
6. Human rights and the environment: a tale of ambivalence and hope¹

Anna Grear

INTRODUCTION

Deeply significant concerns lie behind contemporary efforts to bring human rights law and environmental law into productive and progressive alignment. The twenty-first century sees the Earth's living systems under relentless and destructive pressure from the adverse impacts of industrial capitalist and consumer lifestyles. Simultaneously—along with the multitudes of defenceless living species adversely affected by environmental degradation—millions of human beings are increasingly placed at profound environmental risk and forced to suffer brutally uneven impacts of economic globalization, deepening vulnerability, escalating violence² and the rapidly proliferating erection of physical barriers in an expulsive 'age of walls'.³

Despite the urgency of the need for their convergence,² the relationship between human rights and environmental obligations faces genuinely complex challenges. First, there is the frequently discussed risk of conflicts between, on the one hand, environmental policies, rules, rights and responsibilities and, on the other hand, the human rights to development, privacy and private property. Second, there is a related perception that the methodological individualism of mainstream human rights discourse impedes the collective action necessary to

6. Human rights and the environment: a tale of ambivalence and hope¹

Anna Grear

INTRODUCTION

Deeply significant concerns lie behind contemporary efforts to bring human rights law and environmental law into productive and progressive alignment. The twenty-first century sees the Earth's living systems under relentless and destructive pressure from the adverse impacts of industrial capitalist and consumer lifestyles. Simultaneously—along with the multitudes of defenceless living species adversely affected by environmental degradation—millions of human beings are increasingly placed at profound environmental risk and forced to suffer brutally uneven impacts of economic globalization, deepening vulnerability, escalating violence² and the rapidly proliferating erection of physical barriers in an expulsive 'age of walls'.³

Despite the urgency of the need for their convergence, the relationship between human rights and environmental obligations faces genuinely complex challenges. First, there is the frequently discussed risk of conflicts between, on the one hand, environmental policies, rules, rights and responsibilities and, on the other hand, the human rights to development, privacy and private property. Second, there is a related perception that the methodological individualism of mainstream human rights discourse impedes the collective action necessary to rescue 'the environment'⁴ from practices that degrade its quality. Third, there are ongoing issues concerning rights. These include questions of *whose* rights and *which* rights are to take priority in a conflict of legal paradigms. Such complexity extends, quite naturally, to the vexed question of whether the two institutionally separated international legal orders of human rights law and environmental law can be reconciled in a productive and progressive manner.⁵

This chapter will argue that international environmental law and international human rights law—despite the existence of very real tensions between them—show hopeful signs of progress in their relationship. Notwithstanding such hopeful signs, however, both human rights law and environmental law share underlying subject-object relations inimical to their stated aims. This reality, once acknowledged, however, might with sufficient imagination become the departure point for their reconfigured engagement and transformation.

This chapter will begin by tracing aspects of the historical and institutional emergence of international human rights law and international environmental law before analyzing their shared subject-object relations. The chapter will then suggest how these fields of law might be re-imagined and placed on an alternative mutual foundation. Such a foundation could move them towards a more hopeful relationship with their own stated aims and thus enable them to respond more appropriately to the human and environmental crises of the twenty-first century

Unknown

Field Code Changed

rescue 'the environment'⁴ from practices that degrade its quality. Third, there are ongoing issues concerning rights. These include questions of *whose* rights and *which* rights are to take priority in a conflict of legal paradigms. Such complexity extends, quite naturally, to the vexed question of whether the two institutionally separated international legal orders of human rights law and environmental law can be reconciled in a productive and progressive manner.⁵

This chapter will argue that international environmental law and international human rights law—despite the existence of very real tensions between them—show hopeful signs of progress in their relationship. Notwithstanding such hopeful signs, however, both human rights law and environmental law share underlying subject-object relations inimical to their stated aims. This reality, once acknowledged, however, might with sufficient imagination become the departure point for their reconfigured engagement and transformation.

This chapter will begin by tracing aspects of the historical and institutional emergence of international human rights law and international environmental law before analyzing their shared subject-object relations. The chapter will then suggest how these fields of law might be re-imagined and placed on an alternative mutual foundation. Such a foundation could move them towards a more hopeful relationship with their own stated aims and thus enable them to respond more appropriately to the human and environmental crises of the twenty-first century and beyond.

THE ORIGINS OF HUMAN RIGHTS IN INTERNATIONAL LAW

The story of the genesis and evolution of human rights is thousands of years long. Human rights have antecedents in religious traditions emphasizing norms of human-to-human ethics; in well established philosophical traditions; in early national codes of antiquity; in early international interventions concerning the protection of religious liberty and the abolition of the slave trade; and in the emergence of international humanitarian law and rules concerning the protection of citizens abroad.⁶ However, despite this long antecedent story, 'human rights' as a distinct juridical category emerged with international human rights law in a twentieth-century, post-Second World War fusion of natural law and positive law and an 'unprecedented' international 'consensus' 'on substantive norms with high moral voltage'.⁷ It is generally agreed by mainstream accounts that the 1945 United Nations Charter⁸ brought human rights into the sphere of international law. In the process of doing so, the UN Charter achieved the simultaneous internationalization of human rights and the birth of the 'human individual' as a subject—rather than an object—of international law.⁹ These developments, it is said, authoritatively established the idea that ensuring respect for human rights should no longer be entrusted solely to the power of the nation state.¹⁰

The international order of human rights created by the UN Charter was relatively limited in scope at first, but the United Nations has been instrumental in the production of an apparently ceaseless and expanding process of setting international human rights standards through an almost kaleidoscopic proliferation of instruments and treaties.

All international human rights treaties ultimately take their symbolic and juridical life from the Universal Declaration of Human Rights (UDHR).¹¹ Even in

2021 the UDHR is widely understood to be the symbolic fulcrum of the international human rights order, possessing immense symbolic power and exerting a virtually irresistible degree of normative traction. The position of the UDHR at the apex of the system is amply supported by the fact that no state has denounced it since the moment of its adoption in 1948. Indeed, the UDHR was affirmed by the 1993 Vienna Declaration and Programme of Action¹²—a reassertion of the UDHR’s status as a ‘common standard of achievement for all peoples and all nations’.¹³ The UDHR also inspired an entire generation of post-colonial states, by providing the rights-centred template for a host of new national constitutional documents. It is also credited with being the normative source of over 200 international human rights instruments. As Donnelly puts it, ‘for the purposes of international action, “human rights” means roughly “what is in the Universal Declaration of Human Rights”’.¹⁴

It is often noted that international human rights law has since developed in a series of phases or stages.¹⁵ The initial vigour of human rights standard-setting activities by the United Nations chilled in the light of Cold War politics. There was a marked lull in the production of human rights documents that remained unbroken until the adoption in 1965 of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD).¹⁶ This development primarily reflected the concerns of the newly decolonized nations swelling the ranks of UN membership, whose postcolonial demands were beginning to influence the international community.¹⁷ In 1966 there was a second phase of general or universal standard setting when the rights declared in the UDHR found further enunciation in two international legal documents. These are, in narrow chronological order, the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁸ and the International Covenant on Civil and Political Rights (ICCPR).¹⁹ The dichotomy between these two ‘categories’ of rights is often traditionally explained as reflecting the Cold War ideological fracture. However, for many the dichotomy simultaneously reflects perceived differences between the categories of rights in terms of their relative justiciability, their differing operation as primarily ‘negative’ or ‘positive’ rights, and their relative enforceability.²⁰

Together the UDHR, the ICESCR and the ICCPR are referred to as the ‘International Bill of Rights’. They are supplemented, further expressed or implicitly criticized—depending on one’s viewpoint—by later standard-setting exercises. These tend to focus either upon specific rights, for example as does the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)²¹ or upon specific rights subjects, for example as does the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).²² Finally, the almost ‘carnivalistic’²³ expansion of the number of international UN human rights treaties has been accompanied, at different times and rates, by the spread and maturation of a set of regional international human rights regimes.²⁴ Regional courts have been pivotal in such developments. Similarly, developments at the national level have deepened the juridical potency of human rights.

Human rights, despite their intensifying overlaps and interconnections, were traditionally viewed as having expanded through three ‘generations’: ‘first generation’ civil and political rights; ‘second generation’ social, economic and cultural rights; and ‘third generation’ solidarity rights. Environmental rights, which are sometimes linked to the ‘greening’ of human rights, are often placed in the

Doug Fisher 14/5/2021 15:24

Deleted: —

third generation of such rights.²⁵

So much for mainstream accounts. It seems important, however, before moving on, to acknowledge that this predominantly Western history of human rights is far from uncontested. First, looking beyond the 'UHDR moment', Baxi has argued that any 'adequate historiography [of human rights would] ... locate the originating languages of human rights far beyond the European space-time'.²⁶ Second, the centrality of the 1945 'moment' has been contested by a 'new historiography' for which the 1970s was the 'breakthrough' period for human rights.²⁷ This revisionist account has, however, in turn, been criticized for representing a kind of doubling-down, a Euro-American 'hijacking'²⁸ in service of 'the [structural] *resubordination* of the [postcolonial Global] South within a US-dominated global economy'.²⁹ In short, the genealogy of human rights remains contested.

THE ORIGINS OF ENVIRONMENTAL PROTECTION IN INTERNATIONAL LAW

Compared to human rights law, environmental law is a relatively recent legal innovation. There emerged before the middle of the twentieth century a few important and substantively environmentally responsive legal developments: for example, nineteenth-century private law rules relating to pollution damage; nineteenth-century statutory provisions about public health; and a few international conservation laws that emerged in the 1900s³⁰ and later.³¹ However, environmental law did not exist as a recognized or a discrete category of law, either internationally or domestically, until the 1960s.³²

There is evidence of environmental awareness and concern expressed in the writings of nineteenth-century thinkers such as John Muir, John Burroughs, Henry David Thoreau and George Perkins Marsh,³³ but it was not really until the 1960s that the complex and inter-systemic nature of ecology, the fragility of earth systems and their vulnerability to human activity were well understood. An important moment in the popularization of an emerging environmental consciousness was the publication of Rachel Carson's iconic *Silent Spring*.³⁴ This book evocatively expressed the growing concern that sparked the rapid proliferation of legal arrangements to protect soil, air and ecosystems such as forests and wetlands. These responses emerged initially in the United States, Europe, New Zealand and Australia. These largely statutory developments were significantly buttressed by grassroots energies and by the activities of non-governmental organizations. Accordingly, concern for the environment steadily became part of the mainstream political agenda. By the 1980s, environmental law had become an increasingly important and widely discussed component of international law.³⁵

The obvious intimacy between environmental law and environmentalism lends a certain degree of plausibility to scholars, such as Tarlock, who claim that environmental law is relatively discontinuous with earlier legal traditions because of its special focus upon environmental stewardship. Tarlock argues that the aim of environmental law is 'to change the system of resource use incentives from those that induce unsustainable development to those that induce environmentally sustainable development [and that] [e]nvironmental law is thus a fundamentally new concept with more discontinuity than continuity with past legal and intellectual traditions'.³⁶

However, there are also different views of past legal and intellectual contributions. Coyle and Morrow, for example, argue that environmental law, in effect, revives stewardship ethics predating the industrial revolution. Further, that it is possible to discern in the English common law tradition a philosophical thread running through certain currents of legal thought concerning tort and property and a relationship between public and private law that can accurately be described, in contemporary terms, as being distinctively environmental.³⁷

For Tarlock, however, environmentalism, as the wellspring of environmental law's concerns, places itself in an explicitly critical relationship to the philosophical and historical antecedents of western global capitalism and its colonial past. Thus environmental law, which he suggests exhibits a high degree of homogeneity across legal systems, for him signals a fundamental shift in values.³⁸

While it is clear that there has been a shift of some kind at a surface level at least, the strength of Tarlock's claim is frayed by the work of scholars such as Coyle and Morrow. It is also frayed by an examination of the dominant subject-object assumptions shared by human rights law and environmental law—discussed later in this chapter. Environmentalism may well place itself in a critical relationship to past commitments, but environmental law, as law, continues to reflect antecedent foundations that import complex and contradictory flows and eddies of legal thought and the core philosophical suppositions that inform Eurocentric legal culture. This culture—and its fundamentally capitalist colonial imperatives—continues to a large extent to underwrite international law,³⁹ while environmental law and regulation itself stands accused of legitimating patterns of environmental racial injustice.⁴⁰ Indeed, it may well be that it is the underlying assumptions shaping international law that produce the homogeneity of environmental law observed by Tarlock. The analysis of the foundations of international law undertaken later in this chapter indicate that Tarlock's claim concerning the 'value shift' represented by environmental law is more problematic than he assumes.

Whatever its origins, there can be little room for doubt about the growing contemporary homogeneity of environmental law. Yang and Percival go so far as to identify the emergence of what they call 'global environmental law'. This is a development that signals what they describe as:

a growing convergence around a few principal approaches to environmental regulation [and a set of] growing international linkages blurring the traditional divisions between private and public law and domestic and international law, promoting integration and harmonization. The result has been the emergence of 'global environmental law'—a field of law that is international, national, and transnational in character all at once.⁴¹

This development seems in part to reflect a combination of national efforts to improve national environmental law and regulation in the context of the ongoing efforts of nation states to coordinate global action through the integration and harmonization of environmental norms at the international level.⁴²

HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION—
SIMULTANEOUS CONVERGENCE AND TENSION

Doug Fisher 14/5/2021 15:47

Deleted: privilege

Doug Fisher 14/5/2021 15:49

Deleted: , indeed,

1. Normative Foundations

Notwithstanding tensions and complexities, the relationship between human rights and environmental protection has become increasingly important, and there has been a notable convergence of energies between human rights law and environmental law. Notwithstanding this, the two fields still have a somewhat binary relationship and exhibit tensions that 'cannot be wished away'.⁴³

The links between the two fields were first explicitly formalized in the Stockholm Declaration at the culmination of the 1972 Stockholm Conference on the Human Environment.⁴⁴ Principle 1 of the Declaration, in particular, establishes an international normative foundation for the importance of linking human rights and environmental concerns: 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.'⁴⁵ According to this formulation, a healthy environment is understood to be a precondition for the fulfillment of human rights. This is an approach, perhaps unsurprisingly, echoed by 'many human rights tribunals and experts [for whom environmental protection is] a precondition to the enjoyment of several internationally guaranteed human rights, especially the rights to life and health'.⁴⁶ The relationship between human rights and the environment in this formulation, however, reflects an axiomatic anthropocentrism often criticized by environmental activists — and to which this chapter will later return.

In some respects, the relationship between human rights law and the environment moves in two directions: for example, various international environmental agreements conceptualize human rights as key mechanisms for achieving environmental goals,⁴⁷ while substantive and procedural human rights entitlements involving environmental considerations and claims are also increasingly common. This evolution does not, however, fundamentally challenge the anthropocentric orientation either of international human rights law or of international environmental law. Nevertheless, despite this anthropocentrism, which many regard as a key weakness, the Stockholm Declaration is welcomed by Morrow for being at least a 'crucial institutional recognition of the escalating impact of human activity on the environment and a statement of intent to address it'.⁴⁸ She also notes that the Stockholm Declaration has moved responsibility for achieving its environmental goal beyond the involvement of the state towards a broader conception of human responsibility. It does this in two ways. First, it invokes the responsibility of 'citizens and enterprises and institutions at every level, all sharing equitably in common efforts'. Second, it notes that 'individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions will shape the world environment of the future'.⁴⁹

2. Rights-based Dynamics of Convergence

Rights-based arguments and dynamics have become increasingly prevalent — with human rights-based approaches becoming more deeply entwined with rights for nature arguments.⁵⁰ The human rights approach to environmental protection has taken three predominant forms: the greening of existing human rights; the pursuit of procedural guarantees through which concerned citizens can make clear their environmental concerns; and arguments centering upon the provision of substantive rights to environmental quality, including calls for the development of a 'global environmental right'.⁵¹

Procedural guarantees aiming at participatory justice in the solving of

environmental dilemmas have proved particularly powerful as mechanisms for the pursuit of environmental democracy. Prominent examples are the participatory rights underlined by principle 10 of the Rio Declaration on Environment and Development⁵² and by the Aarhus Convention.⁵³ Indeed, such participatory energies also link human rights to rights for nature advocacy in increasingly powerful ways.⁵⁴

Human rights rhetoric and law have proved highly influential in the search for environmental protection and accountability. Returning again to reflect on the different histories of the emergence of human rights and environmental law, perhaps it is their relative maturity that in part explains the prime position given to human rights-based justifications and normative strategies. Human rights law, after all, significantly pre-dates environmental law. Enforcement mechanisms for international human rights law have proved to be significant factors and 'the availability of individual complaints procedures has given rise to extensive jurisprudence from which the specific obligations of states to protect and preserve the environment are detailed'.⁵⁵

Shelton points out that the paucity of references to the environment in human rights instruments is explained by the fact that 'most human rights treaties were drafted and adopted before environmental protection became a matter of international concern'.⁵⁶ Yet, despite this paucity, the juridical links between human rights and the environment have increasingly influenced rights-based normative approaches, and at least two regional human rights treaties now contain specific provisions on the 'right to environment'.⁵⁷

The increasingly forceful energies driving such convergences are also richly evident in the 'environmental rights revolution' analysed by Boyd and by Gellers.⁵⁸ An impressive evolution of environmental rights as constitutional rights has supported this deepening convergence.⁵⁹ This, again, is a development decisively influenced by civil society initiatives and democratic movements calling on rights-based and procedural justice arguments.⁶⁰ More than 100 national constitutions have now codified environmental rights for human beings.

Arguments are also increasingly made for a freestanding 'right to environment or a global environmental right'⁶¹ as a way of addressing the shortcomings of environmental law. There is also a case for arguing that a human right to environmental quality is emerging as a norm of customary international law.⁶²

3. Continuing Tensions

Despite such evolution, important tensions persist. All things considered, it would be, on balance, premature to assert the untroubled interdependence of human rights and environmental protection. Indeed, their interdependence is often asserted precisely by ignoring the depth of the tensions between them. These tensions complicate the idea of interdependence and render it uneasy in certain respects. Some of these tensions reflect underlying concerns over past, present and future injustices. Gearty, for example, reminds us that:

just as the human rights protagonist has often given the impression that he or she does not care about the natural world, so too have some environmentalists seemed at times to despise people. There is in such activists a potential casualness about humankind which may be understandable emotionally (it is our reckless species

Doug Fisher 14/5/2021 16:30

Deleted: ,

Doug Fisher 14/5/2021 16:25

Deleted: hc

which has brought us to the verge of collapse) but which when worked through into policies and positions will—if left unchallenged—invariably involve the poor and the vulnerable (whose personal responsibility for environmental change is nonexistent) paying a heavy price for the polluting and destructive recklessness of others.⁶³

Environmentalists and human rights activists, moreover, continue to question each other's priorities despite the fact that 'the need to bring the environmental and human rights movements together has been rendered both urgent and vital by the impending climate change catastrophe'.⁶⁴ Gearty's observation on this point brings to mind Tarlock's argument that environmental law, unlike human rights law, fundamentally reflects *environmentalism*. Tarlock, as noted above, suggests that contestation within environment law has increasingly moved to the sidelines as international environmental law has matured and gained greater normative consistency. However, there is good reason to doubt this level of optimism. There is still plenty of evidence that environmental law — not just human rights — is anthropocentric. There is still plenty of evidence that environmental law—as Turner argues—facilitates an eco-destructive 'business as usual'.⁶⁵

Accordingly, the growing systemic consistency of environmental law that Tarlock and others note and welcome might in reality be predicated on something rather less progressive than the environmentalism he celebrates. This possibility invites a review of deep ambivalence and contradiction in environmental law—deep ambivalence and contradiction ultimately shared by human rights law.

HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION—POWER IMBALANCES, DEEP ASSUMPTIONS, AMBIVALENCE AND CONTRADICTION

1. Central Structural Challenges

In his 2014 review of environmental law and governance, Turner argues that 'the very design of the law itself is fundamentally predisposed to environmental degradation and forms part of a dysfunctional global legal architecture which cannot achieve environmental sustainability'.⁶⁶ This conclusion might come as something of a surprise to many, including, perhaps, some environmentalists. But to anyone well versed in critical accounts of law's ideologically tilted structures, including those of international human rights law, Turner's conclusion would be unsurprising, if not entirely predictable.

Turner relates his conclusion to the historical development of 'the global legal architecture' of environmental law as part of international law. This architecture, he points out, was not ad hoc, 'but was developed through careful and deliberate design'.⁶⁷ Turner is unequivocal that the existing foundational commitments of international law make international environmental law very unlikely to succeed. These foundations, he argues, make it extremely challenging to hold some of the most egregious offenders against environmental standards to account. In particular, the centrality of the business corporation and its interests are of decisive significance. In his words, 'even during [their] formative years, certain features were being built into [corporations'] design that would eventually have huge

impacts on the environment in the modern era'.⁶⁸ Turner concludes that separate legal personality, limited liability, the separation between ownership and control of corporations, and the legal duty placed upon company directors to pursue the company's best interests as a profit-making entity are all key structural reasons that explain why environmental legal responses fail to meet important accountability targets in relation to environmental degradation.⁶⁹

Support for Turner's analysis comes from, amongst other sources, the work of Dangerman and Schellnhuber concerning the unsustainability of what they call the 'contemporary industrial metabolism'.⁷⁰ Dangerman and Schellnhuber argue that the unsustainable fossil-nuclear energy system is, in effect, *locked in* by structural conditions. Significantly, their extensive interdisciplinary assessment of the various factors involved in this lock-in unambiguously identifies 'modern corporate law as a crucial system element that has thus far been largely ignored'.⁷¹ The authors also point to fundamental design features of the corporate legal form, which are central to the structural factors at the heart of Turner's analysis. These include the intensification of shareholder control—a development that produces an asymmetry operating as a key block to feedback loops that might otherwise challenge fossil fuel dependency paths. It should be noted, moreover, that the structural features of the corporate form are increasingly globalized. Critiques of the modern corporate entity are now as relevant for China and Japan as they are for France and Germany, and continue to be particularly salient with respect to the Anglo-American corporate form now so dominant in the international order.⁷²

For anyone tempted to think that human rights might provide a challenge to such tilted structural patterns, the news is not good. Numerous studies demonstrate not only the corporate colonization of international human rights law and its sites of institutional and ethnographic power,⁷³ but also a troubling capture of human rights in the service of a 'new global constitutionalism' mediating neoliberal power.⁷⁴

The backdrop of global neoliberal power overshadows and pervades the international legal structures—notwithstanding the emergence of new forms of environmental business ethics. Turner argues, for example, that while there are new forms of 'environmentally-facing corporations', 'even in a corporation that has certain environmental standards, there is still a bottom line as [the corporation] is a business venture that is designed for the creation of profit and therefore such standards can only go so far'.⁷⁵ Structural factors remain pivotal. The landscape of neoliberalism, corporate law, as Shellnhuber and Dangerman have demonstrated, and the legal structure of the corporate form itself make it vital to retain a careful view of corporate environmental responsibility. Sinden argues that it is too easy

to lose sight of the vast power imbalance that still forms the backdrop for the political debate on climate change. Increasingly, stories of corporations going green are being spun into a larger cultural narrative of the corporation as redeemed sinner. Like the Grinch stopping at the top of the mountain to hear the joyful voices of the carolers below, the new green corporation has heard the environmental gospel and its heart has grown five sizes. But it would be a mistake to think that the recent concessions of many in the fossil fuel industry with respect to global warming mean that corporations have suddenly come around to represent the best interests of the general public. Corporations are still structured by law to put the short-term profits of shareholders first. Even as they abandon their oppositionist stance and come to the table acknowledging the existence of climate change and the need for regulation to curb it, they will come to the bargaining table with the primary purpose and duty of protecting short-term share price.⁷⁶

Doug Fisher 25/5/2021 10:06

Deleted: :

Doug Fisher 25/5/2021 10:06

Deleted: t

Doug Fisher 25/5/2021 10:06

Deleted: ;

Doug Fisher 25/5/2021 10:35

Deleted:

Doug Fisher 25/5/2021 10:06

Deleted: (

Doug Fisher 25/5/2021 10:06

Deleted:)

Doug Fisher 25/5/2021 10:06

Deleted:

Doug Fisher 25/5/2021 10:07

Deleted:

Sinden highlights the radical power imbalance and levels of market dominance mediated by contemporary neoliberal globalization and ideology factors that also drive deepening human vulnerability⁷⁷ and the climate crisis.⁷⁸ Business corporations exert considerable global influence with the complex complicity of neoliberal states, thereby dominating specialist legal architectures, including the key international institutions, set up to respond to international law and governance challenges, including climate change.⁷⁹ Indeed, the 'global' of the transnational corporation (TNC)⁸⁰ has for some time been the most widely accepted characteristic of globalization.⁸¹ TNCs exert almost unimaginable power, supported by powerful economic institutions, which are themselves 'both a symptom of and a stimulus for globalization'.⁸²

Doug Fisher 25/5/2021 10:26

Deleted: ing

2. Trajectories as Continuities

Such entrenched patterns did not begin to emerge with the ascendancy of neoliberalism in the 1980s. It is possible to see older logics at work in particular, colonialism—for which the power and legal structure of the TNC was pivotal from the sixteenth century onwards.⁸³ Both international human rights law and international environmental law are core components of an international legal order built upon distinctively colonial foundations.⁸⁴ Moreover, as a range of scholarship has demonstrated, Eurocentric colonialism was 'rationalized' by questionable modes of privileging based on subject-object assumptions that underpinned the rationalistic colonial orders of hierarchy afflicting humans and 'nature' alike.⁸⁵

The subject-object relations characterizing a binary distance between humans and 'their environment' underlie what Merchant famously calls the 'death of nature'.⁸⁶ Merchant's analysis centres upon the Cartesian dualistic rendering of 'nature' as dead *res extensa*—mere inert matter—and upon the Baconian inauguration of a distinctively masculinist mode of scientific dominance. This convergence produced a system of values at the top of which a prurient and masterful 'man' was dominant: the subject constructed as epistemic overlord acting on the world as 'object'. In the process, an entire hierarchy of human beings considered to be less than fully rational was folded into an imposed order of masculinist European mastery. The less than fully rational included women, children, the indigenous and the nomadic. The Eurocentric ordering of humanity was accompanied by the elevation of private property and market rationality as 'givens' of civilizational progress. These essentially hierarchizing dynamics are deeply familiar themes to anyone versed in critical accounts of international human rights law, which, in line with these patterns, still produces entirely predictable marginalized subjectivities.⁸⁷

These trajectories and formations have produced a situation in which international human rights law has been widely colonized by formations of global corporate capital.⁸⁸ At the same time, as noted above, the very foundations of environmental law work against its commitments from 'within'. It is therefore important to face the eco-destructive and inhumane implications of the historically powerful ideological imperatives that haunt the law as subterranean archetypes expressed in tropes of legal subjectivity and sovereignty.⁸⁹ These ideological imperatives are emerging with deepening force in the era of neoliberal globalization and of an industrialization-driven Anthropocene crisis. In short, for all the tensions between them that reflect differing fundamental moral impulses and institutional

Doug Fisher 25/5/2021 10:39

Deleted: Of course,

Doug Fisher 25/5/2021 10:39

Deleted: s

Doug Fisher 25/5/2021 10:39

Deleted: first

Doug Fisher 25/5/2021 10:40

Deleted: , and

Doug Fisher 25/5/2021 11:03

Deleted: And,

Doug Fisher 25/5/2021 11:03

Deleted: Eu

Doug Fisher 25/5/2021 11:08

Deleted: Eu

Doug Fisher 25/5/2021 11:08

Deleted: c

distinctions, international human rights law and international environmental law share the same set of fundamental subject-object relations and the ideologies that feed off them. Both international human rights law and international environmental law exhibit haunting ambiguities that fracture the very hopes they each purport to offer.

What, then, is to be done? What future foundations might bring a renewal of the hope thus far betrayed? Since ontology is fundamental to patterns of eco-violation, the crises of human hierarchy, the assumptions of capitalist praxis and the counterproductive and uneven anthropocentrism characterizing the injustices of the global order, it is to ontology that we now turn.

FUTURE-FACING FOUNDATIONS AND HOPE RENEWED

1. The Intellectual Bankruptcy Underlying Human Rights Law and Environmental Law

The subject-object relations underlying the international legal order have been thoroughly exposed by critical scholarship and by decolonial critical initiatives pushing back against their fundamental Eurocentricity. However, as the twenty-first century complexity deepens, it seems especially urgent to address the implications of new scientific insights that increasingly render these subject-object relations impossible to maintain with any degree of intellectual plausibility. Such scientific insights and developments have inspired a raft of posthumanist and the new materialist responses that push thinking beyond the broadly anti-Cartesian critique offered by critical scholarship towards a post-Cartesian account of reality. The assumptions upon which human rights law and environmental law alike are based look increasingly bankrupt, empirically unsound and unsupportable.

Coole and Frost argue that what is at stake in the scientific and technological developments informing new materialisms is 'nothing less than a challenge to some of the most basic assumptions that have underpinned the modern world, including its normative sense of the human and its beliefs about human agency, [and] its material practices such as the ways we labor on, exploit and interact with nature'.⁹⁰ Such a challenge inevitably problematizes the foundations of human rights law and of environmental law — and of their relationship. In particular, the collapse of their foundations demands a radical questioning of the entire range of assumptions upon which human rights law and environmental law are based—including the human subject at their axis.

The distinctively twenty-first century complexities in relation to which human rights law and environmental law must be situated include climate change, instantaneous algorithm-driven global capital flows, population movements, genetically modified organisms (GMOs), bio-engineering, artificial intelligence, robotic systems and the sheer saturation of contemporary life in biotechnologies, digitalization and virtual technologies. These and other such complexities inexorably 'disturb the conventional sense that agents are exclusively humans who possess cognitive abilities, intentionality and freedom to make autonomous decisions and the corollary presumption that humans have the right or ability to master nature'.⁹¹

Doug Fisher 25/5/2021 11:17

Deleted: ?

Doug Fisher 25/5/2021 11:17

Deleted: 1

Doug Fisher 25/5/2021 11:17

Deleted:

Doug Fisher 25/5/2021 11:17

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.63 cm +
Indent at: 1.27 cm

Doug Fisher 25/5/2021 14:51

Deleted: the

What are the implications for law of a de-centred world in which matter—in reality—has none of the assumed stability or inertia presumed by traditional subject-object relations and in which human subjects themselves are radically de-centred and re-located? Perhaps the first step is openly to acknowledge this evaporation of the human agent at ‘the centre’ and to appreciate that humans are, as Philippopoulos-Mihalopoulos has put it, ‘thrown’ into ‘the middle’ of a radically open ontology.⁹² New materialism and the sciences with which it engages conclusively demonstrate that there is simply *no centre there* for the ‘human’ to occupy. What is revealed is instead an entanglement of multiple bodies at multiple scales—from the global to the microscopic. These bodies are both human and non-human and, as Haraway puts it, the world itself unfolds as a ‘spatial and temporal web of interspecies dependencies’.⁹³ There is no ‘autonomous’—in the Kantian sense—subject of human rights. There are no stable *a priori* subject-object categorizations: ‘species of all kinds, living and not, are consequent on a subject- and object-shaping dance of encounters’.⁹⁴ Accordingly, it makes more sense, as Barad has argued, to eschew any notion of an ontologically fixed subject-object division at all. But this does not mean abandoning the meaning-making function of boundary-drawing. There may be, as Barad suggests, no ‘natural, pure and innocent separations [but this is not to reach] for the rapid dissolution of boundaries’.⁹⁵ Distinctions can still be drawn for various purposes. It is still meaningful, therefore, to speak of the ‘human’ even as there is recognition of the fractures, frays and contingencies accompanying that term. In that sense, the hermeneutical suspicion of critical legal scholarship retains its relevance. At the same time, critique can embrace a more process-based ontology according to which the world is made up *not* by the interaction of separate entities but by differential patterns of *mattering* that retain their ethical significance.

Embracing such destabilization of entrenched habits of mind and ideology might seem hopelessly philosophical—dizzying even. Yet science urges such a view of matter and life. In fact, such a shift is deeply practical, precisely because it is more empirically faithful than the mythic binary that reduces lively materialities to inert matter. Such an understanding re-imagines and resituates the human of human rights law and of environmental law. Humans are resituated by such accounts as being embedded in and as ‘world-making entanglements’, caught up in eddies of materializing matter-meanings, or ‘material-semiotic nodes or knots in which diverse bodies and meanings coshape one another’.⁹⁶ The call invoked by this shift invites a response to the *facticity* of ‘our’ ontological co-constitution with multiple collaborators, including microscopic collaborators, in the co-production of ‘the world’. What might this shift mean for law and policy?

2. Re-imagining Law and Policy

The first implication of this shift is that the ‘human’ itself, while remaining a meaningful (if contested and complicated) referent, instead of being a disembedded autonomous agent radically separated from ‘nature’ is seen to be continuously emergent, evolute, and entangled as but one partner in a wider field of lively agentic significance. The ‘human’, on this view, is always an ‘I’/‘we’ ‘in-the-making’ — an insight that also fully embraces an ongoing critique of the ways in which the naturalized ‘human’ of human rights and of environmental law has operated to exclude non-dominant human beings while

Doug Fisher 25/5/2021 15:01

Deleted: recognition of

Doug Fisher 25/5/2021 15:03

Deleted: while

Doug Fisher 25/5/2021 15:05

Deleted: ing

Doug Fisher 25/5/2021 15:10

Deleted: (

Doug Fisher 25/5/2021 15:10

Deleted:)

Doug Fisher 25/5/2021 15:12

Deleted: ?

simultaneously objectifying a construct of 'nature' and an even more reductive construct of 'environment'.

In this light of this shift from a subject-object dualism towards lively co-emergent multiplicities, human rights law and environmental law become sites for much more attentive praxes of co-situated yet differentially situated living.⁹⁷ Human rights—including human rights law—would, in this light, be understood to be a mode of special juridical attentiveness to the patterns of privilege and marginalization endured by humans as 'critters'.⁹⁸ Human 'critters' are understood—to evoke Haraway—as being entangled with multiple non-human 'critters' of all kinds. Environmental law likewise becomes a field based on an ontology eschewing the 'centre' in favour of a 'middle'⁹⁹ or in the 'midst of'. Environmental law can thus be drawn away from abstractionist tendencies and the production of reified categories—such as 'global water'—to respond to the material and situated particularities—such as 'these lively waters in their irreplaceable uniqueness'—revealed by ecological sciences, indigenous worldviews, and new materialisms in intimate conversation with law. The central task facing human rights law and environmental law alike thus becomes that of re-imagining and addressing the 'situation of the human in a more than human world'.¹⁰⁰

At a practical level, this kind of shift will require a conscious sense of epistemic humility that faces up to the unsustainability of 'the centre', while learning new modes of hearing and engagement that respect a plurality of ontological and epistemological starting points. In environmental matters, for example, this kind of shift will require a rejection of law's linear concept of causation and of law's unhelpful focus on a reductive view of 'harm'. In climate policy, it will require rejecting existing sustainability assumptions while relocating the human as part of a planetary 'assemblage', simultaneously making space for the 'unusual capacities' of humans in climate policy.¹⁰¹ Only these kinds of shifts will enable law to respond to the immense systemic complexities of climate crisis and lively ecological energies.¹⁰² New, possibly as yet unimagined, constituencies of concern will need to be factored into legal decision-making. This will stretch law's epistemic parameters to embrace not only multiple indigenous onto-visions and praxes but also drifts and vectors of ecological patterns and flows together with a wide range of material and semiotic sources of insight. A whole range of perspectives beyond that of the central agent of Cartesian and Kantian onto-epistemology must now—and increasingly—be welcomed into the law's relationships with the materialities of the world.¹⁰³

There are already signs of multiple developments compatible with this onto-epistemic direction. These include commons-based environmental governance strategies; new modes of advocacy and imaginative rights-claiming strategies; the increasingly protest-based energies bringing marginalized perspectives into environmental justice questions; the emergence of biocultural rights discourse; the converging energies of a range of social movement activisms; the extension of legal personhood to assemblages such as rivers; the enshrining of rights of nature in the Ecuadorian constitution, and so forth. However, unless the currently assumed ontological foundations of human rights law and environmental law are replaced, progress will remain impeded. The necessary adjustments might take place in various ways: for example, by the spread of new scholarship; by the wildfire of urgent memes; by imaginative litigation and adjudication strategies; by enlightened legal and political norm formulation; and by the trickle-up effect of ground-level energies arising from multiple situated communities of concern that confront law with its own ideological and structural limitations. In the final analysis, though,

Doug Fisher 25/5/2021 15:17

Deleted: ,

Doug Fisher 25/5/2021 15:29

Deleted: (

Doug Fisher 25/5/2021 15:29

Deleted:),

Doug Fisher 25/5/2021 15:29

Deleted: (

Doug Fisher 25/5/2021 15:29

Deleted:)

Doug Fisher 25/5/2021 15:28

Deleted: y,

Doug Fisher 25/5/2021 15:28

Deleted: ing

Doug Fisher 25/5/2021 15:39

Deleted: ,

Doug Fisher 25/5/2021 15:39

Deleted: hing

Doug Fisher 25/5/2021 15:40

Deleted: ;

Doug Fisher 25/5/2021 15:41

Deleted: and

Doug Fisher 25/5/2021 15:42

Deleted: and

without a significant shift in the fundamental *taken for granted* of human rights law and environmental law, howsoever achieved, the progressiveness of both will remain inhibited by shared and outmoded foundations inimical to their aims.

-

▼

Doug Fisher 23/12/2021 14:43

Deleted: -

... [1]

Doug Fisher 23/12/2021 14:42

Formatted: Right: 0.18 cm, Line spacing: multiple 1.02 li

NOTES

1. This chapter builds on earlier work, particularly A. Gear, 'Framing the Project of International Human Rights law: Reflections on the Dysfunctional "Family" of the Universal Declaration' in C. Gearty and C. Douzinas (eds), *Cambridge Handbook of Human Rights* (Cambridge, Cambridge University Press, 2012), pp. 17–35; A. Gear, 'Human Rights and New Horizons? Thoughts Towards a New Juridical Ontology' (2015/6) *Science, Technology and Human Values*, Special Issue (forthcoming). The author would like to thank Professor Louis J. Kotze and Professor Karen Morrow for their invaluable comments and reflections. Any errors remain the author's alone.

² Kirby (2006).

³ Marshall (2018).

⁴ A revealing term exposing the sense in which 'the environment' is that which surrounds a centre—the human subject. For a fuller discussion, see Philippopoulos-Mihalopoulos (2011a) and (2011b).

⁵ Some of these tensions are explored in Dias (2008).

⁶ Shelton (2007, pp. 1–9).

⁷ De Sousa Santos (2002, p. 260).

⁸ Charter of the UN, 1 UNTS XVI, 24 October 1945.

⁹ See Buergenthal (1997).

¹⁰ For an argument drawing on the quasi-constitutional character of the UN Charter as the basis of a constitutionalized international order, see Fassbender (2009).

¹¹ GA Res 217 (111) of 10 December 1948, UN Doc A/810 at 71 (1948).

¹² UN Doc A/CONF.157/23 (1993), 25 June 1993, endorsed by GA Res 48/121 of 14 February 1994, [2].

¹³ UDHR, Preamble.

¹⁴ Donnelly (2003, p. 22).

¹⁵ Buergenthal (1997).

¹⁶ Opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969).

¹⁷ Joseph and McBeth (2010, editorial introduction).

¹⁸ Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).
¹⁹ Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
²⁰ Turner (2008).
²¹ Opened for signature 10 December 1984, 1465 UNTC 85 (entered into force 26 June 1987).
²² Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).
²³ Baxi (2006, p. 46).
²⁴ The European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 222 (entered into force 3 September 1953), as amended by Protocols Nos 3, 5, 8 and 11 (entered into force on 21 September 1970, 20 December 1971, 1 January 1990 and 1 November 1998, respectively); American Convention on Human Rights OAS Treaty Series No.36, 1144 UNTS 123 (entered into force 18 July 1978); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 ('African Charter'); League of Arab States, Arab Charter on Human Rights, 22 May 2004, reprinted in (2005) 12 *International Human Rights Reports* 893 (entered into force 15 March 2008).
²⁵ Handl (1992, p. 117).
²⁶ Baxi (2006) pp 42-3.
²⁷ Moyn (2010).
²⁸ Slaughter (2018).
²⁹ *Ibid.*, p. 737, citing Bello (1994). Emphasis added.
³⁰ All primarily designed to protect commercially valuable species: see Brown Weiss (1992-93, p. 676). Brown Weiss lists the 1902 Convention for the Protection of Birds Useful to Agriculture, the 1916 Convention for the Protection of Migratory Birds in the United States and Canada and the Treaty for the Preservation and Protection of Fur Seals signed in 1911. She notes that '[o]nly one convention focused on wildlife more generally: the 1900 London Convention for the Protection of Wild Animals, Birds and Fish in Africa' (p. 676).
³¹ Brown Weiss lists conservation laws of the 1930s and 1940s.
³² Tarlock (2009).
³³ Johnson and Powell (2014, p. 13).
³⁴ Carson (1962/3).
³⁵ Tarlock (2009).
³⁶ *Ibid.* (p. 2).
³⁷ Coyle and Morrow (2004).
³⁸ Tarlock (2009, pp. 2-4).
³⁹ Anghie (2005).
⁴⁰ Kaswan (1997), 268-275.
⁴¹ Yang and Percival (2009, p. 616).
⁴² *Ibid.* (p. 617).
⁴³ Anderson (1996, p. 3).
⁴⁴ Stockholm Declaration of the United Nations Conference on the Human Environment, 16 June 1972, UN Doc A/CONF.48/14/Rev.1 (1973).
⁴⁵ A formulation whose gendered anthropocentrism is difficult to ignore.
⁴⁶ Shelton (2011, p. ix).
⁴⁷ *Ibid.* (p. x).
⁴⁸ Morrow (2015).
⁴⁹ Stockholm Declaration (n.38) (preamble, para.7).
⁵⁰ JHRE thing.
⁵¹ Turner (2014).
⁵² UN Doc A/CONF.151/26 (vol.I); 31 ILM 874 (1992).
⁵³ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: 2161 UNTS 447; 38 ILM 517 (1999).
⁵⁴ Fitzhenry (2020).
⁵⁵ Shelton (2011, p. x).
⁵⁶ *Ibid.*
⁵⁷ Article 16 of the African Charter on Human and Peoples' Rights: OAU Doc. CAB/LEG/67/3 rev. 5; 1520 UNTS 217; 21 ILM 58 (1982); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador, 17 November 1988), OAS T.S. 69.
⁵⁸ Boyd (2012); Gellers (2015).
⁵⁹ Boyd (2012).
⁶⁰ Gellers (2015).
⁶¹ Turner (2014).
⁶² Boyd (2012, pp. 111-13).

Doug Fisher 27/5/2021 14:59

Deleted: .

Doug Fisher 27/5/2021 14:58

Deleted: ;

⁶³ Gearty (2010, p. 21).
⁶⁴ ~~Ibid.~~
⁶⁵ Turner (2014).
⁶⁶ Turner (2014, p. 32).
⁶⁷ Ibid.
⁶⁸ Ibid. (p. 38).
⁶⁹ Ibid.
⁷⁰ Dagerman and Schellhuber (2012).
⁷¹ Ibid. (p. 1).
⁷² Turner (2014, pp. 42–4).
⁷³ Baxi (2006); Grear (2010); Salmon, Kohl and Harding (2010); Gill (1995).
⁷⁴ Gill and Cutler (2014).
⁷⁵ Turner (2014, p. 42).
⁷⁶ Sinden (2007, p. 268).
⁷⁷ Kirby (2006).
⁷⁸ Koch (2012).
⁷⁹ Indeed, it has long been widely recognized that TNCs are *the* 'key agents of the new world economy': De Sousa Santos (2002, p. 167).
⁸⁰ Paragraph 20 of the UN Document, 'Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights' (2003) UN Doc E/CN.4/Sub.2/2003/12/Rev.2, defines a TNC as 'an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries—whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively'.
⁸¹ See Shamir (2005, p. 92).
⁸² McCorquodale and Fairbrother (1999, p. 737).
⁸³ McLean (2004).
⁸⁴ Anghie (2005).
⁸⁵ See Huggan and Tiffin (2007) for intimations of these hierarchical patterns.
⁸⁶ Merchant (1990).
⁸⁷ Otto (2005; 2006); Kapur (2006).
⁸⁸ Baxi (2006); Grear (2010).
⁸⁹ Blanco and Grear 2019.
⁹⁰ Coole and Frost (2010, Kindle Location 137).
⁹¹ Ibid. (Kindle Location 250).
⁹² Philippopoulos-Mihalopoulos (2011a; 2011b). 85.).
⁹³ Haraway, (2008, p. 11).
⁹⁴ ~~Ibid., pp. 4–5).~~
⁹⁵ Barad (2007, p. 187).
⁹⁶ Haraway (2008, p. 4).
⁹⁷ See Code (2006) for an extended discussion of situated knowledge and the responsabilization of knowing.
⁹⁸ Grear (2020a).
⁹⁹ Philippopoulos-Mihalopoulos (2011b).
¹⁰⁰ Neimanis (2014, p. 14).
¹⁰¹ Fox and Alldred (2020).
¹⁰² For a theoretical foundation for a new environmental law responsive to new materialist and posthumanist insights, see Philippopoulos-Mihalopoulos (2011b).
¹⁰³ Grear (2020b).

REFERENCES

Adelman, S. (2015). 'Epistemologies of Mastery' in A. Grear and L.J. Kotze (eds), *Research Handbook on Human Rights and the Environment* (Cheltenham, Edward Elgar), pp. 9–27.
Anderson, M.R. (1996). 'Human Rights Approaches to Environmental Protection: An Overview' in A. Boyle and M. Anderson (eds), *Human Rights Approaches to Environmental Protection* (Oxford, Oxford University Press), pp. 1–24.
Anghie, A. (2005), *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, Cambridge).
Barad, K. (2007), *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham NC, Duke University Press: Kindle DX Version, retrieved from Amazon.co.uk).
Baxi, U. (2006), *The Future of Human Rights* (Oxford, Oxford University Press).

Doug Fisher 15/5/2021 10:18
Deleted: citation.
Doug Fisher 15/5/2021 10:19
Deleted:
Doug Fisher 15/5/2021 10:19
Deleted: Gearty (2010, p. 21)

Doug Fisher 27/5/2021 14:57
Deleted: Haraway (2008,
Doug Fisher 27/5/2021 14:57
Deleted: .

- Bello, W. (1994), *Dark Victory: The United States, Structural Adjustment and Global Poverty* (Transnational Institute Series).
- Bianco, E. and A. Grear. (2019), 'Personhood, jurisdiction and injustice: law, colonialities and the global order', *Journal of Human Rights and the Environment* 10(1), 86-117.
- Boyd, D.R. (2012), *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Berkeley, University Berkeley Press).
- Brown Weiss, E. (1992-3), 'International Environmental Law: Contemporary Issues and the Emergence of a New World Order', *Georgetown Law Journal* 81, 675-710.
- Buergeenthal, T. (1997), 'The Normative and Institutional Evolution of International Human Rights', *Human Rights Quarterly* 19(4), 703-23.
- Carson, R. (1962/3), *Silent Spring* (London, Hamish Hamilton).
- Code, L. (2006), *Ecological Thinking: The Politics of Epistemic Location* (Oxford, Oxford University Press).
- Coole, D. and S. Frost (2010), *New Materialisms: Ontology, Agency and Politics* (Durham NC, Duke University Press: Kindle DX Version, retrieved from Amazon.co.uk). Coyle, C. and K. Morrow (2004), *The Philosophical Foundations of Environmental Law* (Oxford, Hart).
- Dangerman, J. and H.J. Schellnhuber (2012), 'Energy Systems Transformation' 110/7 *Proceedings of the National Academy of Sciences of the United States of America*, PNAS Early Edition; <http://www.pnas.org/cgi/doi/10.1073/pnas.1219791110>.
- De Sousa Santos, B. (2002), *Towards a New Legal Common Sense: Law, Globalization and Emancipation* (London, Butterworths).
- Dias, A. (2008), 'Human Rights, Environment and Development with Special Emphasis on Corporate Accountability' Human Development Report 2008 Background Paper; <http://www.core.ac.uk/download/pdf/6248783.pdf>.
- Donnelly, J. (2003), *Universal Human Rights in Theory and Practice* (Ithaca, NY, Cornell University Press).
- Evans, T. and A.J. Ayers (2006), 'In the Service of Power: The Global Political Economy of Citizenship and Human Rights', *Citizenship Studies* 10, 239-308.
- Fassbender, B. (2009), *The United Nations Charter as the Constitution of the International Community* (Leiden and Boston, Brill/Nijhoff).
- Fitzhenry, E. (2020), 'Distribution without representation? Beyond the "rights of nature" in the Southern Equatorial highlands', *Journal of Human Rights and the Environment* 12(1) (forthcoming).
- Fox, N. and P. Alldred (2020), 'Reassembling climate change policy: Materialism, posthumanism, and the policy assemblage', *British Journal of Sociology* 71, 269-283.
- Gearty, C. (2010), 'Do Human Rights Help or Hinder Environmental Protection?', *Journal of Human Rights and the Environment* 1(1), 7-22.
- Gellers, J.C. (2015), 'Explaining the emergence of constitutional environmental rights: a global quantitative analysis' *Journal of Human Rights and the Environment* 6 (1), 75-97.
- Gill, S. (1995), 'Globalisation, Market Civilisation, and Disciplinary Neoliberalism' *Millennium Journal of International Studies*, 24, 399-423.
- Gill S. and C. Cutler. (2014) *New Constitutionalism and World Order* (Cambridge University Press, Cambridge).
- Grear, A. (2010) *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity* (Palgrave MacMillan, Basingstoke).
- Grear, A. (2020a) 'Embracing Vulnerability: Notes Towards Human Rights for a More-Than-Human World' in D. Bedford and J. Herring (2020) *Embracing Vulnerability: The Challenges and Implications for Law* (London, Routledge), 153-176.
- Grear, A. (2020b), 'Legal Imaginaries and the Anthropocene: "Of" and "For"' *Law and Critique* Special issue: 'Laws for the Anthropocene', 31 (3), 351-366.
- Handl, G. (1992), 'Human Rights and Protection of the Environment: A Mildly "Revisionist" View' in A.A. Cançado Trindade (ed.), *Human Rights, Sustainable Development and the Environment* (San Jose de Costa Rica/Brasilia, Instituto Interamericano de Derechos Humanos/Banco Interamericano de Desarrollo), pp. 117-42.
- Haraway, D. (2008), *When Species Meet* (Minnesota, University of Minnesota Press). Huggan, G. and H. Tiffin (2007), 'Green Postcolonialism', *Interventions: International Journal of Postcolonial Studies* 9(1), 1-11.
- Johnson, L. and F. Powell (2014), *Environmental Law* (Boston, Cengage).
- Joseph, S. and A. McBeth (2010), *Research Handbook on International Human Rights Law* (Cheltenham, Edward Elgar).
- Kapur, R. (2006), 'Human Rights in the 21st Century: Take a Walk on the Dark Side',

Sydney Law Review 28, 664–87.

- Kaswan, A. (1997). 'Environmental Justice: Bridging the Gap between Environmental Laws and "Justice"', *American University Law Review*, 47 (2), 221–301.
- Kirby, P. (2006). *Vulnerability and Violence: The Impact of Globalisation* (London, Ann Arbor, Pluto Press).
- Koch, M. (2012). *Capitalism and Climate Change: Theoretical Discussion, Historical Development and Policy Responses* (Basingstoke, Palgrave Macmillan).
- Malm, A. and A. Hornborg (2014). 'The Geology of Mankind? A Critique of the Anthropocene Narrative', *The Anthropocene Review* 1(1), 62–9.
- Marshall, T. (2018). *The Age of Walls: How Barriers Between Nations Are Changing Our World* (Scribner, New York, NY).
- McCorquodale, R. and R. Fairbrother (1999). 'Globalization and Human Rights', *Human Rights Quarterly* 21, 735–66.
- McLean, J. (2004). 'The Transnational Corporation in History: Lessons for Today?', *Indiana Law Journal* 79, 363–77.
- Merchant, C. (1990). *The Death of Nature: Women, Ecology and the Scientific Revolution* (London, Harper Collins).
- Morrow, K. (2015). 'Sustainability, Environmental Citizenship Rights and the Ongoing Challenges of Shaping Supra-National Environmental Governance' in A. Grear and L.J. Kotze, *Research Handbook on Human Rights and the Environment* (Cheltenham, Edward Elgar), pp. 200–218.
- Moyn, S. (2010). *The Last Utopia: Human Rights in History* (Belknap, Harvard UP).
- Neimanis, A. (2014). 'Alongside the right to water, a posthumanist feminist imaginary', *Journal of Human Rights and the Environment* 5(1), 5–24.
- Otto, D. (2005). '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), pp. 105–29.
- Otto, D. (2006). 'Lost in Translation: Rescripting the Sexed Subjects of International Human Rights Law' in A. Orford (ed.), *International Law and its Others* (Cambridge, Cambridge University Press), pp. 318–56.
- Pallonitny, T. (2015). 'Taking aims seriously—how legal ecology affects judicial decision-making', *Journal of Human Rights and the Environment* 6(1), 55–74.
- Philippopoulos-Mihalopoulos, A. (2011a). 'the sound of a breaking string': critical environmental law and ontological vulnerability' *Journal of Human Rights and the Environment* 2(1), 5–22.
- Philippopoulos-Mihalopoulos, A. (2011b). 'Towards Critical Environmental Law' in A. Philippopoulos-Mihalopoulos (ed.), *Law and Ecology: New Environmental Foundations* (Abingdon, Routledge/Glasshouse), pp. 18–38.
- Shamir, R. (2005). 'Corporate Social Responsibility: A Case of Hegemony and Counter-Hegemony' in B. De Sousa Santos and C.A. Rodrigues-Garavito (eds), *Law and Globalisation from Below: Towards a Cosmopolitan Legality* (Cambridge, Cambridge University Press), pp. 92–117.
- Shelton, D. (2007). 'An Introduction to the History of Human Rights Law', *The George Washington University Law School Public Law and Legal Theory Working Paper No.346, Legal Studies Research Paper No.346*, 1–30.
- Shelton, D.L. (2011). *Human Rights and the Environment Volume 1* (Cheltenham, Edward Elgar).
- Sinden, A. (2007). 'Climate Change and Human Rights', *Journal of Land Resources and Environmental Law* 27, 255–71.
- Slaughter, J. (2018) 'Hijacking Human Rights: Neoliberalism, the "New Historiography" and the End of the Third World' *Human Rights Quarterly* 40/4 735-775.
- Tarlock, D. (2009). *Environmental Laws and their Enforcement Volume 1: 'History of Environmental Law'* in *Encyclopedia of Life Support Systems (EOLSS)*.
- Turner, B. (2008). 'Human Vulnerabilities: On Individual and Social Rights'. <http://web.gps.emory.edu/vulnerability/zpdfs/turnerpub.pdf>.
- Turner, S. (2014). *A Global Environmental Right* (London, Routledge).
- Yang, T. and R.V. Percival (2009). 'The Emergence of Global Environmental Law', *Ecology Law Quarterly* 36, 615–64.

