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BOOK REVIEW

FROM ANARCHY TO ALLOTTOPIA

DAVID P. FIDLER*

The Health of Nations: Society and Law Beyond the State. Philip Allott. Cambridge: Cambridge University Press, 2002. PP. 436, \$75.00 (Hardcover) and \$27.00 (Softcover).

Lawyers, I often tell my students, should strive to be philosopher-mechanics. The law relates in profoundly important ways to philosophical ideas and controversies, mandating that lawyers (and law students) have some knowledge and understanding of the philosophical implications of law and legal systems. Simultaneously, lawyers act as mechanics, getting under the hood of the legal machine to make the parts work and, when needed, adjusting and replacing the machine's components to produce a better vehicle. Hopefully, the philosophical and mechanical roles lawyers play inform each other, so that philosophy is done with a sense that law is a practical endeavor, and so that legal mechanics are done with a sense that law is a philosophical project.

Philip Allott, Professor of International Public Law at the University of Cambridge, published a book in 1990 called *Eunomia: New Order for a New World* that addressed the philosopher responsibilities of lawyers by proposing "a general theory of society and law which is potentially universal, that is to say, a theory capable of being the theory acted upon by all participants in international society."¹ Twelve years later, Allott returns with a new book, *The Health of Nations: Society and Law Beyond the State*, in which he seeks "to provide the groundwork of the possible *practical theory* of the new international society."² In Allott's grand project, *The Health of Nations* picks up the "*transcendental* and *pure theory*"³ developed in

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1. PHILIP ALLOTT, *EUNOMIA: NEW ORDER FOR A NEW WORLD*, at xix (1990).

2. PHILIP ALLOTT, *THE HEALTH OF NATIONS: SOCIETY AND LAW BEYOND THE STATE* xi (2002). This book's contents are revised versions of articles or chapters Allott previously published. *Id.* at xv-xvi.

3. *Id.* at xi.

Eunomia and purports to provide practical theory; "ideas which take actual effect in the process of . . . day-to-day social self-constituting."⁴ In an analogy that resonates with my philosopher-mechanic notion, Allott argues that "[a]s a carpenter applies practical theory to the making of a table, so a society applies practical theory to the making of its own social reality."⁵

In Allott's vision, the pure theory of *Eunomia* and the practical theory of *Health of Nations* combine in a "New Enlightenment project" of re-conceiving human society and the human mind. Allott explains that the purpose of the New Enlightenment project is to:

show that international society—the society of all-humanity and all societies—need not be the crazy and archaic intergovernmental unsociety which characterised international relations throughout the last millennium, the archaism which led, in the last century, to more than 100 million unnecessary deaths and to unspeakable human suffering caused by the holders of public power, and unspeakable human suffering caused by the disgraceful inequality of social and economic development throughout the world, a structural injustice which is being perpetrated by the archaic and inhuman international system.⁶

For Allott, the current configuration we call "international relations" represents a diseased, pathological condition in which humanity has trapped itself through ideas that have constructed an "intergovernmental international unsociety" whose institutions and rules, including international law, are archaic, absurd, and unbearable.⁷ Allott describes the existing condition of diseased international anarchy as a form of contagious madness⁸ that must be overcome through "a human revolution, a revolution not in the streets but in the human mind."⁹

Allott unfolds his vision of society and law beyond the state in three parts, the unifying theme of which "is a philosophy of *social idealism*, a belief in the capacity of the human mind to transcend itself in thought, to take power over the human future, to choose the human future, to make the human future conform to our ideals, to our best ideas of what we are and what we might be."¹⁰ The first part of *The Health of Nations* argues that society, and law's role in society, are made in the idea-world of the human mind. Appre-

4. *Id.* at x.

5. *Id.* at xi.

6. *Id.* at 152-53.

7. *Id.* at 289.

8. *Id.* at 130.

9. *Id.* at 157.

10. *Id.* at x.

ciating the role of ideas in constructing society helps overcome the problem that Allott calls “Istopia”—the construction of the human world from the word “is.”¹¹ Istopia is dangerous because it creates ideational sclerosis that impedes the social reconstruction of reality through concepts and ideas not favored by the master builders of Istopia. In Allott’s mind, Istopia has been particularly sinister in connection with thinking beyond national societies: “The history of international society is the history of the arbitrary suppression of creative social thinking beyond the level of the nation and state, the repression of the idea of the ideal, the avoidance of the society-making power of a true legal system.”¹²

Istopia threatens to produce the “tyranny of the actual”¹³ that must be overthrown by redeeming the power of “a new ideal self-constituting of a true international society, a charter of international social idealism, a New Enlightenment.”¹⁴ “The great task of the twenty-first century,” Allott asserts, “is to install the idea of the ideal in dialectical opposition to the fact of the actual as a creative force in the making of the human future. International social idealism is the dialectical negation of international Social Darwinism.”¹⁵ Particularly dangerous aspects of Istopia for Allott are “the post-1989 triumphalism of the advocates of democracy-capitalism and the apologists of ‘globalisation.’”¹⁶

The second part of the book is a case study of the need to reconstitute society and law, focusing on the European Union. Allott concentrates on the European Union to answer the question whether nations and states can transcend themselves through law.¹⁷ Allott is not impressed with the “half revolution” of Europe’s effort to reconstitute itself “not as *society*, *nation*, or *state* but as *economy*.”¹⁸ Far from being a beacon of hope for humanity, Allott sees the European Union as “a troubling precedent for revolutionary social transformation at the global level, the level of all-humanity.”¹⁹

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- 11. *Id.* at 4.
 - 12. *Id.* at 70.
 - 13. *Id.* at 313.
 - 14. *Id.* at 94.
 - 15. *Id.*
 - 16. *Id.* at 149.
 - 17. *Id.* at 159.
 - 18. *Id.* at 205.
 - 19. *Id.* at 182.

The third part of *The Health of Nations* addresses the question of whether humanity can think of itself as a society under law.²⁰ This part contains the most direct and extended analysis of international law, and Allott argues that re-conceptualizing international law forms an integral part of “purposively bringing international society into line with our best ideas and highest expectations about society in general.”²¹ For Allott, the existing system of international law reflects all that is wrong with how international relations are currently conceived and organized:

For 250-years, a perverted, anti-social, anti-human worldview has allowed the holders of public power to treat social injustice and human suffering on a global scale as if it were beyond human responsibility and beyond the judgement of our most fundamental values and ideals, and the holders of public power have imagined an international legal system which enacts and enforces such a worldview.²²

What Allott desires, and what *The Health of Nations* aims to illuminate, is the grasping of the possibility of destroying “the old international unsociety” in order “to create the theory and practice of a true international society, the society of societies and the society of all human beings, enacting and enforcing a true international law, the legal system of all legal systems, for the survival and prospering of all-humanity.”²³

The Health of Nations urges scholars and intellectuals, especially those of younger generations, to abandon the pathological mind-world of international anarchy and to trek towards a better, more creative reality at the level of all-humanity. The revolution in the human mind that Allott wants to stimulate represents uncharted territory in humanity’s mental cartography, and Allott urges us to explore this territory and claim it for humanity’s creative potentialities. We can give this uncharted place a name, Allotopia, and ponder whether this is a place humanity should venture.

Allotopia is, foremost, a philosopher’s world—but of a surprisingly parochial kind. Allott’s premise that ideas determine the constitution of societies makes Allotopia a mind-world, an idea-world.²⁴ *The Health of Nations* is an intellectual *tour de force* because Allott draws upon a broad range of philosophical ideas in lamenting the current state of the world and projecting hope for the pos-

20. *Id.* at 287.

21. *Id.* at 310.

22. *Id.* at 399.

23. *Id.*

24. *Id.* at x (“Societies constitute themselves in the form of ideas.”).

sibility of a better tomorrow. Allott moves impressively, and seemingly without effort, among the ideas of Plato, Aristotle, Descartes, Kant, Burke, Marx, Freud, Foucault, Wittgenstein, and many others as he unfolds his arguments.

Though astonishingly rich in philosophical ideas, Allotopia also exhibits attributes of an idea-world not interested in certain ideas. Although demonstrating Allott's impressive intellectual firepower, *The Health of Nations* shows little interest, for example, in non-Western philosophical thought. I wondered how Allott's thesis of re-conceiving international society as the society of all human beings and international law as the true law of all-humanity could be universally persuasive when the philosophical basis for, and discourse about, the project showed no sustained interest in the diverse intellectual heritage of most of humanity.²⁵

At the philosophical level, Allott clearly distinguishes his vision from current actuality, especially when he contrasts the attributes of the "*old regime* of the human world and its law" with "*a new view* of the human world and its law."²⁶ Allott's ten attributes of the old regime provide a good description of the Westphalian conception of international relations and international law.²⁷ He then expresses the "*new view of the human world and its law*" in eight principles,²⁸ unified by Allott's aspiration for a universal nomocracy²⁹—a universal rule of law. Allotopia represents a re-conceived world with one human society structured by one political constitution pursuing social purposes all-humanity chooses within and through the framework of one law that is participatory and dynamic.

The philosophical idea and ideal of a universal human community is not, of course, new. Many philosophers that Allott discusses had universal visions of various sorts. For example, Kant, Burke, and Marx all imagined universal human communities. The philosophical ideal of a universal human society becomes more interesting when pondering *how* a philosopher blazes a path toward this ideal. Similarities among the thinking of Kant, Burke, and Marx end with the imagined universal human community because each lays out a very different practical theory of how such universal human solidarity can or should be achieved. The philosophical

25. Occasionally, Allott mentions non-Western philosophical traditions. See, e.g., *id.* at 361-362 (briefly discussing Taoism and Buddhism).

26. *Id.* at 418-21.

27. *Id.* at 418-19.

28. *Id.* at 420-21

29. *Id.* at 150 (defining nomocracy).

ideal of a universal human society is the Allotopian vision, but *The Health of Nations* becomes more difficult and frustrating when we wish to know how Allott proposes the achievement of his ideal.

For Allott, ideas do all the work in constituting human societies; so it is to ideas that we must look to discover how to set our moral compasses to find Allotopia in the mind-world of human reality. As a mind-world and idea-world, Allotopia is exclusionary. Ideas that assert the world is not just a mind-world and that advance theories based on the limitations created by the material world do not seem welcome in Allotopia. Allott's alternative mind-world appears to be reserved for what he calls the "best ideas": "We will let our best ideas of society and law flow into our imagining and our understanding of the human world."³⁰ By "best ideas," Allott means "ideas that are philosophically fruitful, psychologically empowering, morally inspiring, [and] practically effective."³¹ Locating what ideas qualify as the "best ideas" in Allotopia proves, however, difficult for two reasons.

First, Allott attacks ideas currently considered in many quarters to be progressive in terms of international relations and international law. Allott is hostile toward, for example, the democracy-capitalism combination,³² the development of international criminal law (e.g., the prosecution of war criminals by international tribunals),³³ and the evolution of new forms of global governance involving civil society groups.³⁴ Allott opposes each of these ideas because they represent "globalisation from below"—an extrapolation of the national realm into the international realm much like nineteenth-century political and economic imperialism.³⁵

Allott dislikes globalization from below because "[t]he risk now facing humanity is the globalising of all-powerful, all-consuming social systems, without the moral, legal, political and cultural aspirations and constraints, such as they are, which moderate social

30. *Id.* at 419.

31. *Id.*

32. *Id.* at 149 (analyzing the "diseases of advanced democracy-capitalism"). More recently, Allott has argued that liberal democracy is dead, killed by, among other things, "the fatal embrace" of capitalism. See Philip Allott, *The Emerging International Aristocracy*, 35 N.Y.U. J. INT'L L. & POL. 309 (2003).

33. ALLOTT, *supra* note 2, at 62-69. Allott's opposition stems from his belief that "the introduction of criminal justice into international society will have the incidental effect of seeming to legitimate the social evil that it does not condemn." *Id.* at 68.

34. "As the idea of democracy decays, the ideas of *governance* and *civil society* flourish. They are the superficially benign symptoms of a wasting disease which is affecting thinking about democracy at every level." *Id.* at 161.

35. *Id.* at 93.

action at the national level.”³⁶ Thus, to contain, tame, and re-direct these globalizing forces, Allott believes we need a universal society, political constitution, and law, replicating globally what the mind created nationally.

Even the great experiment of the European Union receives Allott’s harsh disapproval. The progress of the European Union, which appears to many people familiar with European history in the twentieth century to be “a blessed miracle and a reason for enormous celebration,”³⁷ Allott derides as the “prussianisation”³⁸ of the European future, a symbol of the “canker of defeatism which is now present in the public mind of Europe,”³⁹ and “the greatest achievement of the new international ruling class.”⁴⁰ The only thing Allott identifies as a beacon of hope for the human-mind world is the United States: “The United States is a microcosm of the human world, of the actual human world, and of a potential Human World under Law.”⁴¹ Allott never returns, however, to explore this interesting and controversial assertion.⁴²

Second, Allott does not provide a clear sense of what substantive alternative Allotopia contains. Allotopia is to be the product of “globalisation from above,” which means “the application of every self-creating potentiality of human consciousness to the self-constituting of international society.”⁴³ Globalization from above means that there is only one human world, one rule of law, and one common interest existing at the level of all-humanity.⁴⁴ Yet, Allott fails to provide any sense of what Allotopian oneness should look like substantively. Although he is keen to promote the “best ideas,” Allott does not address in *The Health of Nations* what ideas qualify as the “best ideas” beyond the platitudes that the “best ideas” are philosophically fruitful, psychologically empowering, morally inspiring, and practically effective. Nor does Allott provide guidance on how the revolution in the human mind should evaluate

36. *Id.*

37. ROBERT KAGAN, OF PARADISE AND POWER: AMERICA AND EUROPE IN THE NEW WORLD ORDER 97 (2003) (describing the “new Europe” created by the European Union).

38. ALLOTT, *supra* note 2, at 222.

39. *Id.* at 283.

40. *Id.* at 397.

41. *Id.* at 152.

42. The reader is merely referred to an article Allott published elsewhere that further discusses his argument about the United States. See Philip Allott, *The True Function of Law in the International Community*, 5 IND. J. GLOBAL LEGAL STUD. 391 (1998).

43. ALLOTT, *supra* note 2, at 95.

44. *Id.* at 95-96.

ideas to determine whether they can be categorized with the "best ideas."⁴⁵

Allott's reluctance to identify what he believes are the "best ideas" leaves Allotopia substantively vacant. Allott envisions his New Enlightenment project as leading to a "Eutopia," meaning a "good place," rather than a "utopia," which is defined as "no place."⁴⁶ Allott emphasizes the Eutopian nature of his project to stress "that the nature of the New Enlightenment challenge is to find and to enact the new ideals of a new human mind-world, rather than, as in Thomas More's *Utopia* (1516), to criticize the actual by reference to an imaginary alternative"⁴⁷ Instead, Allotopia emerges as an empty place because the commander of the expedition to this new mind-world has not provided a compass with which to identify what constitutes the "best ideas" beyond the philosophical ideal, as old as philosophy itself, of a universal human community. *The Health of Nations* criticizes the actual without reference to any alternative.

These thoughts lead me back to Allott's scorched-earth approach to developments at the cutting edge of international relations and international law today. In this approach, Allott eliminates from the topography of Allotopia things such as global civil society activism, individual and corporate responsibility for actions in the global society, regional economic integration on the model of the European Union, and the globalization of democracy and its attendant human rights as potentially useful trails, guiding landmarks, or restorative oases in the re-conceiving of the new human mind-world he believes humanity needs. Although Allott makes interesting critical arguments about these developments that are worth consideration, I cannot help but wonder whether Allott doth protest too much.

The philosopher-mechanic closes *The Health of Nations* both stimulated and perplexed. The stimulation arises in Allott's philosophical punditry and his unrelenting idealism concerning the potential for a true human community transcending the fragmented anarchical world of contemporary international relations and international law. But the philosopher-mechanic has been

45. At one point, Allott reformulates Kant's categorical imperative for moral behavior in analyzing the madness of nations, *id.* at 130, but Allott does not develop the Kantian insight into a positive tool for evaluating what ideas should guide the human re-conceiving of reality.

46. *Id.* at 156 n.30.

47. *Id.*

dazzled many times before by philosophical dexterity in the name of human universal solidarity. What the philosopher-mechanic needs is substance and process: how should this new mind-world substantively take shape, and by what means should humanity pursue this objective? Despite Allott's promise to provide practical theory, a blueprint for the new mind-world akin to the practical principles a carpenter applies in making a table, Allotopia remains enigmatic, somewhere beyond Istopia, promising to be more than a Utopia but not yet a Eutopia.