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# Posthuman Legalities: New Materialism and Law Beyond the Human

In 2020, a single virus changed many of the *worlds* in which humans live. From restrictions on immigration, movement and gatherings, to changes to public health policy, through to economics and housing, the SARS-CoV-2 virus restructured laws and lives. It also changed our more-than-human siblings' worlds: some took the opportunity to roam into the quiet of the relatively human-free spaces produced by lockdown, some provided company to their humans working from home, and some, too, were susceptible to the virus.

The dense entanglement of the material and the semiotic and of human and more-than-human worlds evident in this contemporary example has always been the actuality of the lively ecological communities that support life. And, as Indigenous, feminist and materialist scholars have argued, the 'human' always comes about through entanglement with other beings. As the *Feral Atlas* project puts it, '[e]veryday human life is always a multispecies effort' and '[o]ther species, as well as non-living things, make it possible to be human'.<sup>1</sup> The concept of the 'human' is a far more complex, interdependent and entangled actuality than is presented/represented by the autonomous, bounded individual assumed by western legal systems.<sup>2</sup>

In this sense, 'we' are what de la Cadena calls, a 'complex we': 'a shared condition from which "self" and "other" emerge relationally as intra-acted assertions of divergence', both an 'us' and a 'them',<sup>3</sup> or what anthropologist Deborah Bird Rose has called a 'domain of entanglement'.<sup>4</sup> By far the most productive comparative partner in such relational thinking has been, and at the behest of, Indigenous, black, peasant and other communities.<sup>5</sup> An example is provided by the Yolngu people in northern Australia, who describe co-becoming, a presupposition that sees all life, including humans, as coming into being through relationships.<sup>6</sup> Yolngu people view their wellbeing and that of country as an interconnected relationship of mutual care, one in which the human is decentred, while recognising that Bawaka Country cares not only for itself but also for the non-human world.<sup>7</sup>

This 'complex we' is evident not only in the example of Covid-19 but also in the shifting

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<sup>1</sup> AL Tsing, J Deger, A Keleman Saxena, and F Zhou, *Feral Atlas: The More-Than-Human Anthropocene* (Redwood City: Stanford University, 2021): [www.feralatlas.org](http://www.feralatlas.org).

<sup>2</sup> See for example, Bawaka Country including S Suchet-Pearson, S Wright, K Lloyd and L Burarrwanga, 'Caring as Country: Towards an ontology of co-becoming in natural resource management' (2013) 54(2) *Asia Pacific Viewpoint* 185; D Haraway, *Staying with the Trouble* (Durham: Duke University Press, 2016); C Merchant 'Reinventing Eden: Western Culture as a Recovery Narrative' in W. Cronon (ed), *Uncommon Ground: Toward Reinventing Nature* (New York: W.W. Norton, 1995); Plumwood, V. (1993) *Feminism and the Mastery of Nature*. Routledge, London; A Grear, 'Anthropocene, Capitalocene, Chthulucene': Re-encountering Environmental Law and its 'Subject' with Haraway and New Materialism' in L Kotzé (ed), *Environmental Law and Governance for the Anthropocene* (Portland: Hart Publishing, 2017).

<sup>3</sup> M de la Cadena, 'An Invitation to Live Together: Making the "Complex We"' (2019) 11(2) *Environmental Humanities* 477, 478.

<sup>4</sup> D Rose, 'An Indigenous Philosophical Ecology: Situating the Human' (2005) 16(3) *The Australian Journal of Anthropology* 294, 303.

<sup>5</sup> It is important to recognise here however that it is not the responsibility, nor some would argue, the concern, of Indigenous peoples whether or not settler and western populations can come to some level of relationality that may sustain the world, or legal order that truly accounts for the living: See K Whyte, C Caldwell and M Schaefer 'Indigenous Lessons about Sustainability Are Not Just for "All Humanity"' in J Sze (ed) *Sustainability: Approaches to Environmental Justice and Social Power* (University Press Scholarship Online 2019). See also Z Todd, 'An Indigenous Feminist's Take on the Ontological Turn: 'Ontology' is just another word for colonialism' (2016) 29(1) *Journal of Historical Sociology* 4, 9.

<sup>6</sup> Bawaka Country et al. (n 2) 187.

<sup>7</sup> *ibid*, 192.

climate and its auguring of the collapse of the imagined binary relations between humanity and the wider community of life. As multiple beings and communities experience ecological collapse, lawyers and those from other related and concerned disciplines must ask: what is the purpose, description, and function of the legal and ethical systems that are supposed to regulate and guide relations in ecological communities? Can existing legal orders help posthuman beings, borrowing from Donna Haraway, to ‘stay with the trouble’<sup>8</sup> so as to chart a path away from present defuturing conditions?

Although there has been significant work (and some progress in legal systems worldwide) on such issues, the apparently relentless road to ongoing extraction seems to be paved with the best intentions of existing environmental law and governance models. Legal responses remain systems of norms and procedures that independently regulate the ‘human’ use of an external and agentless ‘natural world’, specifying allowable harm rather than encouraging responsabilised relations between beings of all kinds. In attempts to restructure relations with the more-than-human worlds in which humans live, many scholars, lawyers and activists have turned to extending legal rights for nature in order to re-define/reject the human-nature dualism, and to facilitate a deeper and more mutually beneficial relationship between realms currently constructed as distinct.<sup>9</sup> This movement has been heavily influenced by, and has been predominantly inspired and driven by, Indigenous peoples the world over — from Ecuador and Colombia to New Zealand/Aotearoa — informed by their legalities, lifeways and ontologies. National and transnational legislations, court decisions, and governance models across the world have increasingly recognised the legal subjectivity of animals, rivers, and forests, among other beings and relations, as a legal avenue whereby to extend protection and standing to more-than-human lives and lively systems.<sup>10</sup> The rights of nature (RoN) approach is a growing legal response not only to the ‘inter-related global crises of climate, food, energy, [and] poverty, [but also to a crisis of] meaning’.<sup>11</sup>

RoN certainly have the potential to express the interdependence between ecological and social systems. However, the legal discipline is still deeply informed by the mindsets, practices and institutions casting nature as a limitless source of goods and services to meet ever-expanding human needs. Can the RoN movement facilitate a more relational complex ‘we’ under a legal system that so pervasively casts nature as mere ‘resource’? Environmental law, however radical, continues to work within the binary categories central to Modernist thought, seemingly unable satisfactorily to register non-humans as selves, apparently incapable of adequately capturing the lively and vibrant more-than-human materiality and/or the agency that non-humans possess beyond legal modes of representation.<sup>12</sup> Perhaps the best Modernist attempts at broadening the horizon for the legal participation of other-than-human beings in legal systems have granted at most a gesture towards ‘subjectivity’ (i.e. ‘territory as victim’ or nature as ‘witness’).<sup>13</sup> Such attempts have not, however, gone so far as to truly reckon with the forms of agency aspired to in the RoN framing. Environmental

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<sup>8</sup> Haraway (n 2).

<sup>9</sup> M Maloney and P Burdon, *Wild Law in Practice*, (Oxon UK: Routledge Press 2014); C Cullinan, *Wild Law: A Manifesto for Earth Justice* (White River Junction VT: Chelsea Green Publishing 2<sup>nd</sup> ed. 2017); D R Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (Canada: ECW Press 2017).

<sup>10</sup> I Vargas-Roncancio, ‘Forest on Trial: Towards a Relational Theory of Legal Agency for Transitions into the Ecozoic’ in C J Orr, K Kish, and B Jennings (eds), *Liberty and the Ecological Crisis: Freedom on a Finite Planet* (New York: Routledge 2020).

<sup>11</sup> A Escobar, ‘Thinking-Feeling with the Earth: Territorial Struggles and the Ontological Dimension of the Epistemologies of the South’ (2016) 11(1) *Revista de Antropología Iberoamericana* 13.

<sup>12</sup> E Kohn, *How Forests Think. Toward an Anthropology Beyond the Human* (Berkeley: University of California Press 2013).

<sup>13</sup> D Ruiz-Serna ‘El territorio como víctima. Ontología política y las leyes de víctimas para comunidades indígenas y negras en Colombia’ (2017) 53(2) *Revista Colombiana de Antropología* 85-113.

law, in seeking to find the exits from the ontologically Modern room, as anthropologist Philippe Descola has noted, finds them blocked.<sup>14</sup>

The ontological discontinuity constructed between humans and nonhumans and the forms of juridical and other relations that follow from this binary continue to lie at the root of the socio-ecological devastation of the planet. The task ahead is that of seriously attending to and cultivating the necessary ‘nation to more-than-human nation’ relationships<sup>15</sup> while re-embedding social institutions and systems within the broader community of life and its ways. When it comes to law, the task of probing new epistemological and ‘ontological openings’<sup>16</sup> for legal thought and practice in these times of planetary crisis is urgent. A legal ontological turning<sup>17</sup> is required, wherein the fundamental categories, concepts, and conceptions on which Western law is based are interrogated and reimagined/replaced.<sup>18</sup> It is vital to question the very grounds upon which legal orders are based, interrogating, in a metaphysical register, their basic conceptual foundations, from bounded individuals to earth systems articulated by positivist science, and more besides.

Any legal system, as Anishinaabe legal scholar Aaron Mills has explored, is embedded in, and is an expression of, a lifeway.<sup>19</sup> It is clear that the contemporary mainstream, growth-oriented and deracinated neoliberal lifeway is untenable and that contemporary legal systems are but expressions of such worldview commitments. The now-questions are: what directions and what sources might be drawn upon in order to transform such legal orders and that which underwrites them? How might the gap between imagination, methodology and adjudication be mapped in a ‘new’ dimension of law that can be called ‘ontological’? How can the legal ‘activation of relationality’ (that is, the activation of relational thinking in concrete scenarios of legal adjudication, teaching and learning) *be itself activated*?<sup>20</sup>

It is in response to such now-questions that this Special Edition of the *Journal of Human Rights and the Environment* has brought together scholars under the mantle of the ongoing creation and articulation of posthuman legalities.

Further questions emerge. By attending to the agential properties of matter as examined by New Materialism might it be possible to grasp the always-already entangled nature of more-than-human relations so as that it might register in the space, and in the structures, called ‘the law’? How can the unexpected and lively properties of seemingly inert matter come to animate praxes of doing ‘law-otherwise’?<sup>21</sup> Might it be possible to discern legalities that are participated in and expressed in non-symbolic terms — such as ‘eco-feedback’? By looking towards critical thinking that not only ‘decenters the human’,<sup>22</sup> but deconstructs its very meaning, might it be possible to speak both beyond, and in excess of, the human so as to hold open a vital space for multi-being entanglement in

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<sup>14</sup> P Descola, *Beyond Nature and Culture* (Chicago: University of Chicago Press 2013) 192-200.

<sup>15</sup> E Boulot and J Sterlin ‘Steps Towards a Legal Ontological Turn: Proposals for Law’s Place Beyond the Human’ (2021 forthcoming) *Transnational Environmental Law*: doi: 10.1017/S2047102521000145.

<sup>16</sup> M de la Cadena, ‘Runa: Human but not only,’ (2014) 4(2) *HAU: Journal of Ethnographic Theory* 253.

<sup>17</sup> S Vermeulen, ‘Materiality and the Ontological Turn in the Anthropocene: Establishing a Dialogue Between Law, Anthropology and Eco-philosophy’ in L Kotzé (ed) *Environmental Law and Governance for the Anthropocene* (Oxford: Hart Publishing 2017); Boulot and Sterlin (n 5).

<sup>18</sup> W Grant, H Greene and T Zelle (eds) *Earth Law: Emerging Ecocentric Law—A Guide for Practitioners* (New York: Wolters Kluwer Legal & Regulatory 2021).

<sup>19</sup> A Mills ‘Miinigowiziwin: All That Has Been Given for Living Well Together: One Vision of Anishinaabe Constitutionalism’ (2019) PhD Thesis, University of Victoria.

<sup>20</sup> A Escobar, *Designs for the Pluriverse* (Durham: Duke University Press 2018).

<sup>21</sup> This concept builds on Eduardo Restro and Arturo Escobar, ‘Other Anthropologies and Anthropology Otherwise: Steps to a World Anthropologies Framework’ (2005) 25(2) *Critique of Anthropology* 99.

<sup>22</sup> A Gear, ‘Deconstructing anthropos: A critical legal reflection on ‘anthropocentric’ law and anthropocene “humanity”’ (2015) 26(3) *Law and Critique* 225.

the legal field more generally?

The invitation embodied in a ‘law beyond the human’ more broadly seeks a multiplicity of approaches, including those influenced by biosemiotics, artistic practices, posthuman/New Materialist thinking, and crucially, ‘Indigenous legalities’.<sup>23</sup> Might rethinking multispecies entanglements from the perspective of an animate ‘political ontology’<sup>24</sup> aid in reworking the precautionary principle, the notion of a more-than-human transitional justice, or RoN?

This Special Issue, recruited via an open, international call, reflects an invigorating variety of perspectives and experiments at the interface between the more-than-human world and ecocentric legal approaches. Drawing broadly on the insights of posthuman scholarship, the authors in this edition integrate leading insights and critical thought from the legal and social sciences and environmental humanities in order to interrogate environmental law as it currently stands — and to ground alternative legalities. The authors set out avenues for law’s future, and potential possibilities for the future of earthly life. Despite differing foundations for their arguments, some of which might be incommensurable with each other, the articles offer a multiplicity of reflections beyond the horizon of present legal imaginaries.

Authors in this issue examine the ways in which myriad non-humans — from rivers, forests, and the multiple forms of life teeming in oceans, to the soil that is the material substrate for all Earthly life — can be made legally present. The question of how such forms of liveliness might ‘speak’ for themselves, rather than being represented by a form of human ventriloquism,<sup>25</sup> while their personhood remains a mere juridical fiction, remains an area of unfinished collective work to which this Special Issue hopes to contribute. Whether in urban, rural, or ‘wild’ settings, how might legal registers shift towards goals imagined not *within* (constrained by) but *after* — analytically and temporally — the so-called Anthropocene<sup>26</sup> and its many epithets and alternative formulations: for example, the Capitalocene,<sup>27</sup> Plantationocene,<sup>28</sup> Civilocene?<sup>29</sup>

If the all-encompassing concepts of ‘nature’ and ‘environment’ do not exist outside of the ontologies of Modernity, what happens to *environmental* law and the Rights of *Nature*? Perhaps the answer lies in the kinds of complex, lively relations that Anishinaabe legal scholar Aron Mills<sup>30</sup> has noted — the kind of ‘rooted law’, of which the normative relations of indigenous peoples have been the most notable and enduring examples — a ‘rooted law’ open to all/every‘thing’.

This Special Issue, we hope, takes up in multiple ways the possibility of a law that finds itself ‘rooted’ in soils, oceans and forests and issues an invitation to reflect on rights, responsibilities, agreements and other legal concepts and practices in an entirely different way in the light of the fundamental question: what is law *beyond* the ‘human’ and *after* ‘nature’?

The contributions of the authors of this Special Issue broadly fall into three themes, running from the legal-theoretical, to the practical-juridical, on to the affective-restorative. These are as follows:

- 1) Posthuman/New Materialist legal theory;

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<sup>23</sup> K Anker, P Burdon, G Garver, M Maloney and C Sbert (eds) *From Environmental to Ecological Law* (London – NY: Routledge 2021); Mills (n 20).

<sup>24</sup> M Blaser, ‘Political Ontology: Cultural studies without ‘cultures’?’ (2009) 5-6 *Cultural Studies* 873.

<sup>25</sup> Vermeulen (n 18).

<sup>26</sup> P Crutzen and E Stoermer, ‘The Anthropocene’ (2000), 41, . IGBP Glob. Chang. Newsl: 17–18.

<sup>27</sup> J Moore, *Capitalism in the Web of Life* (London: Verso 2015).

<sup>28</sup> D Haraway, S F Noboru Ishikawa, K O Gilbert, A L Tsing and N Bubandt ‘Anthropologists Are Talking – About the Anthropocene’ (2016) 81(3) *Ethnos* 535.

<sup>29</sup> J Sterlin, ‘The Civilocene and its alternatives: Anthropology and its long due durée’ in C J Orr, K Kish, and B Jennings (eds), *Liberty and the Ecological Crisis: Freedom on a Finite Planet* (New York: Routledge 2020).

<sup>30</sup> A Mills, ‘The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today’ (2016) 61(4) *McGill Law Journal/Revue de droit de McGill* 847.



- 2) More-than-human international law; and
- 3) Environmental respon-ability: justice, art, and relationalities.

### *Posthuman/New Materialist legal theory*

In the first article in this edition, Margaret Davies explores the connections between social and environmental justice and the implications of a posthuman, eco-social materiality for the legal concept of private property. Davies begins by setting out a relational move away from a Western, extractive and colonial perspective of human society and its relationship to land towards a co-becoming eco-society, inter-reliant on integrated eco-social networks, communities and habitat(s). Using the concepts of fragmentation and rift, Davies explores the material disintegration of biological, physical and cultural entanglement — a process that has resulted in ongoing environmental injustice, ecological degradation, appropriation, and disconnection from the very conditions of existence. Davies then turns her attention to private property, which she argues ‘enshrines both the rift between human and nonhuman and the fragmentation that characterises eco-society’, a system that requires radical rethinking towards a more relational, responsible and integrated understanding. Using the concept of habitat, Davies argues that a relational form of property with obligations owed to human and non-human life will ensure a system more equal and inclusive for owner and non-owner alike.

The second article in this edition considers the legal representation of the non-human. Using the guardianship model as developed by Christopher Stone and the concept of eco-feedback, Steve Vanderheiden and Matt Harvey investigate communication between human and non-human. Drawing upon both law beyond the human legalities and New Materialist theory on nonhuman subjectivity, Vanderheiden and Harvey explore the ‘Lorax problem’ — that is, the problem of whether a legal guardian can ever truly communicate the needs and interests of their non-human charge. Drawing upon New Materialist scholarship, the authors conceptualise a vibrant materiality in order to illustrate the potential for nonhuman forms of agency, challenging the guardianship model’s restriction of subjectivity to the human realm, and extending agency from the atomistic human individual to what the authors call ‘swarms’ or conglomerates of human and nonhuman actants. This signaling of vital materiality, they argue, is a form of communication that challenges the exclusionary human/nature, subject/object binary found in law.

### *More-than-human international law*

Nick J. Fox and Pam Alldred open their contribution and the contributions to the theme of a more-than-human international law, arguing for the ‘re-materialis[ation of] sustainable development beyond humanism’. To this end, their contribution to the Special Issue charts a pathway between humanism and anti-humanism to establish a posthumanism of the environment and an understanding of ‘posthumans’ that challenges both environmental anthropocentrism and the model of the human as white, male and from the global North. Thus, while ‘posthumans’ are ‘a fully integral element within the environment’, they should no longer be considered to be an amorphous category as is sometimes implied by concepts such as the ‘human species’. To be sure, “‘posthumans’” gain a diverse range of context-specific capacities as they interact with other matter’ and some of these capacities, for example, empathy, altruism, conceptual thinking and modelling futures, are very unusual. Yet, these ‘unusual capacities’ might be key ‘to addressing the current crises of environmental degradation and anthropogenic climate change’.

In the fourth contribution, Emily Jones continues the focus upon international law and suggests that both posthuman theory and the RoN movement have the potential to challenge the

anthropocentrism of international environmental law. Scholars, she argues, have begun to document transformative shifts that could occur through the application of posthuman legal theory to international environmental law, but these theories have yet to be applied to law in practice. While RoN have been applied in domestic law, they have been applied comparatively little in international law, while the question of what RoN includes and excludes remains contested. Jones brings posthuman theory and RoN together, reflecting on how posthuman legal theory might contribute to the framing of RoN, with a focus on challenging the anthropocentrism of international environmental law. She argues that the next step for posthuman legal theory will be its application to existing law and, noting convergences between posthuman legal theory and the RoN, contends that those seeking to apply posthuman legal theory might find alliances by turning to RoN. Meanwhile, using posthuman theory to frame RoN could help to ensure that RoN live up to their transformative potential.

Marie-Catherine Petersmann embraces the disorienting and destabilising rupture of the Anthropocene/s with respect to international environmental law and the Modernist onto-epistemology upon which it is 'grounded'. She sees in this moment a generative opportunity to rethink the animating forces and motivations of environmental jurisprudence. Living amidst Modernist ruins, both physically and metaphysically, provides Western-descended legal orders the prospect of reformulating fundamental assumptions. Drawing on a variety of New Materialist, relational and posthuman literatures — and informed by critiques of them by decolonial, indigenous and black scholars — Petersmann seeks to bring environmental law into line with these literatures and their emphasis on the necessity, and inescapability, of more-than-human relations. Rather than deploying responsibility and protection as focal organising concepts (which presuppose a separation between human beings, their Liberal States, and the non-humans they command and control), Petersmann advocates for response-ability and care. This is not, however, care *for* but rather care *with*, which acknowledges human always-already entanglement and earth-boundedness, and seeks an open-ended moral exploration from a position of humility and vulnerability. Being *involved*, rather than in charge, being relationally embedded in the materiality of the world, requires an orientation that is in excess of the rigidity of environmental law as it is currently practiced, she argues.

#### *Environmental Response-ability: Justice, Art, and Relationalities*

Danielle Celermajer and Anne O'Brien seek, in their article, to extend the conceptual framing of transitional justice beyond the bounds of the human. By applying transitional justice (which focuses entirely on how wrongs committed between human beings can be repaired) to the alterity of soil as a moral agent, the authors pursue the possibilities that such a shift affords to alter the underlying assumptions of transitional justice itself. By shifting away from reflexivity and subjectivity as assumed preconditions for transitional justice, and away from its concomitant emphasis upon victim and perpetrator, Celermajer and O'Brien focus upon the relation itself as the fundamental ontological unit. This focus opens space for a non-hierarchical transformation in practices and embodied relationships, and facilitates a reassessment of the systemic wrongs between human and more-than-human. This ambitious task of re-encountering the 'limit case' that is soil — something of which Western society seems to have an overwhelmingly utilitarian and instrumental vision — as morally considerable thus requires new forms of attentiveness, and the humility to acknowledge epistemic limits. The authors conclude their article by exploring the ways in which artistic work has already begun to rework these conceptions and relations, hoping to see how these kinds of practices might aide in generating the forms of publics necessary for the more-than-human social order to be repaired.

Teresa Dillon uses art practices as a generative site of focus in order to explore the

enactment of multispecies relations within the context of urban environments. She examines multiple artistic installations and works which seek to bring into presence non-human animal cultures, histories, rituals and justice so as to create living frameworks for living otherwise. Affective confrontation with these other-than-human lives destabilise the categorisations of 'animal' and 'nature' upon which present anthropocentric lawscapes are built. To foster multispecies justice, Dillon argues, constant, public, educational, and social rehearsals can be called upon in decentering the human and destabilising the particular form of liberal individualism that law presently promulgates. In so doing, these rehearsals might forge ontological openings that create more equitable conditions for all. For an increasingly city-bound species, beset by climate emergencies and biodiversity loss, a more expansive vision of the urban commons is required if we are to have urban futures at all.

*Closing reflections: Alterity, power and the challenges of relationality*

As the authors of this special issue have eloquently communicated, conventional models of environmental law and governance in the West particularly, but exported throughout the world through colonisation and globalisation, continue to insist on the separation of law, society and Earth systems. This ontology of separation affords a limited capacity to respond to the pressing social-ecological challenges of the age: climate change, biodiversity loss, and the profusion of differing forms of social-ecological injustice. As these challenges so starkly illustrate, the nonhuman can no longer be considered to be a mute object of conventional normative description, of appropriation, or of protection in need of human ventriloquism.

Foregrounding the need to pay attention to forms of life beyond the human in legal thought and practice, the contributors to this special issue have offered a sophisticated range of posthuman approaches and conceptual devices including: the need to recenter response and care in international environmental law (Petersmann); thinking-with soils as moral agents in the context of transitional justice (Celermajer and O'Brien); learning what it means to enact multispecies relations in urban space and earth-bound legalities (Dillon); probing posthuman theory and the RoN movement to challenge the anthropocentrism of international environmental law (Jones); learning how 'posthumans' as agents gain a diverse range of context-specific capacities to face different environmental global challenges (Fox and Alldred); asking what it means to speak for the trees (Vanderheiden and Harvey) and reconsidering property as relational habitat (Davies).

As these authors have identified, much of this work has its antecedents in Indigenous legalities, cosmologies and intellectual labour. And while it may be possible, and aspirational, to consider Indigenous legalities as a site of generative friction, of competing cosmologies, such reflection raises not only questions of alterity but also significant questions of researcher positionality, agency and power.

Mills writes that there is a fundamental incommensurability between legal orders based upon differing forms of constitutionalism, which themselves are rooted in differing lifeways or outgrowths of differing ontological arrangements.<sup>31</sup> Contemporary power remains heavily weighted towards liberal idealism and marketisation, and gives force to Mill's fears of constitutional capture. There is a genuine question concerning the extent to which theorisation and scholarship can contribute to the broader decolonial undertaking without simply continuing a form of colonialism by appropriating and/or pilfering from Indigenous legal orders. How might scholars and researchers seeking a new paradigm, a more life-affirming onto-vision, avoid such trespassing? Here, appropriative risks attach to questions of translation and capture. Much work has been put into trying to honour Indigenous

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<sup>31</sup> Mills (n 20).



'law as law' and there is much to laud here.<sup>32</sup> This same orientation is visible in legal anthropology, and the old cultural relativist injunction to see the cultural elaborations of all human beings as being on the same level and as equivalent in categorisation. However, (neo-)Structuralist questions aside, this approach still results in the effacement of, as Bateson put it, 'differences that make a difference'.<sup>33</sup> Indeed, there remains a sense in which the incommensurability between legal orders observed by Mill problematises the very basis of traditional legal anthropology: is it even possible to compare law across ontologies, or is equivocation uncontrollable?<sup>34</sup> And with what implications for power relations? These questions will not be answered here, but they remain ever relevant, central to an ongoing posthuman research agenda, and they must be addressed in order to achieve the transformative potential of the agenda itself. Relationality is not without its challenges.

The authors in this special edition largely agree that law requires a paradigm shift towards relational thinking. But, returning once more to ask, as anthropologist Arturo Escobar does as he works with Afro-descendant and Indigenous collectives in the Colombian Pacific region, how do we 'activate relationality' in legal theory and practice?<sup>35</sup> Again, questions abound. Is speaking on behalf of non-humans an insurmountable limit to a posthuman legal agenda? What kind of theoretical and methodological tools does a law beyond the human offer in concrete scenarios of education, decision-making and adjudication? Can Davies' concept of property as habitat be operationalised in current legal systems? How? Will eco-feedback as set out by Vanderheiden and Harvey be sufficient to engage and represent eco-communities in law? Beyond the RoN approach, how does a law that is entangled with local territorial practices challenge anthropocentric and colonial concepts of justice, agency, and value? These fundamental questions of relationality and its activation remain potential limitations of a posthuman legal agenda.

Here, as editors, we identify four particular challenges for a posthuman law, law beyond the human, that for us, are signalled by the contributions to this edition.

First, (i) *an over-reliance on human representation* as the only way to engage with the legal: law is conventionally defined as a system of normative statements, that is, as language, or a form of symbolic representation. However, law, as our authors have made clear, can also be defined as a non-symbolic system comprising material dynamics, ecological relations, lived experience, artifacts and dreams, among other sources. Harvey and Vanderheiden pursue this line of approach in their article when they frame eco-feedback as a necessary basis for reformulating environmental law. Building on their work, and extrapolating from it in combination with a broader range of approaches, it is possible to imagine regrounding law in a bold ontological and methodological assumption that humans are not the only thinking selves in the world.<sup>36</sup> More broadly, this means that 'life thinks', or that 'life is semiotic'<sup>37</sup> — that soils, oceans, beetles, plants, fungi, fish and mammals are not only sentient but meaning-making selves.

Second, expanding the notion of representation (and even more so, materio-semiotic agency) to more-than-human beings and collectives has profound (ii) *methodological implications* for legal thinking and justice in Western legal systems. More-than-human beings, given onto-epistemic significance in law, open out alternative ways of perceiving law — new expressions of law as entanglement, law as materiality. This kind of law seems to exceed propositional form (language) and

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<sup>32</sup> H Friedland and V Napoleon 'Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions' (2015) 1(1) Lakehead Law Journal: 43)

<sup>33</sup> G Bateson, (2000) *Steps to an Ecology of Mind*. (Chicago: University of Chicago, 2000): 459.

<sup>34</sup> In the vein of E Viveiros de Castro 'Perspectival Anthropology and the Method of Controlled Equivocation' (2004) 2(1) Tipiti: Journal of the Society for the Anthropology of Lowland South America: 3–22

<sup>35</sup> Escobar (n 21).

<sup>36</sup> Kohn (n 13).

<sup>37</sup> *ibid*, 9.

thus to require non-propositional methodologies, as gestured towards by Celermajer and O'Brien's article in this collection. Such a broad, attentive definition of law would be untenable unless 'we', *humans*, become perceptually open to modes of socio-legal agency that exceeds *us*. Law would thus become a mode of, for example, making decisions or adjudicating justice for which 'human' perspectives and textual methodologies are understood to be but one among *many* ways of meaning-making in a larger cosmological meshwork of life forces and ways of doing and acting in the world.

The challenge of 'hearing', however, remains. How can humans 'listen' to the 'law of a territory' or the 'laws of habitats' where human and more-than-human lifeways are deeply entangled? Reckoning with the limits of human representation brings us to the third challenge for a law beyond the human: the possibility of (iii) *formally incorporating — with some degree of analytical precision — non-representational methodologies* into legal decision-making: How can law listen to non-propositional kinds of law that exceed — and yet inform — legal language in specific contexts and at different scales (local and global)? Translating across worlds — of the forest or ocean for example — into a legal world of symbolic language will require sensing, minimally, into worlds of non-symbolic language (i.e., image, corporality, ritual, dreams), and might require multiple and different techniques. As Petersmann has argued in this collection, the only way for a law worthy of the environment to proceed is for such law to emerge from *within* human always-already entangled relationalities — legal, bodily, affective, and otherwise — in the more-than-human world. Does a 'law beyond the human' need a methodology beyond the law?

Dillon's work in this edition gestures towards at least one answer: by exploring what it might mean to enact multispecies relations in urban spaces through contemporary art practices. These, as she shows, can create living frameworks for encountering non-human animal cultures, histories, rituals, and justice with which she interrogates conventional legal methodologies from the vantage point of these artistic practice. She eloquently summarises the promise of such methodologies: 'This is the power that art holds. It provides possibilities for conjuring up worlds, which even if they fail, still "work" as imagery scaffolds through which we can collectively grip onto the ontological changes that are at stake'.

This brings us to the fourth challenge: (iv) the challenge of *imagining a law beyond the human while necessarily engaging with the very categories* of thought and language that at present continue to sustain conventional legal thinking and action: languages of nature, rights, property etc. Contributors to this edition 'de-center the human' and aim to 're-center the posthuman' in law by proposing ways in which legal fields such as international environmental law and property law can be pushed beyond conventional modern frameworks into networks of relationship and care, as Jones and Davies both suggest. However, a question remains concerning the degree to which a radical posthuman/New Materialist agenda can be truly transformative while law still deploys its current categories, and scholarship is necessarily forced to engage with its dominant constructs.

#### *A law beyond 'the environment'?*

While we have signalled some of the existing difficulties of cross-ontological comparison and engagement, it is nevertheless our hope that this collection gestures towards a potential transformation of law. Such transformation, it seems, is nascent in multiple ways, and would imply a shift away from individual rights towards relational being and responsibility; from an extractive and appropriative legal system towards an integrated eco-social legality embracing norms of non-oppressive restorative responsibility. Breaking open the binary division between nature and culture transforms the onto-epistemic underpinnings of law, diversifying its participants, re-imagining its subjects, transforming its modes of emergence, relationality, operations and performance while inviting 'other kinds' of legal thinking and practice. A law beyond the human is also a law beyond

symbolic representation alone — an acknowledgement that already exists to some degree in legal anthropology and Indigenous legal theories. While attention to the other-than-symbolic forms of legal reckoning and non-human non-symbolic communications populate these fields, such modes of meaning-making are ignored by mainstream legal theory and liberal legality. These remain fixated with the analysis of (exclusively inter-human) social relations and are overwhelmingly sociocentric.

This Special Issue has been an invitation to readers to appreciate *other kinds of law* that emerge from non-modern ontologies, from Indigenous cosmologies, from nonhuman voices ‘in their own right’ and from posthuman and New Materialist theoretical perspectives, as applied through legal theoretical analysis and — here too — reflections on artistic practice. Law can *also* be — as our authors have shown — an outgrowth, a co-emergence, of ‘something else’. Law expresses relationalities, between kinds of beings, assemblages and ‘things’ (as Bennett would put it<sup>38</sup>) with their own ingenious communicative modes and abilities (as many of the authors collected here point towards). If it is indeed the case that other-than-human beings are as agential as the RoN aspirationally describes, as posthuman theory and New Materialism insists, and as animist Indigenous peoples attest to the world over, then the notion of *nature* and therefore of *environment* must be reassessed and perhaps even abandoned entirely unless they can be reformulated in ways that do not preclude the very possibility of agency in the other-than-human world. In a sense, then, in this edition, as editors, we seek to encounter law anew and otherwise, both *beyond* the human, and *after* ‘the environment’, offering the potential for a re-grounding of law that *exceeds* (Modernist) ‘nature’.

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<sup>38</sup> J Bennett, *Vibrant Matter: A Political Ecology of Things* (Baltimore: Duke University Press, 2010)