strength of their preferences" (pp. 40, 227, 274). However, the reliance on the rationality and purposiveness of various actors in the judicial process in order to legitimize the law and its institutions has increasingly been contested by insights from disciplines focused on systematic divergences from the rationality model.[12] These insights, which Putnam only tersely acknowledges, reveal that human—and consequently institutional—decision-making processes are prone to nonrational, yet systematic, tendencies; that decision-making is subject to cognitive illusions that are not capable of being unlearned; and that those cognitive limitations affect various actors "with uncanny consistency and unflappable persistence."[13] In an empirical project of this magnitude, it would have been interesting to critically explore judicial tendencies that deviate from the perfect rationality model. In addition, it would have been helpful to review how "nonstrategic" behavior of litigants impacts the diagnosis and articulation of functional juridical problems, the vocabulary of legal argumentation, and of normative solutions, as well as the functioning and conceptualization of juridical institutions and judicial interpretative agency.

Perhaps Putnam will turn to those questions in her future publications regarding extraterritoriality. For now, she has written a most interesting and challenging book whose argument will surely require consideration and commentary by those writing on this subject in the future.

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Eutopia: New Philosophy and New Law for a Troubled World. By Philip Allott. Cheltenham: Edward Elgar, 2016, Pp. xi, 368. Index. $135.
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Grasping Allott's Ambitious Undertaking

It is not by chance that Philip Allott, professor emeritus of international public law and fellow of Trinity College, University of Cambridge, UK, offers unusual guidance to readers in the opening sentence of the Preface to *Eutopia*: "The reader may want to read this book more than once, and to read it with unusual care" (p. vi). If anything, this advice is understated. Allott has written a learned, conceptually intense, and wildly ambitious book that demands the most dedicated attention taxing the perseverance of even the most diligent of readers. Allott challenges us on every page, really on each of its paragraphs given a systematic inflection by being numbered as if elements of a mathematical proof. Putting the bar of comprehension so high raises preliminary awkward questions—is the immense burden imposed on the reader sufficiently rewarded by the contribution that Allott makes to our understanding of the human condition? There is a second subsidiary question—is Allott's distinctive methodology an effective and necessary means by which to raise and resolve such fundamental issues? and for what audience is this undertaking intended? I will return to these matters at the end of my attempt to assess Allott's undertaking, which by any measure is extraordinary. It is nothing less than a philosophically coherent depiction of a

[12] *See generally* Daniel Kahneman, *Maps of Bounded Rationality: Psychology for Behavioral Economics*, 93 AM. ECON. REV. 1449 (2003); Lauge N. Skovgaard Poulsen, *Bounded Rationality and the Diffusion of Modern Investment Treaties*, 58 INT'L STUD. Q. 1 (2014); Lauge N. Skovgaard Poulsen & Emma Aisbett, *When the Claim Hits: Bilateral Investment Treaties and Bounded Rational Learning*, 65 WORLD POL. 273 (2013); Christine Jolls, Cass R. Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, STANFORD L. REV. 1471 (1998); Haksoo Ko, *Behavioral Law and Economics*, *in* ENCYCLOPEDIA OF LAW AND ECONOMICS 1 (Jürgen Backhaus ed., 2021), *available at* http://dx.doi.org/10.1007/978-1-4614-7883-6_100-1.

[13] Adam Benforado & Jon D. Hanson, *Legal Academic Backlash: The Response of Legal Theorists to Situationist Insights*, 57 EMORY L.J. 1087, 1118 (2008).

comprehensive and desirable future for humanity designed to do nothing less than achieve the totality of human potentiality if properly enacted.

Allott attributes his sense of profound concern with the way the world was organized to his experience decades ago as a legal advisor in the British Foreign Office (1960–1973). It was there that he became aware of "all significant aspects of international government" leading him to the "settled moral conviction—that the nature of so-called international relations must be changed fundamentally and, with it, the nature of international law."[1] Although the argument put forward is expressed abstractly, without civilizational specificity or very much by way of policy critique and example, there is no doubt that Allott is deeply offended and worried by his various encounters with political realism while serving the British crown. In a strong passage Allott vigorously rejects the major premise of the nuclear age, which he decries as "the development of the grotesquely named strategic nuclear weapons, as if mass murder and mass destruction could be strategies adopted by rational human beings."[2] Such strong language suggests Allott's repudiation of conventional wisdom in the world that he inhabits, which stands in stark contrast to the world that he believes can be brought into being by new thinking responsive to the overriding moral and political imperative of seeking a new world order in which all human beings can flourish, and find happiness, as well as address the formidable challenges of global scope that threaten the survival of the human species and much of its natural habitat.[3]

To begin with, it is important to realize that *Eutopia* is a sequel to an equally challenging and ambitious earlier work, *Eunomia: New Order for a New World*, published in 1990.[4] In a long Preface written especially for the 2001 publication of a paperback version, Allott gives readers important clues to what led his thinking in such radical directions, including his disdainful treatment of incremental global reform steps advocated by liberal internationalists that he believes irrelevant, given the magnitude of the challenges facing humanity. Allott is convinced that only a *revolutionary* process can generate the capacity needed to enable humanity to produce a positive future for itself. Clarifying this orientation, Allott writes,

> We are people with a permanent revolutionary possibility, the power to make a revolution, not in the streets but in the mind. And the long journey of revolutionary change begins with a single revolutionary step. We can, if we wish, choose the human future. We, the people, can say what the human future will be, and what it will not be.[5]

This appears to be affirming a radical form of political agency vested in the people, that is, change from below, although this is never asserted in this form or as an ingredient of democracy or transformative populism.

This crucial matter of orientation and perspective, with its Hegelian confidence in the power of ideas to transform and regulate behavior, leads Allott to distance himself from those who insist that "practicality" in the domain of politics is the only responsible approach to the advocacy of change and reform. Allott rejects the mainstream consensus that constrains debate within the confines of feasibility as interpreted by the powers that be: "To disprove a claim that a set of ideas is merely Utopian, it is useful simply to recall that those ideas contain a future which is not only possible but also necessary, and that the human future is always an imaginary potentiality until it becomes a present actuality."[6] As Allott puts it elsewhere, "We make the human world, including human institutions, through the power of the human mind. What we have made by thinking we can make new by new thinking."[7] This theme pervades Allott's entire undertaking, but such an

[1] Philip Allot, Eunomia: New Order for a New World, at xli (2001).

[2] *Id.* at lii.

[3] Allott sets forth his purpose in writing *Eutopia* along these lines at several points (pp. 215, 260, 269, 296, 312–13).

[4] Indeed, it is not possible to ignore the first book in approaching the even more elaborate framework of *Eutopia.*

[5] Allott, Eunomia, *supra* note 1, at xxxiv.

[6] *Id.* at xxvii.

[7] *Id.*

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unconditional statement of benign mental potency seems to be oblivious to the darker forces of the unconscious that drive human behavior in destructive and self-destructive directions. The dominance of these darker forces has, in my view, entrapped the political imagination in an iron cage, accounting for the widespread feelings of despair on the part of those who confront the future with eyes wide open.[8] Allott is fully aware of this, shares this foreboding, but offers us the redemptive possibility of this mental revolution.

Allott writes in the Preface to his present book,

> Since *Eunomia* was published, the globalising of human social and mental existence has proceeded at a pace and in ways that could not have been predicted then, and with ever more troubling consequences, and ever more serious threats and challenges. Chaotic globalizing is even negating humanity's tentative unity-in-diversity. (P. viii)

We should appreciate that *Eunomia* and *Eutopia* asserted this dramatic diagnosis well before Donald Trump's "America First" approach has aggravated the world order situation by a series of dramatic withdrawals of America's engagement in cooperative forms of globalization with respect to such crucial policy contexts as climate change, international trade, global migration, and arms control (currently most pointedly, the decertification of the 2015 5 + 1 Agreement on Iran's Nuclear Program). I think it is safe to assume that Allott's worldview as of 2018 would move closer to moral panic, given Trump's intensifications of "chaotic globalizing." In the Foreword to *Eutopia*, Allott contrasts his earlier effort as one of meeting a "global *social* challenge" with the more momentous current undertaking in the book under review of overcoming "a universal *human* challenge" (p. ix). Putting this progression of perspective in relation to knowledge systems, Allott has shifted his outlook from that of social and jurisprudential engineer to that of global anthropologist or planetary ethnographer.

In Allott's work the reader encounters a perplexing blend of pessimism about the existing human condition and of optimism about the limitless potentiality of the human species. In stirring words, "We are a species with unlimited potentiality that is failing in crucial aspects of its self-evolving and self-perfecting" (p. ix). What gives direction to Allott's radical way of thinking is a post-Enlightenment belief in thought, reason, and knowledge as guiding action, best exemplified by the great philosophical traditions in the West that have been appraising the human condition for centuries. In this spirit he laments, as he rejects, the contemporary Anglo-American philosophic turn against its own tradition, uselessly shifting its energies to arcane language puzzles and esoteric logical quirks while abandoning reflections on and prescriptions for the desirable unfolding of humanity in light of its surrounding human circumstances.

In a short Afterword, Allott makes plain his oppositional stance to the hegemony of science and engineering modes of thought in the public domain where governments act and citizens form their policy preferences. Allott categorizes his own work as exhibited in a private domain and premised on what he calls "humanist thinking" (p. 341), that is shaped by values, wisdom, and erudition. At the same time, he asserts a positive role for such thought against the grain, needed in his view, to enable "the human mind . . . to imagine a better human future" and to activate "the human will" so as to "mak[e] a better future happen" (*id.*). He follows this with the haunting exposure of his own foreboding about the human future, ending the book with these words: "For how much longer?" (*id.*). As a reader I would say that the main message left behind here by Allott is the urgency associated with a revival of humanist thinking as a necessary precondition for meeting the challenges of our historical circumstance as a profoundly threatened species.

Sources of Inspiration

Allott is forthright about acknowledging three inspirational points of departure for *Eutopia*.

[8] My formulation of the human non-responsiveness to these darker forces that currently pose such formidable challenges of global scope is set forth in an essay, Richard Falk, *Does the Human Species Wish to Survive?*, *in* RICHARD FALK, POWER SHIFT: ON THE NEW GLOBAL ORDER 253–62 (2016).

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Allott roots his extraordinary exploration of prospects for radical change in the utopian tradition of Thomas More who "enabled his readers to see their own social life with new eyes, and to judge it, and to imagine other ways of life" (p. vii). In effect, this kind of utopianism creatively provides a stimulus for critical reflections on the world as it is, as well as unleashing imaginative efforts to project on the screen of human expectations more satisfying and uplifting alternatives as potentially attainable.

Francis Bacon is his second inspirational spark, by way of his foundational anticipation of the degree to which scientific and technological innovation—in effect, "revolutions"—would open the doors of human understanding in dramatic new ways that led in the past to drastic forms of societal restructuring. Bacon "saw that a revolution in our understanding of the human mind could produce every other kind of revolution. He saw that the human mind can transform the human world. We are his beneficiaries to this day" (pp. vii–viii). Allott definitely follows Bacon in believing that altering authoritative templates of human subjectivity has the potential for unleashing transformative forces, and given his severe indictment of how human coexistence is currently (mis)managed on all levels of social interactions, he leaves the reader with this urgent sense of "revolution or doom." The French philosopher, Jacques Derrida, raises comparable questions, yet without any prospect of revolutionary closure with a focus on what "living together well" might mean and what "democracy to come" could achieve.[9] Allott comes close to Derrida's approach in a chapter entitled "New Society: Living the Good Life Together."

Allott's undertaking bears comparison with the World Order Models Project (WOMP), which proceeded from a comparable diagnosis to prescribe a series of "relevant utopias" or "preferred worlds" as necessary, desirable, and achievable.[10] It grounds its hope for the human future on the emergence of what might be called *ethical universality* (shared values associated with minimizing collective violence, social and economic well-being, humane governance, and ecological sustainability) that could foster collaborative undertakings of sufficient scope and depth.[11] By so doing it would become possible to overcome both the political fragmentation of state-centric world order and the civilizational diversity of post-colonial identity patterns. Such a relevant utopia depends more humbly than Allott's revolution in the mind on a retuning of the rational mind and the sharpening of normative sensibilities to take account of the globalizing pressures being exerted by nuclearism, neoliberalism, and digitized networks.

The third source of inspiration affirmed by Allott is the canon of Western philosophy as a response to "a miasma of nihilism and despair, unable to comprehend or to redeem terrible real-world events that the human mind itself had caused" (p. ix). Only by turning to philosophizing in the classic tradition can there be any hope for "the necessary and urgent revolution in the human mind" (p. ix). Allott invests philosophical inquiry with an incredible capacity of human empowerment: "Without philosophy, we have little or no control over the making and the remaking of a better human future. Without philosophy, now and hereafter, the human species may not survive" (p. ix). He underscores this rather dismaying observation with the assertion that *Eutopia* is designed with no less an objective than bringing "the great and ancient existential debate back to life, before it is too late . . . the permanent possibility of making the human world into 'a place of happiness'" (p. ix). I wonder whether this is a proper reading of the philosophic canon in which the warnings and admonitions of St. Augustine, Machiavelli, Nietzsche, and Schopenhauer unaccompanied by the view that history can be reshaped by a

[9] See discussions of Derrida's focus on living together in LIVING TOGETHER: JACQUES DERRIDA'S COMMUNITIES OF VIOLENCE AND PEACE (Elisabeth Weber ed., 2012); also FRED DALLMAYR, DEMOCRACY TO COME: POLITICS AS RELATIONAL PRAXIS (2017).

[10] *See* SAUL H. MENDLOVITZ, ON THE CREATION OF A JUST WORLD ORDER: PREFERRED WORLDS FOR THE 1990S (1975); RICHARD FALK, A STUDY OF FUTURE WORLDS (1975).

[11] *See* HANS KÜNG, A GLOBAL ETHIC FOR A GLOBAL POLITICS AND ECONOMICS (1998).

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revolution in the precincts of the human mind. At the same time each of these thinkers, except Schopenhauer, did at least endorse a vision of a better human future, but not as an achievement of the creativity and normative capabilities of the rational mind.

Allott's Distinctive Methodology

It should be understood that unlike *Eunomia*, which drew on Allott's professional experience and academic specialty (international public law), *Eutopia* is a remarkable achievement of *amateurship*, that is, an immersion in philosophic thought for which the author had neither evident training nor prior publications, but great love and intimacy. In this regard it is informed by the philosophic canon of the West, especially as developed by British philosophers, but with its own rather peculiar and somewhat questionable methodology. In clusters of chapters entitled "The Human Condition," "Human Power," and "Human Will," Allott sets forth the grounds and components of his belief in the potency of the human mind. Each chapter is, in turn, divided in two parts, with the first part consisting of numbered paragraphs containing in logical sequence, fundamental elements of the human mind such as memory, imagination, knowledge, and emotions. The second part of each chapter consists of a series of quotes from a wide spectrum of thinkers, mainly philosophers, from Plato and Aristotle to Marx, Lenin, and Karl Popper, and many, many others. Despite impressions of inclusiveness, there are some surprising names missing. For instance, for me none of three twentieth century philosophers who shed the most light on the human condition are even mentioned once: Hannah Arendt, Jacques Derrida, and Martin Heidegger. As well, non-Western thought is touched on very lightly both in the text and the complement of philosophical quotations: The Buddha and Gandhi are never mentioned, Confucius once.

I have no doubt that Allott is a learned student of philosophy who has developed more or less on his own, without specific debts in the course of his argument to earlier thinkers, a coherent cartography of the human mind as possessed of great agency. At the same time, this dualist methodology of putting the argument one place and the philosophic sources in an entirely separate place without any explicit effort to establish a linkage between the two seems questionable to me, and neither rationalized nor explained by Allott. Either the section of quotations is to be read as conveying somewhat randomly the spirit of philosophical conjecture with regard to a theme covered by the argumentative text, or the reader is left to do the immense work of finding for herself connections between an individual quoted passage and the argument of the text, which I can report in my case to have been a daunting, time-consuming, and not very rewarding challenge.

There are other issues raised by this methodology. Allott does not explain his reasons for inclusion and exclusion. Also, his conception of philosophy is very capacious, extending to literary figures (Shakespeare, Tolstoy, Goethe, and T.S. Eliot), social and natural scientists (Durkheim, Max Weber, Harold Lasswell, and E.O. Wilson), and even cultural and political critics (Marshall McLuhan, Ruskin, and Thomas Paine). If each of these quotes was tied to passages in Allott's text even as footnotes, or given a distinct commentary that explicated their linkage, I would likely applaud the approach. Left alone as distinct items to be read in sequence following the chapter text, seems either without redeeming value or requiring too much of an effort for the reward. In *Eunomia* where Allott is on much firmer ground in terms of professional competence, the methodology is more conventional, and although demanding because of the abstractness and systematic quality of the thought, and more effective in conveying a distinct critique and way forward. In this earlier book Allott's chapters contain only the numbered paragraphs of argument with no second part that gives sources.

The Essential Role of Law

Allott's vision is very much influenced by his appreciation of law as a fundamental ordering device with respect to all that transpires in the universe. In this regard "the laws of nature" and "scientific laws" are seen as achieving results that

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human-created law can only aspire to produce, especially with respect to international law. What underlies this emphasis on law is the fact that all activities in the cosmos exhibit for Allott a tendency to exhibit *order* as a fundamental reaction to the alternative of *chaos.* In Allott's view order is the result of law governed behavior.

In *Eunomia* Allott makes clear that the two modern theorists of international law who make contributions along the lines of a systemic reworking of law as constitutive of world order are Hans Kelsen and Myres McDougal.[12] What they have done to merit this affirmation is "to elevate international law on to a plane appropriate to a true legal system." In Kelsen's case, it involved detaching law from its social and political infrastructure so as to create an autonomous legal order of encompassing generality, with international law a derivative subsystem. While in McDougal's case, the effort was almost opposite to that of Kelsen, integrating and connecting international law with the underlying social, economic, and political processes, and disciplining its operations by reference to what Allott calls "value-processing," a phenomenon that is present in all forms of social activity.[13]

Allott calls McDougal "ahead of his time," especially by undertaking the prophetic task of "preaching a new dispensation to a recalcitrant group of human beings who were almost beyond redemption, the participants in international relations." It is clear from a broader exposure to Allott's thinking that he is referring to the hard power realists who exclude values from international relations, and thus marginalize international law, and whose operating procedures can perhaps be most easily comprehended by reference to Henry Kissinger's theory and practice of international relations.[14] Allott concludes that neither Kelson nor McDougal reshaped the manner with which international relations, with its race to the bottom of human endeavor, was being conducted.

Nevertheless, Allott regards the challenge confronting him is to integrate a philosophically coherent and grounded legal order in the manner of Kelsen with a normatively driven legal order geared to the most general features of international life in the spirit of McDougal, and considered his earlier book as having such a purpose by proposing "a general theory of society and law which is potentially universal." He faults McDougal as rooting his approach too parochially in the distinctively Western democratic experience to be universally acceptable. These ideas about law are carried forward in *Eutopia*, but under the North Star of fear and trembling about the human future.

For Allott, "[l]aw is the primary social system serving the survival and flourishing of the human species" (p. 210). In a somewhat grandiose assertion he writes, "[b]y means of the idea of law we human being have taken power over everything, not least power over ourselves" (p. 209). In this era of seeming powerlessness against the pushbacks of nature or the eruption of irrational politics among publics and leaders, it becomes difficult to comprehend such celebrations of the role of law in regulating the human condition. So as to align lawmaking and rule of law with the present, Allott insists "[i]t is time for human beings to become a kind of philosopher" (p. 210). Presumably, such a sentiment should be read as his kind of philosopher who would tie the rule of law, constitutionalism, and international law to human survival and flourishing, the normative goals affirmed throughout as vital within our historical situation.

In a comprehensive chapter on law as a generic dimension of the human condition Allott gives his ideas about the functioning of law and order, as well as law and custom, law and power, law as a system, and law and value (pp. 210–31). With respect to international law discussed as a distinct system, "a primary purpose of the present volume," Allott argues that it is necessary to promote "a fundamental reconstituting of international society, including the reimagining and remaking of the international legal

[12] *See* ALLOTT, EUNOMIA, *supra* note 1, at xlvii.

[13] All references in this and succeeding paragraphs are to *id.* at xlviii.

[14] *See* HENRY KISSINGER, WORLD ORDER (2014). For critique, see Richard Falk, *Henry Kissinger: Hero of Our Time*, 40 MILLENNIUM 155–64 (July 6, 2015).

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system," giving special attention to the relations between law and power (p. 215).

After reviewing the existing theories of law as applied to the international situation Allott is convinced that international law must be fundamentally changed so that it can serve the goals of human survival and flourishing, but how, and by whom? Allott calls for new law that is based on the primacy of these goals, reaffirming human agency in controlling the role of law, contending that we are the makers of law as "the supreme judges of the common good" (p. 232). In some tautological sense, yes, but as an existential matter of politics, psychology, history, and social structure, I would say, no to such an outpouring of anthropomorphic enthusiasm.

Conclusion

For anyone seeking a comprehensive world order vision of what exists and what might be, this book is definitely worth the effort, even if the result, as in my case, is to feel that its value is mainly the focus on the centrality of the law phenomenon rather than on depicting a plausible path to a desirable human future. I find Allott's call for a revolution of the human mind as itself the means for asserting benign control over the human condition now so imperiled to be "whistling in the dark." The structures of power and wealth are entrenched in support of the worst features of "lawlessness." We are in the midst of a regressive era in which we, as a species, are losing the ecological, geopolitical, and ethical struggles for a benign human future.

There has been much discussion in scientific circles as to whether it is appropriate to label our age as that of the "anthropocene," given the impact that human activity has on the sustainability of life on planet earth. Allott converts this acknowledgement into a hyperbolic version of anthropomorphism in which the human mind is crowned as supreme ruler over all that transpires on earth. I find this points our worried sensibilities in the wrong direction.

Although agreeing with Allott on the dangers of state-centricism and political realism, as well as on the goals of species survival and flourishing, I disagree on the dynamics of collective awakening. I would urge "humility" and "compassion" as the guiding values in any constructive reappropriation of the human future motivated by the desire to ensure survival and promote goals of living together happily *as a species.*

In the end, we can thank Allott for providing us with a vision that is rich in conceptual content and moral energy, a philosophic manual for the job that needs to be done. But even after a close reading, the roadmap is missing, and we are left with the imperative of providing one as a civilizational priority. We can agree with Allott that a new international law that is guided by human well-being rather than the old international law catering to the power/wealth lusts of powerful states is essential, but to identify such a need is far removed from its satisfaction.

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Military Trials of War Criminals in the Netherlands East Indies 1946–1949. By Fred L. Borch. Oxford, New York: Oxford University Press, 2017. Pp. x, 255. Index. $90.
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This excellent book addresses a void in the academic literature: an authoritative well-written documentation of post-World War II war crimes trials conducted by an Allied state. Much more than a mere recitation of cases (although there is that, too), this slim volume is a window to an earlier time and an earlier law of war.

"Military tribunal" is the unifying term for all military proceedings of a judicial nature. Courts-martial, employed in all states' military legal systems, are a form of military tribunal. Military commissions are another type. The author closely examines a related form of military tribunal, Holland's 448 "temporary courts-martial" that tried 1,038 Japanese, Koreans, and Formosans in the Netherlands East Indies