BOOK REVIEWS

GEOFFREY GARVER, *ECOLOGICAL LAW AND THE PLANETARY CRISIS: A LEGAL GUIDE FOR HARMONY ON EARTH* (ROUTLEDGE 2022)

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'The Anthropocene' has developed a wide range of meanings within the scholarly community. In essence, the term encapsulates the innate understanding that humans have become (and perhaps always were) a pressing force on the environment.[1] Short-term objectives in politics, and a legal system that prioritizes growth and the deeply enshrined protection of property rights have been criticized for their role in the decay of nature.[2] Yet, it has been difficult to grasp precisely how law and governance may play a positive role, that can lead to a 'good' environmental outcome. In the volume *Ecological Law and The Planetary Crisis: A Legal Guide for Harmony on Earth,* Geoffrey Garver has made a significant contribution to the literature by developing a framework to reform law and governance within the Anthropocene, in part to address the systemic problems outlined above.[3]

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1 T Flannery, *Europe: The First 100 Million Years* (1st edn, Penguin Publisher 2019). Kees Bastmeijer, 'Intergenerational Equity And The Antarctic Treaty System: Continued Efforts To Prevent Mastery' [2011] The Yearbook of Polar Law Online. 3.; P Kanwal, 'Ecocentric Governance: Recognising the Rights of Nature' (2023]) 69 Indian Journal of Public Administration.

2 Kanwal (n 1).

3 G Garver, *Ecological Law and the Planetary Crisis: A Legal Guide for Harmony on Earth* (1st edn, Routledge 2022). The book can be situated in a strain of (theoretical) scholarship that seeks to reimagine how law can be altered, revised or reformed to (better) sustain ecological needs. See, for a recent example, M Davies, *EcoLaw: Legality, Life, and the Normativity of Nature* (Routledge 2022). and K Anker and others, *From Environmental to Ecological Law* (1st edn, Routledge 2021).

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This framework partly builds on a 'mutually enhancing human-Earth relationship' developed by Thomas Berry, which the author has labelled 'ecological law'. In this paradigm of a mutually enhancing relationship, humans see themselves as 'members, not masters', acting 'in the benefit of the larger community as well as ourselves'.[4] It rejects the automatic primacy of anthropocentric needs and mastery of nature, whereby humans can limitlessly exploit other beings on Earth. The framework does not subscribe to a purist approach, whereby nature is to be brought to a state without human interference. Instead Garver argues that the approach requires a 'thriving human presence within a life-enhancing global ecosystem'.[5] Put simply, this is human-inclusive ecocentrism. Unconventional as such a proposition towards law and governance initially appears, Garver has managed to further develop these ideas in a nuanced and cogent manner.

The book can be summarised as follows. Garver identifies that people, generally speaking, have become detached from nature and the ecosystems that maintain us.[6] He subsequently examines the role of the law with respect to the ecological crisis observed throughout the world.[7] In this context, particular attention is paid to the concept of the Anthropocene, as well as the wider historical considerations that underpin distorted human-nature relationships which led to the present geological epoch.[8] In other words, how did the world arrive at this present state?

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4 *See* T Berry, *The Great Work: Our Way into the Future* (Three Rivers Press 1990).

5 Garver (n 3).

6 Garver (n 3), 32.

7 ibid, 9, *see* E.S Brondízio and others (eds), *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES 2019).

8 For that are unfamiliar with the term, I refer to the work of the Anthropocene Working Group. 'The 'Anthropocene' is a term widely used since its coining by Paul Crutzen and Eugene Stoermer in 2000 to denote the present geological time interval, in which many conditions and processes on Earth are profoundly altered by human impact.' Working group on the Anthropocene, 'What Is the Anthropocene - Current Definition and Status', (Quaternary Stratigraphy, 2019) <http://quaternary.stratigraphy.org/working-groups/anthropocene/>. Accessed 10 March 2023

Second, the author explores how the growth narrative of prevalent economic theories have failed to stay within crucial ecological limits, both locally and on a global scale.[9] Drawing on numerous examples derived from environmental instruments, the author argues that environmental law has been unable to address systemic issues underpinning the Anthropocene.[10] These examples paint a tumultuous portrait of failing legislation and protection.

Third, Garver proposes, based on concepts such as systems thinking and interspecies fairness, an alternative to the growth narrative in contemporary models. Here, ecological law is introduced as a new paradigm, and the author provides a guide on how actors can move from environmental law towards this alternative mode of governance.[11]

Last, Garver discusses how activism and research strategies may help improve and reform human-nature relationships in line with the principles of ecological law – taking the degrowth movement as an example. This part aims to translate the framework on ecological law into a practical example.[12]

Not all the nuances and themes outlined above can be covered in this review. Instead, I will discuss a handful of strengths of this book. To start off, Graver's argumentative style is a great asset. Throughout the book, Garver presents multiple perspectives before drawing a conclusion, engaging with various counter-narratives and historical considerations underlying the concepts discussed. For example, in framing the Anthropocene as a human-earth dilemma, the author discusses whether the Anthropocene should be approached as an 'inevitable outcome of deeply rooted human traits', or, alternatively, as a means 'to reflect [on] the immense power of humanity's capacity of collective learning'.[13] Additionally, Garver brings in the concept of the 'Capitalocene',

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9 Garver (n 3), 63.

10 ibid.

11 ibid, 167. A systems-based approach highlights the dynamic approach of law. In this theory, legal systems co-evolve with other systems. Graver develops this approach by reviewing strategies for interventions in legal systems, using the leverage points discussed below in this review.

12 ibid, 225.

13 ibid, 42.

which focuses on the issues underpinning systems of power and profit.[14] Multiple schools of thought are discussed, all of which feed into the debate presented by the author. While the author does guide the reader to a defendable end-conclusion, stating that the Anthropocene is a useful frame of reference thus, rejecting critiques of the concept – the line of argumentation walks a highly transparent path. This challenges the reader to reflect on their own position on these complex matters, meaning one can position themselves within pre-existing debates.[15] This is a fantastic attribute of the book, making it a joy to read. Additionally, this argumentative style opens up the discussion to a broader audience – who may not (yet) be familiar with abstract concepts such as the Anthropocene.[16]

Furthermore, the book manages to be simultaneously both critical and constructive. Initially, the author is critical of modern-day environmental law and how it has been unable to halt an exploitative human-nature paradigm.[17] Drawing on numerous examples derived from different legal systems, Garver exposes systemic issues underpinning environmental protection.[18] For example, the author highlights that, in the case of pollution management, technical feasibility and cost-effectiveness often take precedence over the full achievement of calculated critical loads which would preserve ecological integrity.[19] Thus, environmental law has not always respected ecological limits and, on the whole, has failed to prevent biodiversity loss throughout multiple jurisdictions. In the view of this reviewer, that conclusion is easy to accept. Private property protection can often be seen as an offensive and dominant force in Courts, encoding a 'right to destroy' unless environmental law has

[14] *See* J. Moore, *Anthropocene or Capitalocene?: Nature, History, and the Crisis of Capitalism* (PM Press 2016).

[15] Garver (n 3).

[16] ibid, 49.

[17] ibid, 63.

[18] ibid, 73-91.

[19] Critical loads are the 'legal cap' placed on pollution levels, from air quality parameters to maximum allowable levels of nitrogen deposition. *See* for example: Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe [2008] *OJ L 152/1.*

formulated a constraint.[20]. Environmental law has, historically, been on the defensive – protecting 'bits' but not 'the whole'. This is, for example, reflected in the fact that property rights are strictly protected in the EU's Charter of Fundamental Rights (CFR), whereas no right to a healthy environment has been guaranteed in this instrument as a counterweight.[21] While this example is brought in by the reviewer, it does consolidate the argument that Garver puts forward.

To draw from another example of failing environmental protection - from outside the book - one may turn to species protection of the EU's Habitats Directive.[22] This Directive is the cornerstone of EU Nature Conservation Law, meant to preserve the habitats and species of 'community interest'. In this case, the scope of protection does not include any fungi, the third animal kingdom, whilst the Directive disproportionality favours more 'charismatic' mammals (such as wolves) over invertebrates (such as moths) in its range of protected species.[23] Whilst a plethora of other examples could have been given in this respect, the narrow view of species conservation within the EU highlights that more holistic environmental protection is often lacking in key areas. In sum, Garver's arguments on failing protection can find support – both through the examples within and from examples outside the book.

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[20] H Jans and A Outhuisje, , *Property and Environmental Protection in Europe* (1st edn, Europa Law Publishing 2016). ; N Hoek, 'Nature Restoration Put to EU Law: Tensions and Synergies between Private Property Rights and Environmental Protection' (2023) 19 Utrecht Law Review 76.

[21] Ibid. Charter of Fundamental Rights of the European Union [2012] *OJ C 326/391.* Whilst property rights can be limited on the basis of environmental reservations in the CFR, this does highlight the defensive nature of environmental protection.

[22] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ *L 206/7,.*

[23] Pedro Cardorso, 'Habitats Directive Species Lists: Urgent Need of Revision' (2011) 5 Insect Conservation and Diversity 169. Whilst some invertebrates are listed on the Annexes of the Habitats Directive, their number is not proportional nor reflective of the situation 'on the ground'.

However, while a critical analysis of environmental law carries a great deal of merit, had the author stopped here, the book would have been somewhat limited in its utility. Instead, Garver goes beyond the critique. A more complex and challenging question is how law and governance in the broadest sense may adapt to prevent ecological collapse – and, perhaps more ambitiously, how it may aid in the restoration of the natural environment. In other words, as opposed to highlighting what, normatively speaking, may be 'wrong' – what can be 'right' is just as relevant a question to ask. Therefore, it is welcome that Garver spends a great deal of effort envisioning how problems embedded within our legal systems are to be (potentially) resolved. The core aspects of ecological law, as put forward by Graver, consist of eleven points that articulate a set of structures for law and governance to adhere to.[24]

Touching on a few key aspects of Garver's framework, the author argues that ecological law recognises humans within flourishing life systems, thus subscribing to a human-inclusive view of environmental protection. Human existence is therefore fundamental to the framework – rejecting a goal of absolute and pristine wilderness (void of human interference). Within this paradigm, it requires the fair sharing of resources amongst present and future generations of human and non-human life. Additionally, ecological law is to provide primacy to ecological limits over economic and political considerations, emphasising the need for adequate monitoring and research to establish these limits. This, in part, is inspired by the concept of planetary boundaries, which establishes a safe operating space based on identified prerequisites for life on Earth - from an intact nitrogen cycle to a healthy biosphere. [25] Here, the framework embodies a precautionary approach whereby safe margins are not assumed, and a lack of scientific evidence cannot justify acts that are inherently risk-filled. Moreover, Graver argues that there is a need for law and governance to comply with the principle of adaptive management.[26] This principle entails that law must evolve and/or adapt to accommodate practical findings 'on the

[24] *See* for the eleven core features, in more detail: Garver (n 3), 128.

[25] *See* for further reading J Rockstorm and others, 'A Safe Operating Space for Humanity' (2009) 46 Nature 472.

[26] ibid.

ground'. [27] The relevance of this can, again, be illustrated by the EU Habitats Directive. This instrument has been criticised for failing to keep up with ecological developments: it hosts a rigid list of protected species that is difficult to update as necessary on a frequent basis.[28] Graver's lens of 'ecological law' can draw out these lacunae within instruments. [29] In a system inspired by ecological law, threatened fungi, for example, would likely be included in the scope of protection within the EU - with relative ease.[30]

A crucial element of ecological law is that it should not be read as 'environmental law plus'. By contrast, Garver argues that this concept should permeate every legal discipline and jurisdiction, from the national, regional to the international.[31] Ecological law is thus not a smaller, albeit more ambitious, branch of environmental law – but an expansive lens that is meant to be widely applicable. Additionally, Graver envisions that the norms underpinning ecological law are to become global, binding, and supranational, taking the principles of proportionality (no excessive regulation) and subsidiarity (regulation at the lowest regional tier possible) into account. Critics will undoubtedly point to the difficulty in achieving these aims within our current global political economy, and they would not be wrong; most decision-makers will resist such a significant transition, a point raised by Graver himself.[32]

In this context, it is commendable that the author discusses a plethora of tools to navigate these difficulties. To name just one example, the author discusses the concept of 'leverage points' in great detail.[33] These leverage points are cases when a small change in one aspect of society (whether it be a minor change to

[27] *See* H Brige, C Allen, A Garmestani, K Pope, 'Adaptive Management for Ecosystem Services' (2016) 183 Journal of Environmental Management 343.

[28] Cardoso (n 26).

[29] This may be argued because, in this model, ecological limits have primacy over political considerations. The exclusion of large parts of the animal kingdom may interfere with ecological integrity and could thus be scrutinised through the lens provided by Garver.

[30] ibid.

[31] Garver (n 3), 128-149.

[32] ibid.

[33] ibid, 170.

a parameter in air pollution regulations, or a matter more entrenched, such as a change in a common worldview) leads to a large ripple effect that can change the aggregate, often in counterintuitive ways.[34] For example, a tightening of air quality standards, in turn, may impact offset and cap-and-trade in pollution laws, pollution taxes, and in the end – give rise to the creation of a new regime on air quality standards. Whilst relevant - the downside of this part of the book is that it is relatively complex compared to the rest of the work. In the view of this reviewer, this merely highlights the fact that there is no easy solution to the present-day environmental crisis. The fact that Garver does, however, formulates a path forward - showcases the constructive character that underpins the book.[35] In part because of this constructive character, the book may be relevant for those seeking a normative framework to analyse existing legislation. The clearly defined 'aspects' of ecological law, outlined above, can guide critical thought on how systems may be reformed and/or improved from the perspective of achieving a 'better' environmental outcome.

Ideally, the book would reach beyond the sphere of environmental lawyers. Environmental law, which is limited in its scope, may not be up to the monumental task ahead. Sources predict that an estimated 1 million species will face extinction in the coming decades.[36] For ecological law to succeed in 'turning the tide', it must be considered how it can be implemented in all fields that may impact the environment. At present, environmental protection is increasingly encoded in instruments previously deemed wholly separate from the issue (i.e., the much-cited 'greening' of other areas of law). To name some examples, one can think of recent proposals in EU law: from the due diligence norms embedded in EU corporate law, green finance in EU procurement law,

[34] ibid.

[35] Garver further expands on these pointers in his book, bringing in concepts such as lock-ins within legal systems - that impedes and/or enhances environmental protection. These concepts, due to limitations of space, are not included in this review.

[36] F Sanchez-Nayo, K Wyckkuys, 'Worldwide Decline of the Entomofauna: A Review of Its Drivers' 232 Biological Conservation 8.; IPBES, 'Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services' (2019).

or the green state aid criteria in EU competition law.[37] In order to prevent a tunnel vision on CO_2 emissions within this 'greening' – and to bring in elements of ecological integrity or intergenerational equity within these instruments – Garver provides a case for a holistic approach that takes a broader spectrum of ecological science into account, in an adaptive manner.

In conclusion, whilst no publication on its own can be considered a panacea for all ills, this reviewer finds the contribution by Garver an informative and thought-provoking starting point to critically reflect on contemporary law and governance. If we are to resolve the perils of the Anthropocene – from rapid biodiversity loss to disruptive climate change, Graver suggests the importance of mending human-nature relationships, both on a personal as well as a societal level. These topics, in the end, concern us all: maintaining a safe operating space for life on Earth is a shared objective. Therefore, all that rests for the reviewer is to warmly recommend the book to everyone interested in the topic, regardless of their academic background.

[37] *See* for the examples mentioned, Proposal for a Directive of the European parliament and the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 COM/2022/71 final ; Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 C/2022/481 [2022] *OJ C 80/1 ;* J Jiggins and N Roling, 'Adaptive Management: Potential and Limitations for Ecological Governance' (2000) 1 International Journal of Agricultural Resources, Governance and Ecology 28.