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Legal Rights for Rivers: Competition, Collaboration and Water Governance by Erin O'Donnell (Routledge, 202 pages; 2019)

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BOOK REVIEW

Legal Rights for Rivers: Competition, Collaboration and Water Governance. By Erin O'Donnell. Abingdon, Oxon: Routledge, 2019. Pp.202. \$150 hardback, \$24.95 eBook.

In a world with ever increasing water demands in both quantity and quality I find myself looking for solutions. Solutions that supersede the never ending, pointless debates and instead move us forward with collaborative mechanisms for solving the issue. In fact, this was one of the reasons I went to law school. Throughout my master's program a ubiquitous reply from my teachers went something along the lines of, 'we can't because our state doesn't recognize environmental flow water rights.' (Environmental, or instream flows, are waters flowing through a water system for the benefit of the ecosystem.) Unfortunately, entering law school didn't solidify my understanding of the path to legal rights for environmental flows. Luckily, O'Donnell's new book *Legal Rights for Rivers: Competition, Collaboration and Water Governance* shed some light on the subject, forsaking the 'we can't' attitude, and replacing it with a 'we already have' attitude. The successes of environmental flows are coupled with a conceptual framework regarding the intersection of economics, the law, and environmental water that should be employed the world over.

The first few chapters of the text set up the analytical framework that the author keeps flowing throughout. O'Donnell explains that there are three constructs of the environment in law: (1) a socio-economic concept, (2) a legal object, and (3) a legal subject. The socio-economic concept is founded in the legal definitions of the environment that allow us to *recognize* the environment, giving rise to visibility of the environment by the law. This recognition allows the law *translate* the socio-economic concept of environment into a legal object for which humans can be regulated to protect the environment. The construction of the environment as a legal subject occurs when the law *personifies* the environment giving it a robust toolbox to assert its right in all forums rather than simply restricting the actions of others. O'Donnell goes on to use this framework to explain what Environmental Water Managers (EWMs) are and why they are important to the aquatic environment. EWMs are the real people who represent environmental water. When EWMs represent the environment as a legal object, the EWM acts as an agent protecting the environment through advocacy and litigation thereby extending their personhood to the water. When an EWM represents the environment as a legal subject it is charged with the responsibility of carrying out the legal subject/personhood rights of the river itself.

In later chapters O'Donnell gives real word examples of successful environmental flow programs using her analytical framework. O'Donnell focuses on Australia (originating in riparian rights) and the western USA by way of the Colombia and the Colorado River Basins (for prior appropriation) to demonstrate different ways that EWMs support the environment as legal objects and legal subjects, and the ongoing challenges that they face. EWMs protect environmental water rights by balancing the needs of the economy (agricultural and industry) with the environment through the adaptive management of legal rights and market

environmentalism. In the western USA, this entails increasing the total volume of environmental water. This is achieved by creating/using water markets that simultaneously benefit agricultural users, the environment, and the community at large so as to have a collaborative relationship. In Australia, EWMs prioritize recovering and managing water resources; and want to be seen as ‘just another water user.’ After sufficiently explaining how environmental water and EWMs function in Australia and the Colombia and Colorado River Basins, O’Donnell turns to international examples of rivers being explicitly personified in law in 2017. She explains the instruments that created the rights, the EWMs entrusted with carrying out those rights, and the successes and failures of those endeavors. Finally, O’Donnell discusses the paradox she has uncovered regarding environmental water’s evolution along the spectrum from a socio-economic concept, to a legal object, to a legal subject—and how as legal power and use of those powers increase—environmental protections decrease. O’Donnell offers a solution to the paradox by way of necessary market environmentalism through EWMs as demonstrated in her book.

O’Donnell does an extraordinary job of using each chapter as a tributary to the next, constantly revisiting the framework and comparisons she established along the way. The book is easy to read, giving definitions and elaborations as necessary so that even someone with no experience in water law could understand and use the book to their benefit. Conversely, this book analyzes environmental flows in a way that has never been done before and will thus be interesting to even the most experienced practitioner. The chapters are capable of standing on their own so that you can call back to them (or perhaps start in those areas where you are most interested) and still understand the important foundational context of the earlier and later chapters. I was a little disappointed that O’Donnell brushed off some of obvious questions that arose, for instance: Are there achieved environmental flows that don’t explicitly fit within this framework? Where do the funds come from to support EWMs to achieve their goals? How do we solve the inevitable, eventual problem of competition between economics and the environment regarding environmental flows? What about the benefits of this framework to the community at large, especially to those most opposed to environmental water rights? On the other hand, I found myself so engaged with the book, its framework, and my unanswered questions that I began to reach out to practitioners to learn more about how environmental flows function in my state (because they do!) For these reasons, I recommend this book to just about everyone who cares about the environment, and especially those people who see a need for a tool which enables greater protection and restoration of riverine ecosystems.

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