

BOOK REVIEWS

Mining Law & Policy: International Perspectives

John Southalan

The Federation Press, 2012; v–viii, + 326 pages; AU\$125 (softback); ISBN 978 186287 849 5.

Finally, international mining law and policy are presented in one excellent and practical book. Practitioners, non-lawyers, professors and students should all study John Southalan's book and keep it on their shelves both as a summary of the field and as an incredible resource for deeper research.

Southalan is part of the Global Faculty at the Centre for Energy, Petroleum and Mineral Law and Policy at the University of Dundee, Scotland, teaching international mineral law and policy.¹ Like many other professors of mining law and policy, he recognised early on that there was no textbook for this type of course. There were hundreds of articles, papers and presentations dealing with narrow aspects of the subject, but no one had ever brought them together and summarised the entire field in a usable format. Southalan has now done just that.²

Any work attempting to provide an overview of laws and policies around the world must make many generalisations, and must provide a picture of what laws and policies exist at the time of writing. Southalan acknowledges this and warns that for any generalisation made in the work, it will be possible to find a jurisdiction that 'does things differently'. However, that fact demonstrates the strength of the book rather than its weakness. Other works have provided detailed catalogues of various statutory, regulatory and contractual provisions around the world that were contemporary at the time they were authored,³ and while Southalan presents some of these examples, he goes beyond to synthesise the rationale behind such provisions while placing them in a context that is easily understood by those not intimate with the workings of the industry and the laws and policies having an impact on it.

The book is an outgrowth of Southalan's extraordinarily detailed and comprehensive syllabus and reading list from his course in Dundee,

- 1 Southalan worked full time at the Centre, as a Research/Teaching Fellow, from 2007 to 2010. He is currently based in Perth (Australia) and undertakes a mix of commercial practice, teaching and voluntary work for non-governmental organisations.
- 2 Rio Tinto Minerals; the Centre for Energy, Petroleum and Mineral Law and Policy at the University of Dundee; and the Raw Materials Group provided assistance in the research and writing of this book.
- 3 For example, a highly useful work in this genre is J Otto and J Cordes, *The Regulation of Mineral Enterprises: A Global Perspective on Economics, Law and Policy* (Rocky Mtn Mineral L Foundation 2002).

and demonstrates his mastery of the law, the policy and the pedagogy of teaching these subjects. Equally important, the book contains an exhaustive bibliography (48 pages) and a detailed index (27 pages) that provide a functional resource for any practitioner needing practical tools for accessing in-depth treatment of specific topics.

The book begins with an introduction that provides an overview of the entire mining industry, of the nature of laws and regulations affecting the industry, and of the key economic and policy issues faced by the industry today. The introduction's discussion of sustainable development is typical of the treatment of difficult and complex issues: in three pages Southalan manages to provide a history, definition and critique of sustainable development and place those concepts in context as a 'useful tool to consider issues in mining' while bearing in mind 'a distinction between an ideal and the possible'. Throughout the work, Southalan maintains this balance of the descriptive, the policy ideal and the reality of an extractive industry. Thus, the book avoids the trap of becoming an agenda-driven advocacy argument for either environmentalism or unrestrained irresponsible development.

'Who owns the minerals in the ground?' 'How do you know who owns mineral rights in any specific area?' 'Should a miner have any responsibility for the end use of the product that it mines?' 'What responsibility do the company and the government have in relation to allegations of human rights violations?'

These and similar questions are sprinkled throughout the book in separate 'Think' boxes that provide stimuli for thought and discussion on the topics at hand. The questions do not pander; rather, they genuinely challenge the reader to consider carefully the 'why' or 'how' behind laws and policies. Similarly, a list of 'test' questions is presented at the end of each chapter that serves as a starting point for further consideration (a table of answers is provided at the end of the book making this a useful teaching tool for self-study). Also at the end of each chapter are extensive endnotes providing additional detail of points made in the text, with references to the articles, books and other publications listed in the bibliography.

Following the introduction, the book presents seven substantive chapters. The critical subject of mineral tenure is addressed first, followed by a chapter on land access and use. These two chapters form a strong foundation that reflects the underlying reality in the industry that where the minerals exist and how to gain rights to extract them are the fundamental legal questions on which everything else relies.

The book then deals with the practical legal issues that surround mine development and production, environmental and social issues, and financial and investment issues. Each of these topics could easily fill many volumes.

For example, the chapter on financial and investment issues is broken down into sub-topics, one of which – ‘Market Regulation’ – is then further subdivided into three categories: foreign investment, competition law and reporting of mineral deposits. The purpose of the book is well served by reducing each of these subjects to their essence and treating them with insight and clarity in a few short paragraphs while also providing extensive references – this chapter alone has 149 footnotes.

Southalan concludes the book with chapters on government agreements and the administration of mining law. These chapters will be of great interest to practitioners within governments or advising governments, but are again presented with balance such that industry practitioners will find them to contain perspectives that may be helpful whenever an issue arises with governmental agreements or administration of the laws affecting the mining industry.

The book does not, however, treat private agreements in any depth. For practitioners, students or academics, other sources would need to be consulted, and additional resources explored, for discussions of common agreements in the industry such as confidentiality agreements, joint venture agreements, mining leases or other forms of private agreements widely used in the mining industry.

Overall, this is a practical book that will be useful on many levels. For students of mining law and policy, the book makes the entire subject matter easily accessible and interesting. For professors, the book is an excellent starting point for presenting the material by providing thought-provoking questions to consider and sample tests (with answers). Because of the general nature of the book, it could not properly be the sole resource for a mining law and policy class, but the thorough reference sources in endnotes and bibliographical entries provide guidance to supplemental materials to focus and direct studies into greater depths than permitted in the short format of the book.

For practitioners in private practice, government positions or within industry, this book will provide a well-organised and much-needed point of entry into any specific issue being addressed. However, the book is also a source from which can be taken an easily understandable basic education in law and policy that attorneys are often asked to provide to clients, regulators, policy-makers and non-lawyers in the industry.

Any critics of *Mining Law & Policy* who object to the book on the grounds of over-generalisation should be challenged to study each of the hundreds of works cited in the bibliography (as Southalan has obviously done) and to then produce a summary as concise and understandable as the one contained in this book.

Southalan has provided a great service to everyone involved in mining law and policy by the publication of this book.

Robert Bassett

Partner, Holland & Hart, Denver, Colorado

bbassett@hollandhart.com

Copyright of Journal of Energy & Natural Resources Law is the property of International Bar Association and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.