FOREWORD

As the title of this book avows, Laura Westra provokes thought and challenges us to re-examine the legal foundations for how society defines norms of human behavior toward nature and toward each other in the realm of nature. Human society has evolved within the biosphere of Earth, and humans (at least to date) cannot exist apart from the Earth. Despite this reality, human society acts with callous disregard for its impacts on the natural systems that sustain life.

Westra would have us rethink the limits of criminal responsibility. Living safely within the biosphere is not merely a matter of amenities or entitlements. If nations can promote global trade and communications and travel, she sees the need for a concurrent promotion of supranational norms to define crimes against the ecological foundations of life. The norms she would have us respect have been ably restated in legal instruments, such as the World Charter for Nature adopted by the United Nations General Assembly (UN Res. 37/7) or in the more comprehensively framed Earth Charter, endorsed by UNESCO in 2003 (see Appendices 1 and 3 to this book, and http://www.earthcharter.org).

Human society increasingly applies these norms through the now voluminous body of environmental statutes that have been adopted in every nation, and by the growing body of multinational environmental agreements and other treaties that integrate and harmonize national conduct toward different aspects of life on earth. These legal instruments are based on the findings of the environmental scientists around the world. All nations embraced the action plan to prevent further deterioration of environmental conditions on Earth adopted by the United Nations Conference on Environment and Development as Agenda 21. On many, if not all, issues of environmental stewardship, today there has emerged a congruence of legal opinion and agreement about the measures that constitute environmental protection, and on the acts that constitute environmental injury. When legislatures enact norms as positivist statutes, defining crimes, enforcement follows.

It should surprise none, therefore, that there has emerged in many nations a body of jurisprudence about criminal environmental law.[1] The consensus about

1. See, for instance, *Environmental Crimes*, prepared by the Criminal Litigation Committee of the Environmental law Section of the New Yo4rk State bar Association (Albany, N.Y. 1995).

criminal behavior constituting environmental crimes is that if the actor, for instance, had knowledge that a chemical he used was hazardous, that was enough to establish his responsibility when his chemical causes harm to the environment. No greater *mens rea* is required (consider, for instance Section 3008(d) of the Resource Conservation and Recovery Act in the USA, 42 U.S.C. 6928(d)).

What appears not yet present in national patterns of environmental criminal law, however, is the widening of the scope of what constitutes criminal action from knowingly having the capacity to cause harm, to conduct that acts in disregard of a duty to prevent harm, or to affirmatively protect the environment. The predicate for such a broader scope is found in a number of national constitutions,[2] such as the *dirigiste* provisions of Federal Constitution of Brazil of 1988, in Chapter VI, Article 225 ("All have the right to an ecologically balanced environment, which is an assert of common use and essential to a healthy quality of life, and both the government and the community shall have the duty to defend and preserve it for present and future generations.").

When a person causes egregious, long-lasting and momentously destructive environmental harm, the magnitude of the breach of a duty to sustain life may well be considered to constitute a crime. We see this approach within national criminal law in the case of the act that causes death of a human being, and resulting prosecution for the crime of manslaughter.

Implicitly perhaps, Laura Westra's advocacy echoes the maxim of René Dubos, to "think globally and act locally." Laura Westra would have us recognize that there is—or must be—the global concept of an "ecocrime." Either nations through their national criminal legal systems, or the international community through appropriate international tribunals, would prosecute those who commit ecocrime. She surveys the issues of jurisprudence, and broader philosophical and sociological perspectives relevant to ecocrime, and that applies her survey to the case study of Walkerton, Ontario, Canada. She would have us generalize from the emergence of prosecutions for violations of human rights to universal standards to permit prosecutions for ecocrimes. There are, however, many impediments to recognition or enforcement of ecocrimes at both the national and international levels

Laura Westra's vision extends well beyond state practice today. If her work invites scholars to think further, and elaborate her ideas, it will be to critique whether her "normative strategies" to build the global approach to ecocrimes is realistic, or if competing or different approaches might be assayed. Much of her experience is described from Canadian law, and in this respect the work also provides useful insights for the comparative environmental lawyer. A book succeeds

2. See Appendix B, setting forth "Constitutional Rights and Duties" *in* Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational Publishers, 1989).

when it both stimulates and educates. This volume will excite the reader to think unconventional thoughts, and enriches the tapestry of jurisprudence about the biosphere we call Earth.

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