

LOOKING BACKWARD FROM THE YEAR 2099: ECOZOIC REFLECTIONS ON THE FUTURE

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It's all a question of story. We are in trouble just now because we . . . are in between stories. The old story, the account of how the world came to be and how we fit into it, . . . sustained us for a long period of time. It shaped our emotional attitudes, provided us with life purposes, and energized action. It consecrated suffering and integrated knowledge. We awoke in the morning and knew where we were. We could answer the questions of our children. . . . [But now the old story] is no longer effective. Yet we have not learned the new story.

*Thomas Berry*²

Thomas Berry was a visionary. He told new stories about the Universe and our place in it, stories not only about where we have been and where we seem to be going, but also stories about where we could go, if only we exercised our freedom in different ways.³ Indeed, story, myth, and narrative played a central role in Berry's thinking, as the epigraph to this essay indicates.

Every individual life and every society is an enactment of a story people tell themselves about the nature and purpose of their existence and of the world they live in. These stories shape our experiences and guide our thoughts and actions—for better or for worse, consciously or unconsciously. Needless to say, Berry was deeply troubled by the dominant story of our times. Put simply, he felt it was a story of Earth as a limitless resource to be exploited for human gratification, a story which not only degraded the integrity of our living planet but also promoted a materialistic attitude to life by equating happiness and well-being with increased opportunities to accumulate and consume. Berry tried to provoke us into reconsidering this story. He tried to unsettle and inspire us, by telling new stories. As one of its defining features, Berry's Earth scholarship is a reminder of the significance of story.⁴

For this symposium, rather than offering a close reading of Berry's writings in Earth Jurisprudence, I have dared to experiment with story, inspired by those writings. Due to the unconventional nature of my undertaking, I have avoided direct reference to Berry's writings, but the influence of those writings should be clear, everywhere lying just beneath the surface. In an attempt to build upon Berry's Earth scholarship and contribute in some modest way to the Great Work, I will tell a story of the future, a possible future that was conceived of in between the poles of pessimism and optimism but which is ultimately based upon a faith in

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² THE DREAM OF THE EARTH 123 (1990).

³ THOMAS BERRY, THE GREAT WORK: OUR WAY INTO THE FUTURE (1999); BRIAN SWIMME & THOMAS BERRY, THE UNIVERSE STORY: FROM THE PRIMORDIAL FLARING FORTH TO THE ECOZOIC ERA (1992).

⁴ See also Robin West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 N.Y.U. L. REV. 145, 146 (1985) (“[W]hen we [lawyers] discuss what is possible, what we desire and what we dread, we quite naturally turn to stories about hypothetical communities and the legal actors and forms within those communities.”).

the human spirit to meet the challenges of creating an Ecozoic era.⁵ Though I cannot be sure Berry would have agreed with all the conclusions drawn or speculations made, I believe he would have been sympathetic to my general undertaking.

What follows is an attempt to look back on the 21st Century from the vantage point of the year 2099.⁶ It takes the form of an essay, entitled The Path to Entropia, written for the journal Possibility by Lennox Kingston, a 90-year-old, retired Professor of Legal and Political History.⁷ Motivated by various themes in Earth Jurisprudence, the essay reviews how attitudes toward consumption and economic growth underwent a radical shift over the course of the 21st Century and how this affected, through legal reform, the social, political, and economic order of late capitalism. Particular attention is given to the legal evolution of property rights and the cultural movements that made this evolution possible. Whether the changes described are a cause or effect of a shift in human consciousness in relation to Earth is a question that I leave open for future reflection.⁸

I dedicate this experimental story to the memory of Thomas Berry.

THE PATH TO ENTROPIA

Lennox Kingston

81 Possibility 9 (2099)

I. PAST, PRESENT, FUTURE

The Ecozoic Movements, which emerged with loud warnings in the final decades of 20th Century and which promised so much in the early decades of 21st Century,⁹ ultimately failed to prevent corporate profiteers and the consumer class from having a devastating and irreversible impact on global ecosystems and biodiversity. Scientists, who used to categorize geological ages into periods of millions of years, now commonly use the term “Anthropocene” to refer to the last three hundred years only. During this geological blink-of-an-eye, human economic activity violently degraded the planet in many ways, including pervasive deforestation and the mass extinction of species, climate destabilization, soil erosion, ocean acidification and depletion, and the near exhaustion of many non-renewable resources, most notably, oil.¹⁰ Though recent decades of sustained and dedicated commitment to the Great Restoration seem to have stabilized the biosphere and lessened the threat of ecosystemic collapse, our world has changed and there is no going back. History will never forget that fateful day in 2061 when nine billion people watched their television

⁵ Thomas Berry, *The Ecozoic Era*, in PEOPLE, LAND, AND COMMUNITY: COLLECTED E.F. SCHUMACHER SOCIETY LECTURES 191 (Hildegard Hannum ed., 1997). See also BERRY, THE GREAT WORK, *supra* note 3, at 7-8.

⁶ See EDWARD BELLAMY, LOOKING BACKWARD, 2000-1887 (Bantam Books 1983) (1888).

⁷ I borrow the term “Entropia” from the French journal *Entropia: A Review of Theoretical and Political Study About Degrowth*, available at <http://www.entropia-la-revue.org/spip.php?rubrique24> (last visited Feb. 18, 2011).

⁸ The device of “looking backward from the year 2099” raises some unusual issues with respect to how to reference hypothetical future events and claims. Since there are places where referencing present literature would detract from the futuristic device, at times I have chosen to reference more lightly than would otherwise be the case. For a revised and more heavily referenced version of this article, see Chapter Five of my doctoral thesis, *Property Beyond Growth: Toward a Politics of Voluntary Simplicity*, in PROPERTY RIGHTS AND SUSTAINABILITY: THE EVOLUTION OF PROPERTY RIGHTS TO MEET ECOLOGICAL CHALLENGES (David Grinlinton & Prue Taylor eds., forthcoming 2011) [hereinafter *Property Beyond Growth*].

⁹ See, e.g., TIMOTHY DOYLE, ENVIRONMENTAL MOVEMENTS IN MINORITY AND MAJORITY WORLDS (2005).

¹⁰ See generally RICHARD HEINBERG, PEAK EVERYTHING: WAKING UP TO THE CENTURY OF DECLINES (2007).

screens in silence as the last fragments of the polar ice cap melted away forever, stamping our age with a new image of Earth. It was in 1968 when the Apollo spaceship first captured those iconic pictures of our fragile planet floating mysteriously through the dark heavens of outer space. Fewer than one hundred years later human beings had altered that cosmological scene.

We need not review here the catastrophic effect rising sea levels had on the lives of millions of environmental refugees, to say nothing of the other humanitarian crises, including the Water Wars, which were also causally linked to climate change. Nor is there any need to contribute a word further to the massive literature on the breakdown of global economic institutions during the Lost Years of 2031-34, from which the International Monetary Fund, the World Bank, and most transnational corporations never recovered. We know about these tragic, destabilizing events all too well. But as the 21st Century draws to a hesitant close—not with a bang but with a sigh of relief—there may be some value in looking back on our long, uncertain, and painful recovery from these events, if only so that we may better understand the present as we look to the future. It is a recovery which we must attribute primarily to all those in the Ecozoic Movements who, despite repeated, harrowing disappointments, kept fighting tirelessly for the cause they knew to be just.

II. THE RISE AND DEMISE OF GROWTH ECONOMICS

For most of human history—romantic myths aside—the vast majority of human beings lived lives oppressed by material deprivation and insecurity.¹¹ Generally speaking, human existence was an ongoing struggle for little more than bare subsistence, and for several millennia the standard of living of the average person in civilized centers did not rise significantly.¹² But then, in 1712, the steam engine was invented and the First Industrial Revolution was set into motion. Suddenly the energy stored in the planet's fossilized fuels was released in an explosion of mechanized economic activity. The result was that the wealth of nations—primarily Western nations, at least at first—began to grow at exponential rates that previous generations would not have thought possible.¹³

Within those nations that progressed from circumstances of widespread poverty to circumstances of moderate or comfortable material security, the human lot seemed to improve considerably.¹⁴ Although there were always costs, sometimes great costs, associated with economic growth—e.g., factory labor, pollution, deforestation, social dislocation, and so on—for many years these costs were generally outweighed, in terms of human well-being, at least, by the huge material benefits that resulted.¹⁵ This initial success led to the entrenchment of what political and economic historians now refer to as “the growth model of progress.”

Put simply, the growth model assumed that the overall well-being of a society was approximately proportional to the size of its economy, because more money or higher Gross

¹¹ See BJORN LOMBORG, *THE SKEPTICAL ENVIRONMENTALIST* 328 (2001) (warning against the idealization of the past).

¹² JOHN MAYNARD KEYNES, *ESSAYS IN PERSUASION* 360 (W.W. Norton & Co., Inc. 1963) (1931). As the great economist, John Maynard Keynes, wrote: “From the earliest times of which we have record—back, say, to two thousand years before Christ—down to the beginning of the eighteenth century, there was no very great change in the standard of life of the average man living in the civilised centres of the earth.” *Id.*

¹³ See ANGUS MADDISON, *THE WORLD ECONOMY: HISTORICAL STATISTICS* (2006).

¹⁴ See RONALD INGLEHART, *MODERNIZATION AND POSTMODERNIZATION: CULTURAL, ECONOMIC, AND POLITICAL CHANGE IN 43 SOCIETIES*, at 64 (1997) (noting that “the transition from a society of scarcity to a society of security brings a dramatic increase in subjective well-being”). See also RICHARD A. EASTERLIN, *GROWTH TRIUMPHANT: THE TWENTY-FIRST CENTURY IN HISTORICAL PERSPECTIVE* (1996).

¹⁵ INGLEHART, *supra* note 14, at 64.

Domestic Product (GDP) meant that more individual or social “preferences” could be satisfied via market transactions.¹⁶ No matter how rich a society became, growing the economy was thought to be the only effective way to eliminate poverty, reduce inequality and unemployment, properly fund schools, hospitals, the arts, scientific research, environmental protection programs, and so on. In other words, the underlying social problem (even within the richest nations) was believed to be a lack of money, and thus for more than two centuries economic growth was heralded across the political spectrum as the goal toward which societies should direct their collective energy. The notion of a macroeconomic “optimal scale” was all but unthinkable. It was assumed that a bigger economy was always better.¹⁷

This growth model of progress, as we now know, turned out to be dangerously flawed, although dislodging it from the social imagination proved exceedingly difficult. John Stuart Mill, writing in 1848, was one of the first to point out that the costs of economic growth may one day outweigh the benefits, at which time, he argued, the most appropriate form of government would be “the stationary state.”¹⁸ By this he meant a condition of zero growth in population and physical capital stock, but with continued improvement in technology and in what he called “the Art of Living.”¹⁹ This aspect of his oeuvre, however—today his most famous—was either ignored or summarily dismissed by his contemporaries, and for several generations it lay forgotten in the intellectual dustbin. Growth scepticism was revived and updated in the late 1960s by the economist Ezra Mishan,²⁰ and developed further in the 1970s and beyond by Donella Meadows,²¹ Ernst Schumacher,²² Herman Daly,²³ and Fred Hirsch,²⁴ among many others.²⁵ But although these theorists attained a certain short-lived notoriety within the intelligentsia and certain counter-cultures, for a long time their work had no significant political impact at all. Economic growth remained the overriding objective of governments across the globe.²⁶

¹⁶ See generally STEPHEN J. PURDEY, *ECONOMIC GROWTH, THE ENVIRONMENT, AND INTERNATIONAL RELATIONS: THE GROWTH PARADIGM* (2010).

¹⁷ See generally CLIVE HAMILTON, *GROWTH FETISH* (2003).

¹⁸ JOHN STUART MILL, *PRINCIPLES OF POLITICAL ECONOMY WITH SOME OF THEIR APPLICATIONS TO SOCIAL PHILOSOPHY* Book IV, Chapter IV (William James Ashley ed., 7th ed. 1909) (1848) (arguing that the logical conclusion of unlimited growth of the economy is destruction of the environment and reduced quality of life).

¹⁹ *Id.*

²⁰ EZRA MISHAN, *THE COSTS OF ECONOMIC GROWTH* (rev. ed., Greenwood Publ'g 1993) (1967).

²¹ DONELLA MEADOWS, JORGEN RANDERS & DENNIS MEADOWS, *LIMITS TO GROWTH: THE 30-YEAR UPDATE* (3d ed., Chelsea Green Publ'g 2004) (1972).

²² ERNST FRIEDRICH SCHUMACHER, *SMALL IS BEAUTIFUL: A STUDY OF ECONOMICS AS IF PEOPLE MATTERED* (25th anniv. ed., Hartley & Marks Publishers 1999) (1973).

²³ HERMAN E. DALY, *TOWARD A STEADY-STATE ECONOMY* (1973); HERMAN E. DALY, *BEYOND GROWTH: THE ECONOMICS OF SUSTAINABLE DEVELOPMENT* (1996) [hereinafter *BEYOND GROWTH*].

²⁴ FRED HIRSCH, *SOCIAL LIMITS TO GROWTH* (iUniverse Inc. 1999) (1976).

²⁵ *E.g.*, JOHN GALBRAITH, *THE AFFLUENT SOCIETY* (Mariner Books 1998) (1962); ROBERT THEOBALD, *THE CHALLENGE OF ABUNDANCE* (1961); Richard Easterlin, *Does Economic Growth Improve the Human Lot? Some Empirical Evidence*, in *NATIONS AND HOUSEHOLDS IN ECONOMIC GROWTH: ESSAYS IN HONOR OF MOSES ABRAMOVITZ* (P.A. David & Melvin W. Reder eds., 1974); PAUL L. WACHTEL, *THE POVERTY OF AFFLUENCE: A PSYCHOLOGICAL PORTRAIT OF THE AMERICAN WAY OF LIFE* (New Soc'y Publishers 1989) (1983); Ted Trainer, *Recognising the Limits to Growth: A Challenge to Political Economy*, 50 *J. AUSTL. POL. ECON.* 163 (2002); BILL MCKIBBEN, *DEEP ECONOMY: THE WEALTH OF COMMUNITIES AND THE DURABLE FUTURE* (2007); PETER A. VICTOR, *MANAGING WITHOUT GROWTH: SLOWER BY DESIGN, NOT DISASTER* (2008); TIM JACKSON, *PROSPERITY WITHOUT GROWTH: ECONOMICS FOR A FINITE PLANET* (2009); SERGE LATOUCHE, *FAREWELL TO GROWTH* (2010); KATE PICKETT & RICHARD WILKINSON, *THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER* (2009).

²⁶ ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *ECONOMIC POLICY REFORMS: GOING FOR GROWTH 2010* (2010), available at <http://www.oecd.org/economics/goingforgrowth> (last visited June 28, 2011).

In the late 20th Century and early 21st Century, as the costs of economic growth became more pronounced and harder to tolerate, the undercurrent of growth scepticism slowly strengthened and began entering the intellectual mainstream.²⁷ Many rigorous and credible sociological studies showed that, from about the 1970s onward, economic growth in most Western societies had stopped contributing significantly to human well-being.²⁸ That is, it became apparent that a rise in material “standard of living” (measured by per capita income) was no longer strongly correlated with “quality of life” (measured by subjective well-being).²⁹ Indeed, economic growth had even begun undermining many of the things upon which well-being depended, such as responsive democratic institutions, social solidarity, spiritual and aesthetic experience, and stable, functioning ecosystems.³⁰ The clear implication of these findings was that economic growth should no longer be the primary measure of policy and institutional success within Western societies.³¹ But, again, the impact of this scholarship was very limited, at least for a time. Corporate interests ensured that growth economics remained firmly entrenched in the political realm, and well into the 21st Century the reigning orthodoxy was that the answer to almost every problem—including environmental problems—was *more economic growth*.³²

Below we will review the broad legal and political reforms that eventually helped free the world from this growth fetish. Before doing so, however, we should direct our attention to the cultural movements that put those reforms on the political agenda and which were the driving force behind their implementation. Admittedly, this inquiry is bound to oversimplify the catalysts of change, because the extensive institutional restructuring which occurred over the 21st Century doubtless had an infinite array of causes. Nevertheless, historians generally accept that within Western societies, at least, there were two causes of particular significance: the first being a destabilizing but ultimately productive disillusionment with “top-down” politics; the second being a radical transformation in attitudes toward personal consumption. Let us briefly consider these matters in turn.

The onset of chronic disillusionment with “top-down” or “representative” politics is typically traced back to the years 2007-09. During these years there were two events of global significance which tested the capacity of democratic systems to function for the

²⁷ See JOSEPH E. STIGLITZ, AMARTYA SEN & JEAN-PAUL FITOUSSI, *MIS-MEASURING OUR LIVES: WHY GDP DOESN'T ADD UP* (2010). See also *Beyond GDP*, About *Beyond GDP*, <http://www.beyond-gdp.eu> (last visited Feb. 18, 2011) (providing information on developing “indicators to assess social, economic, and environmental progress” beyond one-dimensional economic indicators).

²⁸ See INTERNATIONAL DIFFERENCES IN WELL-BEING (Ed Diener, John G. Helliwell & Daniel Kahneman eds., 2010); see also RICHARD A. EASTERLIN, *HAPPINESS, GROWTH AND THE LIFE CYCLE* (Holger Hinte & Klaus F. Zimmerman eds., 2010); JOHN TALBERTH, CLIFFORD COBB & NOAH SLATTERY, *THE GENUINE PROGRESS INDICATOR 2006: A TOOL FOR SUSTAINABLE DEVELOPMENT* (2006), available at <http://www.environmental-expert.com/Files%5C24200%5Carticles%5C12128%5CGPI202006.pdf> (last visited June 28, 2011).

²⁹ See Ed Diener & Martin E.P. Seligman, *Beyond Money: Toward an Economy of Well-Being*, 5 *PSYCHOL. SCI. PUB. INT.* 1 (2004), available at <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.134.3462> (reviewing over 150 studies assessing the correlation between financial wealth and well-being). See also ROBERT E. LANE, *THE LOSS OF HAPPINESS IN MARKET DEMOCRACIES* (2001); TIM KASSER, *THE HIGH PRICE OF MATERIALISM* (2002); RICHARD LAYARD, *HAPPINESS: LESSONS FROM A NEW SCIENCE* (2005); BRUNO S. FREY & ALOIS STUTZER, *HAPPINESS AND ECONOMICS: HOW THE ECONOMY AND INSTITUTIONS AFFECT HUMAN WELL-BEING* (2002); INTERNATIONAL DIFFERENCES IN WELL-BEING, *supra* note 28.

³⁰ See *supra* notes 20-25 and accompanying text. See also ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000); DAVID G. MYERS, *THE AMERICAN PARADOX: SPIRITUAL HUNGER IN AN AGE OF PLENTY* (2000).

³¹ VICTOR, *supra* note 25.

³² See, e.g., GEORGE A. GONZALEZ, *CORPORATE POWER AND THE ENVIRONMENT: THE POLITICAL ECONOMY OF U.S. ENVIRONMENTAL POLICY* (2001).

common good. The first was the “Global Financial Crisis” (GFC); the second was the United Nations Climate Change Conference held in Copenhagen, Denmark.

The GFC had its roots in the so-called “credit crunch” of July 2007, when a loss of confidence by U.S. investors in the value of sub-prime mortgages caused a liquidity crisis.³³ Due to unscrupulous lending by several mega-banks—a process which had been insufficiently regulated and, indeed, had been systematically encouraged—a huge number of homeowners in the United States found that they were unable to meet their mortgage repayments. But when the housing market crashed, banks found that the repossessed houses and land were worth less than what the bank had originally loaned out. This resulted in the liquidity crisis. The consequence was that it became increasingly difficult to obtain loans, investments dried up, and consumer confidence was shattered, all of which ended up having hugely negative impacts on the global economy.³⁴ Moreover, many of the mega-banks were on the brink of collapse. Because those banks were “too big to fail,”³⁵ however, governments were essentially forced to bail out the very institutions which caused the crisis in the first place. This approach proved to be efficacious, in the sense, at least, that over the next two years the global economy slowly recovered, not without great hardship to many millions of people. But as “business as usual” resumed, there was the deeply troubling sense that nothing of any significance had been done to rein in the vast powers of privately owned financial institutions or to protect people from history repeating itself.³⁶ In short, Western governments of the time proved to be either impotent in the face of corporate power or unwilling to confront it.

Much the same can be said of the pivotal Climate Change Conference held in Copenhagen during December 2009. By this stage the state of scientific research meant that it was no longer credible to deny the reality of climate change or to deny the potentially catastrophic consequences³⁷—later realized, of course—of failing to significantly reduce global carbon emissions without delay. Despite the clarity and force of the scientific warnings, however, the Copenhagen conference lacked any real sense of urgency and was considered a despairing failure both by and for the Ecozoic Movements. Eventually a weak, non-binding Emissions Trading Scheme was agreed to, heralded by some as the salvation of Earth, but the very method of trying to use market mechanisms to solve a problem essentially caused by markets was doomed to failure—and fail it did. Looking back we see that Copenhagen was a great crossroad for humanity, a final opportunity to take climate change seriously. Vested interests in the economic status quo, however, were able to keep growth capitalism firmly on track, leading not to a decline but, for too many years, a continued rise in emissions.

Whether it was due to impotence, incompetence, or sheer unwillingness to face the facts, it must be said that at Copenhagen the political response to the ecological crisis—the

³³ See generally JOSEPH E. STIGLITZ, *FREEFALL: AMERICA, FREE MARKETS, AND THE SINKING OF THE WORLD ECONOMY* (2010).

³⁴ *Id.*

³⁵ See ANDREW ROSS SORKIN, *TOO BIG TO FAIL: THE INSIDE STORY OF HOW WALL STREET AND WASHINGTON FOUGHT TO SAVE THE FINANCIAL SYSTEM—AND THEMSELVES* (2009).

³⁶ See RAGHURAM G. RAJAN, *FAULT LINES: HOW HIDDEN FRACTURES STILL THREATEN THE WORLD ECONOMY* (2010).

³⁷ See IAN ALLISON ET AL., *THE COPENHAGEN DIAGNOSIS 2009: UPDATING THE WORLD ON THE LATEST CLIMATE SCIENCE* (2009), available at <http://www.copenhagendiagnosis.org/read/default.html> (last visited June 28, 2011). See also KEVIN WATKINS ET AL., *HUMAN DEVELOPMENT REPORT 2007/2008, FIGHTING CLIMATE CHANGE: HUMAN SOLIDARITY IN A CHANGING WORLD* (2007), available at <http://hdr.undp.org/en/reports/global/hdr2007-2008/> (last visited June 28, 2011).

response from the Western nations, in particular—was a profound dereliction of duty.³⁸ Not only that, its short-sightedness was economically irrational, because the financial costs of taking genuine preventative action at that stage would have paled in comparison to the costs of what lay ahead.³⁹ At this time democratic rule may still have been “of the people,” but there was a growing suspicion that it was no longer “by the people” or “for the people.”

And so it was that Western citizenries began to lose faith, as never before, in representative democracy. The most significant political decisions of the age were widely perceived to be dishonourable capitulations before corporate power. Furthermore, the ballot box seemed to provide no avenue for redress, because it was understood to merely offer the choice between two or three essentially corporate parties. In such destabilizing circumstances, one of two things tends to happen: either democratic subjects violently overthrow the unrepresentative government, or those subjects take government into their own hands at the local level. For several years, as the collective rumbling grew to a crescendo, political commentators were unsure which course of action would prevail, and some even voiced their concerns about the prospect of wholesale collapse of democratic processes and the rise of fascist or totalitarian politics in the West. More pessimistically still, others predicted the collapse of human civilization itself.⁴⁰

But rather than a violent revolutionary movement, what in fact emerged was a highly-agitated (though inspired), grass-roots democratic culture based on local participation, community activism, and personal responsibility.⁴¹ Though the essential structure of representative democracy remained in place, how it functioned changed in almost unrecognizable ways. Most notably, the Local Life Networks and the Online Referenda which today structure government so effectively, and which are able to instruct Members of Parliament so precisely and efficiently, would have been considered utopian dreams not so long ago. Leaving the details aside, however, our present point is simply that the disillusionment with “top-down” politics gave birth to an activist, grass-roots culture, animated by the belief that another world was possible.⁴² Through sophisticated organizational techniques, this culture was able to change the nature of representative democracy by taking the power out of the hands of corporations and placing it in the hands of the people. This transition naturally faced fierce resistance from the economic elite, who had grown accustomed to getting their own way. But the tide of participatory democracy proved to be unstoppable. As corporate influence over governments faded, new space opened up within Western democracies, and elsewhere, for radical political reform.⁴³

Of course, the mere possibility of radical political reform did not guarantee that anything much would change, nor, if change were to come about, did it imply a particular direction. But when democratic processes are functioning sufficiently well, changes to the legal and political structure of a society tend to reflect cultural values, like a “magic mirror,” to revive Kermit Hall’s old metaphor.⁴⁴ This notion that “law reflects culture” leads us to the second major reason, mentioned earlier, for the demise of growth politics in the West—

³⁸ See CLIVE HAMILTON, *REQUIEM FOR A SPECIES: WHY WE RESIST THE TRUTH ABOUT CLIMATE CHANGE* (2010).

³⁹ See NICHOLAS STERN, *THE ECONOMICS OF CLIMATE CHANGE: THE STERN REVIEW* (2007) (arguing that the benefits of investing in genuine preventative action would far exceed the costs).

⁴⁰ E.g., DERRICK JENSEN, *ENDGAME: THE PROBLEM OF CIVILIZATION* (2006).

⁴¹ See WE ARE EVERYWHERE: *THE IRRESISTABLE RISE OF GLOBAL ANTI-CAPITALISM* (Notes from Nowhere ed., 2003).

⁴² WILLIAM F. FISHER & THOMAS PONNIAH, *ANOTHER WORLD IS POSSIBLE: POPULAR ALTERNATIVES TO GLOBALIZATION AT THE WORLD SOCIAL FORUM* (2003).

⁴³ See J.K. GIBSON-GRAHAM, *A POST-CAPITALIST POLITICS* (2006).

⁴⁴ KERMIT L. HALL, *THE MAGIC MIRROR: LAW IN AMERICAN HISTORY* (1989). See also LAWRENCE ROSEN, *LAW AS CULTURE: AN INVITATION* (2006).

namely, the radical transformation in attitudes toward personal consumption that occurred during the second and third decades of this century.

The legal and political structures of growth capitalism ultimately depended upon a culture of consumption, that is, upon a populace driven by an insatiable craving for more consumer goods and services.⁴⁵ Though such commodity fetishism was observable in Western societies almost from the onset of industrialization, it was really in the decades after the Second World War (during the era sometimes referred to as “postmodernity”) when consumption became a truly acute and debilitating social practice.⁴⁶ A collective psychological disorder by our standards, commodity fetishism reached its zenith at the beginning of this century, establishing a materialistic culture without *any* sense of sufficiency. For reasons we still do not wholly understand, life in postmodernity was structured around the pursuit of luxuries and comforts merely, and no matter how rich people became, it never seemed to be enough.⁴⁷

Unsurprisingly, during this era the West entered a phase of social decay.⁴⁸ Despite unprecedented levels of material wealth and sophisticated technologies, most Westerners during these times were working longer hours than they had in the past,⁴⁹ and aside from working and sleeping, Westerners generally spent more time watching television than doing anything else.⁵⁰ The division of labor reached an extreme, which may have efficiently maximized economic growth, but it also meant that people became wholly dependent on the market and thus were locked upon a consumerist treadmill that had no end and attained no lasting satisfaction.⁵¹ Furthermore, urban sprawl led to highly artificial living environments that disconnected people from a community of neighbors and from any real engagement with nature.⁵² This was the culture that transnational corporations celebrated as the ultimate fulfillment of human destiny, the peak of civilization.

So long as most people felt that a higher material “standard of living” was needed to increase “quality of life,” growth capitalism was politically safe.⁵³ However, what is kept alive by the citizenry can also, through a change in consciousness, be transformed by it. This subversive thesis was famously advanced during the counter-cultural movements of the 1960s and 1970s, and was neatly captured in their slogan “revolution by consciousness.”⁵⁴ But it was not until the so-called “New Generation” counter-cultural movements of the 2010s and early-to-mid-2020s did a “revolution by consciousness” genuinely threaten to become a

⁴⁵ Writing in 1955, Victor Lebow stated: Our enormously productive economy demands that we make consumption our way of life, that we convert the buying and use of goods into rituals, that we seek our spiritual satisfactions, our ego satisfactions, in consumption. . . . We need things consumed, burned up, worn out, replaced, and discarded at an ever increasing pace.

Price Competition in 1955, 30 J. RETAILING 5, 7 (1955), available at <http://www.scribd.com/doc/965920/LebowArticle> (last visited June 28, 2011).

⁴⁶ See JOHN DE GRAAF, DAVID WANN & THOMAS H. NAYLOR, *AFFLUENZA: THE ALL-CONSUMING EPIDEMIC* (2d ed. 2005).

⁴⁷ CLIVE HAMILTON & RICHARD DENNISS, *AFFLUENZA: WHEN TOO MUCH IS NEVER ENOUGH* (2005).

⁴⁸ See generally LANE, *supra* note 29; PUTNAM, *supra* note 30.

⁴⁹ See TAKE BACK YOUR TIME: FIGHTING OVERWORK AND TIME POVERTY IN AMERICA (John de Graaf ed., 2003); JULIET B. SCHOR, *THE OVERWORKED AMERICAN: THE UNEXPECTED DECLINE OF LEISURE* (1992).

⁵⁰ See LAYARD, *supra* note 29, at 86.

⁵¹ TIBOR SCITOVSKY, *THE JOYLESS ECONOMY: THE PSYCHOLOGY OF HUMAN SATISFACTION* (rev. ed. 1992) (1976).

⁵² See EBEN FODOR, *BETTER NOT BIGGER: HOW TO TAKE CONTROL OF URBAN GROWTH AND IMPROVE YOUR COMMUNITY* (1998); PUTNAM, *supra* note 30.

⁵³ ROBERT B. REICH, *SUPERCAPITALISM: THE TRANSFORMATION OF BUSINESS, DEMOCRACY, AND EVERYDAY LIFE* (2007) (shifting blame for corporate dominance away from the trans-nationals and toward ordinary consumers who want the cheapest deal and investors who want the highest returns).

⁵⁴ CHARLES A. REICH, *THE GREENING OF AMERICA* 299 (1970) [hereinafter GREENING].

socio-political reality. Of those counter-cultural movements, one in particular—which came to be known as the Voluntary Simplicity Movement⁵⁵—deserves our immediate attention, as it undermined growth capitalism and consumer culture most directly. Its unexpected emergence and impact remains a subject of fascination amongst cultural historians, even if the radical ideas upon which it was based seem rather mundane in an age, such as our own, that accepts them unquestioningly as expressing the plainest commonsense. Let our examination, then, be brief.

The emergence of the Voluntary Simplicity Movement was inextricably intertwined with the rise of grass-roots politics, which we have seen was a reaction against the undemocratic influence corporations had on “political representatives.” But it was not enough simply to wrestle political power from corporations; the grass-roots culture had to know what to do with power should it succeed in attaining it, and thus it needed a guiding philosophy. Furthermore, because the grass-roots culture upheld “personal action” as the means to social and political transformation, people realized that they needed to seriously explore, en masse, ways they could oppose growth capitalism in their daily lives. An attractive, meaningful, and coherent philosophy of living was found in the theory and practice of voluntary simplicity. Before proceeding, it may be helpful to present a short statement of this philosophy: first, so that we appreciate its stark contrast with consumerism, and second, to make explicit the ethics of consumption that came to inform the (soon-to-be-considered) politics beyond growth economics.

The following definition serves our purposes. It is taken from the introduction to an early anthology on voluntary simplicity, published ninety years ago at the height of consumer culture:

Voluntary simplicity is a post-consumerist living strategy that rejects that materialistic lifestyles of consumer culture and affirms what is often just called “the simple life,” or “downshifting.” The rejection of consumerism arises out of the recognition that ordinary Western-style consumption habits are destroying the planet; that lives of high consumption are unethical in a world of great human need; and that the meaning of life does not and cannot consist in the consumption and accumulation of material things. Extravagance and acquisitiveness are thus considered a despairing waste of life, not so much sad as foolish, and certainly not deserving of the social status and admiration that they seem to attractive today. The affirmation of simplicity arises out of the recognition that very little is needed to live well—that abundance is a state of mind, not a quantity of consumer products or attainable through them.

Sometimes called “the quiet revolution,” this approach to life involves providing for material needs as simply and directly as possible, minimizing expenditure on consumer goods and services, and directing progressively more time and energy toward pursuing non-materialistic sources of satisfaction and meaning. This generally means accepting a lower income and a lower level of consumption, in exchange for more time and energy to pursue other life goals, such as community or social engagements, family time, artistic or intellectual projects, more fulfilling employment, political participation, sustainable living,

⁵⁵ Richard Gregg, *The Value of Voluntary Simplicity*, in VOLUNTARY SIMPLICITY: THE POETIC ALTERNATIVE TO CONSUMER CULTURE 111 (Samuel Alexander ed., 2009) [hereinafter Alexander VOLUNTARY SIMPLICITY]. The term “voluntary simplicity” was coined in 1936 by American lawyer Richard Gregg. Duane Eglin, VOLUNTARY SIMPLICITY: TOWARD A WAY OF LIFE THAT IS OUTWARDLY SIMPLE, INWARDLY RICH (rev. ed. 1993).

spiritual exploration, reading, conversation, contemplation, relaxation, pleasure-seeking, love, and so on—none of which need to rely on money, or much money. The grounding assumption of voluntary simplicity is that human beings are inherently capable of living meaningful, free, happy, and infinitely diverse lives, while consuming no more than an equitable share of nature. Ancient but ever-new, the message is that those who know they have enough are rich.

According to this view, personal and social progress is measured not by the conspicuous display of wealth or status, but by increases in the qualitative richness of daily living, the cultivation of relationships, and the development of social, intellectual, aesthetic, and spiritual potentials. As Duane Elgin has famously defined it, voluntary simplicity is “a manner of living that is outwardly simple and inwardly rich, . . . a deliberate choice to live with less in the belief that more life will be returned to us in the process.”

Voluntary simplicity does not, however, mean living in poverty, becoming an ascetic monk, or indiscriminately renouncing all the advantages of science and technology. It does not involve regressing to a primitive state or becoming a self-righteous puritan. And it is not some escapist fad reserved for saints, hippies, or eccentric outsiders. Rather, by examining afresh our relationship with money, material possessions, the planet, ourselves and each other, the simple life of voluntary simplicity is about discovering the freedom and contentment that comes with knowing how much consumption is truly “enough.” And this might be a theme that has something to say to everyone, especially those of us who are every day bombarded with thousands of cultural and institutional messages insisting that “more is always better.” Voluntary simplicity is an art of living that is aglow with the insight that “just enough is plenty.”

The spirit of late capitalist society, however, cries out like a banshee for us to expend our lives pursuing middle-class luxuries and coloured paper, for us to become faceless bodies dedicated to no higher purpose than the acquisition of “nice things.” We can embrace that comfortable unfreedom if we wish, that bourgeois compromise. But it is not the only way to live.

Voluntary simplicity presents an alternative.⁵⁶

Of course, this “art of living” was not by any means new. The virtues of moderation and enlightened material restraint had been integral to almost all ancient wisdom and spiritual traditions, with prominent advocates including Lao Tzu, Confucius, Buddha, the Stoics, Jesus, Mohammad, St. Francis, the Quakers, John Ruskin, the New England Transcendentalists (especially Henry David Thoreau), Gandhi, Richard Gregg, and many of the indigenous peoples around the world.⁵⁷ But in postmodernity, when consumption was glorified and luxury admired as never before, voluntary simplicity acquired a special significance.

⁵⁶ Samuel Alexander, *Introduction to VOLUNTARY SIMPLICITY*, *supra* note 55, at 3-4 (footnotes omitted). See also SAMUEL ALEXANDER, *JUST ENOUGH IS PLENTY: THOREAU'S ALTERNATIVE ECONOMICS* (forthcoming 2011).

⁵⁷ *LESS IS MORE: AN ANTHOLOGY OF ANCIENT AND MODERN VOICES RAISED IN PRAISE OF SIMPLICITY* (Goldian VandenBroeck ed., Inner Traditions Int'l 1991) (1978).

Exactly why the Voluntary Simplicity Movement became a powerful oppositional force in the second and third decades of this century remains something of a mystery, as noted above. Few saw it coming or even recognized the signs of its emergence until it had already arrived. Notions of simplicity spread, here and there, person to person, community to community, as if by means invisible. Perhaps the idea just gave people hope? The Movement had no leader, as such, though it developed strong social networks. It received almost no support from mass media. Even politicians, despite their rhetoric of sustainability, were reticent to promote simplicity for fear that widespread reductions in personal consumption would slow economic growth. But still the light of simplicity began to dawn gradually over the whole.

Perhaps Theodore Roszack, writing in the depths of consumer culture, was the most prescient:

There is one way forward: the creation of flesh-and-blood examples of low-consumption, high-quality alternatives to the mainstream pattern of life. This we can see happening already on the counter cultural fringes. And nothing—no amount of argument or research—will take the place of such living proof. What people must see is that ecologically sane, socially responsible living is *good* living; that simplicity, thrift, and reciprocity make for an existence that is free.⁵⁸

In the end, the nature of any society is shaped primarily by the countless number of small decisions made by private individuals.⁵⁹ With respect to the Voluntary Simplicity Movement, those small decisions, those small acts of simplification—insignificant though they may have seemed in isolation—were ultimately of revolutionary significance when added up and taken as a whole. But this “quiet revolution,” as it came to be known, was not like revolutions of the past. It originated with the individual and with culture. It did not need violence to succeed, and it could not have been successfully resisted by violence. And it changed the politico-legal structure only as its final act.⁶⁰

III. POLITICIZING THE ECONOMY: THE EMERGENCE OF RADICAL DEMOCRACY

By the end of the 2020s, the Voluntary Simplicity Movement had become a significant oppositional force, and it would continue to strengthen and expand every year. Though it had not, at this stage, achieved the cultural paradigm shift it sought, and though its political impact had so far been quite modest, the line between counter-culture and mainstream had certainly blurred, which is always a sign of great social transition. Within large sectors of Western societies attitudes to consumption changed drastically. Luxurious and extravagant lifestyles, once almost universally admired and envied, had come to be seen by many as tasteless ostentation, improper in an age of ecological crisis and great human need, and certainly not a reliable path to personal well-being.⁶¹ Furthermore, simple living had become a socially accepted alternative lifestyle, which made stepping out of the

⁵⁸ WHERE THE WASTELAND ENDS: POLITICS AND TRANSCENDENCE IN POSTINDUSTRIAL SOCIETY 422 (1972).

⁵⁹ See HALL, *supra* note 44; ROSEN, *supra* note 44.

⁶⁰ See REICH, GREENING, *supra* note 54, at 4. The last four sentences lightly paraphrase Charles Reich.

⁶¹ THOMAS PRINCEN, THE LOGIC OF SUFFICIENCY (2005).

mainstream much less isolating, thus hastening the demise of consumer culture. All this had discernable social and ecological benefits.⁶²

Nevertheless, despite significant cultural transformation in attitudes to consumption, around this time many within the Voluntary Simplicity Movement came to a troubling realization. It was becoming apparent that even those who genuinely wished to embrace voluntary simplicity as an oppositional living strategy were finding the *practice* of simplicity extremely challenging, especially in urban centers.⁶³ Put otherwise, it seemed that political and economic institutions, and social infrastructure, were functioning to lock many people into high-impact consumerist lifestyles, despite their desire for a simpler way of life.⁶⁴ There had, of course, always been an undercurrent within the Voluntary Simplicity Movement that insisted that personal action alone was never going to be enough to achieve sustainability and social justice—that political engagement was necessary. But few had appreciated quite how hard it would be to create a simpler form of life from within an institutional framework based on materialistic values. By the late 2020s, however, it had become obvious to all that the socio-cultural movement away from consumerism needed to be supplemented and facilitated by a politico-legal movement away from growth economics, and that latter transition is the one to which we must now turn our attention.

Before we review the specific structural reforms that resulted from the gradual politicization of the Voluntary Simplicity Movement, there is a somewhat abstract matter in political and legal theory that ought to be addressed, albeit briefly. It concerns the nature of property rights and the ways in which property rights were perceived to limit state power. We must not forget, after all, that in the first half of the 21st Century, “neoliberalism” was the dominant political ideology, one of the central assumptions of which was that, *prima facie*, the state had no right to interfere in the economy.⁶⁵ This assumption had certain problematic implications for those seeking political reform. Let us consider those implications, for together they represent the last major obstacle that had to be overcome on the path to revolutionary reform.

When participants in the Voluntary Simplicity Movement first began seriously advocating political reform of the economy, they faced three fundamental objections arising out of neoliberal ideology: 1) that the reforms advocated would result in a property system that was no longer a private property system (and, if true, this was widely considered to be a knock-down argument, politically speaking); 2) that the reforms, by interfering in the property system, would violate the liberally revered “private sphere” into which the state purportedly had no right to enter; and 3) that the reforms would arbitrarily interfere with the natural result of voluntary transactions made within the neutral and non-coercive “free market” system.

These objections were not new and, indeed, they had been fairly well answered in the 20th Century by other progressive intellectual movements such as Legal Realism, Critical Legal Studies, and Social Relations Theory.⁶⁶ Accordingly, the Voluntary Simplicity Movement did not really need to develop new intellectual tools to respond to those objections,

⁶² Tim Jackson, *Live Better by Consuming Less? Is There a “Double Dividend” in Sustainable Consumption?*, 9 J. INDUS. ECOLOGY 19 (2005).

⁶³ See Eric T. Freyfogle, *Simplicity, Community, and Private Land*, in Alexander VOLUNTARY SIMPLICITY, *supra* note 55, at 245. Freyfogle notes that “[i]n its current political, legal, and economic forms, the modern world makes simple living a difficult option.” *Id.* at 250. Freyfogle also asserts that a “study of [private property] should be high on the list of tasks for social reformers out to promote more simple ways of life.” *Id.* at 252.

⁶⁴ See Christer Sanne, *Willing Consumers—or Locked-In? Policies for a Sustainable Consumption*, 42 ECOLOGICAL ECON. 273 (2002).

⁶⁵ See generally DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* (2005).

⁶⁶ See *infra* text accompanying notes 67-78.

but it certainly needed to, and did, campaign laboriously to weaken the hold neoliberalism had on the popular consciousness. The following excerpt is taken from an anonymous political pamphlet distributed by the Voluntary Simplicity Movement during its influential internet campaign of 2034-5. It is quoted at some length because it responds, quite directly, to the three objections stated above:

Our detractors rely on an “essentialist” view of property. They assume that there is a concept of property that, in fact, is the right one or the only one; that there is *a* conception of property that is *the* concept of property. But the indeterminacy critique has thoroughly discredited any such claim to essentialism. The “bundle of rights” conception of property, in particular, though it is hardly a complete or uncontroversial picture, has shown that we cannot say that person owns a resource if and only if that person has certain specified rights, powers, liberties, and duties.⁶⁷ In other words, the *concept* of property is one that has many *conceptions*.⁶⁸ This means that private property can take the shape of many different “bundles,” and so it should not be conceived of as a fixed, static, or homogenous category, especially since each “bundle” can be disaggregated into isolated “sticks.” Furthermore, the “sticks” themselves—such as the “right to use,” the “right to exclude,” the “right to transfer,” or the “duty not to harm”—are far from absolute or self-defining.⁶⁹

This, in short, is the great legacy of Legal Realism to which essentialist and absolutist property theorists have never developed a satisfactory response.⁷⁰ It is also the legacy upon which our Politics of Entropia are founded, for it promisingly demonstrates that there can be private property/market systems that are radically different from growth capitalism as we know it, since “private property” does not mean one thing, and neither does “the market.” Another property system is possible.

Our detractors also claim that our political agenda would involve illegitimate state interference in the property and market system. But this objection is analytically outdated. Critical Legal Studies (CLS) showed long ago that for property and property-related concepts (such as ownership, harm, rights, wealth, efficiency, free contract, duress, justice, and so on) to become concrete conceptions in legal reality, state institutions must be always and necessarily involved in defining property rights and market structures.⁷¹ One consequence of this is that the neoliberal demand for state “non-intervention”

⁶⁷ WESLEY NEWCOMB HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING (David Campbell & Philip Thomas eds., Dartmouth Publ'g Co. 2001) (1923); A.M. Honoré, *Ownership*, in OXFORD ESSAYS IN JURISPRUDENCE 107 (A.G. Guest ed., 1961).

⁶⁸ See JEREMY WALDRON, THE RIGHT TO PRIVATE PROPERTY 52 (1988) (discussing the distinction between *concept* and *conception* in property theory).

⁶⁹ JOSEPH WILLIAM SINGER, ENTITLEMENT: THE PARADOXES OF PROPERTY 83 (2000) [hereinafter ENTITLEMENT] (stating that deconstructing ownership “does not deprive it of force as an organizing category”).

⁷⁰ See MARGARET JANE RADIN, REINTERPRETING PROPERTY 98-145 (1993) (providing an uncompromising critique of essentialist and absolutist property theory).

⁷¹ See Karl E. Klare, *Legal Theory and Democratic Reconstruction: Reflections on 1989*, 25 U. BRIT. COLUM. L. REV. 69 (1991); Karl E. Klare, *The Public/Private Distinction in Labor Law*, 130 U. PA. L. REV. 1358 (1982); Gerald E. Frug, *The Ideology of Bureaucracy in American Law*, 97 HARV. L. REV. 1276 (1984); Joseph William Singer, *The Reliance Interest in Property*, 40 STANFORD L. REV. 611 (1988).

in the so-called “private economic sphere”—where property rights are said to be sacrosanct and self-regulating—is an impossible one, and transparently so. The state is necessarily implicated in the economy because (among other things) it must: a) provide details on which incidents of ownership will form the “bundle,” what each incident entails, and in which circumstances; b) define the idea of “freedom of contract,” since it too is not self-defining; c) set other “ground-rules” to the economy (such as, “What can be property?”; “What kind of entities can be agents in the market?”; and “What happens when property rights conflict?”); and d) enforce the property rights created by a), b), and c). As one critical theorist noted, “The question is not whether to regulate owners; the question is what kind of property system to create in the first place.”⁷² “Hands off” is simply not an option.

This critique of the private/public distinction exposes how often the distinction between the “free market” and “regulatory systems” breaks down, a point another theorist has expressed in the following way: “There is no nonarbitrary way to differentiate the law *constituting* a market, from the law supposedly *regulating* or *intervening in* the market.”⁷³ This critique is significant because it answers the neoliberal lament that property rights are violated whenever the state “interferes” in the economy. Again, the state is *necessarily* implicated in the economy, and so reformers are entitled to question whether society may be better off if the state implicates itself in different ways and on a different basis. What is clear is that this reformist approach—which may include “revolutionary reform”—cannot be dismissed in advance on the basis of an essentialist view of “private property” or “the market,” or on the basis that the state ought to stay out of the “private economic sphere,” since both essentialism and the private/public distinction clearly lie in ruins.

Some detractors within the positivist tradition, however, accept that the state is indeed required to define the legal rules governing market transfers, private property, and voluntary contracting—since they are not self-defining—but argue that the rules set up by the state must be *neutral*.⁷⁴ Legal rules that are neutral, the argument goes, would simply facilitate the voluntary exchange of private property rights in a free market, and thereby allow individuals to pursue their own preferences and visions of the good life without having the state impose its preferences or values upon them. Regulators and reformers, according to this view, are seen as politically biased people who try to use state apparatus to impose their own subjective preferences and values on others, and who try to bring about a distribution of wealth and power other than that which naturally results when individuals voluntarily exchange property rights in a free market.

⁷² SINGER, ENTITLEMENT, *supra* note 69, at 7.

⁷³ Stuart Banner, *Conquest by Contract: Wealth Transfer and Land Market Structure in Colonial New Zealand*, 34 LAW & SOC'Y REV. 47, 53 (2000).

⁷⁴ This seems to be the strategy of most law-and-economics scholars. For a critique, see Morton J. Horwitz, *Law and Economics: Science or Politics?*, 8 HOFSTRA L. REV. 905 (1979-80). On neutrality, see Michael Robertson, *Reconceiving Private Property*, 24 J.L. & SOC'Y 465, 468-77 (1997) [hereinafter *Reconceiving*].

The indeterminacy critique, however, renders this neoliberal view incoherent also. As outlined above, the state is required to make all sorts of *definitional choices* about what the abstract property and property-related concepts mean in economic reality, and these choices have significant implications for what type of society results. What CLS made perfectly clear, however, is that these choices can never be *neutral*—first, because there is no objective or apolitical standpoint from where those choices could be made, and second, because such choices always allocate wealth and power between individuals and groups in society.⁷⁵ For these reasons it is wrong to disclaim all responsibility for the social and environmental consequences of those allocations and blithely say that they are the natural result of free choices made within a neutral and non-coercive market framework.⁷⁶ To stress the so-called neutrality of the “free market,” and to deny that political, value-laden, choices inevitably go into its formation, is ideological.⁷⁷ It is a perspective that deflects attention away from the political choices benefiting some individuals, groups, and interests at the expense of others, and it unduly limits what reformative options appear democratically available. It can make the existing property regime (including its concentrations of wealth and structures of power) seem “natural” or “right or “just the way the world is,” when in fact that regime is a contingent creation of our choosing, which we have made, and which can be democratically remade.

The choice is ours, if we choose it.⁷⁸

The fundamental point here—a rather obvious one to us—is that property rights are not static or determinate entities which exist independently of the state, but are evolving and highly malleable creatures of legal convention. It follows that property rights are also inescapably value-laden and context-dependent, meaning that their legitimacy must be periodically reassessed as society or the environment changes. Indeed, the greater the changes in context, the greater the need for the reassessment, and perhaps revision, of property rights. These ideas, as they came to be widely understood and accepted, functioned to radicalize Western democracies by politicizing the economy. It was this shift in political consciousness which allowed democratic citizens to see that they had the right and the power to design (or redesign) the economic framework within which they live their lives, an insight which neoliberal ideology had repressed for far too long.

During this time, as noted above, the Voluntary Simplicity Movement was entering the cultural mainstream and beginning to demand some political recognition—sounding the death knell for growth capitalism. Attitudes to consumption had undergone a huge shift toward material simplicity, and the time was ripe for the political manifestation of this new sensibility. Furthermore, by this stage the myriad problems of social and ecological over-consumption had intensified, meaning that a political response could no longer be delayed. The Voluntary Simplicity Movement did not waste this opportunity to call for a politics of sustainable consumption, a politics beyond growth economics. And, at last, the call did not fall on deaf ears.

⁷⁵ See generally THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE (David Kairys ed., 3d ed., Basic Books 1998) (1982).

⁷⁶ Robertson, *Reconceiving*, *supra* note 74.

⁷⁷ Michael Robertson, *Property and Ideology*, 8 CAN. J. L. & JURIS. 275 (1995).

⁷⁸ These arguments are expanded in Alexander, *Property Beyond Growth*, *supra* note 8.

The world was ready for change.

IV. A RADICAL POLITICS OF PROPERTY BEYOND GROWTH ECONOMICS

What follows is a review of the matrix of “revolutionary reforms” which resulted from the gradual politicization of the Voluntary Simplicity Movement in Western societies over the course of the 21st Century.⁷⁹ Obviously, different nations evolved in different ways, at different times, and these differences were sometimes considerable. Indeed, throughout the Great Transition an openness to plurality was, and still is, considered a virtue. Nevertheless, if we look at the world at the beginning of this century and compare it with how it is at the end, it cannot be denied that there has been a recognizable and coherent paradigm shift in law, politics, and economics, especially with respect to Western-style systems of property. In what follows an attempt is made to outline, with a very broad brush, the most significant features of the new paradigm, beginning with the new indicators of progress which were so instrumental in deposing growth economics. Deferring to convention, this new paradigm will be referred to as “Entropia,” which is not a place, as such, so much as it is the idealized social, economic, and political order which guided and motivated many of the radical law reform movements during this century.

A. Beyond GDP: Alternative Indicators of Progress

We saw earlier that during the era of growth capitalism, increasing GDP was the overriding objective of governments.⁸⁰ It was an era when economists, policymakers, judges, reporters, and the wider public generally relied on GDP as a shorthand indicator of a nation’s progress (“the growth model of progress”). But GDP is merely a sum of national spending which makes no distinctions between transactions that add to well-being and those that diminish it; it does not take any account of ecological damage or wealth distribution; and anything that is not recorded as a market transaction is excluded from its accounts, such as domestic work, volunteering, and leisure.⁸¹ For these reasons, among others, GDP is a highly defective measure of how well-off a society is and a poor indicator of policy and institutional success.⁸² When this was eventually recognized and exposed, scholars began developing alternative, much more nuanced, measures of societal progress.⁸³ One such measure, which has gradually received official recognition and respect, is known as the Genuine Progress

⁷⁹ The Western societies are presently the primary focus of attention because it was therein where growth economics were born and were most deeply entrenched, and where the most radical shifts away from growth economics occurred. As the economically and politically dominant societies (in the 20th Century, at least), the West and its transition obviously had significant impacts on the global economic and political order. This could give rise to the objection that the limited “Western” focus of the present analysis is somewhat artificial, in the sense that transnational flows of capital mean that the late capitalist economies were, by nature, global creatures. While the global nature of late capitalist economies can hardly be denied, it is suggested that there is nevertheless a value in examining the paradigm shift which occurred *within* those economies, given their long era of dominance. The broader issues of how those intra-national developments affected the global order must be the focus of another study.

⁸⁰ See generally HAMILTON, GROWTH FETISH, *supra* note 17.

⁸¹ See STIGLITZ ET AL., *supra* note 27. See also Clifford Cobb, Ted Halstead & Jonathan Rowe, *If the GDP Is Up, Why Is America Down?*, ATL. MONTHLY, Oct. 1995, at 59.

⁸² Cobb et al., *supra* note 81.

⁸³ See HERMAN E. DALY & JOHN B. COBB, JR. WITH CLIFFORD W. COBB, FOR THE COMMON GOOD: REDIRECTING THE ECONOMY TOWARD COMMUNITY, THE ENVIRONMENT, AND A SUSTAINABLE FUTURE (2d ed. 1994). See also Philip A. Lawn, *A Theoretical Foundation to Support the Index of Sustainable Economic Welfare (ISEW), Genuine Progress Indicator (GPI), and Other Related Indexes*, 44 ECOLOGICAL ECON. 105 (2003).

Indicator (GPI).⁸⁴ Arguably, this development symbolizes better than any other the transition from growth capitalism to Entropia.

The “extended accounts” of the GPI begin with total private consumption expenditure and then make reductions for things such as poverty, polarized income distribution, crime, resource depletion, pollution, environmental damage, and so on, and additions for things such as domestic work, volunteering, increases in leisure, public infrastructure, and the like.⁸⁵ The aim is to measure, as accurately as possible, the “genuine progress” of a society, not simply the growth of its GDP.⁸⁶ Although the GPI remains an imperfect tool, and so must be employed cautiously and tentatively, the significance of it replacing GDP as a measure of progress can hardly be overstated. In essence, public support of the GPI means that political parties can campaign for policy and institutional reforms that are likely to genuinely improve well-being, even if those reforms would slow or even reduce economic growth. Once upon a time, of course, implementing reforms that would negatively affect growth rates was tantamount to committing political suicide. But by distinguishing genuine progress from economic growth, that changed. In particular, new space opened up within the political arena for the following legal reforms in property relations.

B. Basic Income As a New Property Right

One of the deepest and most enduring criticisms levelled at capitalist societies was that, no matter how rich they became, there always remained an underclass of people who were unemployed and poverty-stricken. To permit members of an affluent society to live without any secure livelihood seems to us to be an evident moral abomination, but majority opinion among earlier generations took it to be regrettable but permissible, perhaps even necessary.⁸⁷ Even strong varieties of the “welfare state” were unable to provide all with the economic security which we regard as necessary to live a fully human life of freedom and dignity, because welfare payments could be denied, delayed, or revoked, for any number of reasons. The politics of Entropia boldly confronted this serious problem with remarkable directness, by gradually introducing what is called a “Basic Income System,” otherwise known as a “Simplicity Entitlement.”⁸⁸

Although there is considerable variety in forms of Basic Income, the core idea is relatively straightforward. In its idealized form, every permanent resident would receive a periodic (e.g. fortnightly) stipend sufficient to live at a culturally defined minimal standard of economic security, generally at a level marginally above the culturally specific “poverty line”; that is, enough to live simply, securely, and with dignity, though, as two commentators put it, “extremely modestly.”⁸⁹ The Basic Income is guaranteed by the state, is unconditional on the performance of any labor, and is universal (excepting only those incarcerated). Parents are

⁸⁴ See, e.g., SUSTAINABLE WELFARE IN THE ASIA-PACIFIC: STUDIES USING THE GENUINE PROGRESS INDICATOR (Philip A. Lawn & Matthew Clarke eds., 2008).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ For a critical discussion of traditional views of poverty, see Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499 (1991).

⁸⁸ Philippe Van Parijs, *Basic Income Capitalism*, 102 ETHICS 465 (1992); Erik Olin Wright, *Reducing Income and Wealth Inequality: Real Utopian Proposals*, 29 CONTEMP. SOC. 143 (2000). The Basic Income has come to be known as a “Simplicity Entitlement” because the normative framework of voluntary simplicity which did the most to realize this policy initiative was not just about resisting over-consumption, it was also about ensuring that everyone had “enough.” Among other things, voluntary simplicity is about material sufficiency for all.

⁸⁹ Derek Hum & Wayne Simpson, *The Cost of Eliminating Poverty in Canada: Basic Income with an Income Test Twist*, in THE ETHICS AND ECONOMICS OF THE BASIC INCOME GUARANTEE 282 (Karl Widerquist, Michael Anthony Lewis & Steven Pressman eds., 2005).

the custodians of children's grants (which are typically somewhat lower than adult grants). Within a fully developed Basic Income System most other state transfers can be abolished—unemployment benefits, family allowances, pensions, and so on—because the Basic Income grant is sufficient to provide everyone with a decent, though minimal, subsistence. Economic insecurity, whether from incapacity or unemployment, is therefore essentially eliminated. Even minimum wage laws can be somewhat relaxed, because all earning above the Basic Income is discretionary. Other kinds of programs remain, such as subsidies for people with special needs, as do universalistic programs, such as public education and health care.⁹⁰ In many jurisdictions, the Basic Income entitlement is increasingly being described as a “new” property right.⁹¹

The feasibility of a Basic Income System was historically doubted for two main reasons. The first objection was that making the Basic Income unconditional on the performance of any labor would give rise to a society of “free-riders” and ultimately lead to economic collapse. This pessimistic outlook, however, has been proven unjustified. Few would be surprised to hear that the “free-rider” problem does exist to a certain extent today—that is, there are indeed some who live off the Basic Income but who choose not to contribute to society in any discernable way. However, it turns out that human beings, by and large, are social creatures, who find being engaged in their community's work more meaningful and fulfilling than being isolated, idle, and parasitic on the community. Furthermore, the very small minority that choose not to contribute in any way prove to be a tolerable burden—certainly more tolerable than the levels of poverty which persisted within the property systems of late capitalism. A large majority of citizens remain in some form of paid employment, and the percentage that do not are typically engaged in other forms of socially necessary and beneficial work, such as raising children, working in community gardens or local energy centers, volunteering at the esteemed and well-organized Centers for Social Service, or exchanging labor for housing through the Organization for Affordable and Sustainable Housing.⁹²

The second objection concerned the feasibility of financing a Basic Income System, an issue which is obviously of great importance, although it was and remains a matter of political commitment more than a financing issue. Basic Income entitlements did create a new and significant financial burden on the public purse; however, changes to public spending as well as significant tax reforms⁹³ have been sufficient, in many of the wealthier jurisdictions, at least, to gradually raise the Basic Income to a minimal level of dignified subsistence. Those jurisdictions around the globe which are still transitioning toward a subsistence-level Basic Income System are often called “Guaranteed Income Systems” (which guarantee a certain level of income, but below subsistence levels, meaning that some supplementary income is still necessary through earnings). Another method several nations have used to progress toward a Basic Income System is to establish a Negative Income Tax System, which differs from a Basic Income in that it provides a tax credit (typically beginning at low levels and increasing over time) to those with low incomes, providing such

⁹⁰ Wright, *supra* note 88, at 149.

⁹¹ See Charles A. Reich, *The New Property*, 73 YALE L. J. 733 (1964) (arguing that as contexts change, new forms of property rights may need to be created to ensure that “private property” still advances the ethical purposes that justified its original institution).

⁹² To guard against the “free-rider” problem—at least as a transitional step—some jurisdictions have established a variation of the Basic Income known as a Participation Income, which does mandate some form of social contribution, but not necessarily “productive” work as traditionally understood. A “social contribution,” in this sense, could include care-giving, studying, volunteer work, and looking for work, or being excused due to illness, disability, or reaching retirement age. For pioneering scholarship on the Participation Income, see A.B. ATKINSON, *PUBLIC ECONOMICS IN ACTION: THE BASIC INCOME/FLAT TAX PROPOSAL* (1995).

⁹³ See *infra* notes 99-104 and accompanying text.

low-earners with a minimum income but by an alternative route.⁹⁴ These approaches of incrementally raising the level of Guaranteed Income or Negative Income Tax to establish a fully developed system of Basic Income were key both to the financial viability and the political attractiveness of the Basic Income policy objective.

It is worth noting that a Basic Income System or one of its varieties does tend to slow growth in the economies in which they operate, for the reason that such systems—consonant with the predictions of orthodox economic theory—inevitably provide fewer incentives for citizens to dedicate so much of their energy to productive activity. But because the wealthiest nations today are no longer anxious to grow, and many are even voluntarily transitioning by way of degrowth to a steady-state economy,⁹⁵ the whole question of maximizing incentives is much less pressing. Indeed, the level at which governments set a Basic or Guaranteed Income can be a device to control, to a certain extent, the level of growth/degrowth in an economy.

The social benefits of the Basic Income were profound and far-reaching. Beyond eliminating poverty and economic insecurity—which were the primary functions of a Basic Income System—its gradual institution also strengthened the bargaining position of workers, because it gave them a livelihood that was independent of their paid employment and thus more power to demand decent working conditions. It also meant that people did not have to accept alienating, exploitative, or degrading jobs just to survive; nor was there any real pressure to sacrifice social and political autonomy in order to achieve economic security.⁹⁶ Furthermore, introducing the Basic Income was effectively an acknowledgement of the worth of unpaid caring work and other forms of social contribution, thereby extending economic citizenship beyond participants in the traditional labor market.⁹⁷ For these reasons, among others, the legal restructuring of property relations based upon the notion of Basic Income has done much to create more democratic and egalitarian societies. By structurally promoting “simple living,” the Basic Income has also had ecological benefits.⁹⁸

C. Progressive Income Tax and the Maximum Wage

In general, the property systems of Entropia are shaped by highly progressive income or consumption taxes which fund a considerable portion of the state’s policies, including the Basic Income entitlement.⁹⁹ Progressive forms of taxation were in place even within the paradigm of growth capitalism, so there is little need to address the matter of justification in any detail. Put simply, progressive taxation is justified primarily on the dual grounds of equity and utility. That is, because it is equitable for the richest to pay more than the poorest to fund the state’s policies, and because the diminishing marginal utility of money means that

⁹⁴ For a discussion, see TONY FITZPATRICK, *FREEDOM AND SECURITY: AN INTRODUCTION TO THE BASIC INCOME DEBATE* 88-99 (1999).

⁹⁵ See DALY, *TOWARD A STEADY-STATE ECONOMY*, *supra* note 23; DALY, *BEYOND GROWTH*, *supra* note 23; LATOUCHE, *supra* note 25.

⁹⁶ Ingrid Robeyns, *An Income of One's Own: A Radical Vision of Welfare Policies in Europe and Beyond*, 9 *GENDER & DEV.* 82, 84 (2001).

⁹⁷ *Id.* at 85.

⁹⁸ See Jan Otto Andersson, *Basic Income from an Ecological Perspective*, 4 *BASIC INCOME STUD.*, Art. No. 4 (2009), available at <http://www.bepress.com/bis/vol4/iss2/art4> (defending Basic Income and its environmental benefits) (last visited June 28, 2011).

⁹⁹ During the second half of this century there has been a slow movement away from income taxes toward consumption taxes, but at present the former are still the dominant structure and so will be the focus of this section. Consumption taxes found some of their earliest and most ardent supporters among ecological economists, who argued that governments should tax environmental “bads,” such as consumption, not social “goods,” such as income. See, e.g., HERMAN E. DALY, *ECOLOGICAL ECONOMICS AND SUSTAINABLE DEVELOPMENT: SELECTED ESSAYS OF HERMAN DALY* 111 (2007).

the more money one has, the less utility or happiness one can buy with each further dollar (i.e., one dollar is more valuable to a poor person than to a rich person), some redistribution is an efficient use of resources. What distinguished the politics of Entropia from growth capitalism was how progressive taxation was used to effectively create a “maximum wage” or “income cap.”¹⁰⁰ Let us consider this central development.

Just as most at the beginning of the 20th Century had trouble imagining how their ancestors could have stomached slavery, so we at the end of the 21st Century are dismayed by the truly excessive incomes that some executives, managers, shareholders, doctors, lawyers, and other professionals received not so long ago.¹⁰¹ We cannot understand why it was ever permitted for some incomes to reach into the millions or tens of millions of dollars when many workers—sometimes even those working in the same enterprise—received little more than an (insecure) subsistence wage. We consider such disparities plainly objectionable on many grounds: they undermine democracy and social solidarity, they encourage grossly extravagant lifestyles, and they simply cannot be justified by any appeal to proportional merit or social contribution.¹⁰² The politics of Entropia, of course, never advocated anything like strict equality in incomes. Much inequality remains. However, it is widely taken for granted today that *some* limits must be placed on individual incomes, and a simple restructure of progressive income tax policy provided a straightforward method for doing so.

An income tax is “progressive” when the tax rate increases as the taxable income increases. In theory, at least, all income over a certain amount could be taxed completely, thereby creating a “maximum wage” or “income cap.” Although only New Zealand’s Remuneration Justice Act 2038 has actually gone this far, all of the Western economies have gradually established a top income bracket which is taxed more than ninety percent (which, strictly speaking, does not place any “cap” as such on incomes, but functions in a similar way).¹⁰³ The income level of the top tax bracket also varies between nations—often starting high, for political reasons, and then decreasing—but today it generally sits quite stably around ten to fifteen times the level of the Basic Income.¹⁰⁴

One may have thought that the introduction of such policies would have been politically controversial in the extreme, given the history of limitless incomes, but it turned out that this was not the case. Although there were certainly loud objections from advocates of the “free market,” various referenda were held which unambiguously demonstrated that the policies had overwhelming public support, doubtless owing to the fact that the maximum wage would only limit the incomes of a very small minority of people. Political representatives, accordingly, had no choice but to follow the will of the people.

¹⁰⁰ SAM PIZZIGATI, *THE MAXIMUM WAGE: A COMMON-SENSE PRESCRIPTION FOR REVITALIZING AMERICA—BY TAXING THE VERY RICH* (1992) [hereinafter *MAXIMUM WAGE*]; SAM PIZZIGATI, *GREED AND GOOD: UNDERSTANDING AND OVERCOMING THE INEQUALITY THAT LIMITS OUR LIVES* (2004) [hereinafter *GREED AND GOOD*].

¹⁰¹ See PIZZIGATI, *GREED AND GOOD*, *supra* note 100.

¹⁰² *Id.* at 1-154. See also PICKETT & WILKINSON, *supra* note 25.

¹⁰³ We must not forget that as late as 1961, in the United States, the top tax bracket was 91%, so this policy was not as radical or unprecedented as some made it out to be. See PIZZIGATI, *MAXIMUM WAGE*, *supra* note 100, at 62. Obviously, the success of the maximum wage tax policy was dependent on closing tax “loopholes.”

¹⁰⁴ Setting the Maximum Wage in proportion to the Basic Income gives the wealthiest members of society an incentive to seek a raise in the Basic Income. This is consistent with the “maximin” principle, often associated with John Rawls. Put simply, the maximin principle holds that society should be structured so as to maximize the well-being of the worst off. See JOHN RAWLS, *A THEORY OF JUSTICE* 153-63 (1971).

D. Worker Cooperatives

Capitalist economic relations paradigmatically involved workers selling their labor to the owners of productive assets and those owners then selling the commodities produced for more than the cost of the labor that went into making them, thereby making a “profit.” We attribute to Karl Marx, more than any other, the thesis that this capitalist mode of production and exchange exploits workers.¹⁰⁵ It is exploitative, Marx argued, because workers are paid less for their labor than the value of the commodities they produce.¹⁰⁶ The solution he proposed was to abolish all private ownership of productive assets and replace it with state ownership; that is, to replace capitalism with communism.¹⁰⁷

Many involved in the politics of Entropia were sympathetic to (without wholly subscribing to) the view that workers, to varying extents, were exploited under the capitalist mode of production and its legal superstructure; yet, for various reasons, they did not see state ownership of productive assets as the solution. Rather than state communism, what emerged instead were various forms of “market-socialist” property systems in which worker cooperatives are increasingly the dominant economic form. These enterprises are owned by their workers and democratically operated on a “one person, one vote” basis, thereby avoiding the exploitative relationships which Marx and others criticised so vehemently.¹⁰⁸ The cooperatives still fall within the private property paradigm, however, because workers still have individual ownership interests in them, and the state does not determine what the cooperatives produce. Furthermore, the economy is still based on market exchanges, because cooperatives gain income by selling their goods and services to customers. In doing this, they compete with other cooperatives (and other small businesses of the allowable types). The primary difference with growth capitalism is that large corporate entities employing non-shareholders have largely disappeared.¹⁰⁹

The transition to this type of “stakeholder society” was facilitated both by public policy and cultural changes, each promoting the other in a dialectical fashion. When governments decided that broadening the ownership base of the economy was to be a policy goal, the first step in that direction was often to make the tax rates for worker cooperatives extremely attractive compared to the tax rates for the traditional “owner-shareholder” corporate entities. Governments also began explicitly preferring worker cooperatives when contracting with the private sector, and whenever possible government spending was directed toward worker cooperatives. Various types of development banks were also created through which governments began funding new businesses which were required to establish themselves as worker cooperatives. Collectively, these strategies, and many others, were able to create fertile conditions in which worker cooperatives could take root, multiply, and

¹⁰⁵ See generally KARL MARX, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY (Ben Fowkes trans., Vintage Books 1977) (1867-94).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*; see also KARL MARX & FRIEDRICH ENGELS, MANIFESTO OF THE COMMUNIST PARTY (Classic Books Publ'g 2009) (1848).

¹⁰⁸ MARX & ENGELS, *supra* note 107. Marx and Engels never addressed the question of whether the mode of production and exchange in a society of worker cooperatives would have been exploitative, and it is not clear what their view would have been. Some Marxists might argue that since all property rights are not socialized and administered according to the slogan “from each according to his ability, to each according to his need,” today’s systems of worker cooperatives remain exploitative and alienating. Others, however, might argue that property systems dominated by worker cooperatives effectively resolve whatever “contradictions” were arguably present within capitalist property structures of production and exchange. There is no need to resolve this issue here, but see generally BERTELL OLLMAN ET AL., MARKET SOCIALISM: THE DEBATE AMONG SOCIALISTS (Bertell Ollman ed., 1998).

¹⁰⁹ ROBERTSON, *Reconceiving*, *supra* note 74, at 478-80 (providing an elaborate and convincing case for why these types of worker cooperatives fall coherently within the paradigm of private property).

flourish. It was arguably a shift in consumer attitudes, however, that was the deepest driver of change. When private individuals began choosing to direct their expenditure toward cooperative enterprises, the old corporate structures gradually withered away as a natural consequence of market forces. This is a powerful reminder that how we spend our money is how we vote on what exists in the world.¹¹⁰

The emergence of worker cooperatives has been one of the most significant developments in the transition toward Entropia. It has expanded democratic decision-making beyond representative politics to include the everyday realm of economics, giving people much more control over their lives. Though democratizing the internal workings of business enterprises has created new inefficiencies—e.g., decision-making can be slower—the fact that workers now have a real stake in the businesses within which they work has also created new forms of efficiency and fostered a new ethics of productivity and collective responsibility.¹¹¹ The material rewards of production are also distributed more evenly, though strict equality is rarely practiced (or expected). Beyond these appealing features, worker cooperatives have also functioned to be more ecologically sensitive than the old corporate forms, because businesses owned and managed by local citizens take more care than “absentee owners” to ensure business practices do not harm the environment.¹¹² Finally, cooperatives also seem to have engendered a greater sense of social solidarity and community, as workers belong to and participate in stable associations of people with common interests and a shared economic identity.¹¹³

E. Land Law and the Duty Not to Harm

Although all of the reforms described above had ecological benefits, more direct and immediate legal and political action was needed to adequately confront the ecological crisis. The difficulty here was the enduring influence of the neoliberal conception of property, which resisted state regulation in the economy.¹¹⁴ It was a remarkably simple question, however, which gave rise to a radically new approach: Do property owners have the right to use land in ecologically unsustainable ways? Although the response came dangerously late, lawmakers eventually answered that question in the negative. Let us consider the general line of argument.

To question whether a person or entity possesses a property right to engage in a particular activity is to acknowledge, as we must, that property rights are not absolute but in some sense always limited.¹¹⁵ Outdated imagery aside, ownership does not and cannot entail

¹¹⁰ MICHELE MICHELETTI, *POLITICAL VIRTUE AND SHOPPING: INDIVIDUALS, CONSUMERISM, AND COLLECTIVE ACTION* (rev. ed. 2010) (2003).

¹¹¹ Wanjiru Njoya, *Employee Ownership and Efficiency: An Evolutionary Perspective*, 33 *INDUS. L. J.* 211 (2004).

¹¹² Neil Carter, *Worker Co-operatives and Green Political Theory*, in *DEMOCRACY AND GREEN POLITICAL THOUGHT: SUSTAINABILITY, RIGHTS, AND CITIZENSHIP* 55, 55 (Brian Doherty & Marius de Geus eds., 1996) (noting that “Most varieties of green political thought . . . display a fondness for the worker co-operative”). Carter’s analysis is particularly useful in that he takes a sceptical stance in relation to the environmental credentials of worker cooperatives and concludes, after rigorous theoretical and empirical examination, that the claim that worker cooperatives are ecologically sensitive is “valid only under certain circumstances.” *Id.* While acknowledging ecological sustainability is not guaranteed under a system of cooperatives, Carter cites the more democratic structure of cooperatives and the heightened potential for close ties with the local community as the main reasons cooperatives will tend to be more ecologically sensitive than traditional corporate structures.

¹¹³ See Thomas Weiskopf, *A Democratic Enterprise-Based Market Socialism*, in *MARKET SOCIALISM: THE CURRENT DEBATE* 120, 121 (Pranab K. Bardhan & John E. Roemer eds., 1993).

¹¹⁴ For a clear statement of this view, see ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1977).

¹¹⁵ RADIN, *supra* note 70, at 98-119.

the right to “do as one pleases” with the property one owns, for that would be plainly self-defeating. It would allow others to use their property in ways that harmed one’s own property or indeed oneself, and thus even the most hard-nosed libertarians have always accepted that the ownership of property necessarily entails a “duty not to harm.”¹¹⁶ As Hohfeld explained long ago, this “duty not to harm” places limits on the “right to use.”¹¹⁷

One important consequence of this is that state regulation which prevents “harmful use” cannot be considered a violation of property rights, because property holders simply do not have the right to harm others or the property of others. In other words, such preventative action would not be “taking” anything that owners ever held (or properly held), from which it follows that in such circumstances no right to compensation could arise. What this means, also, is that regulation of the property system which prevents “harmful use” should not be understood to be *changing* the prior regime, but only *maintaining and enforcing* the “rightful scope” of the prior regime in which the duty not to harm was always recognized.

This blurs the distinction between “property” and “regulation.”¹¹⁸ Regulation is normally conceived of as something that *interferes* with property rights. But when the state intervenes in the property system to stop “harmful use,” then such intervention is not so much the *regulation* of property as it is the *maintenance* or *protection* of property. And this more accurate reframing of the issue has been of rhetorical significance to ecological reformers, especially in the first quarter of this century when “regulation” was such a dirty word.

In the midst of the ecological crisis, when nothing less than Nature’s life-support systems were at risk of collapsing, lawmakers realized that they needed to pay much more attention to the duty of property holders not to cause “harm.” Exactly what constitutes harm, at any given time, is indeterminate and often contentious, of course, but that just means that it is a concept that must be defined democratically, for the common good. As one pioneering legal ecologist at the turn of the century noted, “Harm . . . is an elastic, vague concept that we can define in whatever way we deem wise. . . . By redefining harm we can [for example] challenge and end land uses we don’t want.”¹¹⁹ This theorist added, however, with an air of caution, that “government wields breathtaking power when it can define harm however it sees fit.”¹²⁰ That was (and remains) true, but as Nature was being degraded as never before there were far greater risks in the government not doing enough to enforce the “duty not to harm” than there were in it doing too much.

As the problems of overconsumption, loss of biodiversity, and climate change intensified, the meaning of the “duty not to harm” inevitably expanded, narrowing the rightful scope of property rights.¹²¹ By intervening in the property system to enforce this “duty not to harm,” the state was not actually *changing* the prior regime, properly understood, but only *maintaining* the “rightful scope” of the prior regime in which the duty not to harm was always recognized. Accordingly, such preventative action or maintenance was not

¹¹⁶ See, e.g., RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN 112-21 (1985).

¹¹⁷ HOHFELD, *supra* note 67.

¹¹⁸ See generally SINGER, ENTITLEMENT, *supra* note 69.

¹¹⁹ ERIC T. FREYFOGLE, ON PRIVATE PROPERTY: FINDING COMMON GROUND ON THE OWNERSHIP OF LAND 115 (2007).

¹²⁰ *Id.*

¹²¹ See Samuel Alexander, *Earth Jurisprudence and the Ecological Case for Degrowth*, 6 J. JURIS. 131 (2010), available at <http://www.jurisprudence.com.au/juris6/alexander.pdf> (last visited June 28, 2011); Samuel Alexander, *Imagining a Post-Growth Jurisprudence of Property*, Proceedings of the Second International Conference on Economic Degrowth for Ecological Sustainability and Social Equity (Mar. 26-29, 2010), available at <http://www.degrowth.eu/v1/fileadmin/content/documents/Proceedings/Alexander.pdf> (last visited June 28, 2011).

“taking” anything that owners ever held (or properly held), from which it followed that in such circumstances no right to compensation could arise.

To provide a famous, ground-breaking example of this approach, we need only note the case of Australia, which, in 2025, was the first nation to pass legislation to the effect that coal mining and the logging of old-growth forests were no longer acceptable uses of land, and would be faded out (with minor exceptions). Unsurprisingly, powerful economic agents at this time cried out piously about the alleged violation of their property rights; all the more so when they received little or no compensation. But slave owners once cried out in the same vein, and their claims to compensation were also properly ignored. In short, once lawmakers decided that property law had been wrong to protect certain use rights, and that no such rights did or should exist, it was considered contradictory to grant compensation as if the property rights did exist after all. As the preamble to the Australian *Land Ethics (Amendment) Act 2025* still reads: “The government does not accept for compensation purposes the very baseline that regulatory protection recognizes as wrongful.”¹²²

F. Inheritance and Bequest

Another key feature in the transition from growth capitalism to the politics of Entropia was the revolutionary reforms that took place in relation to the laws of inheritance and bequest. A few words will suffice to convey the essence of these changes and their salutary effects.

Opposition to the laws of inheritance and bequest was as old as the laws themselves.¹²³ Allowing huge concentrations of wealth to be passed down a family line, from generation to generation, was often criticized for being an inequitable relic of feudalism that somehow survived the transition to capitalism. The overthrow of feudalism was driven, after all, by distaste for the arbitrary birthright privileges (of wealth, status, and power) that were bestowed upon the “nobility.” Simultaneously, one of the bedrock principles of political liberalism which shaped the post-feudal world was a commitment to “equality of opportunity,” that is, to the belief that success in life should be based as far as possible on merit, not accident, chance, or caste.¹²⁴ Yet, despite entrenching arbitrary privileges and keeping concentrations of wealth intact for reasons other than merit, the laws of inheritance and bequest endured for hundreds of years after the transition to capitalism, almost as if they were essential to a private property system.¹²⁵

But essential they are not. Private property is a concept that has many conceptions. According to one persistent conception (useful though incomplete), property is a “bundle of rights.” What is clear is that the “bundle of rights” can be reconfigured, sometimes significantly, while remaining a private property system, and over the last century private property has indeed been significantly reconfigured. In various ways (discussed below), the right to bequeath one’s property upon death has been disaggregated from the bundle of rights associated with property ownership. And when that right goes, so too does any alleged right of potential beneficiaries to inherit property. The politics of Entropia have shown not only that there can be private property systems which do not recognize the right to bequeath or

¹²² For an early defence of this position, see RADIN, *supra* note 70, at 150.

¹²³ For a review, see INHERITANCE AND WEALTH IN AMERICA (Robert K. Miller, Jr. & Stephen J. McNamee eds., 1998).

¹²⁴ See Anne L. Alstott, *Equal Opportunity and Inheritance Taxation*, 121 HARV. L. REV. 469 (2007).

¹²⁵ See EPSTEIN, *supra* note 116, at 304. Epstein claimed that inheritance and bequest are an essential component of property. “The conception of property includes the exclusive rights of possession, use, and disposition. The right of disposition includes dispositions during life, by gift or by sale, and it includes disposition at death . . .” *Id.*

inherit property, but also that such revised systems better accord with the arguments (based on freedom, justice, utility, security, and so on) used to justify private property in the first place.¹²⁶

Nevertheless, despite the conceptual possibility and normative attractiveness of a private property system that does not recognize the rights of inheritance and bequest, reconfiguring the “bundle of rights” in that manner required political tact. Rather than an outright abolition of those inheritance and bequest laws, in most jurisdictions it proved to be politically more attractive to gradually increase inheritance taxes and gift taxes. In fact, even today, bequest and inheritance are still technically recognized in most of the advanced economies, where allowances are properly made for dependents (children, parents, and grandparents who are in need of support), as well as certain other exceptions (such as limited gifts to charities). But beyond providing for the essential needs of dependents, which is very limited in our age of the Basic Income, and other minor exceptions, a citizen’s property upon death is generally taxed in excess of ninety percent. This effectively (though not technically) disaggregates the right of bequest from the bundle of rights associated with ownership. It is perhaps surprising that only in England, where the roots of feudalism were deepest, have inheritance and bequest been abolished outright. In that jurisdiction, a citizen’s property upon death is now distributed by the Justice Tribunal, which was established in 2042.¹²⁷ It is a system that has acquired wide support. Whether other jurisdictions eventually follow the English example remains to be seen.

Whether through taxation or outright abolition, disaggregating inheritance and bequest from the institution of private property has been a landmark achievement on the path to Entropia. Not only has it contributed greatly to the democratic ideals of equality of opportunity in life and a broad-based distribution of wealth, it also provided (and still provides) states around the world with the public resources necessary to adequately confront the ecological crisis and adapt to climate change. In fact, many political parties, particularly in Western Europe, campaigned for the reform of inheritance and bequest laws on the very basis that the bulk of the new tax revenues would be directed toward environmental initiatives. Indeed, it would be fair to say that the transition to clean and renewable energy systems that we saw over the first half of this century was funded, to a large extent, by the proceeds of the property and tax reforms related to inheritance and bequest.

G. Working Hours

The reforms outlined above represent the most significant structural changes that occurred over the last century to Western-style property systems. Before concluding our review of the paradigm shift, it is important to note one final revolutionary reform, this time in labor law, which is considered central to the politics of Entropia.

Over the last century working hours in the West have dramatically decreased, representing a culture-wide exchange of money for time. This was partly due to cultural changes in attitudes to consumption (i.e., the less one consumes the less one needs to work to support one’s lifestyle), but it was also facilitated by structural changes. Economic theory posits that actors in an economy should be free to maximize their happiness (or “utility”) by selling as much or as little of their time (or “labor-power”) as they want.¹²⁸ Under growth

¹²⁶ For philosophical discussions on the foundations of property, see LAWRENCE C. BECKER, *PROPERTY RIGHTS: PHILOSOPHIC FOUNDATIONS* (1977); ALAN RYAN, *PROPERTY AND POLITICAL THEORY* (1984); ALAN CARTER, *THE PHILOSOPHICAL FOUNDATIONS OF PROPERTY RIGHTS* (1989).

¹²⁷ J.W. Harris, *Inheritance and the Justice Tribunal*, in *NEW ESSAYS IN THE LEGAL AND POLITICAL THEORY OF PROPERTY* 106 (Cambridge Stud. Phil. & L., Stephen R. Munzer ed., 2001).

¹²⁸ See generally *THE ECONOMICS OF WORK AND FAMILY* (Jean Kimmel & Emily P. Hoffman eds., 2002).

capitalism, however, there were structural biases that functioned to promote over-work (i.e., working hours that were not “optimal” or “utility maximizing”), such as laws which treated the forty-hour work week as “standard” and which excluded part-time workers from many of the non-pecuniary benefits enjoyed by those who work full-time. The effect of these structural biases was essentially to force many people to work longer hours than they wanted or needed to, which gave rise to cultures that tended to over-consume resources and under-consume leisure.¹²⁹ This led to higher GDP per capita, of course, but often at the cost of quality of life, and the planet.¹³⁰

During the 21st Century, led by Western European nations, many jurisdictions first introduced the thirty-five-hour work week, then the twenty-eight-hour work week, and in places even the twenty-one-hour work week.¹³¹ In a progressive response to pressures arising from the GFC, the U.S. state of Utah, for example, shifted to a four-day work week for all public employees. Almost immediately it was reported that the resulting pattern of work reduction led to “significant environmental benefits, with reduced transport and energy costs.”¹³² Furthermore, the extra day off also led to a “dramatic increase in community volunteering.”¹³³ Many governments around the world have shown leadership in this regard, by down-shifting most government positions to a reduced work week and by providing tax incentives to private employers which do the same.

As well as reducing the standard work week, labor laws have also been broadly reformed to better protect those in part-time employment and those who wish to job-share. In many places these policies have gone a long way to eliminating unemployment (because labor is systematically spread); furthermore, the increase in leisure has resulted in many other social and ecological benefits, including healthier and happier populations with more time to pursue their private passions and enjoy their civic responsibilities, and with lower ecological footprints (because they are consuming and travelling less).¹³⁴ The Working Hours Adjustment Act 2000 in The Netherlands is representative of the structural changes which occurred in this regard. This path-breaking act allowed workers to reduce their hours to part-time simply by asking their employers.¹³⁵ As explained by pioneering work reductionist John de Graaf:

Unless there is a clear hardship for the firm—something shown in less than 5% of cases—the employer must grant the reduction in hours. Workers keep the same hourly salary, full health-care, and pro-rata additional benefits like vacation time and pensions. This law, in the most concrete terms, allows workers to trade money for time, without losing their jobs or healthcare. As a result, more than a third of Dutch employees work part-time, the highest ratio in the world.¹³⁶

¹²⁹ See generally DE GRAAF, WANN & NAYLOR, *supra* note 46.

¹³⁰ See ANDERS HAYDEN, *SHARING THE WORK, SPARING THE PLANET: WORK TIME, CONSUMPTION, AND ECOLOGY* (1999).

¹³¹ ANNA COOTE, JANE FRANKLIN & ANDREW SIMMS, *21 HOURS: WHY A SHORTER WORKING WEEK CAN HELP US ALL TO FLOURISH IN THE 21ST CENTURY* (2010), available at <http://neweconomics.org/publications/21-hours>.

¹³² See CHARLES BERGER, *BETTER THAN GROWTH: THE NEW ECONOMICS OF GENUINE PROGRESS AND QUALITY OF LIFE 12* (2010), available at http://www.acfonline.org.au/uploads/res/ACF_BetterThanGrowth.pdf.

¹³³ *Id.*

¹³⁴ COOTE, FRANKLIN & SIMMS, *supra* note 131; HAYDEN, *supra* note 130.

¹³⁵ See SHERI TODD, *IMPROVING WORK-LIFE BALANCE—WHAT ARE OTHER COUNTRIES DOING?* 28, 28 (2004), available at <http://www.hrsdc.gc.ca/eng/lp/spila/wlb/pdf/improving-work-life-balance.pdf> (last visited June 28, 2011).

¹³⁶ John de Graaf, *Political Prescriptions*, in Alexander VOLUNTARY SIMPLICITY, *supra* note 55, at 271, 274.

Those who complained that these work policies would not maximize GDP per capita were obviously missing the point. The point of an economy is to efficiently promote quality of life, and if a smaller economy promotes quality of life by providing increased leisure but less money for its participants, then a smaller economy is the most economically rational option to choose. In a word, this is the rationality of degrowth.¹³⁷

V. CONCLUSION: THE LAW OF PROGRESSIVE SIMPLIFICATION

According to Arnold Toynbee's "Law of Progressive Simplification,"¹³⁸ as a civilization evolves it will come to transfer increasing increments of energy and attention from the material (money and possessions) to the non-material side of life (relationships, contemplation, community, art, and so on). If we accept this aspect of Toynbee's conception of history, which posits simplicity of living as the peak of civilization, then ours has ultimately been a century of progress. As Toynbee and others predicted, nature compelled us to revert to a stable state on the material plane and thus we found ourselves forced to turn to the realm of the spirit to satisfy our hunger for infinity. As the dust settles upon the path we have travelled this century, we look back and gain a new prospect of the world and our place in it. When placed in the context of history, the changes we have seen have surely been as great as the transition from feudalism to capitalism.

If there is one lesson that humanity will take from this difficult century, it will be that legal and political reforms in property relations which slow or even have a negative impact on growth, and which thereby lower "standard of living" (measured by per capita income), can actually increase "quality of life" (measured by subjective well-being). Put otherwise, the lesson is that lower productivity is a small price to pay for unprecedented well-being, the advancement of distributive justice, and enhanced ecological conditions. Looking back we see how easy it would have been to avoid so much suffering and destruction had we only realized this earlier, or, rather, had we only acted earlier upon that which we knew very well.

Of course, despite huge advances, our world today is far from perfect. Global poverty has not been eradicated and it is probably too early to claim that the ecological crisis is over. In particular, we will still need to adapt as the climate changes further, and the countless tonnes of carbon deposited in the atmosphere by earlier generations may still have unforeseeable impacts on global ecosystems. But genuine and significant progress has unquestionably been made. Far from signifying the end of history, however, it is clear that this moment in time, like every moment, is simply the beginning of the future. And that is the challenge which confronts us, which has always confronted us.

¹³⁷ See Francois Schneider, Giorgos Kallis & Joan Martinez-Alier, *Crisis or Opportunity? Economic Degrowth for Social Equity and Ecological Sustainability*, 18 J. CLEANER PRODS. 511, 512 (2010), available at <http://www.cemus.uu.se/dokument/msd2010-2011/article%20for%2024th.pdf> (last visited June 28, 2011) (defining sustainable degrowth as "an equitable downscaling of production and consumption that increases human well-being and enhances ecological conditions").

¹³⁸ ARNOLD J. TOYNBEE, A STUDY OF HISTORY 198 (D.C. Somervell ed., abr. Vol. I-VI, Oxford Univ. Press 1987) (1946).

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