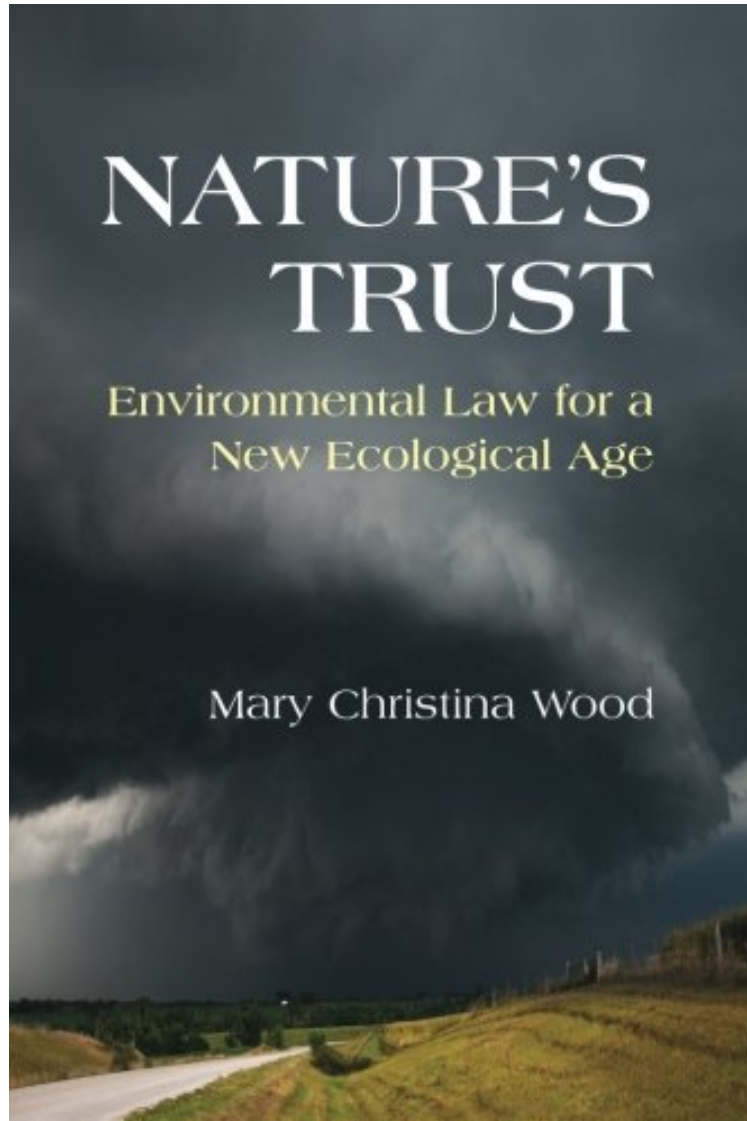


[Download pdf] Nature's Trust: Environmental Law for a New Ecological Age

Nature's Trust: Environmental Law for a New Ecological Age

Mary Christina Wood

*ebooks | Download PDF | *ePub | DOC | audiobook*



 Download

 Read Online

#773802 in Books 2013-09-30 2013-11-28Original language:EnglishPDF # 1 8.98 x .87 x 5.98l, 1.35 #File Name: 0521144116457 pages | File size: 42.Mb

Mary Christina Wood : Nature's Trust: Environmental Law for a New Ecological Age before purchasing it in order to gage whether or not it would be worth my time, and all praised Nature's Trust: Environmental Law for a New Ecological Age:

3 of 3 people found the following review helpful. An intensive look at the environmental crisis and possible legal remediesBy J. M. AlexanderThe author is a true environmentalist, and also a professor of environmental law at the University of Oregon Law School. As such, she is very familiar and has significant expertise in the legal protections that are provided the environment by not only our myriad of statutes and regulations, but also by historical

applications of the common law that have fallen into disuse in the decades since statutory law became dominant. It is her frustration with both the current state of the law and the public attitudes toward the environment that prompted not only this book, but also her support of new efforts to take advantage of past legal remedies. She feels that the current maze of environmental laws and regulations have become so arcane as to be opaque to all but those most steeped in their application and interpretations. This is a narrow group of government administrators, industry lobbyists and lawyers, and a few well organized environmental groups. The states traditional role in protecting valuable common assets has been lost amidst this quagmire of acronyms and nebulous regulations. The uninitiated have no chance at understanding the proper role of their political leaders, and feel disconnected from the process. The author feels that the result is a close relationship between administrators and industry, often resulting in revolving doors of employment between the two. She postulates that the myriad of rules and regulations enacted with the expressed purpose of protecting the environment (Clean Air Act, Clean Water Act, Endangered Species Act, etc.) have instead become vehicles by which industry obtains permits to slowly degrade the natural resources they were intended to protect. Indeed, Ms. Woods notes that: The agencies implementing the environmental laws have become perpetrators of legalized destruction, using permit provisions contained in nearly every statute to subvert the purposes Congress and state legislatures intended. This slow degradation reflects a politics of scarcity rather than abundance. Such (P)olitics of scarcity focus on creating legal mechanisms to allocate the benefits of an ever-declining natural resource. In other words, officials use the power of the state primarily to divide the last crumbs (allocating those to the most politically powerful individuals). These politics have led society to this perilous point in time. The politics of abundance, by contrast, reach persistently and undauntingly toward protecting and building natural wealth. Political systems might support politics of scarcity or abundance, but the Earths natural systems can only support the latter. These short sighted policies reflect a society bent on unlimited and unnecessary present indulgence without regard to the world left to future generations. One of the most telling reflections of this goal of unrestrained economic growth, and perhaps the most dangerous, is the present and future effect of climate change. The author presents very persuasive scientific evidence about the threats posed to our environment, and is very critical of the lack of political action, and in fact the suppression of scientific evidence during the Bush administration. These discussions are almost a book in themselves, but the thrust of Natures Trust is the legal theory which the author advances as providing not only a viable remedy, but an alternative way of thinking which would hopefully move public opinion. The author starts with the recitation of a basic principle that Government, deriving its authority from the people as a whole, must act as a fiduciary to protect the natural resources held in trust from damage, as well as from dangerous privatization. This recognizes that land has both a public and a private component, and that governments hold the public interest in basic ecological assets, such as water and air, in trust for the benefit of all citizens, both current and future generations. Thus, ***private use and enjoyment of trust property by individuals and corporations remains at all times subject to an antecedent encumbrance in favor of the public in order to maintain the ecological stability necessary for society to thrive. This doesnt mean that all private property is subject to a public trust, but the author notes at least four common situations that would activate the public trust: (1) where circumstances involve trans-boundary interstate assets (such as an interstate rivers, lakes, underground aquifers, migratory wildlife, the air, and atmosphere); (2) where state trustees utterly fail to discharge their fiduciary duties to protect assets within their jurisdiction; (3) where national exigencies demand federal involvement, such as those involving national security, commerce among states, broad ecological or public health threats, or natural disasters; and (4) where disputes arise over resources shared with other nations or tribal sovereigns (such as oceans, fisheries, atmosphere, and the like). Conversely, there are also situations in which governments might alienate land from the trust to private parties. Such transfer could be allowed (1) where trustees make the grant in aid of navigation, commerce, or other trust purposes; and (2) where the grant does not cause substantial impairment to the public interest in the lands and waters remaining. When trust duties arise, the government must assume the traditional obligations of a trustee. It must first ensure the productivity and health of the asset(s) in trust. Second, it must take action when the trust assets are imperiled. Third, a trustee must exercise prudence in managing the trust, defined by courts as reasonable care, skill and caution. And fourth, and perhaps most importantly, a trustee bears a strict duty of loyalty in administering trust assets. If a public trust is recognized, then State and Federal governments must fulfill these responsibilities. But who recognizes such a trust and imposes such duties? The courts are probably the only entity equipped to do so. This can entail courts telling administrative agencies or even legislatures what they must do to protect trust assets. Such tensions trigger our basic principles of separation of powers. But the author notes these and other examples where the courts have successfully ordered appropriate remedies when other governmental entities did not fulfill their appropriate duties. In New Jersey the State Supreme Court held that each town in the state held a state constitutional duty to provide a fair share of affordable housing. In Oregon the Federal court fashioned a remedy when the National Fisheries Marine Service failed to draw up an adequate plan to protect Endangered salmon in the Columbia River. Although rare, such actions are supported by precedent. Utilizing this public trust doctrine, in 2011 a non-profit organization known as the Childrens Trust, on behalf of young adults who are invested in a healthy future, initiated litigation in all the states seeking a declaration of a sovereign duty to protect the atmosphere sufficiently to reduce carbon emissions and thus counteract the potentially disastrous effects of global warming. They allege that

such action is necessary to protect the atmosphere needed by the youth and future generations for their long-term survival. The cases have not had much initial success. As the author notes: Unfortunately, many of today's judges show distaste and fatigue at the prospect of managing the complex details of a meaningful remedy. They may hastily dismiss trust claims on procedural grounds, or characterize the trust issue as a political question committed to the other branches of government. This, indeed, has been the result of some (but not all) of the lowest-court rulings in Atmospheric Trust Litigation. NOTE—Since publication there has been a victory of sorts in Washington State where the trust doctrine was recognized, but the court held that the Legislature was taking appropriate steps. The Children's Trust also recently initiated litigation against the Obama Administration in the Federal District Court of Oregon. (My reading of information in the papers.) So, with so little prospect of success, and with a political environment where global warming is questioned, and much of public opinion is directed toward expanded private property rights and against the idea of the commons, or the common public interest in a beneficial use of the land, what does the author see for this legal theory? From my reading, I do not perceive Ms. Wood as the least bit naive. She certainly hopes that the litigation will have some success, but she acknowledges that the real battle to save the environment, and the planet as we know it, depends on a shift in public opinion, not just here, but worldwide. She hopes that the public trust doctrine might rekindle the sense of commons that has been present in our country since the days of the Founders. She also hopes that a similar change in attitude takes place in other parts of the world, and does cite favorable attitudes. This book is a very complete legal discussion, but one that can be digested by a lay person willing to take the time. (I do have the advantage of being a retired lawyer.) It also is far more than a book on the potential legal remedies for climate change. It is also a basic primer on the science of climate change, and a literal expose of the corporate and political corruption that so threatens our planet. This is a serious book that demands a serious read. As with many books of this sort that I have read and reviewed, I also feel that its message could have been conveyed more succinctly, but all of the information is relevant and informative. It certainly discusses in detail the nature and extent of environmental degradation that should be of concern to all of us.

6 of 6 people found the following review helpful. Five stars is not high enough—read this, save the planet!

By Rocky M. Sehnert

The publication of *Natures Trust: Environmental Law for a New Ecological Age* by Professor Mary Christina Wood is the highest landmark to date on the trail to achieve environmental protection. Professor Wood illuminates a powerful and effective tool to achieve rapid and lasting protection for Earth's life support systems. Her explanation of the jurisprudence that supports the evolution of the public trust doctrine gives hope that there may yet be time enough to salvage Nature for her own sake and that of humanity. As a philosophical justification for empowering and challenging jurists, lawyers, and citizens alike this treatise ranks with Aldo Leopold's *Sand County Almanac* and Rachael Carson's *Silent Spring*, with the added impetus of Edward Abbey's moral outrage toward the foes of Nature and servants of mammon.

1 of 1 people found the following review helpful. Our Elected and Appointed Officials No Longer Represent the Interests of Current and Future Generations

By Storm Petrol

Natures Trust: Environmental Law for A new Ecological Age. By Mary Christina Wood

*Review of Part I *Hospice for a Dying Planet* By Tim Palmer

In Part I of this seminal work, Professor Wood describes universal cultural values that acknowledge the essential nature of healthy ecological systems for sustaining life. That recognition is expressed in the admonition to consider the effects of governance decisions on the next seven generations, for example. This, and other fundamental tenets of Native American culture, inspired the Founders as they forged The Constitution of the United States. Ancient Roman law is also part of the foundation of our modern government. The Romans, too, recognized that responsible stewardship of the natural endowments shared by all citizens is a fundamental, organizing principle of representative government. The author chronicles the flowering of the environmental movement in the 1970s, a robust response to threats imposed by industrial civilization. Symbolized by Earth Day, there was a demand for protection of public assets such as clean air to breathe, access to safe food and unpolluted water, as well as the aesthetic enjoyment of a thriving, natural environment. In response, Congress passed the Endangered Species, Clean Air and Water Acts, among others. In an astounding exercise of executive power, the Nixon Administration also created the Environmental Protection Agency to administer some of these carefully crafted statutes. It was a time when, in response to the will of its citizens, our elected officials reaffirmed their ancient obligation to govern so as to protect crucial natural assets, thus insuring they would be held in trust for the benefit of present and future generations. However, attentive citizens now recognize a rapid deterioration in the quality of the global ecosystem. Evidence of the failure of the 1970s model of environmental law includes a rapidly energizing atmospheric system, the startling disappearance of ice everywhere, and rapidly rising, acidic seas. The natural birthright of our children and grandchildren is succumbing to the global frenzy of extraction and consumption wielded by the heavily industrialized system of corporate capitalism. In fact, the laws passed to protect the treasured legacy of our own, and our children's natural resources have become tools used for carving them up, and then delegating management of each portion to a specific agency. These agencies, from the Fish and Wildlife Service to the Bureau of Land Management, are engaged in the continuous development of extraordinarily confusing regulations. These complex webs of rules are used to determine how much, when, and who will be permitted to exploit the assets under their jurisdiction. Thus, a system initiated with the best intentions, illuminated by the bright promise of the early environmental movement, has become opaque to both the public and, by choice, the judiciary branch of

government, as well. However, this misleading labyrinth is easily negotiated by the corporate interests that shape its ongoing design. Elected and appointed officials are subjected to a variety of influences, including offers of opportunities to leave public service for lucrative jobs in private industry. Experience in these company jobs, combined with the knowledge gained while serving in government, produce skilled, highly motivated lobbyists who further refine the art of swaying their former congressional and agency colleagues. Many actually return to government service by executive appointment, often to lead the agencies that are responsible for regulating the very same industry they now represent. All elected and appointed officials in public service have solemnly sworn to uphold The US Constitution as they discharge the duties of their office. The truth is that, tragically, many of these people no longer personify the interests of current and future generations of Americans.

Part II, The Peoples Natural Trust

In Part I, Professor Wood described the subversion of environmental laws intended to protect and conserve natural resources, permitting the destruction of the principal in Nature's Trust rather than wisely managing its conservation. This style of governance now puts the entire global life-support system in peril. In The Peoples Natural Trust, she provides the sound, legal basis for the foundational changes she proposes. Her reasoning is radical in the very best sense of the word, which is derived from radix, meaning the root, or the inherent nature of a thing. The supreme authority of nations with representative forms of government is rooted in popular sovereignty. Therefore, one of the most essential purposes of such governments is protecting crucial natural assets for the survival and welfare of citizens. Those natural assets/resources that both born and unborn members of the state will require for their continued good health and happiness constitute the principal held in the public trust that is the subject of the book. Elected officials are empowered to represent the interests of their constituents and are, therefore, responsible for insuring the safety of the trust assets. These officials of government are the trustees whose sworn duty it is to govern so that these resources will be available for the present and future generations who are its beneficiaries. This fundamental responsibility of leadership is the explicit, central principle of governance in the constitutions of nations around the world. However, the true origins of the trust reach far deeper than any one nation's legal system. This obligation is rooted in natural law. It is what John Locke, whose philosophy provided a cornerstone used by the Framers of our Constitution, called the Fundamental, Sacred and unalterable Law of Self-Preservation. The necessity of insuring the wherewithal for its members continued existence is the basis of society. This creates a fiduciary obligation on the part of government to protect this human right. One central conclusion of this line of reasoning regarding the principles of representative governance is that the people's interest in the ecology essential for their survival and well-being limits their governments ability to destroy it. The governments obligation to act as trustee for the benefit of citizenry, rather than on behalf of powerful special interests, might come as a surprise to some. One might ask, Where is this actually written into our laws? The answer is that, Properly understood, the public trust stands as a fundamental attribute of sovereignty a constitutive principle that government cannot shed. The trust forms the sovereign architecture around which the Constitution and all other laws meld. It is not set out in law because, as the author points out, Nature's Trust is actually the slate upon which all laws are written. The structure of government designed by the Framers includes, as its intended sovereign legacy, to secure the Blessings of Liberty to ourselves and our Posterity. Thus, there is an inalienable duty engrained in government itself to govern for the benefit of future generations as well as present ones. Professor Wood cites many United States Supreme Court decisions to support her contention that this principle is, indeed, the foundation of our government. She leaves no doubt that our representatives are entrusted with careful administration of the principal in this natural trust. The resources therein are those required for life, liberty and the pursuit of happiness; those unalienable Rights that form the foundation of our great Nation. However, the officials responsible for conserving and protecting these assets for the benefit of all present and future generations are parsing them out to special interests for personal gain, instead!

Natures Trust Review Part III Natures Trust and the Great Transition

Professor Wood laid the foundation for the Great Transition by tracing the legal history of natural trusts back through Roman times and into the Indigenous cultures that preceded Western Civilization. U.S. case law provides abundant evidence that it is the sovereign duty of modern government to insure the preservation of natural trust principal. This includes, but is not limited to, clean air, safe water, sufficient food and the biological systems required to provide them. As its trustees, government officials are accountable for passing this common wealth along, undamaged, to future generations. The book also documents the perverse agency mismanagement of statutes like The Clean Air and Water Acts. Environmental law under the control of neoliberal capitalism provides bureaucratic cover for permitting widespread destruction of the very natural resources it was intended to protect. Justified by a presumed need for unending material growth, it is rapidly liquidating the natural resources and living systems that constitute the most vital stock of capital in Nature's Trust, while calling it profit. This is the ideology of a cancer cell! It clearly violates the trustee obligations of any government, especially one claiming to represent citizen interest and dedicated to insuring their posterity. Citizenship includes the duty to hold government accountable for its destruction of vital, natural resources and to reclaim the endowment held in Nature's Trust. Insuring a secure future for our children requires the restoration of governance that administers natural trust law for the many, rather than providing obscene wealth for the few who have seized control of it for their own benefit. Unfortunately, we have forgotten both our dependency on the natural environment, and the stewardship ethic implicit in that relationship. As a result, we are

vulnerable to the modern administration of environmental law, which effectively destroys any vestigial moral basis an individual might muster in an attempt to defend themselves and their communities from destruction. How can we possibly prevail? Professor Wood emphasizes that moral principle is the foundation of law not only to maintain credibility and respect in society at large, but also to inspire citizens to participate in democracy. The Natures Trust approach revives four moral understandings that are fundamental to humanity's continued existence: 1. That we owe future generations a beautiful, rich and healthful environment. 2. Natural law designates certain resources common to all mankind and not susceptible to private ownership, including the air, water and the ecological web that sustains community prosperity. (Claiming personal ownership of such resources for oneself is theft.) 3. Natural law compels using this commonwealth for the greatest possible public benefit. (Wasting community resources is a sign of greed.) 4. Nature itself has a right to exist and flourish. When a community recalls its dependence on natural systems, it bolsters this constellation of values. Viewed in this frame, it is apparent that preserving the Natures Trust endowment, especially in the face of its imminent destruction, is paramount to everything else. The contrast between living in an environment governed by such precepts versus one dominated by greed, fear and waste provides additional incentive. Professor Wood provides powerful insights about how structuring property rights relative to Natures Trust can provide effective legal tools for curbing corporate power. As a fundamental property concept, natural trust law defines the obligations of governance in a deeply integrated, holistic way that applies to all sovereigns from tribes to nations. This intrinsic quality endows it with legal validity independent of legislation an essential characteristic where elected officials are bound by special interests. The integrity of the trust concept depends instead on a strong judiciary to enforce the fiduciary duties of trustees the very ones that have been sloughed off by our elected officials. The author details the steps that judges could take immediately, within their realm of authority and judicial tradition, to restore integrity to environmental law and enforce the property rights of citizen beneficiaries. However, making judicial findings that result in the fundamental changes needed requires courage. Judges must first understand the real gravity of the ecological disaster confronting us. It is equally important to assist them with recollecting the fundamental human values embodied in Natures Trust principles. A citizenry acting in accordance with such values will animate the courts. Choosing to act in the best interest of coming generations, while simultaneously making very visible and vocal demands that corporate and governmental actors do likewise, (by eschewing wasteful uses of needed resources, for example) is required. Such social behaviors are manifestations of the deepest human sensibilities. Open display of these qualities is inspirational to humanity, including judicial actors. If they can be so inspired, the judiciary already has the power to make the necessary changes, as Professor Wood explains so well in Natures Trust!

Tim Palmer
Master of Environmental Law and Policy
Vermont Law School
10 September 2015

*Professor Wood is the Phillip H. Knight Professor of Law and Faculty Director of the Environmental and Natural Resources Law Center at the University of Oregon School of Law.

Environmental law has failed us all. As ecosystems collapse across the globe and the climate crisis intensifies, environmental agencies worldwide use their authority to permit the very harm that they are supposed to prevent. Growing numbers of citizens now realize they must act before it is too late. This book exposes what is wrong with environmental law and offers transformational change based on the public trust doctrine. An ancient and enduring principle, the trust doctrine asserts public property rights to crucial resources. Its core logic compels government, as trustee, to protect natural inheritance such as air and water for all humanity. Propelled by populist impulses and democratic imperatives, the public trust surfaces at epic times in history as a manifest human right. But until now it has lacked the precision necessary for citizens, government employees, legislators, and judges to fully safeguard the natural resources we rely on for survival and prosperity. The Nature's Trust approach empowers citizens worldwide to protect their inalienable ecological rights for generations to come.

"What Silent Spring did for our perception of the environment, Nature's Trust should do for our perception of environmental protection. Thoroughly researched and beautifully written, this book calls for a revolution in environmental policy and law - now, before it is too late. It is simply brilliant." James Gustave Speth, author of *America the Possible: Manifesto for a New Economy* and former dean, Yale School of Forestry and Environmental Studies

"The gutting of our environmental laws now generates ominous and grotesque distortions in our natural world. This, as Mary Wood so vividly points out, reflects the deeper pollution of our regulatory agencies caused by the influence of big industries. Assembling an impressive range of legal precedents, Wood challenges our government to fulfill its age-old responsibility as "trustee" of public property. Nature's Trust is an eloquent plea to revive a fundamental pillar of civilized law to ensure the survival of a coherent civilization." Ross Gelbspan, author of *The Heat is On and Boiling Point*

"At pivotal points in western history, when the failures of government became unconscionable and unbearable, thinkers have come forward with new, catalyzing principles that changed the world. I believe that Nature's Trust is the book we have been waiting for, a new paradigm that can correct the course of history." Kathleen Dean Moore, co-editor of *Moral Ground: Ethical Action for a Planet in Peril*

"We face, in climate change, the worst crisis in human history. So it's a good thing we have such a powerful mind rethinking our

understanding of legal obligation - and human responsibility." Bill McKibben, author of *Earth and The End of Nature*"Our children are trusting us to protect their Earth. Our governments are on trial for failing that trust. This is the trial that should rivet the public's attention, for all life depends on its outcome. This book puts the people - all of us - in the jury box." James Hansen, author of *Storms of My Grandchildren* and former director, NASA's Goddard Institute for Space Studies"It is a rare opportunity to read a book that causes us to reimagine the landscape of law, democracy and the environment. *Nature's Trust* does that. Here, Professor Wood challenges us with a thorough investigation of what it will take to really protect the environment coupled with a profound assessment of the legitimate foundations of government. She demonstrates that the principles of trusteeship animate our relationship to nature as well as to the institutions of the state. These trust duties are the very slate upon which our constitution is written. This is a beautiful, profound, and important book and anyone who cares about our environmental and democratic future needs to read it." Gerald Torres, Marc and Beth Goldberg Distinguished Visiting Professor of Law, Cornell Law School; Bryant Smith Chair in Law, the University of Texas at Austin School of Law; and co-author of *The Miner's Canary*"Nonetheless, as jacket blurbs by Bill McKibben, James Hansen, and Ross Gelbspan express quite well, *Nature's Trust* is both ambitious and original. For anyone interested in using the legal system to prod action, Wood has made a major contribution." Rena Steinzor, *Science Magazine*About the AuthorMary Christina Wood is the Philip H. Knight Professor of Law and Faculty Director of the Environmental and Natural Resources Law Center at the University of Oregon School of Law. She has taught law for more than twenty years, specializing in property law, environmental law and federal Indian law. She founded the school's top-ranked Environmental and Natural Resources Law Program and initiated several of the program's interdisciplinary research projects, including the Native Environmental Sovereignty Project and the Food Resiliency Project. She is the coauthor of a textbook on natural resources law and another on public trust law. She has also authored many articles and book chapters on the federal Indian trust obligation, wildlife law and climate crisis.