

Baber, Walter F., and Robert V. Bartlett. 2009. *Global Democracy and Sustainable Jurisprudence: Deliberative Environmental Law*. Cambridge, MA: MIT Press.

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In this ambitious work, Walter F. Baber and Robert V. Bartlett propose an alternative approach for international law in the area of environmental protection. Rather than seeking law backed by nation-states, they argue, international environmental law practitioners should aim to construct a global jurisprudence based on collective will formation. This reformulation would not only give legitimacy to environmental law, but would, as a result, make it more effective. They envisage their approach allowing the spread of international environmental law, and facilitating the engagement of citizens across nations with one another. International environmental law based on global jurisprudence could also address the democratic deficit of international law more generally.

Baber and Bartlett emphasize the role of the citizen rather than the nation-state as the backbone of legitimacy in international environmental law. Their argument has three parts. First, for environmental law to achieve the global reach that is necessary, global jurisprudence must be based on the collective will of citizens around the world rather than on the nation-state. Second, it must be rooted in local ecological knowledge. Third, the political process used to create international environmental law must be based on deliberative democracy and consensus. Fundamental to their approach is the belief that international law fails not from lack of coercion but rather from lack of authority.

The authors provide an imaginative and thought-provoking approach to addressing environmental problems. They ground their ideas in a rich set of intersecting theories, but also provide some suggestions of the practical implications of their approach. They offer some concrete suggestions for how such a system could operate: they imagine institutions of citizen-constituted juries that would deliberate hypothetical cases, a global codifying body, and ultimately a cosmopolitan and transnational common law. How should we evaluate their work?

First, it is unclear that a collective will, however formed, would necessarily favor the environment. There is an underlying assumption that a global jurisprudence system would give voice to the "otherwise silent revolution of post materialist values that environmentalism represents" (p. 6). It is not fully explained what these values are, however, or how they may conflict with other important goals such as economic development and growth, trade, and poverty alleviation.

The authors also argue that nation-states are too limiting as a basis for sufficient environmental law, and suggest a set of transnationally-linked citizen committees as a way to do so instead. Why not consider the potential of regional associations to make progress? It would seem unlikely that citizens of the

global North and South would be able to constructively come to consensus. Would it not make more sense to expect such progress from regionally-linked groups? Regional groups would have more in common, and would have better-aligned interests, when it comes to the environment. The authors do attempt to suggest ways in which conflict of interest could be minimized and judgment could be based on hypothetical cases. But it is difficult to imagine how such an approach could work in practice.

Barber and Bartlett also spend too little time explaining how citizens from all over the world, in the absence of a shared identity, could realistically come together. Shared identity in the form of nationalism during the 18th and 19th centuries emerged for specific historical political and economic reasons. Technology, shared press, improved communication, market relations, globalization of the economy and discovery of the New World were important factors. Building a collectivity could also be an incredibly bloody and coercive affair. It is left unspecified how such a collectivity rooted in a global jurisprudence could be formed in the absence of some kind of integrating force.

In addition, the authors could have provided more support for why they believe deliberative democracy is so important to *effectiveness*. One of the most successful international environmental actions, the Montreal Protocol, was not particularly deliberative and did not exhibit the features Baber and Bartlett encourage. Other examples of effective international law and institutions exist without incorporating deliberative democracy at the citizen level. Trade treaties and some transnational actions taken by the World Health Organization in response to global health threats suggest that international law and institutions can work without deliberative democracy.

Lastly, Baber and Bartlett do not mention alternatives to international law. Scholarship about private regulation, including voluntary programs and certification, provides ample evidence of effective means to address global environment problems that do not involve the state. These types of measures put the burden of effort on the main (or most direct) perpetrators of environmental degradation: corporations.

Baber and Bartlett's work is thought-provoking and leads to a consideration of the many ways in which institutions could be constructed to effectively deal with global environmental problems. Future work could focus on how to practically implement their global jurisprudence framework and test whether such a system would lead to more effective global environmental protection.