

## Review Article

# Marking out the Interpretive Possibilities of the Aarhus Convention

Caer Smyth<sup>\*</sup> 

*The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship.* By Emily Barritt [Hart, 2020, ISBN: 9781509915279, Hardback, 188 pp.]

### 1. COMMITMENT: SETTING THE INTENTION

Environmental law scholarship is fast-paced; environmental law scholars assess the implications of swift policy and regulatory changes, draw on scholarship across many disciplines and develop new concepts and strategies, all to build a toolbox of approaches with which to respond to the multiple, complex challenges facing the environment.<sup>1</sup> In this context, environmental law can feel like it has too many words, too many aims and not enough clarity. It is not always clear whether an approach is going to work and whether we are replicating work that has already taken place. If time is so limited, what will happen if we invest our time in the wrong choice?

These questions of pace and purpose emerged for me as I read *The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship*. In this work, Emily Barritt concentrates on the underpinning purposes of the Aarhus Convention, a cornerstone convention in international environmental law. This thoughtful pace stood out against the urgency of the present moment, a sense of urgent unease that seemed to be reflected in conversations with my human rights law students last semester. The module focuses on the European Convention on Human Rights and in this class they were learning about human rights-based climate change litigation and the road that led to what might be the Strasbourg Court's first climate change case, *Duarte Agostinho and others v Portugal and 32 Other States*.<sup>2</sup> In preparation, the students

<sup>\*</sup> Lecturer of Law, Cardiff University School of Law and Politics, Museum Avenue, Cardiff, Wales CF10 3AX, UK. ([smythc@cardiff.ac.uk](mailto:smythc@cardiff.ac.uk)).

<sup>1</sup> E Fisher, B Lange, E Scotford and C Carlarne, 'Maturity and Methodology: Starting a Debate about Environmental Law Scholarship' (2009) 21 JEL 213, 228.

<sup>2</sup> App no 39371/20. This was the first case concerning climate change to be filed with the Court, on 3 September 2020 (Global Legal Action Network, 'An Emergency like no other: Six young people from Portugal are taking 33 countries to the European Court of Human Rights for failing to do their part to avert climate catastrophe' <<https://youth4climatejustice.org/>> accessed 10 May 2022). However, it seems as if *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* (App no 53600/20) will be heard earlier (European Court of Human Rights, Press release issued by the Registrar of the Court ECHR 142 29.04.2022 'Grand Chamber to examine case concerning complaint by association that climate change is having an impact on their living conditions and health' (2022)).

read articles on human rights and the environment<sup>3</sup> and previous environmental case law of the Court.<sup>4</sup> They were asked to consider whether human rights legal instruments can be an effective tool for environmental protection. Reflecting on whether human rights instruments could be employed to mitigate climate change or to protect the environment, many of the students responded by saying that these instruments were far from ideal but that they were available now and that it was unrealistic to develop more appropriate instruments, given the limited time left to respond effectively to the climate emergency. It should be highlighted that the students were asked to reflect on human rights legal instruments and not the concept of human rights more broadly and that the students' understanding of human rights legal instruments would be shaped by the European Convention on Human Rights and its Court. This qualification noted, the general sense among the students was that human rights were not appropriate to this purpose, that they were individualist, state and human-centric, but that despite their many flaws, they might be usefully employed for environmental protection. I suggest that the students' responses reflect a feeling prevalent in environmental law, and of course reveals something of my own perspective in the way I chose to approach teaching this topic, focusing on the challenges and on the gaps between ambitions and implementation. It reveals a concern with time and perhaps a cynicism regarding the grand claims attached to international human rights and environmental legal frameworks. The students' responses reflect a sense that these instruments are not expected to fulfil their grand ambitions but rather are expected to function just enough to be of some use. This sense is perhaps also reflected in the Aarhus Convention, the instrument investigated in this book. The Aarhus Convention is shaped by grand ambitions and recognises a substantive right to a healthy environment; however, the rights established in the Convention are procedural environmental rights, more limited in scope.<sup>5</sup> In the fast-paced, multiplying and complicating challenges of environmental law, beset with wicked and super-wicked problems,<sup>6</sup> we might think that this will have to be enough.

## 2. AFFECTION: A LOVE STORY OF THE CONVENTION

In *The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship*, Emily Barritt pulls at the roots of these assumptions and interrogates the deeper purposes underpinning the Aarhus Convention. The Aarhus Convention is an instrument of the UNECE<sup>7</sup>; it was adopted on 25 June 1998 and entered into force on 30 October 2001.<sup>8</sup> The Aarhus Convention is an environmental and human rights treaty that enshrines the participatory rights set out in Principle 10 of the Rio Declaration<sup>9</sup> in its three pillars; access to environmental information; public participation in environmental decision-making and access to justice in environmental

3 For example, RG Lee, 'Resources, Rights and Environmental Regulation' (2005) 32 JLS 111; F Francioni, 'International Human Rights in an Environmental Horizon' (2010) 21 EJIL 41; CD Stone, 'Should Trees Have Standing?' (1972) 45 Southern California Law Review, 450; A Savaresi and J Auz, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9 Climate Law 244.

4 For example, *Guerra and Others v. Italy* App no 14967/89 (1998); *Hatton v UK* App no 36022/97 (2003); *Fadeyeva v Russia* App no 55723/00 (2005).

5 The relationship between the substantive and procedural environmental rights found in the Aarhus Convention is explored in detail in *The Foundations of the Aarhus Convention*, and described briefly below.

6 RJ Lazarus, 'Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future' (2009) 94 *Cornell Law Review* 1153–234.

7 United Nations Economic Commission for Europe. UNECE, 'Mission' <<https://unece.org/mission>> accessed 4 April 2022.

8 Aarhus Convention, 'Introduction.' <<https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>> accessed 4 April 2022; Aarhus Convention, 'Status of Ratification' <<https://unece.org/environment-policy/public-participation/aarhus-convention/status-ratification>> accessed 4 April 2022.

9 The Rio Declaration on Environment and Development (adopted at United Nations Conference on Environment and Development Rio de Janeiro (Brazil), 3–14 June 1992) UN Doc. A/CONF.151/26 (Vol. I), Principle 10.

matters.<sup>10</sup> The Convention enshrines these participatory rights so as to promote sustainable development and environmental citizenship within its Contracting States. The book develops from Barritt's doctoral thesis<sup>11</sup>; it packs an impressive amount into its 188 pages, firstly setting out its methodological and theoretical approach, from there developing an explanatory framework for the environmental democracy, environmental rights and environmental stewardship purposes in turn and lastly applying these frameworks to the Aarhus Convention. A sense of optimism runs through the book. This is not to say that the book is naïve about the geopolitical contexts in which states operate. Rather, in *The Foundations of the Aarhus Convention*, Barritt holds the Contracting States to their word and sets out to develop an authentic interpretation of the purposes guiding the Convention. The mood is set for this genuine commitment to understanding the Convention from the start of each chapter; each chapter begins with a quotation from bell hooks' *All About Love: new visions*. In *All About Love*, hooks critically analyses love in modern American society and contends that people must learn to be better at giving and receiving love; this can be achieved by fostering commitment, affection, care, recognition, open communication and respect.<sup>12</sup> Barritt states that her 'love story' with the Aarhus Convention, the journey of understanding she has undertaken, has required similar skills.

This book makes a valuable contribution to the intersection of human rights and environmental law scholarship and in particular to the scholarship around the Aarhus Convention. This is a rich field, with much valuable scholarship that outlines the extent to which states are Aarhus Convention-compliant, how Aarhus Convention duties interact with other duties enshrined in other instruments and other valuable insights.<sup>13</sup> In this book, Barritt steps back from the focus on implementing the Convention and instead contemplates in greater depth the purposes and values that guide it. The commitment to developing a deeper understanding of the Aarhus Convention starts by recognising that the Convention attracts many ambitious, impressive but ambiguous aims, including among others; to promote sustainable development; to facilitate environmental citizenship; to protect the environment and to address climate change.<sup>14</sup> Their meaning is not clear from the Convention's explanatory materials or similar resources.<sup>15</sup> Barritt contends that to understand how the Aarhus Convention should be interpreted, whether by academics interpreting its scope, judges interpreting its duties or by policy-makers implementing its mission, these purposes need to be understood. Barritt identifies three core purposes underpinning the Aarhus Convention: environmental democracy, environmental rights and environmental stewardship, and develops her own explanatory framework of these purposes to illuminate how these purposes shape the Convention. To the real benefit of the work, Barritt

10 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998 38 ILM 517.

11 As noted in the book's introduction. E Barritt, *The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship* (Hart 2020) 3.

12 b hooks, *All About Love: New Visions* (William Morrow & Co 2000) 5.

13 This is a rich field of scholarship, including but not limited to: M Lee and C Abbot, 'The Usual Suspects? Public Participation under the Aarhus Convention' (2003) 66 MLR 80; E Hey, 'The Interaction between Human Rights and the Environment in the European "Aarhus Space" in A Grear and L Kotzé (eds), *Research Handbook on Human Rights and the Environment* (Edwards Elgar 2015) 375; Á Ryall, 'Beyond Aarhus Ratification: What Lies Ahead for Irish Environmental Law?' (2013) 20 IPELJ 19; M Pallemmaerts (ed), *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law* (Europa Law Publishing 2011); Á Ryall, 'The Relationship between Irish Law and International Environmental Law: A Study of the Aarhus Convention' (2019) 41 Dublin University LJ 163; OW Pedersen, 'The Price is Right: Aarhus and Access to Justice' (2014) 33 Civ JQ 13.

14 United Nations Economic Commission for Europe (UNECE) Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Programme of Work and Operation of the Convention: Strategic Plan for 2022-2030 (Seventh Session, Geneva, 18–20 October 2021) ECE/MP.PP/2021/2/Add.1. "Our Long-term Mission is to Minimize the Depletion of Environmental Resources that Should Remain for Future Generations, Promote Inclusive Societies, Address Climate Change, Support Disaster Risk Reduction and Ensure Sustainable and Environmentally Sound Development Through Strengthening Participatory Environmental Democracy in the United Nations Economic Commission for Europe (ECE) Region and Beyond."

15 Barritt (n11) 7.

chooses authenticity over clarity. The broad and complex concepts explored in the book are not neatly ordered and defined; rather, following Davies, Barritt treats them as ‘experimental explanations’,<sup>16</sup> carefully revealing their complexity and tracing the contours of their various meanings instead of trying to capture their meaning in a narrow definition. This approach is advocated by Scotford, who contends that ‘it is the careful methodological treatment of environmental law issues, rather than the taming of environmental law into coherent legal submission, that is the priority of environmental law scholarship.’<sup>17</sup> Having developed an understanding of the three purposes, in the final section of the book Barritt applies these meanings to the Aarhus Convention as an interpretative guide, enhancing our understanding of the possibilities of the Convention.

### 3. CARE: EXAMINING THE CONVENTION’S THREE PURPOSES

The first underpinning purpose to be investigated is environmental democracy. To do this, Barritt sets out boundary markers of democracy, for example ‘the presumption that human knowledge is *fallible*.’<sup>18</sup> The key challenges of environmental decision-making that mechanisms for environmental democracy would need to manage are further identified, for example that environmental knowledge claims are complex and environmental decisions are shaped by multiple values. The interactions between this marker of democracy and these challenges of environmental decision-making in particular provide valuable insights for debates in environmental law around expertise in decision-making.<sup>19</sup> The chapter further sets out the normative aims of environmental democracy, which are that it should: (1) aim towards environmental protection; (2) develop a broader conception of the common good; (3) give moral priority to long-term generalisable interests and (4) improve the legitimacy of environmental decisions.<sup>20</sup> The contours of environmental democracy thus identified, it is put to the side to be applied to the Convention in the final chapter.

In order to manage the ambiguous and complex concepts embedded within environmental democracy and in order to develop an explanatory framework for this purpose, Barritt investigates the ‘boundary markers’ of democracy, of environmental democracy and of environmental democracy as it informs our understanding of the Aarhus Convention; the environmental stewardship purpose follows a similar approach, as we shall see. The environmental rights purpose however has its own unique problems and requires a different approach. In its three pillars, the Aarhus Convention sets out three procedural environmental rights. There is not a lot of ambiguity to work through here. The ambiguity comes in Article 1 of the Convention, and it is to this Article that Barritt’s attention turns. Article 1 of the Aarhus Convention states:

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.<sup>21</sup>

16 M Davies, *Law Unlimited: Materialism, Pluralism and Legal Theory* (Routledge 2017) 14 in *ibid* 18.

17 E Scotford, *Environmental Principles and the Evolution of Environmental Law* (Hart 2017) 64 in *ibid* 15.

18 *ibid* 46.

19 *ibid* 46. C Smyth, “‘Tick the Box and Move On’: Compartmentalization and the Treatment of the Environment in Decision-Making Processes” (2021) 48 *JLS* 410.

20 Barritt (n11) 57.

21 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998 38 *ILM* 517, Article 1.

Chapter 4 seeks to ‘unlock the riddle’ of this Article, that points to a substantive environmental right, ‘the right of every person of present and future generations to live in an environment adequate to his or her health and well-being’ but actually establishes procedural environmental rights, ‘the rights of access to information, public participation in decision-making and access to justice in environmental matters.’ The Convention in its preamble similarly recognises a right to a healthy environment but does not establish one.<sup>22</sup> The relationship between these forms of rights is unpacked and then in the final chapter applied to the Convention; this analysis is a particular strength of the book. The focus on Article 1 and its substantive environmental right, Barritt acknowledges, limits the focus of the environmental rights discussion to anthropocentric rights, ‘an environment adequate to... health and well-being’ and away from discussions of rights of nature.<sup>23</sup>

Barritt draws on the work of Hey, who states that the ‘bones of the procedural rights enshrined in the Aarhus Convention are clothed with substantive requirements.’<sup>24</sup> Hey argues that the underpinning purpose of the Convention is the substantive environmental right as set out in Article 1, ‘the right of every person of present and future generations to live in an environment adequate to his or her health and well-being’; this provides judges interpreting the duties of the Convention with a clear indication of its purpose.<sup>25</sup> Hey notes in this way, while there is no substantive environmental right enshrined in the Convention, there is an interplay between substantive and procedural environmental rights; the substantive right is a guide to aid the interpretation of the procedural rights. Barritt builds on this in her analysis of the theoretical foundations of environmental rights and in applying this analytical rights work to Article 1 of the Convention. She firstly suggests, echoing Hey, that the substantive right outlined in Article 1 is a moral right that shapes the interpretation of the procedural rights pillars of the Convention. Barritt extends this idea however, reflecting on what is being accomplished by the ambiguous position of the substantive right in Article 1. Barritt contends that this ambiguity operates to identify a moral right while allowing space for an emerging legal right.<sup>26</sup> While one could argue that it is not unexpected for international legal documents to have this mixture of narrow legal duty and wider political ambition, what is distinctive about this analysis here is its analytical rights approach. In this analysis, Barritt clearly sets out how the Article accomplishes this dual function and how this framing might shape the interpretation of the Article 1. This interpretive approach is built on the understanding that human rights do not tend to appear, fully formed, but develop and gain authority over time.<sup>27</sup> At the time the Convention was being negotiated, a substantive right to a healthy environment was more aspirational and less concrete than it is now, with explicit recognition of this right present in several constitutions.<sup>28</sup> The position of the substantive right in Article 1, Barritt suggests, enables the Convention to respond to the discourse around this emerging right. This analytical work is particularly strong and displays the value of this detailed articulation of the Convention purposes that brings these blurred connections into clearer focus.

22 *ibid* preamble.

23 Barritt (n11) 76.

24 Hey (n12) 375.

25 *ibid* 375.

26 Barritt (n11) 154.

27 *ibid* 159.

28 According to the 2019 Report of the Special Rapporteur on human rights and the environment, there were (at the time of this report): 100 States whose constitutions incorporate a right to a healthy environment; 12 additional countries where courts have ruled that the right to a healthy environment is falls within the right to life and 100 States where a right to a healthy environment is incorporated in legislation; a total of 155 States with some form of legal obligation to respect, protect and fulfil the right to a healthy environment. Human Rights Council, *Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Report of the Special Rapporteur*, 8 January 2019 (A/HRC/40/55) paras. 13–6.



Lastly, Barritt explores the environmental stewardship purpose of the Convention. While this purpose is not explicitly stated in the explanatory material and implementation guide to the Convention,<sup>29</sup> so in some ways is less prominent than environmental democracy and environmental rights, in another reading it is the Convention's most fundamental purpose. The core purpose of the Convention is to facilitate the public to act as stewards of the environment by applying the three procedural environmental rights, and further to promote responsibility to and awareness of the environment among the wider public. In order to understand environmental stewardship as it applies to the Convention, Barritt explores stewardship along four dimensions: 'the object of the duty; the actor (or actors) who exercises the duty; the beneficiary of the duty; and the nature of the duty', which includes the different types of stewardship relationship.<sup>30</sup> The different forms of environmental stewardship that are most appropriate to the Convention's duties, custodial and managerial stewardship, are then applied to the Convention in the final chapter. Considering that this study of the Aarhus Convention is described as a 'love story', one might have expected to find a deeper engagement with emotional attachment to nature, place and community in this analysis. However, I recognise that this might not have fit so neatly in the framework for exploring environmental stewardship followed by Barritt in this chapter.<sup>31</sup>

#### 4. RECOGNITION: THE WORK SURPASSES ITS AIMS

Barritt describes *The Foundations of the Aarhus Convention* as a conscious step back from the 'practical problems of implementation' to explore the theoretical underpinnings of the Aarhus Convention.<sup>32</sup> In this regard, this book certainly achieves its aims. It deeply engages with the theoretical concepts embedded in the identified purposes and works with them to make valuable insights about the Convention. The book is perceptive, managing to open up new ways of looking at familiar concepts from different angles; this is facilitated in part by the wide range of scholarship upon which Barritt draws. To take one example from many, new materialist and related fields of thought contribute in stimulating ways to the understanding of environmental stewardship developed in the book. Barritt briefly explores schools of thought that recognise materiality or agentic force to both inorganic and organic matter and reflects on the implications of this 'thing-centric' approach for environmental stewardship. Barritt describes how the object of the stewardship duty, whether it is land, ecosystems, communities or things, will shape the scope of that duty. Further, the object of the stewardship duty reveals fundamental assumptions about the relationship between humans and that object; where the object is non-human matter, new materialist scholarship can make a valuable contribution to the debate. This is demonstrated in Jane Bennett's work, who argues in *Vibrant Matter* that conceiving of things as 'dead or thoroughly instrumentalised matter feeds human hubris and our earth-destroying fantasies of conquest and consumption',<sup>33</sup> raising the alarm on the effects and implications of a worldview that does not recognise any form of materiality. These are complex fields of thought that are only briefly discussed in the book; however, by taking this approach, Barritt underscores their value to these questions and encourages further research.

In taking this step back, Barritt develops and works through an elegant methodology that can be applied to similar instruments. Barritt offers her readers an invitation to explore these ambitious, broad concepts and to come to these explorations with an open and responsive mind.

29 The Aarhus Convention: An Implementation Guide (2014) ECE/CEP/72/Rev.1 (Implementation Guide, 2nd edn).

30 Barritt (n11) 110.

31 *ibid* 116.

32 *ibid* 20.

33 J Bennett, *Vibrant Matter: A Political Ecology of Things* (Duke University Press 2010) xi in *ibid* 119–20.

There is a remarkably diverse and broad range of sources relied on throughout the book, sources that go far beyond the typical terrain of environmental scholarship; bell hooks, Grayson Perry, Cam Grey (social historian), *Velvet Elvis* author Rob Bell, *Aristocats...* Some of these unexpected sources play a significant methodological role. As noted earlier, bell hooks' *All About Love* sets the tone with which the analysis is undertaken. Grayson Perry's vivid description of 'beating the bounds' provides a way of explaining unruly concepts without resorting to strict definition.<sup>34</sup> As for the other adventurous sources, it seemed to me as if the unexpected analogies and references were a way of disrupting the usual ways of approaching these concepts with which we are familiar – democracy, rights, environmental protection – and playfully encouraging different perspectives. The references to popular culture might also serve to enhance the accessibility of the work.

The book succeeds in setting out these three purposes and explaining their complex and various parts, and then applying them to the Convention. This framework, the three purposes echoing if not being confined to the three pillars of the Convention, works to keep these unwieldy concepts clear and coherent. However, the analysis comes alive in the explorations of the relationships between the three purposes; this close work enables the reader to reflect on subtle connections between these purposes that guide the Convention. Barritt describes the inter-related nature of these purposes, setting out how the ethic of environmental stewardship that runs through the Convention supports the normative ambitions of environmental democracy, and that the procedural environmental rights set out in the Convention are a structural device that promote these normative ambitions.<sup>35</sup> These relationships are clearly traced out in the frameworks developed to understand the three purposes. More subtle connections are also highlighted in this analysis. In her exploration of the environmental democracy purpose of the Convention, Barritt states that procedural environmental rights are democratic rights that are good for the environment and good for democracy.<sup>36</sup> Barritt also explores the idea that substantive environmental rights are good for democracy because they secure what Dryzek terms 'the ecological preconditions for democracy',<sup>37</sup> while acknowledging that this argument is critiqued by some and that the connection between a particular political system and the environment is more complex than this argument might indicate. The fundamental role that environmental stewardship plays in the unique structure of the Convention rights is further explored. Environmental stewardship motivates members of the public to use the procedural rights established in the Convention, the Convention thus taking part in a virtuous circle bolstering environmental responsibility and public participation among the publics of the Contracting Parties. Echoing the moves outlined in the analysis of environmental stewardship ('the actor who exercises the duty; the beneficiary of the duty'), Barritt notes how the Convention separates out the rights-exerciser and the rights-beneficiary. This is facilitated in part by the structure of Article 1 outlined above; 'In seeking to protect the rights of future generations, the Aarhus Convention recognises that the persons exercising a right need not be the person who ultimately benefits from it, by separating the substantive right to a healthy environment from the procedural rights that help to vindicate it.'<sup>38</sup> The implications of this move are also explored by Hey, who notes that people and NGOs who apply their Aarhus rights are not necessarily concerned with motivation by 'the protection of their own substantive rights, even if such rights may play a role

34 *ibid* 19.

35 *ibid* 146.

36 *ibid* 146.

37 J Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford University Press 2000) 142 in Barritt (n11) 64.

38 *ibid* 105.

in specific cases, but the protection of the environment.<sup>39</sup> To this Barritt adds the substantive rights of future generations.

## 5. OPEN COMMUNICATION: FUTURE DIRECTIONS FOR THIS WORK

These explanatory frameworks of the three purposes in hand, Barritt in the final chapter applies these purposes as they are now deeply understood to the Aarhus Convention. Barritt notes some areas where the approaches taken by the Convention do not seem to align with these purposes. This is particularly evident when considering the environmental democracy purpose. Environmental democracy is a definitive purpose of the Aarhus Convention; as Barritt notes, in the foreword of the first Implementation Guide in 2000, Kofi Annan described the Convention as ‘the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations’.<sup>40</sup> The normative aims of environmental democracy are quite strongly connected to a form of public participation that is transformative, that makes space for genuine public participation and deliberation.<sup>41</sup> However, despite the foundational role played by environmental democracy, the form of public participation set out in the Convention is broadly consultative, a form of participation Arnstein classifies as ‘tokenism’.<sup>42</sup> Barritt raises the concern that this consultative form of participation put forward in the Convention seems “more about legitimising’ decisions’ than ‘interrogating the quality and environmental outcomes of environmental decisions’<sup>43</sup>; to this we might add whether consultative participation truly facilitates a broader conception of the common good. Similarly, thinking of the ways that the Convention develops more expansive understandings of constituents protected by its rights, e.g. ‘non-nationals, who can represent themselves, and the environment, which is represented by NGOs’, Barritt notes that the rights of future generations are more weakly protected in the Convention; these rights are more dependent on present generations fulfilling their moral duty.<sup>44</sup> Barritt’s development of these understandings of the three purposes to the Convention provides truly valuable insights. It relies on the skilful development of the explanatory frameworks clarifying the purposes; it is clear that the work of developing these frameworks is the core focus of the book. However, compared to the depth and detail of this part, the application of the purposes to the Convention feels a little light. Deeper analysis of the implications of this work, further examples of its application and what it reveals about the Convention would have been enjoyable and valuable for the reader. While I accept that this was not the identified aim of the book,<sup>45</sup> the application of the frameworks to the Convention was a fascinating and insightful section of the book and I was keen for more detail; developing the book from the doctoral thesis perhaps a constraining factor here.

Throughout the book, Barritt sets out a clear methodological approach in order to tease out the meanings of the purposes animating the Convention. This approach could certainly be useful in other contexts, for example when analysing other human rights instruments that have

39 Hey (n12) 375.

40 The Aarhus Convention: An Implementation Guide (2000) ECE/CEP/72 (Implementation Guide, 1st edn) v in Barritt (n11) 26.

41 J Steele, ‘Participation and Deliberation in Environmental Law: Exploring a Problem-solving Approach’ (2001) 21 OJLS 415.

42 S Arnstein, ‘A Ladder of Citizen Participation’ (1968) 35 JAIP 216.

43 M Mason, “Information Disclosure and Environmental Rights: The Aarhus Convention” (2010) 10 *Global Environmental Politics* 10, 26 in Barritt (n11) 151.

44 *ibid* 148.

45 In fact, the author clearly states that the purpose of the final chapter is not to set out an exhaustive list of the insights to be provided by this approach but rather to function as “an invitation to carry on the work of discovering the interpretive possibilities of the Aarhus Convention using the frameworks I have developed”. *ibid* 141.



complex and contested concepts as their aims and ambitions.<sup>46</sup> While the process with which each purpose is separated out and examined and put to the Convention is clearly outlined, which is very helpful for any possible application of this approach to other projects, I would have found it valuable to learn more about the process of identifying the three purposes that underpin the work. If this methodology is being proposed to be employed by other scholars,<sup>47</sup> it would be useful to see the full process of its development, including its very beginnings. We are told why these three purposes are particularly important and that there were many to choose from and a range of sources on which to draw.<sup>48</sup> But what is the process through which these three purposes are identified? Were other purposes selected and rejected? Was there a process of honing down, of coming to the most appropriate formulation of these overlapping purposes? Generally, I think greater reflexivity and openness about our methodological choices enhances the discipline and makes it more rigorous<sup>49</sup>; this is something that areas of legal research outside of empirical legal research are increasingly incorporating into their work, which in my opinion can only be a positive development.<sup>50</sup>

## 6. RESPECT: REFLECTING ON THE WORK AND ON THE CONVENTION

Reflecting on the distinctive position of the Aarhus Convention today, with the benefit of the purposive interpretative framework provided in *The Foundations of the Aarhus Convention*, I am drawn to the Convention's role in promoting and enhancing environmental citizenship, a core purpose that interacts with the three purposes explored in this book. Environmental citizenship seems to be especially relevant to our present context and one that speaks to the urgency captured by my human rights law students at the start of this review. The Convention promotes environmental citizenship through encouraging 'members of the public to think about considerations beyond their own interests',<sup>51</sup> and by raising public awareness and fostering environmental education in Article 3(3).<sup>52</sup> It is further demonstrated by the significance the Convention attaches to civil society, recognising their 'cornerstone role... in protecting the environment and promoting sustainable development and the green economy',<sup>53</sup> in part through how they can fulfil the participatory rights enshrined in the Convention.<sup>54</sup> Looking to the future course of the Convention as set out in the 2022–30 Strategic Plan, it is evident that environmental citizenship continues to be a guiding purpose for the Convention; worryingly, the stronger support and protection for civil society outlined in the Strategic Plan seems in part a response to

46 This approach is applied skilfully in a recent paper by Orla Kelleher in this journal. O Kelleher, 'Systemic Climate Change Litigation, Standing Rules and the Aarhus Convention: A Purposive Approach' (2022) 34 JEL 107.

47 While Barritt does not explicitly propose that this methodology can be used by other scholars, she suggests that the explanatory frameworks developed in the book could be applied to other aspects of environmental law (Barritt (n11) 17), and champions the approach she has taken to understanding the three purposes, one of developing 'negative capability', noting it is well suited to research that contends with contested, ambiguous concepts shaping legal instruments (Barritt (n11) 174).

48 Barritt (n11) 7.

49 This point is developed in greater nuance and detail in Fisher et al (n1) Section 4.1.

50 Along with Fisher et al (n1), these arguments are explored in R van Gestel and H-W Micklitz, 'Why Methods Matter in European Legal Scholarship' (2014) 20 Eur LJ 292. An example of a piece of doctrinal work that thoughtfully reflects on its approach is E Scotford, 'Mapping the Article 174(2) EC Case Law: A First Step to Analysing Community Environmental Law Principles' (2008) 8 Ybk Eur Evtl L 1.

51 Barritt (n11) P148.

52 Ryall 2013 (n12) 12. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998 38 ILM 517 Article 3(3).

53 UNECE Meeting of the Parties to the Aarhus Convention n(13).

54 Abbot and Lee (n12) 86.

increased levels of violence and intimidation faced by environmental defenders.<sup>55</sup> The 2022–30 Strategic Plan makes note of the increased threat to which environmental defenders are subject<sup>56</sup>; responding to this threat is one of the key objectives for the Parties in the next inter-session period.<sup>57</sup> This commitment to environmental citizenship is further demonstrated in the decision of the Meeting of the Parties to the Aarhus Convention in October 2021 to establish a rapid response mechanism for the protection of environmental defenders.<sup>58</sup> The need for this explicit support and recognition is evidenced in the work of Global Witness, CIVICUS among other civil society organisations.<sup>59</sup> These troubling developments serve to illuminate the urgent contexts with which environmental law contends; the actions and inactions of environmental lawyers have profound consequences for many, not least for people defending their local and global environments. These consequences tend to play out in deeply unequal ways. However, this urgent context is not a reason to rush or to conduct thin or instrumental research; rather it is an appeal to understand, to critique and to articulate the full scope and complexity of the challenges we face and of the institutions developed, at least in part, to address them. This is the response to urgency found in the pages of *The Foundations of the Aarhus Convention*. This is a stimulating book that makes a valuable contribution to our understanding of the Aarhus Convention. It enriches our understanding by conducting a deep and thoughtful analysis of the purposes which underpin this key environmental and human rights instrument; it will be a valuable guide to future analysis of the Convention. Beyond providing a useful source for policy makers, judges, environmental law scholars and practitioners, it will most certainly be making an appearance on the reading list for my students next year.

55 Another more political reason for this addition to the Strategic Plan might be that a safe and enabling environment for environmental defenders is enshrined in Article 9 of the Escazú Agreement (Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (adopted 4 March 2018, entered into force 22 April 2021) LC/CNP10.9/5); the parties of the Aarhus Convention might not want the Convention to appear to be lagging behind in this regard.

56 UNECE Meeting of the Parties to the Aarhus Convention n(13). While the 2009–2014 and 2015–2021 Strategic Plans have objectives that provide for recognition of and support to civil society, these objectives do not refer to the ‘prevention of any kind of retaliation against members of the public promoting environmental protection’ as this objective does and they make no reference of environmental defenders as this Strategic Plan does.

57 *ibid.* *Objective 1.8*: Each Party provides for appropriate recognition of and support to civil society and prevention of any kind of retaliation against members of the public promoting environmental protection as important actors in advancing democratic debate on environmental policies, raising public awareness and mobilizing and assisting citizens in exercising their rights under the Convention and contributing to its implementation (mainly target 16.10 of the Sustainable Development Goals).

58 UNECE Meeting of the Parties to the Aarhus Convention, Excerpt from the addendum to the report of the seventh session of the Meeting of the Parties, Decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Aarhus Convention (Seventh session, Geneva, 18–20 October 2021) ECE/MP.PP/2021/2/Add.1.

59 CIVICUS, *2021 State of Civil Society Report* (CIVICUS 2021) <<https://civicus.org/state-of-civil-society-report-2021/>> accessed 6 April 2022. The Global Witness Report, *Last Line of Defence*, found that 227 environmental defenders had been killed in 2020. Global Witness, *Last Line of Defence: The industries causing the climate crisis and attacks against land and environmental defenders* September 2021 (Global Witness 2021) <[https://www.globalwitness.org/documents/20190/Last\\_line\\_of\\_defence\\_-\\_low\\_res\\_-\\_September\\_2021.pdf](https://www.globalwitness.org/documents/20190/Last_line_of_defence_-_low_res_-_September_2021.pdf)> accessed 6 April 2022.