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A POST-CAPITALIST EARTH, AND BEYOND?

Chase Hobbs-Morgan*

PAUL ANDERSON, *REFORMING LAW AND ECONOMY FOR A SUSTAINABLE EARTH: CRITICAL THOUGHT FOR TURBULENT TIMES* (ROUTLEDGE 2015). PP. 282. HARDCOVER \$145.00.

Paul Anderson's *Reforming Law and Economy for a Sustainable Earth* (hereinafter, *Sustainable Earth*) sets out to answer a tremendous question—tremendous in scope and importance alike: how can we move toward a “sustainable human culture?”¹

Throughout, his response is methodologically and politically pragmatic, even as his conclusions are radical. Through engagements with traditions of economics, international law, political theory, and moral philosophy, Anderson is able to discuss reified ideological positions on what he calls global environmental change (“GEC”) without becoming subsumed by any one such ideology. Instead, like others in and around environmental justice scholarship, Anderson's pragmatism (my description, not his) leads him on a search for “what will work.”²

So, what will work given the ubiquitous need to create a sustainable human culture? Anderson opens *Sustainable Earth* with the claim that a collective shift in how our global economy functions is required, given its “role in global environmental degradation.”³ Like Naomi Klein in *This Changes Everything*, Anderson perceives an unbridgeable rift between our global capitalist economy and a sustainable human culture.⁴ As readers of *This Changes Everything* will note, Klein ultimately makes a *political* argument in favor of coalitions of ordinary citizens, activists, indigenous peoples, and others actively blocking (she suggests the term “blockadia”) the fossil fuel industry from expanding.⁵

For Anderson, reforming the economy should not (necessarily) take place through direct action, but through a reformation of international environmental law

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1. PAUL ANDERSON, *REFORMING LAW AND ECONOMY FOR A SUSTAINABLE EARTH* 1 (2015).
2. KRISTIN SHRADER-FRECHETTE, *WHAT WILL WORK* (2011).
3. ANDERSON, *supra* note 1, at 1.
4. NAOMI KLEIN, *THIS CHANGES EVERYTHING* 21 (2014).
5. *Id.* at 293-336.

(“IEL”).⁶ Yet prior to any substantive changes in IEL, three challenges must be met. Per Anderson, “[t]he first is to identify features of human practice that must change if sustainability is to be achieved. The second is to effect that change sufficiently quickly. The third is to justify, and to elicit sufficient motivation for, the first two tasks.”⁷ The specific task of *Sustainable Earth* is to identify and respond “to shortcomings in contemporary efforts to meet the first of these three challenges.”⁸ Identifying features of human practice that need to change if we are to move down the path of sustainability is thus the central task of *Sustainable Earth*, a task that Anderson undertakes admirably.

He does so in four movements: “analysis, critique, reconstruction, and proposition.”⁹ Chapters one and two provide an analysis and suggest that the problem of GEC “may be characterised [sic] as the aggregate use of environments as sources of and sinks for economic practice at a rate greater than that at which sources and sinks can be replenished.”¹⁰ Chapters three and four, in turn, critique the “economic model of international environmental law.”¹¹ Anderson finds that building law around economic allocation of natural resources is not a useful way to stop environmental damage: “although markets may be ‘ecologically corrected,’ it is unlikely that they can be ‘ecologically correct.’”¹² At risk of losing the nuance and sophistication of the argument, a summary of Anderson’s critique of the economic approach is that “it locates the single structural cause of market failure and posits, as sole remedy for GEC, the correction of market failure.”¹³ For evidence, Anderson points to the “increasingly neoliberal character of international coordination . . . which prioritises [sic] the pricing and privatisation [sic] of nature, markets, growth and the increasing involvements of finance capital” as means of protecting the environment.¹⁴

Yet if Anderson is right, the attempt to produce sound international environmental law aimed at producing efficiency in markets is misguided because the economic thinking that so often underwrites such an attempt fails to take *itself* into account: “[t]he economic diagnosis of the causes of environmental change as market failure presupposes capitalist institutions which are not themselves represented in the diagnosis.”¹⁵ If economic thinking would dare to think of itself it would find “that a greater causal role in generating global environmental change . . . may be attributed

6. Anderson, *supra* note 1, at 25, where international law is defined broadly as “a set of rules, principles and associated international bodies which regulate the relations between and conduct of states.”

7. *Id.* at 1.

8. *Id.*

9. *Id.* at 4.

10. ANDERSON, *supra* note 1, at 66.

11. *Id.* at 131.

12. *Id.* at 196 (citing Joan Martinez-Alier, *Distributional Obstacles to International Environmental Policy: The Failures at Rio and Prospects after Rio*, 2 *Envtl. Values* 2 (1993)). In other words, as chapters three and four demonstrate convincingly, all of the rosy rhetoric about markets’ ability to address environmental degradation is based more on economic assumptions and models (which can be updated with ecological concerns) than on environmental realities and outcomes (which cannot be made correct through economic means).

13. *Id.* at 130.

14. *Id.* at 146.

15. ANDERSON, *supra* note 1, at 159.

to those institutions themselves than solely to faulty pricing mechanisms.”¹⁶ Capitalism, rather than offering solutions, shoulders the blame.

Turning to reconstruction, chapter five “provide[s] a more suitable causal analysis than that offered by economics.”¹⁷ Following the argument that economics fails to offer a coherent account of environmental degradation, chapter five brings capitalism and capitalist institutions into the analysis. More importantly, and in line with critical theory of recent years,¹⁸ Anderson defines capitalism more broadly than is generally done: as “a constellation of social institutions which organise [sic] the ecologico-social metabolism.”¹⁹ Once such institutions are taken into account rather than presumed ‘natural,’ we see more clearly the extent the which capitalism *is* the allocation problem: micro- and macro-economics inherently incentivize us to consume natural resources more quickly than they can be replenished and to produce waste more quickly than sinks are able to absorb it. Capitalism upsets the “ecologico-social metabolism” which, when out of balance, “counts among the most important structural causes” of GEC.²⁰

Arriving at the proposition section, chapters six and seven present the most original arguments of *Sustainable Earth*. Anderson here proposes putting *politics* first. Per Anderson, one way of putting politics first is to prioritize concerns of distributive justice. The relevant question of distributive justice is “who is to contract greenhouse gas emissions, by how much and by when?”²¹ Answers to these questions, Anderson notes, all suggest the importance of equity (in which “the right to life of all is treated equally”), a distribution of entitlements—so reduction in resource use is not based on “people’s willingness and ability to pay”—and a “*per capita* equal license” as a normative basis for reducing resource use from existing to “precautionary levels.”²² Distributive justice, familiarly, is a matter of fairness.

Though an improvement over the economic approach, Anderson finds the distributive justice approach lacking for three reasons. First, distributive justice assumes “that those who use resources constitutive of harms are in fact entitled to that use.”²³ Second and relatedly, distributive justice assumes “that harm is unavoidable.”²⁴ Why, Anderson allows us to ask ourselves, should we build environmental law around an assumption that harm is inevitable and that the world’s relatively wealthy are entitled to harm others through resource use?

Corrective justice, which focuses on “which causes of action are available to

16. *Id.* at 159.

17. *Id.* at 159.

18. See, e.g., Nancy Fraser, *Expropriation and Exploitation in Racialized Capitalism: A Reply to Michael Dawson*, 3 CRIT. HIST. STUDIES 165 (2016), in which Fraser elucidates Marx’s view that capitalism “is not an economy but a *social system of class domination*”.

19. ANDERSON, *supra* note 1, at 159.

20. *Id.* at 180.

21. *Id.* at 199.

22. *Id.* (citing AUBREY MEYER, *CONTRACTION & CONVERGENCE: THE GLOBAL SOLUTION TO CLIMATE CHANGE* (2000)).

23. *Id.*

24. ANDERSON, *supra* note 1, at 199.

victims against those who harm,”²⁵ is offered as a response to the first two limitations of distributive justice, holding that “few, if any, harms constitutive of GEC are unavoidable.”²⁶ Centering corrective justice, whereby we edge toward sustainability through “litigation against governments and states,” might be useful.²⁷ Yet it too is limited insofar as “corrective approaches are by and large (perceived to be) piecemeal rather than comprehensive, and reactive rather than proactive.”²⁸ This approach leaves the reader with one more avenue by which to sculpt IEL: a critical theory of justice.

Indeed, a critical theory of justice is necessitated by a third limitation of distributive justice to which corrective justice cannot respond. Whereas distributive justice might adequately distribute rights, duties, wealth, entitlements to resources, and so on, it cannot distribute *power*. In the same way that economic approaches to stopping GEC naturalize their own institutions thus leaving them out of the account, “[d]istributive approaches typically assume institutional structures as given and instead inquire into principles and practices of distribution within them.”²⁹

In chapter seven, inspired by a critical theory of justice to redistribute power itself, Anderson asks “whether an alternative model of governance to that of capitalism” might effectively arrest GEC and produce a sustainable human culture.³⁰ Anderson names this alternative “ecological democracy.” Comprised of decentralized and deliberative democracy (so people have a voice) and “common key resource control” (so people have reason to voice sustainable concerns), Anderson concludes that ecological democracy would better inform IEL.³¹

My appreciation for *Sustainable Earth* is likely apparent. The book is timely, thoroughly researched, well-argued, and important politically. Yet, I do have three inter-related concerns. To get to them, recall Anderson’s starting point regarding three tasks that stand in the way of a sustainable human culture: the need to determine which features of human practice need to change, the need to make those changes quickly, and *then* the need to elicit motivation for the first two.

Analytically, this order is sound. Yet politically, is it not necessary to flip the order, starting with motivation? In *Sustainable Earth* Anderson is expressly committed to a radical democratic approach, but would not such an approach demand that we start where people are: with their communities, their preferences and struggles, and their motivations? It is understandable that Anderson would prefer the intellectual first challenge over and above the unwieldy third challenge of developing and fostering motivation. However, he might have done more to acknowledge and avow the complexity and messiness of the world “out there,” even while opting to impose the clarity required for approaching matters of IEL.

Relatedly, while reading *Sustainable Earth* I was struck by Anderson’s written and

25. *Id.* at 201.

26. *Id.*

27. *Id.* at 202.

28. *Id.* at 201.

29. ANDERSON, *supra* note 1, at 203.

30. *Id.* at 207.

31. *Id.* at 214.

organizational *style*, each of which might have better balanced clarity and order with the urgent and chaotic dimensions of environmental degradation. Again, the fault here is not Anderson's alone, and might be shared by the series under which *Sustainable Earth* was published. As noted in the book's introduction, *Environmental Politics / Routledge Research in Environmental Politics* is a single series with two distinct goals or audiences. *Sustainable Earth* is part of *Routledge Research in Environmental Politics*, which "presents innovative new research intended for high-level specialist readership." Yet given the importance of Anderson's arguments and political claims, and considering his conclusion that GEC and IEL ought be directed by ecological democracy (in which, yes, the more ordinary and non-specialist elements of "the people" must participate), I wonder if *Sustainable Earth* would have spoken more directly to "the people" had it been styled and published under the *Environmental Politics* branch of the series, which "addresses the needs of students and teachers?"³²

Additionally, given the complexities and uncertainties that would inevitably arise in the quest to replace the economic approach to IEL with one of ecological democracy, I wish that Anderson had devoted more space to his *positive* critique. Readers who follow Anderson's *critical* critiques of economic and distributive justice approaches to IEL might be disappointed to hear that when it comes to ecological democracy, "a comprehensive proposal to reform the above-mentioned [capitalist] distributions of power lies beyond the scope of this work."³³ To be sure, no academic work should try to dictate democracy's every detail. Yet given the importance and urgency of the problem of GEC, I would have welcomed more guidance and detail with regard to how to approach implementing Anderson's suggestions.

Still, *Sustainable Earth* is tremendous in scope and in the importance of its endeavor. Yet it is tremendous in another sense as well. Most importantly, Anderson's *Sustainable Earth* is tremendous in its ability to foster interdisciplinary conversations and to leverage such conversations to render the scope of the book necessary rather than ill-advised. Anderson not only promises that his book will address a huge issue (reforming law *and* economy!) he also delivers in a way that might be of use to a wide readership. Anderson argues in chapters one to five that, when we approach matters of concern having to do with the earth and its organization by IEL, we need to think in post-capitalist terms. In turn, Anderson contends in chapters six and seven that we need to go beyond a post-capitalist earth and toward an ecological democracy—even as he starts to show us that ecological democracy will work.

32. *Id.* at "Environmental Politics / Routledge Research in Environmental Politics."

33. *Id.* at 206.