider social criticism and liberation.²⁹ It is consistent, too, with an emergent model of legitimation theory, one which moves away from the formalist structures of rules and objectivity and relies more on a "process" principle of legitimacy, a principle - especially from critical, feminist and minorities theory - of legitimacy resting on discourse.

Though there may be ideological and intellectual disagreement, we also know that there is an increasing voice that argues that there is an immediate problem (*we know* that) and that the solution requires more than mere adjustments to the priorities of industrial capitalism (notwithstanding Fukuyama). It may also be that there will be disagreements with the argument that it is western capitalism that is responsible for degrading the environment and depleting resources. Still, the point has to be strongly made that the east-west conflict now gives way to the north-south conflict. And the larger point is to be made, as at the outset, that we have moved beyond simply seeing at a factual level that there is a problem of some kind (once our own children are poisoned, then we recognise the urgency). What matters is the analysis, by Bosselmann and numerous others, that the problem is symptomatic of causes that lie deep at the heart of industrial society and the consciousness of separation that has shaped it. What lies at the heart is the culture of that kind of rationality which, while it has produced glorious and appealing results, is also life threatening. In W I Thompson's terms, our unique capacity becomes our tragic flaw.³⁰ So, the strategies are built not just on the factual account of environmental degradation (though these will shape the science) but rather on the interpretation of the nature and sources of the problem.

So, what we have in the last part of the book are indications of strategies, for example, in relation to repairing the gap between the rich north and the poor south. These are to be read in the context of the rest of the book. Immediate strategies, such as

28 "Der Befreiung der Natur ist zum Schlüssel für die Befreiung des Menschen geworden." Above n 2, 207.

29 See, for example, M Walzer, *The Company of Critics: Social Criticism and Political Commitment in the Twentieth Century* (Basic Books, New York, 1988). There are, he says, "three tasks of criticism: the critic exposes the false appearances of his [sic] own society; he gives expression to his people's deepest sense of how they ought to live; and he insists that there are other forms of falseness and other, equally legitimate, hopes and aspirations." Above n 2, 232.

30 W I Thompson *Evil and World Order* (Harper Colophon, 1976) 79 ff.

the recognition of sovereignty over natural resources and access to international trading markets, are in themselves only partial: they address immediate problems and inequities, but still do not go to the core of the epistemology that has shaped the threat to life on the planet.

The problem is that strategies, in terms of the kinds of solutions that are currently sought, are shaped by the orthodoxy and by the prevailing power structures. That is why the main part of the book is so important - to make it very clear that the nature of the problem is, at heart, an epistemological one. The other point to note in relation to strategies is that not only are they now shaped by existing ideologies and structures, and thus need to be turned around from that point of control, they are also strategies that have to be implemented in the face of urgency. As indicated in referring to ecologists like Lester Brown, Edward Goldsmith³¹ and as pointed out early in the book,³² it is not a question of waiting for the last bit of proof (which seems too often to be the argument from the manufacturers required to find alternatives to destructive practices and products). This is not an urgency created by the life-span of governments seeking re-election, nor by the imperatives of new policies. The nature of the urgency shapes the imperatives of the solutions and strategies.

The key ideas in the strategic proposals can be reduced to these:

1. Political: a self sustaining economy through the development of qualitative value rather than quantitative growth, and the principle of sustainability.³³
2. Institutional: the concept of trusteeship over particular regions of the earth and a newly conceived international law which reduces the concept of national sovereignty to manageable dimensions. The starting point, of course, for such an international law is no longer the state centred perspective but rather the ecocentric perspective that is the thesis of this book and the ethical core of its jurisprudence. Thus the function of international law changes from the preservation of separation, sovereignty and autonomy, to the preservation of the globe. This is taken to reflect the emerging perspective which acknowledges the scientific view of the world as an integrated ecological whole.

In the end, whether we can take on board all of the author's suggestions or not, this needs to be seen not just as a book in environmental law but as a model of the kind of synthesis that modern times require. It is a model of jurisprudence in a very real sense, in moving beyond the safe confines of self-referential and narrowly defined intellectual boundaries, to take on the whole of the intellectual moral, scientific and spiritual culture that shapes our current crisis and its resolution. *Im Namen Der Natur* - reconstructing the *Rechtssaat* and models of rules in terms of a nature-centred ethic - means far more than reshaping rules to meet new categories of problems or claims. It means, in the necessarily brave terms of the author, nothing less than rediscovering our own true selves. In this respect, this book is important as it reflects the work of a legal academic

31 Above n 2, 394.

32 Above n 2, 74.

33 Above n 2, 396.

exploring the personal, political and spiritual consequences of his work. Klaus Bosselmann is clearly not alone in this endeavour, though the company he finds himself in, that of critical, feminist, minority theorists and practitioners, still tends to be marginal and marginalised. However, in the same way that the very issue of environmentalism was once marginal and is now mainstream, in the same way that politicians tumble over each other in the rush to appear "green", it is increasingly likely that the quality and scope of this kind of jurisprudence and political philosophy will be the mark of what will become the norm in legal theory and political imagination.