

Charles Reich's Unfinished Work

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Charles Reich never stopped worrying for the world. Throughout his life, Reich diagnosed our social and environmental ills with unmatched prescience, insight, and clarity. Yet Reich also never stopped believing that our better selves could still prevail. Even as the zeitgeist turned decidedly against the “new consciousness” that he once proclaimed to be inevitable,¹ Reich never wavered in his conviction that true freedom must—and can—come from individuals working together.

By letter dated September 12, 2008, Reich shared two book proposals with me that, in his words, “address the same underlying problem in very different ways.”² With permission from Reich’s family, the *Yale Law Journal* agreed to publish these two brief writings as part of this *Forum* collection celebrating Reich’s life and work.

In one proposal, Reich lays out a vision of what he calls *The Individual Sector*,³ a space apart from the public and private sectors within which massive “machines” of governmental and corporate power have come to dominate the terms of human existence. Careful readers of Reich’s landmark article, *The New Property*,⁴ will recognize his distinctive brand of left libertarianism in this proposal, but the call for individual freedom feels more urgent now and informed by

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1. CHARLES A. REICH, THE GREENING OF AMERICA 1-19 (1970).
 2. Letter from Charles A. Reich to author (Sept. 12, 2008) (on file with author).
 3. Charles A. Reich, *The Individual Sector: A Book Proposal*, 129 YALE L.J.F. 694 (2020), [hereinafter Reich, *Individual Sector Proposal*]. Some of the themes of this proposal are also explored in Charles A. Reich, *The Individual Sector*, 100 YALE L.J. 1409 (1991), and Charles A. Reich, *Beyond the New Property: An Ecological View of Due Process*, 56 Brook. L. Rev. 731 (1990).
 4. Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964).

intervening decades of political fracture, mounting inequality, market creep, and the rise of existential environmental threats.

Reich locates declining human vitality and the rise of America's "red-blue split" in what he calls our unrecognized loss of "human habitat."⁵ Without "a sanctuary, home and habitat where human beings can flourish," individuals have turned on each other rather than on the machines that have wedged them in with ever tightening force.⁶ The private sector that nominally belongs to individuals instead is controlled by "giant non-human entities" that increasingly enjoy "totalitarian [power] superimposed upon our earlier form of constitutional government."⁷

Critically, Reich draws direct connections between the environmental crisis and the "human habitat crisis."⁸ In the plain and charismatic prose that marks all of his work, Reich writes: "Human beings have created power so immense that it has escaped the rule of law. And lawless power must inevitably become destructive power. It has turned against nature, and now it has turned against us, its creators."⁹ The response Reich offers to this grave moment of irresponsible power is revolutionary: he proposes instituting a constitutionally protected "Individual Sector," a third pillar of our political economy in which individuals could be guarded against the oppressive footprint of organizational power, whether governmental or corporate.¹⁰

The second book proposal, *The Rise of Lawless Power*,¹¹ carries this theme further. Reich examines human power and its contemporary amplification through technologies such as weapons of mass destruction, the corporate form, and mass media. He fears the unchecked power of "the megahumans of today, who command governments, corporations, and private armies."¹² Although written nearly a decade before we learned how deliberately oligarchic powers have weaponized corporate-owned social media to undermine democratic processes,¹³ *The Rise of Lawless Power* has much to say to us today.

5. Reich, *Individual Sector Proposal*, *supra* note 3, at 694-95.

6. *Id.* at 695.

7. *Id.* at 698.

8. *Id.* at 697.

9. *Id.* at 695.

10. *Id.* at 696, 699-700.

11. Charles A. Reich, *The Rise of Lawless Power: A Book Proposal*, 129 YALE L.J.F. 701 (2020).

12. Reich, *supra* note 11, at 703.

13. Joint Statement from the Department of Homeland Security and Office of the Director of National Intelligence on Election Security, DEP'T HOMELAND SECURITY (Oct. 7, 2016), <https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national> [<https://perma.cc/XH34-3N7L>].

In response to the rise of lawless power, Reich returns to one of his life-long themes: “we must . . . begin to see that no one is left to save us but ourselves acting as individual human beings.”¹⁴ Although we may experience a foreboding sense that “the machines have taken over, and they will carry us straight to catastrophe,” we must also remember that “[w]e have created these destructive forces, and we alone can change their course.”¹⁵ The recent resurgence of mass protests, civil disobedience, and other forms of activism in the face of the climate crisis may mark an awakening of the sort Reich longed to witness. Indeed, features of the climate movement, such as Extinction Rebellion, seem perfectly matched to Reich’s description of the true significance of 1960s era activism. In Reich’s words, every instance of that activism, “from the most playful to the most serious, had this in common: it was a response. They were all a response to an urgent sense that things were out of control, and that no one was minding the store, least of all those in positions of responsibility”¹⁶

Although shared by Reich in 2008, *The Individual Sector* and *The Rise of Lawless Power* carry an eerie resonance in 2020. We desperately need the books that Reich proposed but was unable to complete. To an environmental law scholar, what marks the two proposals as especially profound and necessary is that Reich revives political economy by placing ideas about nature at the heart of his analysis.¹⁷ Environmental law is a fruitful place to engage political theory precisely because the field haunts our visions of liberal harmony and plenitude in just the right way. Environmental law poses the limit cases, the stress tests, that liberalism must endure in order to be durable.¹⁸ Climate change has made these questions literally unavoidable and thus the significance of Reich’s ideas and writing is only going to increase with the temperature.

It falls to us now to take up Charles Reich’s unfinished work and to continue, as he did, showing up with hope. We must do so—again, as Reich did—even when the path to equitable and sustainable human flourishing seems hopeless to all but ourselves alone.

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14. Reich, *supra* note 11, at 704.

15. *Id.* at 705.

16. *Id.* at 704.

17. For a fully realized and equally visionary project in this vein, see JEDEDIAH PURDY, *AFTER NATURE: A POLITICS FOR THE ANTHROPOCENE* (2019).

18. See generally DOUGLAS A. KYSTAR, *REGULATING FROM NOWHERE: ENVIRONMENTAL LAW AND THE SEARCH FOR OBJECTIVITY* (2010).