
Global Democracy and Sustainable Jurisprudence: Deliberative Environmental Law

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A Preface to Global Democratic Anarchism

In *Democracy in America*, Alexis de Tocqueville frequently mentions a singular advantage that the democrats of the New World enjoyed over those of the Old. Americans had no monarchic past to slough off on their way to democracy. This advantage manifested itself in the structural looseness of American institutions and in the absence of any large entrenched elite that might resist the idea of popular sovereignty. Thus it was possible for Americans to “have arrived at democracy without suffering through democratic revolutions, and to be born equal instead of becoming equal” (S. Wolin 2001, 119–127). The advantage enjoyed by Americans was more than tactical. Having avoided the social traumas that Old World wars of revolution involved, Americans never found it necessary to overcome the implacable hatreds among different classes that slowed the development of democracy in Europe. To put it succinctly, America’s democratic revolution didn’t cost very many Americans very much.

As we witness the emergence of what Jürgen Habermas characterizes as a postnational constellation, one might be forgiven for wondering if the advantage has shifted away from Americans (Habermas 2001b). Having become, by so many measures, the world’s privileged class, will Americans yield gracefully to a movement toward democratization at the global level? Might it not be that citizens of the Old World, who suffered so grievously at the hands of nationalists during the last century, will prove far more open to new forms of transnationalism that empower individuals and groups at the expense of sovereign states? In an era when the democratic impulse begins to erode both national boundaries and structures of arbitrary authority within human institutions, are the citizens of the world’s last “superpower” destined to be the rearguard of the old world order? We have written this book for a global audience, but early in the twenty-first

century its arguments and proposals may fall on less receptive ears in the United States than elsewhere.

In 2005, we published a book entitled *Deliberative Environmental Politics*. Our limited objective in that volume was twofold. First, we wanted to describe what we took to be areas of conceptual consistency between deliberative democracy and the imperatives of environmental protection. Second, we wished to identify institutional innovations and political trends that at least suggested that the areas of conceptual consistency we had described were not sterile ground.

In this volume our objective is similarly limited. It is to indicate that theories of political deliberation offer useful insights into the “democratic deficit” in international law. Our discussion of international institutions and procedures is not intended to be comprehensive. It is intended only to suggest that there are approaches to the problem of global environmental protection that require nothing more than a new conceptual orientation and a renewed sense of the possibilities of cosmopolitanism. Here, as in our earlier work, we focus on the environment because it provides the most nearly universal human interest that can be described with any level of precision.

We also advance a proposal for institutional innovation not because we conceive of it as the only (or even, necessarily, the best) approach to the problem of developing transnational environmental consensus, but rather because it is necessary to start somewhere. We have made no claims, and have none to make, about the content of the decisions people would reach on environmental matters—we do not claim that juristic democracy would resolve all or part of the environmental problematique or even that any choices made will necessarily be better choices environmentally. As in every realm of human endeavor, bad choices *can* be made by the most democratic of processes, although there are good reasons—and evidence—to suggest this will happen less often and the bad choices will be less bad than when made by nondemocratic processes. Moreover, we assume that the capacity of any polity to recover from what turn out to be environmentally substantive mistakes will be enhanced if decisions are made in processes that create social capital rather than spend it. We only assert that environmental norms with genuinely democratic lineage, if they could be developed, would be well worth having.

Our argument in the book proceeds as follows. After exploring the necessary characteristics of a meaningful global jurisprudence, a jurisprudence that would underpin truly effective international environmental

law, we back up and reconsider the possible theoretical foundations for that jurisprudence in realism, pragmatism, and deliberative democracy. Building on this analysis, we suggest a conceptual framework for international politics and law that offers the prospect of workable, democratic, and environment-friendly rule-governed behavior within a system of global politics that is likely to remain (and perhaps ought to remain) anarchic in important respects. Specifically, we suggest the development of a global environmental jurisprudence based on democratically generated norms. We propose a concrete process for identifying and generating global environmental norms for translation into international law—law that, unlike all current international law, can be universally recognized as both fact and norm because of its inherent democratic legitimacy.