

women who also guided his thinking, Isabel Paterson, author of *The God of the Machine*, and Rose Wilder Lane, author of *The Discovery of Freedom*. This new edition stands proudly beside their works. □

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## **Property Rights in the Defence of Nature**

by Elizabeth Brubaker

Earthscan • 1995 • 328 pages with index  
• no price stated

## **Property Matters**

by James V. DeLong

The Free Press • 1997 • 390 pages with index  
• \$27.50

## **Property Rights: Understanding Government Takings and Environmental Regulation**

by Nancie G. Marzulla and  
Roger J. Marzulla

Government Institutes • 1997 • 325 pages with index  
• \$79.00

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## **Reviewed by Bruce Yandle**

**I**t has now been almost three decades since the beginning of the federal environmental misadventure, a period that saw the rise of the regulatory state and the erosion of private-property rights. During this time, federal statutes, regulations, and centralized control have systematically replaced a diverse mix of decentralized common-law rules, state statutes, and local ordinances, along with customs and traditions that previously protected property rights. With the federal takeover, the rule of law, which is based on protection of property rights, was replaced by the rule of politics, which respects few property-rights boundaries.

Fueled by a combination of environmental hysteria, political opportunism, and efforts by

some industries to raise rivals' costs and block competitive entry, the environmental juggernaut first provoked outcries from firms and municipalities that bore heavy environmental costs. Speaking indirectly for their customers, auto companies, steel producers, and a host of other manufacturers called for special relief, and in some cases got it. Municipalities and state governments asked for federal money to pay for mandated improvements; the money valves were opened. Until recently, hardly anything was heard from ordinary Americans—the farmers, ranchers, homebuilders, countless operators of small businesses, and just plain citizens who head off to work each day. Diverse and unorganized, these citizens hardly understood why some major manufacturers were so upset about environmental regulation. After all, protecting the environment made good sense, especially when someone else seemed to be footing the bill.

But as the environmental steamroller made its mark, ordinary Americans were pulled into the fray. For many of them, the issue was a simple one: their property rights were being taken by regulation. It was happening in the name of wetlands protection, saving endangered-species habitat, preserving historic corridors, and enhancing national landmarks situated near their homes.

Across the nation, many people came to realize that they were bearing the cost of providing public benefits, and contrary to the Constitution, they were not being compensated when their property was taken for public use. The resulting public outcry spawned hundreds of grassroots property-rights organizations, and eventually generated a struggle nationwide to protect private property.

Significant parts of this struggle are recounted in three important books. Elizabeth Brubaker's *Property Rights in Defence of Nature* addresses the Canadian experience and emphasizes the important role played by traditional private-property rights in protecting environmental quality. Brubaker's book focuses on the common law. But much more than a primer on nuisance and trespass, this highly readable and heavily documented volume convincingly demonstrates the power of common law—the law of the people—to protect envi-

ronmental rights. Replete with case-law vignettes, the book shows how air and water pollution was countered by common-law rules, how defense of property rights in trout held by fishing clubs overcame the polluting tendencies of cities and industries, and how, in many cases, common-law remedies were harsher and the rules stricter than those that came with statutes and regulation.

James V. DeLong's *Property Matters*, which addresses the U.S. experience, provides a powerful companion volume to Brubaker's Canadian story. Writing in a style that is as entertaining as it is logical, DeLong offers countless short episodes to teach his lessons. He first offers some pointers on property rights and then examines the fundamental concern for and importance of property rights held by the nation's founders. Along the way, he introduces the ideas of John Locke and the legal synthesis provided by Blackstone. DeLong's examination of the record—what has actually been accomplished as opposed to what some politicians and environmentalists claim is being accomplished—destroys the myths associated with the Endangered Species Act and wetlands protection. In short, the rhetoric is great, but the record is dismal.

In the case of the Endangered Species Act, what might be an asset—a species that could be protected—becomes a liability when freedom to manage land is taken in the name of species protection. The wetlands story is even worse. No wetlands legislation has ever been enacted. Instead, a body of administrative law, with criminal sanctions, has emerged from the bureaucracy. DeLong explains that if the rules were enforced using the most expansive wetlands interpretation, 75 percent of the United States territory could become subject to Corps of Engineers dictates.

The Corps has encroached on the traditional rights of farmers, ranchers, and ordinary citizens who find their right to productive use of land taken by regulation. People building homes, constructing duck ponds, and plowing land find themselves in violation of rules, and in some cases sentenced to federal prisons. All this is happening, according to data cited by DeLong, while the amount of wetland is rising, not falling, as a result of wetland cre-

ation. DeLong carries the reader through issues involving land-use planning, zoning, artists' rights, Indian rights, and intellectual property, always building a strong case for private markets, property-rights enforcement, and the rule of law.

Nancie and Roger Marzulla, widely known for their leadership and their organization, Defenders of Property Rights, have provided a primer and more in their book, *Property Rights: Understanding Government Takings and Environmental Regulation*. Taking a constitutional approach, the Marzullas first define property, explain the fundamental social role played by property rights, and then quickly focus on a central question: What is a taking? The answer is developed in good lawyerly fashion so that the nonlawyer will understand and appreciate the complexities involved.

The Marzullas give a highly focused treatment of environmental regulation and devote separate chapters to wetlands and endangered-species regulation. Unlike DeLong, they delve deeply into case law on these topics and take a similar approach when addressing Superfund and land use and zoning. Their last few chapters address legal procedures, difficulties to be encountered when litigating takings cases, and what appears to be emerging on the property-rights legislation front. Appendices provide President Reagan's executive order on takings, which sought to rein in the regulators, as well as two recent and key Supreme Court decisions on takings, the *Dolan* and *Lucas* decisions.

Friends of liberty who study these highly readable volumes will be rewarded for the effort. □

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## Makers and Takers: How Wealth and Progress Are Made and How They Are Taken Away or Prevented

by Edmund Contoski

American Liberty Publishers • 1997 • 464 pages  
• \$24.95

Reviewed by Daniel Hager

Man is distinguished from the lower orders of animals because of the frontal and prefrontal lobes in his brain that foster thinking ahead and planning. Man becomes a maker, rejecting momentary gains for the adoption of long-range goals, while the lower animals are merely takers. Government, inherently an instrument of force and plunder, constitutes a regression to a lower state of being. If humans are to prosper and thrive, government must be kept in tight check, just as the Founding Fathers of the nation advocated.

In *Makers and Takers*, author Edmund Contoski offers a timely warning. While the philosophy of individualism promoted the nation's rapid advancement, America has now imperiled itself by turning toward collectivism. The political drive for "diversity" aims at social and economic equality, negating what Madison cited as "the diversity in the faculties of men." Contoski writes, "Equal rights, correctly speaking, mean only that men are entitled to equal protection against force, which means: the liberty to be *unequal* in every other respect. Any attempt by government to make men equal in any other respect necessarily violates their rights, their liberty." The implications of this attack on equality before the law gravely concern the author.

According to Contoski, democracy needs to be limited because it is based on the fallacy that "wisdom resides in the majority, . . . that wisdom is defined by popular opinion," in defiance of Newton's demonstration of "the universal nature of truth." He asks whether people would care to have a decision on proposed surgery submitted to a popular vote, concluding that "It would seem desirable to have as few decisions as possible determined by democratic vote." Alas, our trend runs in the opposite direction.

He takes issue with John F. Kennedy's idealistic appeal, "Ask . . . what you can do for your country." Claptrap, says Contoski, who offers a better alternative: "Ask what you can do for yourself." The contrasting cases of John Fitch and Robert Fulton illustrate his point. Fitch developed the steamboat in 1785 and offered the invention to "the country" and various state legislatures, but was continually stymied by indifferent politicians. Two decades later, Fulton refined the concept, received a patent, and launched water transportation's Steam Age: "Hoping to reap profits for himself, Fulton did more for his country incidentally than Fitch did by intention and years of self-sacrificing perseverance."

But now big government has the upper hand, achieved through what Contoski terms the collectivists' "quiet conquest" of lower education and their domination of higher education, as well as most information media. Constant propagandizing makes it easy for government to expand through economic regulation. Contoski describes regulation as a form of coercion fueled by the alleged need to protect "the common good." Actually, it's a system in which "some people obtain material benefits by employing force against others."

The author devotes many pages to demolishing excuses for regulatory intrusion. For example, he cites Lawrence Reed's refutation in *The Freeman* (November 1994) of Upton Sinclair's truth-straining "exposé" of turn-of-the-century meatpacking houses that led to the 1906 Meat Inspection Act and notes that its legislative successor, the ineffectual Wholesome Meat Act of 1967, was similarly driven by distortions of the truth. He also quotes from Edith Efron's exhaustively documented and lamentably neglected *The Apocalypstics: Cancer and the Big Lie* to counter public hysteria about synthetic chemicals, and he disproves much more hokum.

The collectivists have indoctrinated enough generations of Americans that the nation's original guiding principles have been nearly expunged. Contoski is right on target in writing, "The sad fact is that most Americans have never really understood the American system. They were fortunate enough to have been born into it and benefited from it, but