

1 Embracing Vulnerability: Notes Towards Human Rights for 2 a More-Than-Human World*

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4
5 This chapter follows human corporeality into a more intimate engagement with
6 materiality in order to explore embracing vulnerability as one way to re-imagine human
7 rights for a more than human world.

8 Human rights have a meta-ethical status in the juridical order, but are currently
9 profoundly challenged by rights-threatening developments: growing levels of populist
10 authoritarianism; deepening forms of surveillance and control (including the increasing
11 surveillance and control of public, quasi-public and private spaces); widespread corporate
12 rights abuse;¹ extensive panoptic eco-governance; and—not least—by a whole range of
13 crises threatening the future survival of multiple species, communities and eco-systems.
14 Meanwhile, human rights continue to reveal familiar paradoxes and tensions. On one
15 hand, human rights are celebrated as cardinal achievements of humanism—their post-
16 War inauguration characterised by the Universal Declaration of Human Rights (UDHR)²
17 as being an international humanitarian reaction to ‘barbarous acts’ searing the conscience
18 of humankind,³ [needing no] philosophical argument in addition to the experience of the
19 Holocaust.⁴ On the other hand, human rights are subjected to important critiques, the
20 two most relevant of which for present purposes concern their attachment to an
21 exclusory form of rationalist anthropocentrism,⁵ and (relatedly) their legitimating role in
22 an international order consolidating oppressive levels of neo-coloniality.⁶

23 Human rights also confront a range of posthuman challenges⁷ and the humanist
24 subject undergirding human rights faces a deepening crisis of legitimacy. Braidotti,
25 addressing the crisis of humanism, identifies three strands of posthumanism.⁸ First,
26 *reactionary posthumanism*—an intensified commitment to humanism: some neo-Kantian
27 accounts of human rights might fit this category—as does Nussbaum’s non-Kantian
28 ‘humanistic cosmopolitan universalism’.⁹ Secondly, *analytic posthumanism* emerging from
29 contemporary science and technology studies—the implications of which undermine the
30 centrality of the human and generate important dilemmas for human rights law and
31 theory.¹⁰ Finally, *critical posthumanism*, Braidotti’s ‘own variation’, the goal of which is to

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¹ Transnational Corporations’ impact on human rights ranges from a direct role in violations, such as abuses of employees or the environment, to indirect support of governments guilty of widespread repression. The conduct of TNCs can also have a dramatic impact on poverty, either by directly undermining human welfare (e.g., limiting a community’s access to land or food) or influencing relevant government policies and laws (e.g., relating to agriculture, technology, employment and subsidies), C Jochnick, ‘Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights’ (1999) 21 *Human Rights Quarterly* 56-79 at 65.

² GA Res. 217(111) of 10 December 1948, UN Doc. A/810 at 71 (1948).

³ Ibid, Preamble.

⁴ J Morsink, ‘World War Two and the Declaration’ (1993) 15 *Human Rights Quarterly* 357–405, at 358.

⁵ C Gearty, ‘Do human rights help or hinder environmental protection?’ (2010) 1/1 *Journal of Human Rights and the Environment* 7-22.

⁶ R Kapur, ‘Human Rights in the 21st Century: Take a Walk on the Dark Side’ (2006) 28 *Sydney Law Review* 665-687; A Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: CUP, 2005).

⁷ U Baxi, *Human Rights in a Posthuman World* (Oxford: OUP, 2009).

⁸ R Braidotti, *The Posthuman* (Cambridge: Polity Press, 2013) (Kindle Edition) at KinLoc 695-900.

⁹ Ibid, KinLoc 702.

¹⁰ See (2018) 43/1 *Science, Technology and Human Values*, Special Edition: ‘New Technologies, Developments in the Biosciences and the New Frontiers of Human Rights’ 016224391773614 (Available at <http://journals.sagepub.com/toc/sthd/43/1>) (Date of last access: 9th March 2018) (Guest editor: N Vaisman).

32 ‘move beyond analytic posthumanism and develop affirmative perspectives on the
33 posthuman subject’.¹¹

34 It is important to admit the depth of the contemporary challenges faced by
35 traditional humanistic conceptions of human rights. Breakthroughs in biotechnology and
36 cybernetics and developments in artificial and robotic intelligence challenge the idea that
37 the human is neatly separable from the machine and is uniquely capable of reasoning and
38 higher level calculative function. Meanwhile, increased understanding of the multiple
39 forms of intelligence and vulnerability distributed across animal, bird and fish populations,
40 and among trees and other living ecosystems, has generated impetus towards the award of
41 rights to range of non-human beneficiaries.¹² Rights claims for animals, ‘plants and even
42 inanimate objects’¹³ respond to the fact that anthropocentrism is increasingly
43 anachronistic—and that the current global order feeding off it produces extensive and
44 multiple dangers for all forms of life—including the human. Indeed, multiple crises
45 emerging from the centrality of ‘the human’ and its transnational corporate avatar¹⁴ feed
46 the pervasive vulnerability and deepening levels of violence linked with neoliberal
47 globalisation¹⁵ and to its ‘global commodification of living organisms’.¹⁶

48 This chapter, in response to such concerns and developments, seeks, in line with
49 the affective nuances of critical posthumanism, to offer a reflection on human rights and
50 vulnerability in an ultimately affirmative register. It does so by ‘following’ vulnerable
51 corporeality towards New Materialist understandings of materiality and towards a human
52 rights ontology embracing the de-centring of the human and the refusal of its hierarchical
53 ontological primacy. Human rights are re-imagined here through an (in part, critical)
54 ‘embrace’ of vulnerability theory to resituate human rights as a form of juridical
55 attentiveness to human ‘critters’¹⁷ in a more-than-human world, contributing, it is hoped,
56 to vulnerability theory in the process.

57 The chapter offers an unapologetically theoretical experiment—a setting off
58 without final arrival. It opens by offering an account of the relationship between
59 vulnerability and human rights (and examining the politics of vulnerability in human
60 rights) before introducing ‘the vulnerability thesis’ and human rights, and reflecting briefly
61 on the relationship between vulnerability and dignity. It then gestures towards an as-yet
62 contingently traced, broadly New Materialist approach to vulnerability and human rights
63 before offering some concluding thoughts and further research directions.

64 *Vulnerability and Human Rights—Opening Critical Notes*

65 Human rights, for all their *putative* focus on the human—have never been entirely
66 dedicated to the protection of human beings as corporeally vulnerable living beings: the
67 universal subject of human rights has been criticised for its relative disembodiment and
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¹¹ Braidotti, above n 8 at KinLoc 822.

¹² For example, LB Solum, ‘Legal Personhood for Artificial Intelligences’ (1992) 70 *North Carolina Law Review* 1231-1287; P Cavalieri, *The Animal Question: Why Nonhuman Animals Deserve Human Rights* (Oxford University Press, 2001); G Teubner, ‘Rights of Non-Humans? Electronic Agents and Animals as New Actors in Politics and Law’ (2006) 33 *Journal of Law and Society* 497-521; CD Stone, *Should Trees Have Standing? Law, Morality and the Environment* (Oxford: OUP, 2010).

¹³ JR Pennock, ‘Rights, Natural Rights and Human Rights—a General View,’ in JR Pennock and J Chapman, eds., *Human Rights: NOMOS XXIII* (New York: New York University Press, 1987), 19.

¹⁴ A Grear, ‘Deconstructing *Anthropos*: A Critical Legal Reflection on “Anthropocentric” Law and Anthropocene “Humanity”’ (2015) 26/3 *Law and Critique* 225-249.

¹⁵ P Kirby, *Vulnerability and Violence: The Impact of Globalisation* (London, Ann Arbor: Pluto Press, 2006).

¹⁶ Braidotti, above n 8 at KinLoc 205.

¹⁷ To borrow Haraway’s term: D Haraway, *When Species Meet* (London and Minneapolis: University of Minnesota Press, 2008).

69 invulnerability,¹⁸ and human rights have been criticised for gaps between the ‘human’ and
70 the ‘citizen’ through which human beings *as such* tend to fall.¹⁹ Meanwhile, conceptual and
71 linguistic confluences between ‘the human’, the ‘person’, and the ‘legal person’ have been
72 widely exploited by transnational corporations to such an extent that the UDHR paradigm
73 has mutated into a neoliberal ‘trade-related market-friendly’ paradigm of human rights.²⁰
74 This paradigm;

75
76 seeks to reverse the notion that universal human rights are designed for the attainment of
77 dignity and wellbeing of human beings and for advancing the security and well being of
78 socially economically and civilizationally vulnerable peoples and communities. The
79 emergent paradigm insists upon the promotion and protection of the collective human
80 rights of global capital in ways that ‘justify’ corporate well being and dignity even when it
81 entails gross and flagrant violation of human rights of actually existing human beings and
82 communities.²¹

83
84 Perhaps such critiques and anxieties can be summed up by saying that human
85 rights express ineradicable ideological tensions reflecting struggles for their meaning and
86 for the meaning of the human—and that such struggle has reached an urgent
87 contemporary intensity. Capitalist formations use human rights law to claim a form of
88 legal humanity,²² while advocates for marginalised humans, non-human animals and
89 other forms of life imperiled by the corporate colonisation of lifeworlds fight back
90 against the global production of precarity²³ and the ‘neoliberalisation of nature’.²⁴ Both
91 sides in the struggle draw upon ‘the logics, paralogics and languages of human rights’²⁵—
92 logics and languages that have never lost their meta-ethical and political potency, despite
93 being assailed by critiques and doubts.

94 The struggle for human rights meanings is thus a key battleground. A particularly
95 salient and influential critique concerns the dominance of the archetypal conceptual
96 paradigm of the liberal (humanist, Eurocentric) subject of rights, which ‘stands at the
97 centre of the universe and asks the law to enforce his entitlements without great concern
98 for ethical considerations and without empathy for the other’.²⁶ It is this paradigmatic
99 subject of human rights that is exposed as being—as Nino has argued—‘prior to any
100 end, interest and desire’,²⁷ whose most fundamental characteristic is the ‘ability to

¹⁸ A Grear, ‘Challenging Corporate Humanity: Legal Disembodiment, Embodiment and Human Rights’ (2007) 7 *Human Rights Law Review* 511-543; D Otto, ‘Disconcerting “Masculinities”’: Reinventing the Gendered Subject(s) of International Human Rights Law in D Buss and A Manji (eds), *International Law: Modern Feminist Approaches* (Oxford, Hart Publishing, 2005) 105-129.

¹⁹ Most famously by Hannah Arendt in *The Origins of Totalitarianism* (New York: Harcourt, 1971): ‘... the conception of human rights, based upon the assumed existence of a human being as such broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had lost all other qualities and specific relationships—except that they were still human’ (at 299). See also A Grear, *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity* (Basingstoke: Palgrave MacMillan, 2010) at 150-155.

²⁰ U Baxi, *The Future of Human Rights* (Oxford: OUP, 2002) ‘Human Rights Movements and Markets,’ and ‘The Emergence of an Alternate Paradigm of Human Rights’ (chapters 7 and 8 respectively); C Harding, U Kohl, and N Salmon, *Human Rights in the Market Place: The Exploitation of Rights Protection by Economic Actors* (Aldershot: Ashgate, 2008).

²¹ Baxi, above n 20 at 132.

²² Grear, above n 18 and 19.

²³ G Standing, *The Precariat: A New Dangerous Class* (London: Bloomsbury, 2011); S Nasstrom and S Kalm, ‘A democratic critique of precarity’ (2015) 5/4 *Global Discourse* 556-573.

²⁴ J McCarthy, ‘Commons as counterhegemonic projects’ (2005) 16/1 *Capitalism Nature Socialism* 9-24, at 11.

²⁵ Baxi, above n 20, at 132.

²⁶ C Douzinas, *The End of Human Rights* (Oxford: Hart, 2000) at 238.

²⁷ C Nino, *The Ethics of Human Rights* (Oxford: Clarendon, 1993), at 110.

101 choose'.²⁸ The ontological separation assumed between the willful Eurocentric subject-at-
102 the-centre and the world as an objectified field, has in turn resulted in 'the
103 impoverishment of the subject'.²⁹ This is a process, according to Douzinas, by which
104 human rights have become susceptible to trivialisation and commodification and their
105 'endless extension . . . to match ever expanding desire threatens their protective role'.³⁰

106 Yet, despite their ideological weaknesses, human rights, for those deploying them
107 in political struggles or claiming them as forms of protection against injustice, offer an
108 unrivalled degree of semantic force. And, at the heart of such struggles and claim-making
109 practices, the potential of human rights can readily be understood to have an intimate
110 relationship with human vulnerability.

111 Indeed, at first glance it might seem that the relationship between vulnerability
112 and human rights is somewhat self-evident. Human rights, according to their own
113 dominant self-presentation in the UDHR and in related treaties,³¹ emerged as a response
114 to the pathogenic imposition of suffering, expressing an 'unprecedented international
115 consensus on substantive norms with high moral voltage'.³² At the heart of the UDHR
116 lay the visceral experience, according to Morsink's analysis of the drafting process,³³ of
117 the Holocaust, and while the precise role of the Holocaust can be disputed, there is no
118 doubting the public shock at 'the haunting and nightmarishly painful visibility of corpses:
119 corpses piled high, in pallid, ravaged mounds at Auschwitz and other concentration
120 camps—and the possibly even more unbearable images of the ghostly living bodies of
121 the emaciated, skeletal survivors in their ragged camp uniforms'.³⁴ Something deeply
122 *creaturely* was at work in the international response to such corporeal violation. And, in
123 this respect, as in others, the UDHR follows the earlier French Declaration of the Rights
124 of Man and the Citizen for which outraged political response to corporeal violation was
125 also decisive.³⁵

126 Nevertheless, the visceral energies inspiring the genesis of both Declarations
127 were selectively muted by influences at work in the *real politik* of rights
128 institutionalisation.³⁶ The UDHR, textually modeled on the earlier Declaration,³⁷ installed
129 an abstract subject of rights (only this time, a 'human' instead of a 'man')—a move
130 repeating, in effect, the earlier Declaration's universalisation of a Eurocentric masculinist
131 particular.³⁸ Indeed, a pattern of elite property-centred retrenchment is visible throughout

²⁸ Douzinas, above n 26, at 235.

²⁹ Ibid, at 236.

³⁰ Ibid, at 242.

³¹ See, especially, the International Covenant on Economic, Social and Cultural Rights (ICESCR): Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), and the International Covenant on Civil and Political Rights (ICCPR) Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

³² B De Sousa Santos, *Towards a New Legal Common Sense: Law, Globalization and Emancipation* (London, Butterworths 2000) 260.

³³ Morsink, above n 4; J Morsink 'Hitler's Organic State and Articles 1 and 2' (1993) 15 *Human Rights Quarterly* 359–366.

³⁴ H Caven, 'Horror in Our Time: Images of the Concentration Camps in the British Media 1945' (2001) 21 *Historical Journal of Film, Radio and Television* 205–253.

³⁵ L Hunt, *Inventing Human Rights: A History* (New York, WW Norton 2007).

³⁶ N Stammers 'Social Movements and the Social Construction of Human Rights' (1999) 21 *Human Rights Quarterly* 980–1008.

³⁷ SP Marks, 'From the "Single Confused Page" to the "Decalogue for Six Billion Persons": The Roots of the Universal Declaration of Human Rights in the French Revolution' (1998) 20 *Human Rights Quarterly* 459–514.

³⁸ L Hunt, *The French Revolution and Human Rights: A Brief Documentary History* (New York: Bedford/St Martins Press, 1996); J Scott, *Only Paradoxes to Offer: French Feminists and the Rights of Man* (Cambridge Mass.: Harvard University Press, 1996).

132 the history of human rights³⁹—a pattern for which the abstract human rights subject is
133 ideologically pivotal.

134 The very purpose of according priority to the abstract subject is, of course, to
135 submerge social conflicts and fractious politics.⁴⁰ As Keenan puts it, ‘ethics and politics
136 ... are evaded when we call on the conceptual priority of the subject, agency or identity
137 as the grounds of our action’.⁴¹ It is highly significant that ‘[o]nce the slightest empirical
138 or historical material is introduced into abstract human nature, once we move from the
139 declarations onto the concrete embodied person, with gender, race, class and age, human
140 nature with its equality and dignity retreats rapidly’.⁴² So too does corporeal vulnerability,
141 because the abstract subject of human rights installs a particular form of relative
142 *invulnerability* into the subject of human rights.

143 The dignified, autonomous subject of human rights is a subject whose
144 vulnerability consists primarily in the possibility of attacks upon its (predominantly
145 Kantian) dignity and/or autonomy—or upon the pre-conditions/conditions for that
146 autonomy.⁴³ This autonomy is built, as numerous critics have noted, upon Eurocentric
147 ‘Reason’, which operates a ‘politics of disembodiment and embodiment’⁴⁴
148 operationalising what Kapur calls the ‘dark side’ of human rights.⁴⁵

149 This variant of autonomy is also foundational to the ‘philosophical speciesism’⁴⁶
150 of human rights and deeply complicit in the ‘entanglements of oppression’⁴⁷ driving
151 spiraling levels of multi-species vulnerability and industrial-scale violence against non-
152 human living beings and systems.⁴⁸

153 The politics of disembodiment and embodiment is also a politics of vulnerability.
154 The abstract (quasi-disembodied) human rights universal produces a set of ‘others’,
155 disqualified from being its paradigmatic instances. Pride of archetypal place is reserved
156 for the construct of the rational, white (European) male—the complete and self-evident
157 exemplar of human universality (the most rational of subjects (*the* subject)). This
158 subject’s less-than-fully-rational ‘others’ are constructed, meanwhile, as inherently and
159 quintessentially vulnerable in ways that hinge precisely upon their assumed/assorted lack
160 of rationality—glaring examples being ‘women and children’⁴⁹ and ‘savages’.⁵⁰

³⁹ M Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era*, 2nd edn (Berkeley, CA University of California Press 2008).

⁴⁰ A particularly powerful example of how this submersion functions is presented by A Norrie, *Crime, Reason and History: A Critical Introduction to Criminal Law* (Cambridge: CUP, 2014).

⁴¹ T Keenan, *Fables of Responsibility: Aberrations and Predicaments in Ethics and Politics* (Stanford CA: Stanford University Press, 1997) at 3, cited by E Swanson Goldberg and A Schultheis Moore, *Theoretical Perspectives on Human Rights and Literature* (London: Routledge, 2012) at 3.

⁴² Douzinas, above n 26, at 96.

⁴³ J Anderson, ‘Autonomy and Vulnerability Entwined’ in C MacKenzie, R Rogers and S Dodds, *Vulnerability: New Essays in Ethics and Feminist Philosophy* (Oxford, Oxford University Press 2014), 134-161.

⁴⁴ U Baxi, ‘Foreword’, in Grear, above n 19.

⁴⁵ Kapur explains that ‘the liberal project could reconcile promises of universality with exclusions in practice through a clear and persuasive logic. Rights and benefits were linked to the capacity to reason, and the capacity to reason was tied to notions of biological determinism, racial and religious superiority, and civilizational maturity’: R Kapur, ‘The Citizen and the Migrant: Postcolonial Anxieties, Law, and the Politics of Exclusion/Inclusion’ (2007) 8 *Theoretical Inquiries* 537-570 at 541. See also Kapur, above n 6.

⁴⁶ Gearty, above n 5.

⁴⁷ D Nibert, *Animal Rights, Human Rights: Entanglements of Oppression and Liberation* (Oxford: Rowman and Littlefield, 2002); M Dekha, ‘Intersectionality and Post-humanist Visions of Equality’ (2008) 23 *Wisconsin Journal of Law, Gender and Society* 249-267.

⁴⁸ Kirby, above n 15 links vulnerability and violence to globalisation, which is in turn driven by separative ontological assumptions driving the objectification of other animals and ‘nature’ more broadly: Nibert, above n 47.

⁴⁹ See D Otto, ‘Disconcerting “Masculinities”’, above n 18. Otto argues (at 105-6) that ‘the allegedly universal subject of human rights law . . . reproduces hierarchies, including those of [gender], race, culture,

161 These quintessentially vulnerable (less-than-fully-rational) human beings are
162 constructed as needing the protection of the white-male
163 savior/rescuer/protector/civilizer through the construction of an agency-denying
164 victimology.⁵¹ These others, paradoxically, are constructed as being especially inherently
165 vulnerable precisely because they are deemed incapable of the *kind* of vulnerability
166 fundamental to the human rights universal. Again, this is because the *kind* of vulnerability
167 central to the human rights universal turns upon the possibility of injury to fully rational
168 autonomy and/or the dignity founded upon it. And, in a further insult, paradigmatic
169 human rights violations are thus also imagined primarily as violations of (white) male
170 bodies.⁵² These, after all, are the smuggled bodies⁵³ that alone bear the fully dignified
171 rational autonomy not attributed to the ‘others’ of the human rights universal.

172 In short, the abstract universal human rights subject is simultaneously relatively
173 invulnerable *and* uniquely vulnerable. It is relatively *invulnerable* compared to the
174 quintessentially vulnerable others of human rights, but uniquely vulnerable to the *kind* of
175 injury most significant to the liberal subject of rights.

176 The body politics involved in this sleight of hand constructs ‘others’ to the
177 abstract subject as marginal precisely because they are deemed to be closer to the
178 ‘animality’ of the body and to the ‘mess and irrationality’ of ‘nature’. It is only these
179 others who need ‘protection’, or ‘civilization’ or ‘saving’.⁵⁴ Vulnerability functions,
180 therefore, as an ideological mechanism intrinsic to the hierarchical production of
181 marginalised human rights bearers, and moves along a bipolar axis between the full
182 rational agency of the human rights universal and the ‘victimhood’ of its quintessentially
183 vulnerable others. In this respect, the universal is at odds with the impulses of
184 universalisation driving the genesis of rights documents declaring the inclusion of
185 previously excluded others: women, children, indigenous peoples and others have all
186 fought for inclusion as specific rights-bearing subjects, as is well known. The very need
187 for them to have done so, however, points to the pervasive exclusions haunting the
188 abstract universal with its smuggled, uniquely rational and uniquely *invulnerable*/uniquely
189 vulnerable beneficiary.

190 Perhaps another way of getting at these complexities is to argue that vulnerability
191 is not—and cannot be—monolithic—including for human rights. MacKenzie, Rogers
192 and Dodds have recently offered an account of vulnerability that helps to respond to this
193 point.⁵⁵ Addressing the foundational question of what vulnerability *is*⁵⁶ and addressing
194 tensions between the two dominant answers to this question in the relevant literature, the
195 authors distinguish between ‘distinct but overlapping kinds of vulnerability’.⁵⁷ In this
196 context, they identify three *sources* of vulnerability useful for the argument to come:
197 *Inherent vulnerability* refers to ‘sources of vulnerability intrinsic to the human condition’,
198 which arise from human corporeality and vary in response to resilience. *Situational*

nation, socio-economic status and sexuality’.

⁵⁰ M Matua, ‘Savages, Victims and Saviours: The Metaphor of Human Rights’ (2001) 42/1 *Harvard International Law Journal* 42 (1): 201-46.

⁵¹ Otto, above n 18.

⁵² F Beveridge and S Mullally, ‘International Human Rights and Body Politics’ in J Bridgeman and S Millns (eds) *Law and Body Politics: Regulating the Female Body* (Aldershot: Dartmouth Publishing, 1995) 240-272.

⁵³ ‘The disembodiment of the masculine perspective is itself an inscription of a body’: S Ahmed, ‘Deconstruction and Law’s Other: Towards a Feminist Theory of Embodied Legal Rights’ (1995) 4 *Social and Legal Studies* 55-73 at 56.

⁵⁴ Otto, above n 18; Matua, above n 50; Kapur, above n 6 and n 57.

⁵⁵ C MacKenzie, R Rogers and S Dodds, *Vulnerability: New Essays in Ethics and Feminist Philosophy* (Oxford, Oxford University Press 2014).

⁵⁶ *Ibid*, 3-4.

⁵⁷ *Ibid*, 7.

199 *vulnerability* is ‘context-specific’ and arises in response to conditions that can be ‘short
200 term, intermittent or enduring’.⁵⁸ (Despite their analytical distinguishability, these two
201 sources of vulnerability are not ultimately separate and vulnerability is always ultimately
202 ‘experienced in the body’.⁵⁹) *Pathogenic vulnerability* arises from a range of sociopolitical,
203 social and interpersonal sources—and ‘a key feature of pathogenic vulnerability is the
204 way it undermines autonomy or exacerbates the sense of powerlessness engendered by
205 vulnerability in general’.⁶⁰

206 Notable in all these formulations is the centrality of human corporeality and the
207 semiotic imbrication of vulnerability, powerlessness, need, dependency, suffering and
208 harm. In both these respects, the formulations closely chime with two leading accounts
209 of ‘the vulnerability thesis’.

210

211 *The Vulnerability Thesis and Human Rights*

212 I turn first to the ‘vulnerability thesis’ developed as a critical heuristic by feminist legal
213 theorist, Martha Fineman.⁶¹ I begin here because Fineman’s thesis is highly influential
214 and was explicitly first developed as ‘a stealthily disguised human rights discourse’⁶²
215 aimed at her ‘audience’ in the United States of America.⁶³ Central to Fineman’s thesis is a
216 sustained attack on the relatively invulnerable ‘autonomous subject’ of the liberal order:
217 Fineman argues that the trope of ‘the vulnerable subject’ is ‘far more representative of
218 actual lived experience and the human condition and should be placed at the center of
219 our political and theoretical endeavours’.⁶⁴

220 The language that MacKenzie, Rogers and Dodds use to describe inherent
221 vulnerability, which addresses ‘sources of vulnerability intrinsic to the human condition’
222 that arise from human corporeality and vary in response to resilience, applies directly to
223 Fineman’s thesis.⁶⁵ For Fineman, vulnerability is ‘common and enduring’, ‘universal and
224 particular’: ‘

225

226 We have different forms of embodiment and also are differently situated within webs of
227 economic and institutional relationships. As a result, our vulnerabilities range in
228 magnitude and potential at the individual level. Vulnerability, therefore, is both universal
229 and particular; it is experienced uniquely by each of us.⁶⁶

230

231 Fineman’s emphasis on inherent vulnerability does not mean that she ignores
232 situational and pathogenic vulnerability: Fineman would be especially suspicious of some
233 situational accounts of vulnerability—arguing, for example, that vulnerability has been
234 unfairly characterised as being the particular condition of identified social groups and has
235 been pejoratively deployed to construct unacceptable forms of victimhood, dependency
236 and even pathology.⁶⁷ Fineman presents her vulnerable subject as an explicitly post-

⁵⁸ Ibid.

⁵⁹ Ibid, 8. (These two sources can both manifest as either of the two *states* of ‘potential versus actual’ vulnerability, *the dispositional* and *the occurrent*. The authors explain that women of child-bearing age are all dispositionally vulnerable to complications in childbirth, but whether or not that actualises as occurrent vulnerability turns on a host of situational and/or inherent factors).

⁶⁰ Ibid, 9.

⁶¹ MA Fineman, ‘The Vulnerable Subject and the Responsive State’ (2010) 60 *Emory Law Journal* 251-275.

⁶² Ibid, 255.

⁶³ Ibid.

⁶⁴ MA Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ (2008) 20 *Yale Journal of Law and Feminism* 1-23, at 2.

⁶⁵ MacKenzie et al, above n 55, at 7.

⁶⁶ Fineman, above n 61, at 269.

⁶⁷ Fineman, above n 64, at 8. Fineman cites constructions of children, women and minorities as ‘vulnerable, pathological and in a perpetual state of victimhood’ in n 20, referring to C Knowles, *Family*

237 identity conception focusing upon ‘exploring the nature of the human part, rather than
238 the rights part, of the human rights trope’.⁶⁸

239 Fineman is not, however, a human rights theorist and nor does she claim or set
240 out to be. Despite that, her argument that universal variably experienced vulnerability
241 should replace the relatively invulnerable autonomy of the traditional liberal subject
242 chimes well with attacks on the deceptive universality of the autonomous, dignified
243 subject of human rights declarations, as does her wariness concerning pejorative
244 deployments of vulnerability to pathologise certain groups and identities. Fineman’s
245 work is not free, though, from important ambiguities from a human rights perspective.

246 Her positioning of institutions as vulnerable,⁶⁹ her notion of the ‘responsive
247 state’,⁷⁰ and her deployment of the market-soaked language of ‘assets’ in the production
248 of resilience⁷¹ are all reasons why scholars have had cause to question her approach, but
249 the most relevant ambiguity for present purposes concerns Fineman’s ontology. Fineman
250 argues that

251
252 [o]ne promising theoretical potential of making vulnerability central in an analysis of
253 equality is that attention to the situation of the vulnerable individual allows us to redirect
254 our focus onto the societal institutions that are created in response to individual
255 vulnerability. This institutional focus has the effect of supplementing attention to the
256 individual subject by placing him/her in social context.⁷²

257
258 Fineman’s language is revealing: societal institutions are ‘*created in response to*
259 *individual vulnerability*’—and ‘*this institutional focus supplements attention to the individual*
260 *subject by placing him/her in social context*’. The individual here appears to be in some
261 sense, pre-social, requiring insertion into ‘social context’, and Wall has argued (for
262 different but related reasons) that ‘the assertion that placing the individual in its
263 institutional context socialises the individual is far from satisfactory’,⁷³ because it appears
264 to refract sociality through institutionalisation.⁷⁴

265 This sociality, I suggest, is also too limited in its embrace of the corporeality of
266 the vulnerable human subject and its implications: It is the fundamentally natal eco-
267 sociality intrinsic to human corporeality that is so promising for an ontology of
268 vulnerability and human rights responsive to the entangled materio-sociality of the
269 human and non-human. It is this natal, materially entangled eco-sociality, moreover, that
270 offers a more empirically faithful—and politically radical—account of the world.⁷⁵

271 Some of these potential limitations merely reflect that fact that Fineman’s
272 concern is not primarily with human rights but with the lack of substantive equality in

Boundaries: The Invention of Normality and Dangerousness (New York: Broadview Press, 1996) at 108-9. See also, M Fineman, *The Autonomy Myth: A Theory of Dependency* (New York: The New Press, 2003), especially at 33-35.

⁶⁸ Fineman, above n 61, at 255.

⁶⁹ IR Wall, ‘On Pain and the Sense of Human Rights’ (2008) 29 *Australian Feminist Law Review* 53-76, at

⁷⁰ S Coyle, ‘Vulnerability and the Liberal Order’ in M Fineman and A Gear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Aldershot: Ashgate, 2013) 61-76.

⁷¹ Wall argues that seeing rights or ‘assets’ as modes of response to the market society limits the imagination of what rights can become: ‘Institutions are not vulnerable in the same way that people are, rights cannot be seen as assets to be accumulated, and to see the world through the eyes of the market is to refuse to think the creation and transformation at the heart of human rights’, above n 69, at n 54.

⁷² Fineman, above n 64, at 15.

⁷³ Wall, above n 69, n 54.

⁷⁴ *Ibid.*

⁷⁵ For a stunning exploration of the broader entanglement of the human-non-human see A Tsing, *The Mushroom at the End of the World: On the Possibility of Life in Capitalist Ruins* (Princeton: Princeton University Press, 2015).

273 the USA. Fineman explicitly leaves behind her disguised human rights discourse
274 relatively early on in her work to focus more broadly upon ‘vulnerability and the human
275 condition’.⁷⁶ Her observations concerning the lack of a US human rights discourse, US
276 exceptionalism in relation to core international human rights instruments,⁷⁷ and judicial
277 resistance to human rights as a ‘foreign fads’,⁷⁸ were never intended to offer an extended
278 engagement with human rights or with their ontology. For that, we turn to the work of
279 Bryan Turner.

280 In *Vulnerability and Human Rights*,⁷⁹ Turner provides a sustained sociological
281 account of the vulnerability thesis and human rights,⁸⁰ identifying human ‘embodied
282 vulnerability’ as the ontological foundation of human rights universalism. In this section
283 of my reflection I will examine Turner’s argument, drawing on my earlier discussion of it
284 in *Re-Directing Human Rights: Challenging Corporate Legal Humanity*.⁸¹

285 Turner’s conception of vulnerability, like Fineman’s and the other accounts
286 surveyed by MacKenzie, Rogers and Dodds, focuses on vulnerability’s intimate
287 relationship with the capacity of the human being to suffer. Turner argues that ‘suffering
288 is inevitable and misery is universal’ and that ‘we suffer because we are vulnerable, and
289 we need, above all else, institutions that will give us some degree of security’.⁸² Human
290 rights are ‘rights enjoyed by individuals by virtue of being human—and as a consequence
291 of their shared vulnerability’,⁸³ and can ‘be defined as universal principles, because human
292 beings share a common ontology that is grounded in a shared vulnerability’.⁸⁴

293 Turner draws upon an argument made by Michael Ignatieff,⁸⁵ in which Ignatieff
294 suggests that human rights need to be understood as the basis for a shared deliberation
295 concerning how humans should treat one another but states that ‘the ground we share
296 may actually be quite limited: not much more than the basic intuition that what is pain
297 and humiliation for you is bound to be pain and humiliation for me. But this is already
298 something’.⁸⁶ Turner argues, extending Ignatieff’s claim, that it is our ‘capacity for
299 suffering that creates a significant basis for universalism’.⁸⁷

300
301 While humans may not share a common culture, they are bound together by the risks
302 and perturbations that arise from their vulnerability. Because we have a common
303 ontological condition as vulnerable, intelligent beings, human happiness is diverse, but
304 misery is common and uniform. This need for ontological security provides a strong
305 moral argument against cultural relativism and offers an endorsement of rights claims for
306 protection from suffering and indignity. While liberal theory is largely about the political
307 dimension of human rights, ontological insecurity indicates a cluster of salient social and
308 economic rights... fundamentally connected with human embodiment.⁸⁸

310 For Turner, it is the commonality emerging from the uniformity of
311 misery and the need for ontological security that provides ‘a strong moral argument’ for

⁷⁶ Fineman, above n 61, at 255.

⁷⁷ Ibid, 254-5.

⁷⁸ Ibid, at 255.

⁷⁹ B Turner, *Vulnerability and Human Rights* (Pennsylvania: Pennsylvania University Press, 20006).

⁸⁰ Ibid, at 2.

⁸¹ Grear, above n 19.

⁸² Turner, above n 79, at 127.

⁸³ Ibid, at 3.

⁸⁴ Ibid, at 6.

⁸⁵ M. Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001).

⁸⁶ Ibid, at 95.

⁸⁷ Turner, above n 79, at 9.

⁸⁸ Ibid.

312 universalism.⁸⁹ Anticipating the obvious counter-argument that suffering is not uniform,
313 Turner concedes that while suffering may be variable, pain is not: ‘Whereas bankruptcy,
314 for example could involve some degree of variable psychological suffering, a toothache is
315 a toothache’.⁹⁰ Turner ultimately founds the ontology of human rights universalism, then,
316 on the ‘common and uniform’ misery of physical pain. But pain, as Morris has shown, is
317 ‘decisively shaped or modified by individual human minds and [by] specific human
318 cultures’.⁹¹ It is ‘historically, culturally and psychosocially constructed—[and] is “always
319 more than a matter of nerves and neurotransmitters”’.⁹² Pain, we might say, is *culturally*
320 *relative*. Morris demonstrates that ‘[w]e learn how to feel pain and what it means’⁹³ and
321 that ‘[w]hen we fall into pain, we also fall into a net of already constructed meanings’.⁹⁴ If
322 this is the case, then physical pain cannot be deployed to defeat cultural relativism in the
323 way that Turner proposes. Indeed, the more we understand pain, ‘the more we learn
324 anatomically and neurologically about it, the more we learn that it is the very hard wiring
325 of our bodies, that there is no “pain centre”, there is no place in which the “objective”
326 pain ends and the “subjective” suffering begins’.⁹⁵ Turner did not, in any case, need to
327 rely on pain in this way to ground vulnerability as the ontological foundation of human
328 rights. Variable experience does not defeat a universalism drawing upon human
329 corporeal vulnerability.⁹⁶

330 From the point of view of a critical human rights approach, there are further
331 issues with Turner’s thesis. First, his understanding of vulnerability leads him to suggest
332 that ‘ontological insecurity’ implies a particular cluster of social and economic rights. He
333 then anticipates the claim that ‘the vulnerability thesis can be further criticized because it
334 is very relevant to some human rights, but not to others’.⁹⁷ This concession forces him to
335 link democracy and the right to health in order to construct vulnerability as an indirect
336 foundation for civil and political rights. However, it is not necessary to take such an
337 indirect route when civil and political rights presuppose both corporeality and
338 vulnerability.⁹⁸ Secondly, Turner’s account appears to assume that human rights are
339 benign—an assumption ignoring the role of human rights in the construction of
340 pathogenic forms of vulnerability and overlooking the distinction between politics *for*
341 human rights and politics *of* human rights.⁹⁹ Thirdly, Wall has criticised Turner for
342 constructing vulnerability as a condition that human rights seek to turn away from,
343 producing an account of human rights that neutralises the *political* energy of vulnerability
344 as suffering¹⁰⁰ and enabling a discourse whereby human rights respond to (certain)
345 subjective, visible harms while continuing to legitimate invisibilised structural violence.¹⁰¹
346 Finally, for Turner, it is ‘risk and uncertainty’ that gives rise to ‘sympathy,

⁸⁹ Ibid.

⁹⁰ Ibid, at 35.

⁹¹ DB Morris, *The Culture of Pain* (Berkeley: University of California Press, 1991) at 1.

⁹² Ibid, at 2.

⁹³ Ibid, at 14.

⁹⁴ Ibid, at 19.

⁹⁵ Wall, above n 69, at 61.

⁹⁶ Grear, above n 19 at 134.

⁹⁷ Turner, above n 79, at at 36.

⁹⁸ There is a direct foundation for civil and political rights in the notion of human embodied vulnerability: See discussion in Grear, n 19 above, at 158-160.

⁹⁹ See Baxi, above n 20, where this distinction appears in various ways. It is also further invoked in subsequent editions of the book.

¹⁰⁰ Wall, above n 69 at 66-67.

¹⁰¹ Ibid, at 55: ‘This is Zizek’s point in *Violence*. He argues that so long as we focus on proximate and immediate violence, we lose sight of structural and symbolic violence’.

347 empathy and trust’,¹⁰² and drives humans to build forms of social organisation aimed at
348 mitigating precarity. However, as I argued in *Re-Directing Human Rights*, it is possible to
349 imagine society as something more than ‘a pact of the insecure and suffering-prone,
350 huddling together in the face of a dark, frightening world of risk and conflict’,¹⁰³ and to
351 respond to vulnerability as ‘a core component of an alternative view of human
352 relations—as far more than our capacity to suffer/feel pain, and as far more than a
353 synonym for suffering’.¹⁰⁴

354 It is necessary to think beyond the threatened human and the frightening world
355 and to *embrace* vulnerability as an aspect of ordinary natal sociality¹⁰⁵ and of mundane
356 corporeal entanglements that include non-humans.¹⁰⁶ It is possible—and necessary—in
357 short, to think towards questions of posthuman subjectivity, vulnerability and human
358 rights in an affirmative register.

359

360 *Vulnerability and Dignity*

361 It is important briefly to consider the relationship between vulnerability and dignity.
362 Dignity is famously posited as being the foundation of human rights in much mainstream
363 human rights theory, and, as Neal’s analysis (to be discussed here) suggests, mainstream
364 accounts of dignity construct dignity in terms producing an ambivalent relationship with
365 vulnerability. I choose Neal’s work because Neal bases her analysis of dignity on
366 vulnerability—and deploy’s Fineman’s vulnerability thesis.¹⁰⁷ Neal’s survey of existing
367 dignity scholarship and her reflections on dignity and vulnerability deliberately leaves
368 aside, it should be noted, the question of the dignity of ‘non-human entities’¹⁰⁸ (to be
369 considered briefly below).

370 Neal argues that dignity is semantically unstable and potentially philosophically
371 redundant.¹⁰⁹ She also argues that it is necessary to move beyond the Kantian conception
372 of autonomous dignity,¹¹⁰ attacking the Kantian conception for its central reliance upon
373 rationality and suggesting that a shift towards ‘an account [of dignity] based on the
374 interconnectedness between dignity and vulnerability’ would neutralise some of the most
375 common critiques of dignity itself.¹¹¹

376 ‘Human dignity’ should, Neal argues, be understood as an ‘organizing idea’.¹¹² An
377 ‘organizing idea’, Neal explains, is something like Wittgenstein’s notion of the ‘family
378 resemblance’. Understood in this way, dignity is a ‘moral response to vulnerability’, and
379 spacious enough to ground all the various concepts and conceptions of dignity, not on a
380 monolithic core, but within a clustered relationality. And it is here, at the level of the
381 organising idea, that Neal locates her analysis of the imbrication between dignity and the
382 ‘phenomenon of human vulnerability’:¹¹³ human dignity, she argues, is ‘a particular sort

¹⁰² Turner, above n 79, at 26 – ‘Such a theory of society embraces a set of Hobbesian assumptions in which life itself is vulnerable – that is, nasty, brutish and short’ and ‘in psychological terms, this shared world of risk and uncertainty results in sympathy, empathy, and trust, without which society would not be possible’.

¹⁰³ Grear, above n 19, at 133.

¹⁰⁴ Ibid.

¹⁰⁵ As is strongly implied by Butler’s work on vulnerability, J Butler, *Frames of War: When is Life Grievable?* (New York: Verso, 2009).

¹⁰⁶ Although it is an anticipation of New Materialist approaches, for thoughts on this see A Tsing, ‘Unruly Edges: Mushrooms as Companion Species’ (2012) 1 *Environmental Humanities* 141-154.

¹⁰⁷ M Neal, “‘Not Gods but Animals’”: Human Dignity and Vulnerable Subjecthood’ (2012) 33 *Liverpool Law Review* 177-200

¹⁰⁸ Ibid, 180.

¹⁰⁹ Ibid, at 177-80.

¹¹⁰ Ibid, at 181-185.

¹¹¹ Ibid.

¹¹² Ibid, 180.

¹¹³ Ibid, at 181.

383 of ethical response to universal human vulnerability—distinctive among ethical values in
384 that it values us because of, rather than in spite of, or regardless of, our universal
385 vulnerability'.¹¹⁴

386 In addressing vulnerability, Neal adopts Fineman's approach but supplements
387 Fineman's focus upon what Neal calls 'negative' vulnerability (the capacity for suffering)
388 with my 'positive' (Neal's terminology, not mine) account of vulnerability, offered in
389 *Redirecting Human Rights*. Neal describes my position in the following terms:

390
391 Crucially, [Gear] writes, vulnerability is 'a key incident of human embodiment', and the
392 openness of our bodies exists not only in the negative sense of dependence and
393 penetrability—sources of pain and suffering—but also in a positive 'affectability', an
394 openness to all that is welcome and embraceable and dynamic about our
395 interconnectedness with, and our ability to interface with, other beings and our wider
396 environment. In Gear's words: 'The openness—the ethesiological nature—of the living
397 body, once fully appreciated, might provide the foundation for a vulnerability thesis that
398 allows us to embrace vulnerability as a dynamic interrelational concept highly suggestive
399 of richer human bonds not only with human beings, but of humans with the world
400 itself'.¹¹⁵

401
402 Neal insists that vulnerability (understood in this more-than-negative sense) is
403 what makes ethics *possible*—that 'in the absence of vulnerability, there would (could) be
404 no ethics'.¹¹⁶ Vulnerability, on this account, is foundational to any human life worth
405 imagining—an anchor for that which is valued and worthy of compassionate
406 consideration. It is not merely a susceptibility.

407 For Neal, the all-embracing power of the connection between vulnerability and
408 ethics opens out the distinctiveness of dignity by establishing its 'unique' connection with
409 vulnerability.¹¹⁷ This unique connection is not, however, to be found in the Kantian
410 conception of dignity. Like Harris,¹¹⁸ upon whose work on dignity and vulnerability she
411 draws (with reservations), Neal eschews the Kantian view of what dignity is and argues
412 that Kantian dignity as a universal foundation for human rights is problematic.¹¹⁹ She
413 points out that 'there is ... a significant difference between observing that my abilities to
414 reason and to act autonomously are critical to my moral agency, and making the more
415 controversial claim that unless I possess the capacities for reason and autonomous
416 action... I cannot matter morally, or cannot matter morally as much as someone else
417 who does possess these capacities'.¹²⁰

418 Neal's argument has obvious resonance with the critiques of human rights, noted
419 above, concerning the oppressive use of 'Reason' in the construction of the universal's
420 'others'. Kantian dignity purports to ground a human universal, yet in both theory and in
421 practice, the human rights universal thus grounded is parochial, a deceptive placeholder
422 guarding a privileged space for the quasi-disembodied Eurocentric rational human
423 subject, which is as property-centred and exclusory as its broader ideological foundation

¹¹⁴ Ibid, at 177, abstract.

¹¹⁵ Ibid, at 187, citing Gear, above n 19.

¹¹⁶ Ibid, at 189.

¹¹⁷ Ibid.

¹¹⁸ G Harris, *Dignity and Vulnerability: Strength and Quality of Character* (Berkeley and Los Angeles: University of California Press, 1997).

¹¹⁹ Neal, above n 107, at 184: 'If the value expressed by dignity is not universal, how can dignity ground universal rights?'

¹²⁰ Ibid.

424 in the liberal legal and political order as a whole.¹²¹

425 Although Neal explicitly avoids the question of non-human dignity, her
426 fundamental argument about the ontology of dignity is compatible, I suggest, with the
427 dignity of non-humans. If dignity is a particular sort of ethical responsiveness to
428 vulnerability there is no reason not to respond to the universal vulnerability of non-
429 humans once anthropocentric assumptions are put to one side. Indeed, as more is
430 understood about the intelligences, agencies and socialities of non-humans, the more
431 challenging it becomes to accept the idea that humans have a sole—or even a unique—
432 claim to any given characteristics founding ethical regard.¹²² And, even if one were
433 successfully able to argue that humans uniquely possess particular characteristics,
434 deepening understanding of non-human intelligence and agency makes it increasingly
435 implausible—notwithstanding such an argument—that humans should be granted the
436 *apriori* centrality assumed by traditional dignity accounts. In short, once humanistic
437 assumptions are rejected, it becomes possible to see the universal vulnerability of non-
438 humans as a basis for non-human dignity. Universal vulnerability understood as an
439 intrinsically socio-material, corporeal openness, moreover, could provide a strong bridge
440 into a theory of non-human dignity without negating the ethical significance of potential
441 differences in the experiences and sources of human and non-human vulnerability at
442 work in any given situation.

443

444 *Towards a New Materialist Account of Vulnerability and Human Rights*

445

446 If the vulnerability thesis is to be ontologically consistent with the implications of the
447 corporeality at its heart, then vulnerability must necessarily be conceived of as a more-
448 than-human entanglement, for the human body is an ‘intrinsically open, sensing, feeling,
449 desiring, libidinal, expressive circuit with the world’¹²³—inescapably entangled in porous,
450 lively materialities of the same ‘order of touch’ as itself.¹²⁴ Such an ontology offers the
451 possibility, I suggest, of an affirmative prefigurative politics of human rights responsive
452 to multiple human-non-human entanglements—opening the possibility, in the process,
453 of human rights-based objections to the denial of such important relationalities.

454 Indeed, in the light of the multiple contemporary crises marking the posthuman
455 epoch, an understanding of materiality itself as vulnerable is now a pre-requisite for
456 human rights realisation—and while this point may be relatively obvious in the case of
457 ‘environmental human rights’,¹²⁵ it nonetheless applies to *all* human rights, as an
458 implication of the porous, transcorporeal¹²⁶ nature of the human embodiment

¹²¹ P Halewood, ‘Law’s Bodies: Disembodiment and the Structure of Liberal Property Rights’ (1996) 81 *Iowa Law Review* 1331-1393; J Nedelsky, ‘Law, Boundaries and the Bounded Self’ (1990) 30 *Representations* 162-189.

¹²² Study of the non-human world—indeed—increasingly reveals the implausibility of human uniqueness and priority. Humans emerge from contemporary biology as entangled partners in a world full of livelier partners than Kantian and Cartesian suppositions allow for. For indicative readings see, Haraway, above n 17; DJ Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Duke University Press: Durham and London, 2016); Tsing, above n 106.

¹²³ Grear, above n 19, at 132.

¹²⁴ M Merleau-Ponty, *The Visible and the Invisible* (J.M Edie, Ed) (Northwestern University Press, 1968), at 134.

¹²⁵ Environmental human rights are a particularly promising site for the acknowledgement that all forms of corporeality exist in a transcorporeal planetary flow (‘Transcorporeality’ is a powerful concept developed by S Alaimo, *Bodily Natures: Science, Environment and the Material Self* (Bloomington: Indiana University Press, 2010)).

¹²⁶ See Alaimo, *ibid.*

459 foundational to all human rights.¹²⁷ Human rights theory and practice must evolve,
460 therefore, by putting to one side the patterns of injustice visible in the politics of
461 disembodiment and by embracing the ontic fact of human co-enfoldment in a living,
462 vulnerable mesh.¹²⁸ Taking up Fineman’s admonition to position ‘the human condition
463 ... at the center of our political and theoretical endeavours’¹²⁹ therefore means embracing
464 the human being as but one vulnerable partner in a vulnerable entanglement¹³⁰—paying
465 close attention to the differential patterns of vulnerability—inherent, situational and/or
466 pathogenically generated—of multiple human and non-human partners. It is precisely in
467 relation to this expansion of focus and concern that New Materialist thought is so
468 promising.

469 New Materialism draws on Spinoza, Merleau-Ponty, and Deleuze and Guattari,
470 combining such theoretical influences with developments in cutting edge science that
471 make the human exceptionalism and bounded individualism that have for so long
472 underpinned humanism and human rights ‘...[s]eriously unthinkable: not available to
473 think with’.¹³¹ What happens, we might therefore ask, to theories of *vulnerability* when an
474 affirmative prefigurative politics for the posthuman situation can no longer do its job
475 with ‘bounded individuals plus contexts’,¹³² or bodies plus environments, with the subject
476 and its objects? What happens when such constructs can no longer offer even an
477 empirically sustainable way of seeing *what’s/who’s here?*

478 New Materialism challenges ‘received concepts of agency, action, and freedom
479 sometimes to the breaking point’ and aims to ‘sketch a style of political analysis that can
480 better account for the contributions of nonhuman actants’.¹³³ Such an account exceeds
481 the foundational Cartesian and Kantian assumptions dominating mainstream human
482 rights discourse and doctrine, and expresses ‘an alternative to the object as a way of
483 encountering the nonhuman world’.¹³⁴ The ethical aim of such approaches is to cultivate
484 ‘the ability to discern nonhuman vitality, to become perceptually open to it’,¹³⁵ and this
485 cultivation of discernment should explicitly include, I suggest, the fundamental
486 affectability of materiality—in short, its vulnerability. If ‘[t]he locus of agency’ is ‘always
487 a human-nonhuman working group’,¹³⁶ so too is the locus of vulnerability.

488 For New Materialist accounts, ‘agency’ becomes *affect*—and the capacity to affect
489 or to be affected is typical of all matter.¹³⁷ The affectability of matter is key to an

¹²⁷ See Grear, n 19 above, 156-161: ‘Based on the foregoing analysis it can be convincingly argued that ... the main categories of human rights established in the UDHR paradigm can be read as an extended defence of human embodied vulnerability. The rights contained in the UDHR, the ICCPR and the ICESCR (which together form the ‘International Bill of Rights’) simply make *no conceptual sense without presupposing a vulnerable living body*’: *ibid*, 161.

¹²⁸ Addressing an analogous argument in relation to political analysis and progressive politics, Braidotti argues that embracing ‘the nature-culture continuum’, emphasising the ‘self-organizing ... force of living matter’ is fundamental to social theory, which ‘needs to take stock of the transformation of concepts, methods and political practices brought about by this change of paradigm’: Braidotti, above n 8 at KinLoc 116.

¹²⁹ Fineman, above n 64, at 2.

¹³⁰ A Grear, ‘The Vulnerable Living Order: Human Rights and the Environment in a Critical and Philosophical Perspective’, (2011) 2/1 *Journal of Human Rights and the Environment* 23-44.

¹³¹ DJ Haraway, ‘Tentacular Thinking: Anthropocene, Capitalocene, Chthulucene’ in Haraway, *Staying with the Trouble*, above n 122 at 30.

¹³² *Ibid*.

¹³³ J Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham NC: Duke University Press, 2010) (Kindle Edition) at KinLoc 108-9.

¹³⁴ *Ibid*, KinLoc 231.

¹³⁵ *Ibid*, KinLoc 553-4.

¹³⁶ *Ibid*, at KinLoc 236-237.

¹³⁷ NJ Fox and P Alldred, ‘New Materialist Social Inquiry: Designs, Methods and the Research-assemblage’ (2015) 18/4 *International Journal of Social Research Methodology* 399-414, at 401, at citing G Deleuze, *Spinoza*:

490 adequately materialist understanding of vulnerability.¹³⁸ Analytical attention to
 491 ‘assemblages’ (including ‘the body’) as processes of production that emerge ‘in a kind of
 492 chaotic network of habitual and non-habitual connections, always in flux, always
 493 reassembling in different ways’¹³⁹ suggests the need for vulnerability analyses to range
 494 back and forth, tracing ‘shifting states and capacities, which in turn produce further
 495 shifting states and capacities in a non-linear, rhizomatic way that spreads out in all
 496 directions sometimes in patterned ways, sometimes unpredictably’.¹⁴⁰ Deploying this
 497 method of analysis, the affects of macro-structural projects (such as the international
 498 economy) can be drawn together with ‘micro-powers of governmentality’ and with ‘a
 499 whole constellation of actants; biological urges; movements of herds or flocks; transits of
 500 toxins, viruses, nutrients, water, air; the physical infrastructure of a power supply and so
 501 much more’.¹⁴¹ Such a field of attention might yield a more complete engagement with
 502 the complexities of vulnerability as it emerges in multiply constructed ways and is
 503 promisingly multilayered.¹⁴²

504 Because ‘agency’ is distributed as affect, the human subject (vulnerable or
 505 otherwise) is no longer an automatically prioritised ontological, epistemological or
 506 axiological *pivot*. Dissipating the subject-object divide that has underpinned human rights
 507 and so much vulnerability theory does not imply, however, the dissolution of all
 508 boundaries into an undifferentiated flux.¹⁴³ Barad, for example, argues that subject-object
 509 distinctions become *contingent*—constructed for a particular purpose from a particular
 510 perspective.¹⁴⁴ Human beings will obviously continue to distinguish things from persons,
 511 but it is vital to acknowledge that ‘the sort of world we live in makes it constantly
 512 possible for these two sets of kinds to exchange properties’.¹⁴⁵ Perhaps it is here, in this
 513 onto-epistemic move, that human dignity might find some theoretical space. Human
 514 exceptionalism might be unsustainable, but human distinguishability as particular but
 515 contingently understood and positioned diffractions of relationality remains meaningful
 516 and ethically important, while human rights and vulnerability analyses can both become,
 517 along with other modes of navigating the world, more responsive to the implications of
 518 the connectedness between bodies of *all kinds*. This expanded epistemic embrace can
 519 enable ‘wiser interventions’ into the ecology of embodied entanglements¹⁴⁶ at stake in any
 520 given question of injustice. The ethics implied by this distributes significance, value and

Practical Philosophy (San Francisco, CA: City Lights, 1988) at 101.

¹³⁸ It should be noted that various other accounts of vulnerability emphasise affectability and its implications—and affectability, in this sense, provides a rich convergence point between New Materialism and such accounts. I am grateful to Daniel Bedford for raising this point.

¹³⁹ Ibid, citing A Potts, ‘Deleuze on Viagra (or, What Can a Viagra-body Do?)’ (2004) 10 *Body and Society* 17–36 at 19.

¹⁴⁰ Grear, above n 130, at 23.

¹⁴¹ A Grear, ‘Resisting Anthropocene Neoliberalism: Towards New Materialist Commoning?’ in D Bollier and A Grear (eds) *The Great Awakening* (forthcoming, 2018-9): file on copy with author.

¹⁴² Fox and Alldred, above n 137, at 402.

¹⁴³ ‘According to Barad, “reality is not composed of things-in-themselves or things-behind-phenomena, but of “things”-in-phenomena” where phenomena are differing processes of materialization which produce various distinctions by virtue of specific intra-actions. Such intra-actions enact what Barad calls “agential cuts” which institute fissurings and ruptures within the flow of phenomena (which would otherwise remain ontologically indeterminate), and so establish differentiations which introduce “exteriority-within-phenomena,” that is, boundaries separating “components” in phenomena in ways that matter ontologically, epistemologically and ethically’: P Haynes, ‘Creative Becoming and the Patience of Matter’ (2014) 19/1 *Angelaki: Journal of the Theoretical Humanities* 129-150, at 135.

¹⁴⁴ K Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham, NC and London: Duke University Press, 2007) (Kindle Version) at KinLoc 1893.

¹⁴⁵ Bennett, above n 133, at KinLoc 451-453.

¹⁴⁶ Ibid, at KinLoc 353-355.

521 vulnerabilities to ‘bodies *as such*’¹⁴⁷ and generates, as Bennett puts it, ‘a great sense of the
522 extent to which all bodies are kin in the sense of inextricably enmeshed in a dense
523 network of relations’.¹⁴⁸

524 This then, is an ethics of attentiveness to multiple modes of co-situatedness. As
525 Haraway argues, it matters ‘*who we are bound up with and in what ways*’¹⁴⁹—and this ‘who’ is
526 made up of kin of all kinds, human and non-human. Human beings are thus a
527 ‘specifically endowed (but not special) . . . species’.¹⁵⁰ And as a specifically endowed
528 species, human beings can still form the focus of a human rights ethic—only now, non-
529 human actants also take their place, in full view, no longer *invisibilised* by anthropocentric
530 epistemological closures. Human beings can be understood as vulnerable and materially
531 entangled, but not uniquely so. Human rights analysis will retain, though, the task of
532 remaining especially sensitive to the affectability of humans in any given situation.

533 Human rights thus become a specific way of asking ‘who we are bound up with
534 and in what ways’, alert to the idiosyncratic ways in which humans collectivise. Even for
535 human rights analyses, however, non-human actants are, as Bryant puts it, ‘pertinent’, not
536 least ‘to why collectives involving humans take the form they do’:

537
538 the ‘nonhuman . . . in the form of technologies, weather patterns, resources, diseases,
539 animals, natural disasters, the presence or absence of roads, the availability of water,
540 animals, microbes, the presence or absence of electricity and high speed internet
541 connections, modes of transportation, and so on . . . and many more besides play a
542 crucial role in bringing humans together in particular ways’.¹⁵¹

543
544 Returning to Bennett’s invitation to perceive and to respond to the ‘extent to
545 which all bodies are kin in the sense of inextricably enmeshed in a dense network of
546 relations’,¹⁵² it is enriching to turn to Haraway, who encourages human beings to ‘make
547 kin’ of all kinds.¹⁵³

548 Active *kin-making* necessitates an active kind of world-making. Haraway proposes
549 that humans should take up ‘tentacular thinking’ and ‘tentacular worlding’, which is an

550
551 ecology of practices, [a commitment] to the mundane articulating of assemblages
552 through situated work and play in the muddle of messy living and dying. Actual players,
553 articulating with varied allies of all ontological sorts (molecules, colleagues and much
554 more) must compose and sustain what is and will be.¹⁵⁴

555
556 The ‘seriously tangled affair’¹⁵⁵ of such world-making necessarily concerns the
557 vulnerability of messy living and dying—with all its rich imperatives for close ethical
558 attentiveness. Thus, while vulnerability as suffering ignites radical human rights politics,
559 vulnerability as affectability points unambiguously towards multiple forms of
560 interconnection and co-flourishing between humans and other multi-species partners and
561 allies in a way that might inspire ‘new [human rights] practices of imagination, resistance,
562 revolt, repair and mourning, and of living and dying well’.¹⁵⁶ Vulnerability means taking

¹⁴⁷ Ibid, at KinLoc 508-9.

¹⁴⁸ Ibid, at KinLoc 510-511.

¹⁴⁹ Haraway, above n 122, at 31, fn 2. Emphasis original.

¹⁵⁰ Ibid, at 185, n 52.

¹⁵¹ L Bryant, *The Democracy of Objects* (Ann Arbor: New Humanities Press, 2011) at 23-24.

¹⁵² Bennett, above n 133, at KinLoc 510-511.

¹⁵³ This is a central theme in Haraway’s work, and is highly visible in *Staying with the Trouble*, above n 122.

¹⁵⁴ Haraway, above n 122, at 42.

¹⁵⁵ Ibid.

¹⁵⁶ Haraway, referring to the work of P Pignarre and I Stengers, *La sorcellerie capitaliste: Pratiques de desenouement* (Paris: Decouverte, 2005).

563 up Haraway’s call to stay willingly immersed in all the messy incompleteness of resistive
564 living: ‘We are at stake to each other. . . . The order is reknitted: human beings are with
565 and of the earth, and the biotic and abiotic powers of this earth are the main story’¹⁵⁷—
566 *not* human centrality. The biotic and abiotic *vulnerabilities* of this earth are *also* the main
567 story. As Bryant argues, ‘in an age where we are faced with the looming threat of
568 monumental climate change, it is irresponsible to draw our distinctions in such a way as
569 to exclude nonhuman actors’.¹⁵⁸

570 This urgently needed new approach to ‘the main story’ of humans as ‘with and of
571 the earth’ contains in its tissues, I suggest, threads for a re-imagined human rights.
572

573 *Threads in New Materialist Human Rights Making*

574 What then are some potential threads in New Materialist human rights making? And
575 what implications does a broader view of vulnerability have for existing theoretical
576 engagements with human rights and vulnerability?

577 First, understanding vulnerability as a form of affectability intrinsic to materiality
578 opens up to view multiple ethological and corporeal dynamics of connection drawing
579 vulnerability theory towards an enriching embrace of human-non-human socialities
580 exceeding the socialities imagined by Fineman and Turner. It could also enable human
581 rights and vulnerability theory to be freshly responsive to materiality’s rich hints
582 concerning the dynamics of ecstasy, wellbeing and flourishing, open to the ‘other-
583 seeking’ nature of bodies as they reach towards other bodies of all kinds—*not* merely to
584 huddle together against precarity. Relatedly, a New Materialist political ecology of human
585 rights would be *intrinsically* open to the more-than-human world—an openness
586 supporting epistemic justice for indigenous cultures and bringing human rights into line
587 with the cutting edge science now dismantling their humanist foundations.

588 Second, New Materialist ethics call for deep attention to the action of bodies
589 upon bodies—*of all kinds*. Such ethics calls for ‘a praxis-oriented, spatially specific,
590 material approach that considers every problem in its singularity’.¹⁵⁹ Here, New
591 Materialist analysis converges human rights as a ‘politics of singularity’¹⁶⁰—as a practice
592 of ‘right-*ing*’ amidst the humus of material entanglement.¹⁶¹ This approach would resist a
593 ‘rushed search for short term solutions that misunderstand . . . complexity’.¹⁶² Human
594 rights thinking and practice will need to step beyond the neat discursive containers set up
595 by humanism, to move forward into the complex realities of the haunting ambiguities of
596 the posthuman situation: Climate change, biotechnologies (GMOs, bio-engineering, new
597 medical technologies, genetic recombination, shared genetic materiality, etc.),
598 instantaneous algorithm-driven global capital flows, rapidly evolving artificial and robotic
599 intelligence and the saturation of contemporary life in digitalization and virtual
600 technologies etc.—make the re-imagination of human rights entanglements in world-
601 making increasingly urgent. Familiar linear legal assumptions concerning causation,
602 responsibility and agency are simply not up to the enormity or complexity of the

¹⁵⁷ Haraway, *ibid.*, at 55.

¹⁵⁸ Bryant, above n 151 at 24.

¹⁵⁹ A Philippopoulos-Mihalopoulos, “‘. . . the sound of a breaking string’: critical environmental law and ontological vulnerability” (2011) 2/1 *Journal of Human Rights and the Environment* 5-22, at 21: “The question becomes one of *nomos* law, that is, a legal regime beyond the property regime, where the singularity of a tree is equivalent to the singularity of the cyborg?”

¹⁶⁰ Wall, above n 69 at 74.

¹⁶¹ “Right-ing . . . would be nothing short of the singular “creation of the world” . . . There is no transcendent law which is revealed in human rights. Rather there is only the world and our action therein. . . . [T]here is the world, each time taking place”. *Ibid.*, emphasis added.

¹⁶² Philippopoulos-Mihalopoulos, above n 159, at 22.

603 challenge. Such re-imagination is now both an intellectual and practical necessity.¹⁶³
604 Third, since science reveals matter to be ‘materialization [,] a complex, pluralistic,
605 relatively open process’, it is necessary to locate all human knowing ‘as thoroughly
606 immersed within materiality’s productive contingencies’.¹⁶⁴ Human theory and practice—
607 including human rights approaches drawing upon vulnerability—now need to face up to
608 the fact that the centre (‘the subject’) has gone, and needs to be replaced by a contingent,
609 purposive place-holder. Legal epistemologies, accordingly, need to embrace a profound
610 degree of onto-epistemic humility.¹⁶⁵

611 Fourth, the de-centering of the human means that Fineman’s vulnerable subject
612 must also explicitly be understood as a contingent identification. Fineman’s ontology is
613 only partly reformulated by later applications of her theory to animals as ‘vulnerable
614 subjects’¹⁶⁶ and to ‘ecological vulnerability’.¹⁶⁷ There is more consistent theoretical work
615 to be done if de-centring the human is to do its most powerful ethical work. De-centring
616 the human does not mean that we can no longer speak meaningfully of the vulnerable
617 human being for human rights—but the dynamics between bodies *as such* now matters
618 more explicitly as a central part of understanding the onto-political question of ‘*who we are*
619 *bound up with and in what ways*’.¹⁶⁸ Human rights can—in this light—be imagined as special
620 forms of attentiveness to the situation of human ‘critters’¹⁶⁹ understood as entangled kin
621 in a world inevitably marked by multiple forms of vulnerability.

622 *Concluding Thoughts and Further Research Directions*

623 Human rights look very different when humans are seen as partners in ‘world-making
624 entanglements’ ‘in which diverse bodies and meanings coshape one another’.¹⁷⁰ Human
625 rights emerge as a particular form of juridical attention, and become part of expressing a
626 wider call for sensitive engagement with the patterns and dynamics through which bodies
627 (human, institutional or otherwise) can be called ‘to account for the ways in which they
628 affect other bodies of all kinds’.¹⁷¹ Situational and pathogenic vulnerability remind us to
629 be constantly vigilant concerning the politics of unevenness. Critique remains essential.

¹⁶³ As Coole and Frost argue in the opening sentences of their book, *New Materialisms: Ontology, Agency and Politics*, ‘foregrounding material factors and reconfiguring our very understanding of matter are prerequisites for any plausible account of co-existence and its conditions in the 21st century’: D Coole and S Frost (eds.), *New Materialisms: Ontology, Agency and Politics* (Durham: Duke University Press, 2010) at 2.

¹⁶⁴ *Ibid.*, at 7.

¹⁶⁵ See, for this kind of epistemic project, L Code, *Ecological Thinking: The Politics of Epistemic Location* (Oxford: OUP, 2000).

¹⁶⁶ A Satz, ‘Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy and Property’, in Fineman and Grear, above n 70, at 171-198. Satz’s new paradigm for the legal regulation of human use of domestic animals, which combines equal protection and capability theory approaches to generate a non-discrimination approach giving rise to presumption against the use of animals who have the capacity to suffer, does not fully explore and extend the underlying ontology of Fineman’s approach.

¹⁶⁷ A Harris, ‘Vulnerability and Power in the Age of the Anthropocene’ (2014) *Washington and Lee Journal of Energy, Climate and the Environment* 98-161. Harris’s extension of Fineman’s theory to embrace ‘ecological vulnerability’ is problematically uncritical of ‘recent policy and theoretical efforts to develop assessment systems for quantifying ecosystem processes’ (at 116) and ‘ecosystem services’ and the ‘services’ provided by microbiota. Harris does not advert to significant contradictions between the foundational assumptions of such ‘services’ (and of the broader panoptic, neoliberal eco-governmentality operative in the quantification of ecosystem processes) and her embrace of New Materialist ontology. Additionally, given her (potentially straw man) argument concerning the need for a strong subordination critique to supplement Fineman’s vulnerability analysis, addressing the oppressive impacts of the ontological commitments of environmental law and its broadly anthropocentric understanding of environmental vulnerability is an important omission.

¹⁶⁸ Haraway, above n 122, at 31, fn 2. Emphasis original.

¹⁶⁹ To speak with Haraway again.

¹⁷⁰ Haraway, above n 17, at 4.

¹⁷¹ Barad, n 144 above, KinLoc 1891.

630 New Materialist accounts do not necessarily detract from this responsibility, for they
631 insist that there is a deep ethical responsibility for ‘the fact that our practices matter’.¹⁷²

632 One particularly important future-facing research question concerns the role that
633 such an account of human rights might play in offering renewed attentiveness to the
634 marginalisations and exclusions *still marking human rights themselves*. Other future reflection
635 could address what such theoretical shifts might mean in practical terms for courts,
636 human rights institutions and human rights activists.

637 While this chapter offers an unashamedly theoretical reflection, hints already exist
638 in relation to future-facing legal praxis. The use of animal movements to derive rules
639 governing property rights and relations in the upland highlands of the United Kingdom,
640 for example, hints at the way in which normativities emerge from a human-nonhuman
641 working group.¹⁷³ The deployment of legal personification/rights for nonhuman entities
642 and living systems promises new ways of thinking about legal subjectivity and
643 repositioning human-nonhuman relationalities in the practice of legal judgment
644 crafting—ideas anticipated by projects such as the ‘wild law’ judgment project.¹⁷⁴
645 Meanwhile, the creation of greater epistemic space and respect for the worldviews of
646 indigenous peoples hints at the promise of exploring a ‘pluriverse’ of ontologies¹⁷⁵
647 compatible with New Materialist science. The potential deployment of algorithms as
648 digital partners in the mapping of affective flows affecting human rights, handled with
649 immense care and critical awareness in order to avoid simply replicating forms of techno-
650 capitalist governmentality,¹⁷⁶ might be worth exploring. The materio-semiotic teachings
651 of forests and plants, water, animals, minerals and multiple other non-human actants,
652 could also fruitfully be explored by courts deliberating on human rights issues.¹⁷⁷

653 Such possibilities could play a role in developing law’s threaded contribution to
654 the necessary ‘reknitting’ of the world. The ongoing power of human rights as a politics
655 and ethics of singularity arguably now depends upon such a reorientation, and on
656 embracing vulnerability as the material affectability of the more-than-human
657 entanglements we call the world.

658 One thing is certain—re-imagining human rights and vulnerability for the

¹⁷² Ibid.

¹⁷³ M Pieraccini, ‘Property pluralism and the partial reflexivity of conservation law: The case of upland commons in England and Wales’ (2012) 2/2 *Journal of Human Rights and the Environment* 273-287; See also, A Philippopoulos-Mihalopoulos, ‘The Trivenuto Transhumance: Law, Land, Movement’ (2012) 3 *Politica and Societa* 447-468.

¹⁷⁴ N Rogers and M Maloney (eds.), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Abingdon: Routledge/Glasshouse, 2017).

¹⁷⁵ A Escobar, ‘Commons in the Pluriverse’ in D Bollier and S Helfrich (eds.) *Patterns of Commoning* (Amherst, Mass: The Commons Strategies Group, 2015) 348-360. The ‘pluriverse’ is explicitly *contra* the ‘One World World’ of neoliberalism and its Eurocentric ontology.

¹⁷⁶ For a particularly rich discussion of the implications of neoliberal governmentality on living systems, see TW Luke, ‘On Environmentality: Geo-Power and Eco-Knowledge in the Discourses of Contemporary Environmentalism’ (1995) 31 *Cultural Critique* (The Politics of Systems and Environments, Part II) 57-81.

¹⁷⁷ In this, human rights thinking would follow the broadly New Materialist shifts influencing the development of legal ontologies that have become ‘increasingly fluid, watery, vegetal, animal and even mineral’: A Philippopoulos-Mihalopoulos and V Brooks, *Research Methods in Environmental Law* (Cheltenham: Elgar, 2017) at xii. (The editors cite J Gellers, ‘The Great Indoors: Linking Human Rights and the Built Environment’ (2016) 7/2 *Journal of Human Rights and the Environment* 243-261; A Neimanis, ‘Alongside the Right to Water: A Posthumanist Feminist Imaginary’ (2014) 5/1 *Journal of Human Rights and the Environment* 5-24; E Cocola, *La Vie des Plantes: Une Métaphysique du Mélange* (Paris, Payot et Rivages, 2016); Y Otomo and E Mussawir (eds.), *Law and the Question of the Animal: A Critical Jurisprudence* (Abingdon: Routledge/Glasshouse, 2012); R Mawani, ‘Insects, War, Plastic Life’ in B Bhandar and J Goldberg-Hiller (eds.), *Plastic Materialities: Politics, Legality and Metamorphosis in the Work of Catherine Malabou* (Durham and London: Duke University Press, 2015) 159-188; K Yusoff, ‘Geologic Subjects: Nonhuman origins, Geomorphic Aesthetics and the Art of Becoming Inhuman’ (2014) 22/3 *Cultural Geographies* 383-407).

659 posthuman situation and the multiple crises facing humans and non-humans alike
660 demands a thoroughgoing, fearless and imaginative ‘critical-creative engagement with
661 deeply embedded, yet often uncontested assumptions about human subjectivity and
662 agency [that] (often silently) inform the instituted social imaginary ... and tacitly
663 constrain ... thinking’.¹⁷⁸ Given all that is now at stake, nothing less will do.
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¹⁷⁸ L Code, ‘Ecological subjectivities, responsibilities, and agency’ in A Grear and L Kotze (eds.) *Research Handbook on Human Rights and the Environment* 46-60, at 46.