

## REVIEW ARTICLE\*

*Places Worth Keeping - Conservationists, Politics and Law* by TIM BONYHADY (Australia: Allen & Unwin Pty Ltd, 1993), pp xii + 192. Softcover recommended retail price \$19.95 (ISBN 1 86373 448 1).

It is difficult here to convey a sense of how *Places Worth Keeping* works, not just because this is a brief review, but because of the lucid complexity and conciseness of Tim Bonyhady's conspectus and analysis of many environmental disputes which have confronted Australia over the last thirty years. There is no simple or linear structure, but at no time does the reader feel the loss of a thread. In seeking a metaphor to encapsulate the book's modus operandi, I thought of honeycomb; although a given page (or given chapter) is firmly located within a particular cell, that cell itself is never far from lots of others, its elements or shapes echo those of others, and it connects with other cells through common elements (encountered elsewhere perhaps as an obverse). Thus it is, with the fluidly and interactively treated themes, issues, characters, disputes, battles, strategies, tactics, methods, criticisms, victories and losses presented in this book.

Bonyhady (presently a Senior Research Fellow in the Urban Research Program, Research School of the Social Sciences, ANU, on leave from the ANU Faculty of Law) leads us through his honeycomb with ease. Along the chapter openings entice. Chapter One deals with the early battle for Fraser Island; just when you thought, at its end, that a new topic would appear, he begins Chapter Two (and later Chapter Seven) with a further reference to that dispute, a motivic link which aids in maintaining the reader's interest. Chapter Three's title ("Bombs, Blockade and Barricades") followed by its opening words ("Early one morning in July

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1976...") cleverly draw the reader in with their implied promise of perhaps mystery or excitement. The title of Chapter Four - "Those Blasted Caves" - attracts the reader's interest by intriguing at least those who do not immediately guess at its reference to the barbaric destruction of a Queensland hangout for rare bats, and, even so understood, repeatedly mingles the sense of bitterness at that loss with a sweet amusement at the witty turn of phrase.

The author's skill is by no means exhausted with clever links or bon mots. Each cell of his text is cleverly organised around a specific main theme which is neither announced bluntly nor relied upon rigidly. His chapters successively address the important role of individuals in environmental issues, the place of formalised participation in decision-making processes, aspects of direct action, environmental litigation, environmental impact procedures, the tactics and impact of Greenpeace in regard to chemical pollution, and public enquiries. At the same time, each chapter places some emphasis on a specific dispute or context; the sandmining of Fraser Island, town-planning in South Australia, limestone mining of the Mount Etna bat caves, forestry disputes in NSW, chemical pollution of waterways, and logging and tourism on Fraser Island. In counterpoint with the two broad organising elements selected for each chapter, Bonyhady also crosses (and occasionally recrosses) the diverse territory of other disputes, resources, jurisdictions, tactics, personalities, periods of time, and issues (including town planning and landuse control, pastoral leases of Crown land, fishing rights, mining, logging, and air and water pollution). The discussion is thus never straightjacketed by the main foci of each chapter, but does not stray so far off the track that the reader loses the way.

Some themes, by re-emerging in different places, create unifying links through the work. Although Chapter One provides a major focus on the role of individuals in environmental disputes (through a close consideration of John Sinclair's efforts for Fraser Island), Chapter Five also implicitly picks up this theme as it surveys litigation against the NSW Forestry Commission instituted by Diane Kivi, Peter Prineas, Wendy Jarasius, Trevor Bailey and John Corkill. The attention to those individuals also includes discussion of the efforts of their and other environmental groups, thus echoing the major focus of Chapter Six on Greenpeace, of Chapters One and Seven on the Fraser Island Defence Organisation, and the various references to the Australian Conservation Foundation, the Central Queensland Speleological Society, and the National Parks Association (NSW), among other organisations.

Another group of themes holding the web together is that of legal techniques and procedures: the biased use of the criminal law against environmental demonstrators, the intimidatory use of defamation law, the availability of expanded standing and third party appeal rights, the problem of expense for the conduct of litigation and for representation before commissions of enquiry, the intimidatory use of (potential) orders for costs against environmental litigants, the use by

government of fast-track legislation, the censorship of eco-terrorist literature, and the role of experts.

In addition to all of these there is a deeper integrating theme which, while implicitly contributing to the structure of the honeycomb, robs it of its sweetness. This finds expression in Bonyhady's concluding sentence:

Because government cannot be trusted to protect even those areas identified as the common heritage of mankind, conservationists are destined to fight again and again for places they believe are worth keeping.<sup>1</sup>

This conclusion had been anticipated with instances of ultimately negative outcomes of what should have been, and sometimes genuinely still are, environmental successes: Federal compensation to Tasmania for prohibiting the proposed dam on the Gordon River turned to the purpose of constructing other dams on other rivers;<sup>2</sup> legislation lightening the burden on the NSW Forestry Commission to conduct environmental impact assessments as a response to environmentalists' successes in cases such as *Corkhill v Forestry Commission of NSW*;<sup>3</sup> the enormous personal cost which environmental battles may impose on individuals such as John Sinclair (The Australian's 1977 'Australian of the Year' in recognition of his efforts to preserve Fraser Island);<sup>4</sup> the limited, short-term reliance which can be placed on publicity of direct environmental action due to the shortness of public and media interest;<sup>5</sup> and the massive financial cost to environmental groups of participation in litigation and public enquiry processes, even when these are open to them.<sup>6</sup>

The book powerfully confronts the lawyer and theoretician with the reality that, whilst argument and principle are not entirely irrelevant in shaping the course of events, personal interventions, interest group coalitions and some very dirty tricks ultimately have more impact. Indeed, these aspects may themselves be at the centre, and environmental issues merely the tools of politics rather than one of its subject matters:

Whether government chooses to implement or reject the findings of these bodies [of enquiry] depends less on their cogency than the political situation. For example, the federal Government's decision to ban mining at Coronation Hill was the result of Paul Keating's first, unsuccessful attempt to oust Bob Hawke as prime minister. Although Hawke was in a minority in Cabinet, he had his way as defeat on the issue would have undermined his leadership. That this decision accorded with the report of the Resource Assessment Commission was coincidental.<sup>7</sup>

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1 T Bonyhady, *Places Worth Keeping - Conservationists, Politics and Law*, Allen & Unwin (1993) p 146.

2 *Ibid* at 140.

3 (1991) 73 LGRA 126; *Ibid* at 103.

4 Note 1 *supra*, pp 16-20.

5 *Ibid* at 126-7.

6 *Ibid* at 32-4, 67-71, 77-8.

7 *Ibid*, p 37.

Numerous examples are offered of behaviour by public officials, public institutions, and private organisations and individuals in opposing the demands and action of environmental groups or individual activists. Much of the behaviour can be described only as having been in bad faith, even if not always illegal. On both popular and institutional levels the personal attack is often the favoured weapon:

Whatever the reasons, the [Federal] Government's decision [to refuse export licences for mineral sands taken from Fraser Island] was a remarkable triumph for John Sinclair whose family had been ostracised and vilified in Maryborough because of his stance; his wife had received threatening phone calls; his children's bicycle tyres had been slashed; Sinclair had been booed when he led his scout troop into the ring at the Maryborough show.<sup>8</sup>

[T]he Queensland Department of Education refused to let Sinclair take holidays, long service leave or even leave without pay which he sought while the [Commonwealth Government's Fraser Island Environmental I]nquiry took evidence.<sup>9</sup>

[U]nder parliamentary privilege, Country Party politicians vilified Sinclair, declaring that he was 'abusing' his position as an adult education officer....<sup>10</sup>

The book does not spare environmental groups from a critical assessment. Bonyhady astutely observes that conservationists are (often) unable to "extend even their greatest victories beyond places immediately in dispute: far from resulting in the reform of any governmental institutions, they have allowed the institutions under threat to pursue their old practices elsewhere".<sup>11</sup> He points to the example of how NSW Government decisions in 1982 to protect rainforests deflected anti-logging groups from maintaining pressure on the NSW Forestry Commission to reform its practices and structure generally.

That view, and the general underlying theme of political, institutional and personal resistance and manipulation which confront attempts to protect the environment, beg the question: What legal or structural changes might make environmental gains, once made, more secure? Would such security make the achievement of gains perhaps even more difficult by engendering greater initial resistance and making disputes even more vicious and uncompromising? If this is what we must implicitly draw from the accounts in this book, perhaps we are left only with that most banal of conclusions: until individual and public attitudes change, little else can be expected. Tim Bonyhady does not expressly address these questions, nor has he set out to do so, but he keenly increases our awareness of circumstances and behaviour which make those questions more pressing and immediate.

This is an exceedingly well-researched book. There are copious endnotes referring to legislation, cases, articles, books, newspaper reports (usually with

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8 *Ibid* at 16.

9 *Ibid* at 14.

10 *Ibid* at 18.

11 *Ibid* at 140.

parallel references to more than one paper) and many other sources, and a substantial bibliography of books and articles. The index is a useful register, especially of persons, organisations and places, allowing many specific environmental disputes to be chased up in the text. As regards topics and issues (in regard to which many indices in other books tend to be weak), the present index seems thorough and useful, even if it may very occasionally mislead in minor respects.

The range of themes and topics which Bonyhady's book addresses, the regular illuminating asides to comparable or contrasting disputes or contexts, the fluid integration of party and individual politics, of reportage, and of formal laws and procedures, all presented through prose of great directness and elegance, make for a work which is subtle, complex, hugely informative, thoughtful, thought-provoking and yet very lucid. It deserves close attention by all who are concerned not just with environmental conservation but indeed with the way our political system and public and private institutions function.