Review Essay

Three approaches to environmental political theory

Allocating the Earth: A Distributional Framework for Protecting Capabilities in Environmental Law and Policy

Breena Holland

Oxford University Press, Oxford, 2014, 272pp., ISBN: 978-0199692071

Consensus and Global Environmental Governance: Deliberative Democracy in Nature's Regime

Walter F. Baber and Robert V. Bartlett

The MIT Press, Cambridge, MA, 2015, 280pp., ISBN: 978-0262527224

Engaging the Everyday: Environmental Social Criticism and the Resonance Dilemma

John M. Meyer

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The environmental movement has had remarkable success in certain limited areas, but environmental concerns remain relatively low on the public agenda, and global challenges like climate change and species extinction seem increasingly intractable. What to do? Each of these books takes up a different domain of politics: regulatory policymaking (Holland), international environmental law (Baber and Bartlett) and everyday life (Meyer). Each adopts a different approach to environmental political theory: explicate and apply normative standards, design new institutions to propose such standards, develop an imminent critique of existing practices. Despite these differences, the authors all reject technocratic proposals for environmental authoritarianism, and they share a conviction that political theory needs to reach beyond white-middle-class environmentalism to engage questions of justice and democracy in diverse communities around the world.

Breena Holland's *Allocating the Earth* develops a 'capabilities approach' to environmental policy. The heart of the book consists of chapters on the valuation of environmental goods, the justification of environmental policies and a 'capabilities

approach to regulatory rulemaking'. As developed by Amartya Sen and Martha Nussbaum, capabilities theory addresses questions of justice not in terms of the distribution of wealth or happiness, but in terms of people's actual ability to do and to be things they have reason to value. The capabilities commonly invoked include being able to satisfy basic material needs and to enjoy various forms of social interaction and personal development, such as political activity, education, leisure, art and music, friendship, sexuality and relations with non-human nature. Holland presents the capabilities approach as a 'substantive' alternative to the leading 'procedural' approaches to environmental policymaking: cost-benefit analysis and deliberative processes. As Holland notes, Sen is skeptical about ideal theories of justice and so he has not provided a detailed account of specific capabilities. He wants to avoid undermining ordinary people's efforts to determine what capabilities they deem most important in local contexts. But Holland follows Nussbaum, who builds on the tradition of Rawlsian ideal theory and offers a list of ten universal human capabilities. Both Nussbaum and Holland say the list is based on historical experience and needs to be further specified through citizen participation, and indeed, the tenth item on the list includes the capability 'to participate effectively in political choices that govern one's life' (pp. 74, 188–192, 209). But Holland repeatedly emphasizes her aim of providing 'substantive criteria for a generalizable approach to policy evaluation, as well as substantive constraints on democratic processes' (p. 72). Judicious and meticulous, Holland's book is indispensable for those engaged in similar projects, and more broadly, for anyone interested in capabilities theory. But those who share Sen's skepticism toward ideal theory are likely to have some questions about Holland's approach.

The book begins with a persuasive if mostly familiar critique of economic and deliberative approaches to environmental policymaking. Cost-benefit analysis focuses on people's 'willingness to pay' for environmental goods, and such willingness may be distorted by ignorance or by people adapting their preferences to existing circumstances, which for many provide few opportunities to enjoy nature. In any case, even if economic approaches could assess the full economic value of non-human nature, they still could not capture its unique, irreplaceable, non-economic value (pp. 41–43). Deliberative regulatory processes are a welcome improvement, but one common method, deliberative monetary evaluation (DMV), still neglects non-economic values. Deliberative stakeholder processes, such as ecosystem-based management (EBM), incorporate non-economic concerns, but their emphasis on seeking consensus allows powerful interests to undermine serious efforts to protect the environment (pp. 47–49, 57–58, 175–179).

In contrast to these approaches, Holland expands Nussbaum's capabilities approach in several key ways. First, she argues that the environment should be understood as a 'meta-capability' that is a precondition for all other capabilities (p. 112). Nature is not merely an *object* of either individual or collective choice, but a *condition* of choice (p. 34). Not only do physical capabilities such as bodily

health depend on a threshold level of environmental protection, but even capabilities such as imagination, play and practical reason may be severely constrained by ecological destruction. Second, Holland shows how capabilities theory offers a way of assessing the impact of environmental policies on questions of distributive justice. By highlighting the close relation between environmental conditions and people's effective opportunities for living fulfilling lives, Holland shows how environmental risks often have disproportionate impacts on poor and minority communities and people with disabling conditions such as asthma (pp. 87–89). Third, Holland argues that capabilities theory currently lacks an effective way to cope with 'capability conflicts', situations in which a policy pushes some people's capabilities above the threshold level that justice requires, while simultaneously pushing other people's capabilities below that threshold (p. 136). Nussbaum argues that such conflicts should be resolved through deliberation by those directly affected. For Holland, in contrast, capability conflicts should be resolved by appealing to substantive ideals of justice (pp. 137–138). More specifically, capability conflicts should be resolved by policies that establish and enforce 'capability ceilings', which are 'limitations on the choice to pursue certain individual actions' when those actions undermine other people's minimum threshold level of capabilities (p. 142). For example, driving an SUV may be understood as the exercise of one's capability for personal mobility, but SUVs pollute the environment and undermine people's capabilities for life and bodily health. Adopting a capabilities approach would thus allow policymakers to justify a registration tax on SUVs (p. 150).

Holland is well aware of the technocratic potential of her emphasis on substantive standards, and she takes pains to demonstrate its democratic legitimacy. She rightly points out that democratic representation requires not only satisfying popular preferences but also promoting the substantive interests of the represented (pp. 180–183). And she notes that some elements of capabilities theory are already implicit in existing environmental laws, such as the US National Environmental Policy Act, which Holland suggests have been enacted through at least minimally democratic procedures. Moreover, Holland argues that even if current popular preferences do not support the substantive commitments of capabilities theory, the democratic legitimacy of those commitments may be seen as resting on citizens' capacity to challenge them. From this (neo-republican) perspective, 'democracy entails contestation and struggle rather than agreement and well-structured deliberation' (p. 186). The key is to 'institutionalize citizens' capacity to object' to the way that policymakers and scientific experts represent public interests (p. 187). Holland thus argues that her proposal 'should be understood as a way to secure conditions of democracy rather than as a threat to democratic deliberation' (p. 197).

This reference to 'conditions of democracy' suggests that one might read Holland's book as a theory of democratic constitutionalism. From this perspective, the important distinction is not between procedure and substance, but between everyday administrative rulemaking and the quasi-constitutional principles that guide

and constrain it. But several questions remain unanswered. Do citizens who exercise their ‘capacity to object’ to Holland’s proposal, once it is enshrined in law, have any real possibility to alter or abolish it? What should be the requirements for amending an administrative constitution based on capabilities theory? Most importantly, how should policymakers resolve interpretive differences about how to apply the list of capabilities to particular issues? Holland rightly asserts that democratic procedures cannot ‘guarantee’ or ‘ensure’ substantively just outcomes (pp. 104, 139, 171, 191), but does appealing to principles of justice provide any more of a guarantee?

The second book under review, *Consensus and Global Environmental Governance* by Walter F. Baber and Robert V. Bartlett, rejects the search for substantive guarantees – or rather seems to, as I explain in a moment – while vigorously defending citizen deliberation. Resting in part on the authors’ work with the Earth System Governance Project, an international social science network, this is Baber and Bartlett’s third co-authored book. The first linked environmental political theory with leading accounts of deliberative democracy; the second developed a theory they call ‘juristic democracy’, which locates the legitimacy of international environmental law in citizen deliberation rather than agreements among nation states. The current book builds on the authors’ previous work by taking up the challenge of developing a global consensus on basic environmental norms. The book touches on a wide range of issues, including environmental justice, global federalism and theories of consensus. The overall argument is that a global network of citizen juries could provide the foundation for an international common law of environmental protection.

Baber and Bartlett begin by acknowledging that nation states and transnational corporations present enormous obstacles to international environmental law. And they make clear that international law is only one component of distributed systems of global governance. But they rightly point out that coercive state power is not a necessary component of law, and moral and psychological sanctions are generally more important than coercion for generating compliance. Moreover, the legal judgments of international organizations need not be enforced by those same organizations (p. 51). The real weakness of international law, they argue, lies in its lack of adherence to precedent. Decisions by the International Court of Justice, for example, are only binding on the parties to the case at hand. As a result, ‘international law lacks the capacity to grow’ (p. 37). It also lacks democratic legitimacy, because the bodies that create it are legitimized through highly attenuated paths of accountability that stretch implausibly from ordinary citizens to national governments to international organizations (pp. 38–39).

Baber and Bartlett propose to address these dilemmas with citizen juries. Along with deliberative polls and other kinds of ‘mini-publics’, citizen juries are perhaps the most prominent institutional innovation associated with deliberative theories of democracy. Modeled on juries in the US legal system, citizen juries consist of small groups of randomly selected lay citizens. They meet once or more to discuss a controversial public issue and make recommendations about it. The participants are

selected to represent a cross-section of the local population, and organizers often portray their deliberations as representing the public's genuine will and opinion. However, critics have long argued that citizen juries represent only a hypothetical public: what the public would be, if it were deliberative. Apparently undeterred by such critiques, Baber and Bartlett double-down on the hypotheticals, proposing that participants would not discuss actual policy issues but rather hypothetical cases designed to highlight narrowly defined, concrete questions of environmental law and policy. The result, it seems, would be hypothetical public opinion about hypothetical cases, far removed from everyday politics. But the authors argue that this approach would allow citizen juries to reveal areas of agreement on basic environmental principles, reduce international tensions, and help legitimize environmental policies (pp. 26–27). Most importantly, the decisions of a global network of citizen juries could be analyzed and aggregated by social scientists, using established techniques of content analysis and legal restatement whereby legal specialists periodically summarize case law to inform judges and lawyers about emerging principles of common law in the United States (pp. 122–128). The goal would be to compile the decisions of innumerable citizen juries to create a body of international case law with a normative claim to social consensus similar to that of domestic common law. International environmental groups, international tribunals, and other organizations could then cite these results to resolve environmental disputes (pp. 163–168).

Baber and Bartlett persuasively address many of the objections commonly raised about public deliberation (pp. 106–119). They note empirical evidence suggesting that problems of bias and polarization can be countered by selecting a diverse group of participants and engaging a trained facilitator to help ensure that everyone has a chance to both speak and be heard. The authors are less convincing in their efforts to address the concerns about deliberation associated with agonistic theories of democracy: that deliberative procedures risk suppressing conflict, excluding minority perspectives, and delegitimizing non-deliberative modes of engagement like civil disobedience (pp. 57–81). Baber and Bartlett belittle such concerns as 'apparently serious' (p. 65), and they caricature them as amounting to the claim that 'deliberation is too demanding, confusing, and frustrating for women and minorities to master' (p. 67). But they also claim that such concerns have always been shared by deliberative democrats themselves (p. 65), and later they acknowledge the 'relative advantage of male, middle-aged, dominant-social-group professionals in deliberative contexts' (p. 111, see also p. 116). Their overall assessment of these issues remains unclear, but they suggest that social exclusion can be avoided with careful institutional design (pp. 70, 111–112).

Be that as it may, citizen juries also face several additional objections that Baber and Bartlett neglect to discuss. First, while often portrayed as elements of 'participatory democracy', citizen juries involve an extremely small number of citizens, and once the jury is selected, non-participants have no option of becoming involved. Citizen juries are usually single-shot episodes, providing no opportunity for participants to build group solidarity and commitment over time. As the authors

themselves state, ‘it is not the concern of juristic democracy that all and everyone have their say; rather, it is that everything worth saying gets capably said *and heard*’ (p. 174, original italics). One might conclude that citizen juries are ‘representative’ in a scientific rather than political sense, and the authors do not discuss why ordinary citizens should consider themselves represented by such institutions. Indeed, the authors’ reliance on citizen juries echoes Holland’s focus on articulating a substantive normative standard to justify environmental policies, thus raising similar questions about the role of broad public engagement.

John Meyer’s eloquent and innovative new book, *Engaging the Everyday*, begins with the proposition that appeals to abstract moral standards have failed to resonate with the general public, and it is time for a different approach. Rather than trying to trump people’s everyday concerns with philosophical arguments or social scientific studies, Meyer argues, ‘we would do far better to explore ways to address climate and environmental challenges as *an integral part of* these concerns’ (p. 4, original italics). Environmental philosophers and scientists, regardless of whether they pose as solemn prophets of doom or cheerful promoters of techno-fixes, easily come across as arrogant and elitist, and their recommendations often seem patronizing and paternalistic. And practically speaking, ‘no matter how sound the science nor how widely shared the moral propositions, they cannot resolve differences in how to act or in the distribution of consequences from a given act’ (p. 5). Meyer thus draws on Michael Walzer’s account of the ‘connected critic’ to argue that environmental social criticism can and should criticize everyday environmental practices from the inside. In contrast to both the ‘outside critic’ (who relies on philosophy or science for a normative standard) and the ‘inside player’ (who goes along to get along), the ‘inside critic’ attempts to remind people of their own neglected or obscured moral resources. Meyer locates such resources in everyday material practices. For Meyer, ‘attending to practices draws our attention to the context that structures individual choices and the collective possibilities for such choices to modify this context’ (p. 15). The first section of the book consists of theoretical chapters on liberalism, materiality, and the relation of private and public. The second section turns to three areas of practice – private property, automobiles, and homes – to reveal internal tensions that suggest openings for social and environmental advocacy. In each case, Meyer examines the relevant practices with regard to a particular political concept: privacy, freedom, and citizenship, respectively.

Environmentalists have long had a fraught relationship with liberalism, with many seeing classical liberal commitments to individual rights and private property as inherently anti-environmental, while others (like Holland and Baber and Bartlett), build on the tradition of social liberalism and view environmental protection as a key component of human freedom and equality. Meyer’s attention to everyday practices allows him to bypass this debate, which he sees as an ‘unproductive dichotomy’ between ‘transcendent and totalizing’ external critics and ‘circumscribed and resigned’ inside players (p. 44). Meyer’s imminent criticism, in contrast, remains

agnostic on the precise relation of liberal theory and environmentalism. Instead he argues (with a nod to Bruno Latour) that 'we have never been liberal' in the sense that popular attitudes often exceed the boundaries of liberal categories (p. 19). By directly engaging existing public values and practices, Meyer argues, environmentalists can build a broader constituency than either environmental liberals or their critics have garnered so far.

Existing practices, Meyer argues, should be understood as material – that is, as intertwined with material conditions, human and non-human entities, and built environments. In one of the book's most important sections, Meyer refutes Ronald Inglehart's influential argument that environmentalism depends on 'higher-order', 'post-material' values that only emerge in relatively wealthy societies once basic material needs are secure. The post-material thesis is empirically flawed, because it ignores not only today's environmental justice movement but also earlier movements that addressed public sanitation, occupational health, and other issues that link environmental conditions and basic needs. Moreover, post-materialism is politically misguided, since it fosters a narrow conception of environmentalists as virtuous elites concerned with protecting pristine wilderness (p. 52). Meyer then identifies a different sort of elitism in 'new materialist' thinkers like Jane Bennett who aim to foster environmental concern by cultivating an awareness of nature's protean vitality. While Meyer supports Bennett's critique of mechanistic views of nature as inert and passive matter, he argues that her emphasis on persuading readers to adopt a new ontology leaves little space for everyday political questions (p. 64). Moreover, Meyer sees the attempt to embrace 'vital materiality' as 'less a materialist project than an idealist one', and it amounts to a form of external criticism (p. 66). For Meyer, engaging with a vital material world is 'not something new to any of us', and most people are likely to perceive philosophical arguments for transforming one's ontology as patronizing and paternalistic. Meyer calls instead for 'engaging materiality as it is already manifest in practice' (p. 67).

In the first of his case studies, Meyer shows that the absolutist view of property rights associated with liberalism does not capture most Americans' actual attitudes and practices regarding private property. In their everyday lives, Americans often treat property as socially and ecologically embedded. For example, there is widespread public support for polices to regulate environmental risks and preserve public space. Meyer's second case examines people's lived experience with automobiles, showing that cars create both freedom and dependence. The culture of automobility affects people very differently, depending on their socio-economic resources. Cars allow a person to seek a job far from home, but the long commute may soon become a source of unfreedom. Expressed preferences for private automobiles should thus be neither morally condemned nor taken at face value, as they are intertwined with the existing physical infrastructure (pp. 135–137). Transportation and urban planning policies that open up a wider range of mobility options would make the constraints of the current system more evident. Indeed, recent studies show a decline in driving, which

Meyer sees as ‘a shift in practice to be enabled and built upon in ways large and small’ (p. 138). Finally, a chapter on homes, household practices, and green consumerism shows that ‘practices of dwelling are inescapably political’ in the sense that domestic life shapes and is shaped by political structures and decisions (p. 147). Meyer acknowledges that promoting environmentally conscious consumer behavior often amounts to privatizing and individualizing social responsibility. But he shows how various household practices – including those of a student-run household and advocacy group at his university – suggest a more promising version of household environmentalism. When people see how their homes are ‘central to the reproduction of everyday life, the nexus for a wide variety material practices and flows’, then ‘the already present concerns and identities that emerge from the home can be recognized as a basis for environmental action’ (p. 156). Seen in this light, homes can become venues for environmental citizenship and they can also foster citizenship outside the home.

Like other immanent critiques, Meyer’s case studies are vulnerable to the objection that he has exaggerated the possibilities for generating reform from within existing practices. He readily acknowledges that the meaning of a practice or experience is ‘never transparent’ and often becomes subject to conflicting interpretations (p. 62). But some interpretations may be extremely difficult to change. Meyer’s account of various alternative practices provides hope for environmental goals, but at points he seems to underestimate the structural barriers they face. Nonetheless, such barriers have proven highly resistant to academic arguments for environmental justice and democracy – a fact that continues to frustrate many academics. For anyone ready to move beyond such arguments, Meyer’s attention to the concerns and dilemmas of everyday life offers a promising alternative.

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