



Introduction: Climate justice in the Anthropocene

OÑATI SOCIO-LEGAL SERIES VOLUME 11, ISSUE 1 (2021), 30–43: CLIMATE JUSTICE IN THE ANTHROPOCENE

DOI LINK: [HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-1168](https://doi.org/10.35295/osls.iisl/0000-0000-1168)

RECEIVED 29 JANUARY 2021, ACCEPTED 1 FEBRUARY 2021

SAM ADELMAN* 

LOUIS KOTZÉ* 

Abstract

The need to address climate and environmental change becomes ever more urgent as climate harms and ecological destruction intensify and become more frequent. The articles in this issue emerged from a workshop in 2019, and they explore the multi-faceted nature of climate justice against the backdrop of the Anthropocene trope. The articles address specific issues such as corporate responsibility, the plight of farmers in India, climate displacement, and gender justice. In doing so, they reveal common themes such as the limitations and failings of business as usual and law as usual, the centrality of human rights and vulnerability theory in the pursuit of climate justice, the indivisibility of justice, and alternatives ways of achieving it.

Key words

Anthropocene; climate justice; business as usual; law as usual; human rights; vulnerability; indivisibility of justice

Resumen

La necesidad de ocuparnos del cambio climático y medioambiental está adquiriendo una urgencia creciente a medida que los daños climáticos y la destrucción ecológica se intensifican y se vuelven más frecuentes. Los artículos de este número se originan en un workshop de 2019, y exploran la naturaleza polifacética de la justicia climática en el escenario del tropo del Antropoceno. Los artículos se ocupan de temas concretos, como la responsabilidad empresarial, la lucha de los granjeros de India, el desplazamiento por motivos climáticos y la justicia de género. Así, revelan temas comunes, como son las limitaciones y fallos de las formas de siempre en los negocios y

* Warwick University. Email address: S.Adelman@warwick.ac.uk Reader, School of Law, University of Warwick, Coventry CV4 7AL, UK

* Faculty of Law, North-West University (14 Hoffman St, Potchefstroom, 2520, South Africa) and Law School, University of Lincoln (Bridge House, University of, Lincoln LN6 7TS, UK). Email address: Louis.Kotze@nwu.ac.za

en el derecho, la centralidad de los derechos humanos y la teoría de la vulnerabilidad en la búsqueda de la justicia climática, la indivisibilidad de la justicia y maneras alternativas de conseguirla.

Palabras clave

Antropoceno; justicia climática; statu quo; statu quo jurídico; derechos humanos; vulnerabilidad; indivisibilidad de la justicia

Table of contents

1. Introduction.....	33
2. The Anthropocene.....	35
3. Business as usual.....	36
4. Law as usual.....	37
5. Human Rights	39
6. Vulnerability.....	39
7. Alternatives	40
8. The Indivisibility of Justice.....	41
References.....	43

1. Introduction

The workshop that resulted in this special issue took place in Oñati in 2019. Since then, the unfolding climate and ecological crises have intensified and been complicated by the COVID-19 pandemic. COP 26, which is due to finalise the rulebook for the implementation of the Paris Agreement, was postponed, losing more time. When the United Nations Framework Convention on Climate Change (UNFCCC) was established in 1992, there were 359.99 ppm of CO₂ in the atmosphere, 80 ppm higher than preindustrial levels. On 26 January 2021, the level was 416.46 (see Daily CO₂ at <https://www.co2.earth/daily-co2>). 2020 was the joint hottest year on record on a planet that has not been this hot in 12,000 years (Carrington 2021). The world still awaits an effective legal framework for dealing with the climate emergency.

Intensifying climatic harms destroy the entire Earth system, the lives of humans and non-humans, and livelihoods. Global heating is a threat multiplier and intensifying climate harms threaten food, water and energy security, and human rights. These adverse impacts collide to exacerbate deepening patterns of injustice at a planetary scale, notably in relation to particularly vulnerable humans and non-humans. Rising sea levels, desertification, floods and stronger tropical storms will increase the number of people displaced by global heating. These harms, which are increasingly anthropogenic, generate considerable injustices because they violate human rights and cause substantial physical and psychological loss and damage. And these injustices arising from ongoing Earth system destruction, continue to be ignored, most alarmingly, by powerful nations and political leaders. But there are also signs of hope: signalling a stark repudiation of his predecessor's climate denialism, President Joe Biden has acknowledged global heating as an existential threat, not only to the United States, but to the entire world. (Millman 2021).

The coronavirus pandemic increased the vulnerability of poor and marginalised sectors of society, especially those living in the global South, making it more difficult to deal with global heating, and further highlighting the structural inequalities that beset the global economy. If global heating is still too often erroneously treated as an abstract future hazard, the pandemic delivered a sudden, vivid warning about the scale of transboundary threats in an interconnected world and the need for concerted, coherent, collective action. COVID-19 demonstrates that nobody is safe unless everyone is safe, and reveals the dangers of vaccine nationalism that could undermine equity and justice in a sovereign-centric world. The pandemic is an inflexion point that exposes the scale of global corruption, inequality, and exploitation along gender, racial, ethnic, and class lines; and the dangers of predatory forms of exploitative corporate opportunism and greed in the production and distribution of effective vaccines. When the world locked down in March 2020, it was already clear that it was not feasible to return to the world before coronavirus (BC) because, in W.B. Yeats's words, things had "All changed, changed utterly..." (Yeats 1921).

This did not prevent governments promising a return to normality after coronavirus (AC). Countries have been promising to re-emerge from the pandemic's abyss stronger, better and especially *greener*, but after a brief moment of hope of achieving deep structural change, we seem to be back on a business-as-usual trajectory that pursues neoliberal, capitalist growth, self-preservation, exploitation and exclusion of "others",

and an unequivocal reaffirmation of human domination and mastery at the apex of the living order's hierarchy.

The sudden, sharp shock of the pandemic made it clear that recovery requires fundamental, and radical social, political and economic transformation – as many of the contributors to this issue have long argued in relation to global heating. The pandemic demonstrated that what was considered impossible BC became possible within weeks AC, and that neoliberal dogmas apparently written in stone could be overturned almost overnight. Yet, these continue to limp on, zombie-like, in pursuit of the abnormality of endless growth, free trade, and ecological destruction. Finally, the pandemic emphasised the links between habitat destruction and the zoonotic transmission of viruses, between global heating and under- and maldevelopment, and the indivisibility of justice for the global North and South.

Across the world, impoverishment and vulnerability to transborder threats are closely correlated with gender, ethnicity, indigeneity, race, and socio-economic class. In turn, these are linked to neoliberal globalisation and models of development – including the predatory notion of sustainable development – based upon endless economic growth on a finite planet. They are also linked to the legacies of colonialism and imperialism, as Carmen Gonzalez cogently argues in her article on *Racial capitalism, climate justice, and climate displacement*. It is delusionary and unjust to pretend that it is possible to grow our way to safety.

Justice is not singular. It is contextual and experienced differently by embedded, interconnected, corporeal beings. Jacques Derrida argued that justice cannot wait but is also never quite here, deferred, to come, *à venir* (Derrida 1992). There is an imperfect fit between law and justice and law is a slow-moving beast; in a climate emergency, justice delayed is justice denied. The multi-faceted nature of justice, which is reflected in the articles in this issue, means that there is no single definition of climate justice. Yet as Sam Adelman has argued elsewhere (Adelman 2016, 36), and Sarah Seck cogently does in this issue: climate justice can be framed as a question: who owes what to whom, in what form, and why?

A common assumption amongst all contributing authors to this issue is that climate justice is owed primarily to poor and vulnerable living beings who are least responsible for global heating but most threatened by climatic harms. Climate justice is particularly owed by states and corporations that have benefited from historical and ongoing emissions; it is after all these states and corporations that have the ability to assist less developed countries with finance and resources in kind. Climate justice is achieved, *inter alia*, by discharging ecological debts, fulfilling duties under the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, protecting human rights, and compensation for loss and damage, and the forging of a new, planetary ethics. Climate justice flows from abandoning the discourses, rationalities and social relations that have brought us to the precipice and replacing them with onto-epistemologies that reflect the scale and urgency of the unfolding catastrophe, and by reimagining law and justice.

The climate emergency signifies a triple failure: of business as usual, of law as usual, and of politics as usual. The articles in this issue are all critical of these failures. They collectively suggest that climate justice cannot only be achieved through the top-down,

state-centric, techno-managerialism of the climate regime but also through the bottom-up activism and civil disobedience of Fridays for the Future movement and Extinction Rebellion; through the resistance of indigenous peoples; and collaboration between environmental non-governmental organisations, other social movements, lawyers and academics. Achieving climate justice is both reactive – stopping ecological destruction and protecting environmental defenders who face daily violence and death, particularly in Latin America – and proactive, by preventing future environmental degradation and rights violations at the hands of rebarbative states and ecocidal corporations.

The failure of political will is exemplified by the continuing, and worrying mismatch between states' unambitious nationally determined contributions (NDCs) under the Paris Agreement and climate science urging much more ambitious commitments, continuing subsidies for fossil fuels, and the core delusion of the Sustainable Development Goals (SDGs) – that it is possible to grow and trade our way to ecological sustainability (see Villavicencio Calzadilla's article). Declaring a climate emergency, as many states, sub-national entities and universities have done, is a welcome start, but this is only a start and much the easiest part of the challenge. The failure of political will and imagination is reflected in every call for a return to "normal" – to business, politics and law as usual. It is a sad failure that vindicates Albert Einstein's observation that no problem can be solved at the same level of consciousness that created it.

The articles in this special issue address some of the central issues that we have highlighted here, and that continuously emerge in the growing literature on climate justice. In the following sections we identify seven themes that emerge from the nine articles in this special issue, several of which address more than one of these overlapping themes.

2. The Anthropocene

First, as the theme of this collection indicates, the contributors framed their arguments in relation to the now dominant trope of the Anthropocene in the natural and social sciences and public discourses. Yet, while the Anthropocene trope has become deeply engrained in these discourses, it does not go unchallenged, as the contributions of Adelman, Gonzalez, and Louis Kotzé, Louise Du Toit and Duncan French demonstrate. The Anthropocene could undermined supposedly stable Western ontologies and epistemologies. Based upon the idea that the telluric hyper-agency of humanity has altered the Earth's geology and conflated geological and human time into geohistory, the Anthropocene calls for conceptions of deep time and considerations of the interests of future generations who will have to deal with the locked in heating caused by current generations and their forebears. Several articles (Kotzé, Du Toit and French; Morrow; Seck) discuss the implications of the Anthropocene in light of the evidence provided by Earth system science, including specifically the planetary boundaries framework that has been developed by Earth system scientists.

One key concern with the Anthropocene trope, especially when deployed in a generalised and uncritical way, is that it is seen to ascribe responsibility for the climate crisis to humanity as a whole regardless of the actual current and historical greenhouse gas emissions. In doing so, as Gonzalez observes, it obscures the reality that a relatively small number of states and corporations (and privileged *humans*) are responsible for the

preponderance of greenhouse gas emissions and the pursuit of capitalism as the main driver of socio-ecological destruction. The notion that the climate emergency is attributable to an undifferentiated humanity is antithetical to climate justice.

3. Business as usual

While all the authors concur that business as usual is ecologically destructive, drives ecological destruction, and impedes climate justice, four articles specifically address the impacts of neoliberal globalisation (Adelman; Gonzalez; Villavicencio Calzadilla; Kotze, Du Toit and French).

Yet there is also cause for optimism: there is a slow and halting move amongst central banks, hedge funds, and corporations towards mandatory reporting requirements about exposure to climatic harms, and growing public pressure for the need to increase corporate accountability, that is still rare. The role of climate litigation to increase state and corporate liability has considerable potential. A landmark decision holding one of the carbon majors accountable for its contribution to greenhouse gas emissions, which may be delivered by a Dutch court against Royal Dutch Shell (due to be decided later this year),¹ may signal a turning point in hitherto uncritical approaches towards, and blind acceptance of, corporate impunity.

Seck directly addresses the question of ‘who owes what to whom, and why?’ in her article on *A relational analysis of enterprise obligations and carbon majors for climate justice*. Seck takes a relational approach to legal discourses that critiques the dominance of the bounded autonomous individual at the heart of liberal legal theory – the abstract legal person at the apex of the Anthropocene’s legal hierarchy (the Northern, white, bourgeois, quasi-disembodied, rational, reasonable *man*). Seck describes the myriad obstacles that law places in the path to climate justice such as standing, jurisdiction, causation, cost and the slow pace of adjudication. She argues that relational approaches confront the largely unacknowledged privileging of the bounded autonomous individual in liberal law, philosophy and policy, while offering a method for critique, reinterpretation and transformation of law.

In an extended analysis of the 2015 Oslo Principles and the 2018 *Principles on Climate Obligations of Enterprises*, Seck describes how the Enterprise Principles “simultaneously reflect and depart from a relational approach to legal analysis, and the implications of this for conceptualizing the human rights responsibilities of carbon majors for climate justice”. She concludes “that a coherent theory of justice in the Anthropocene is dependent upon relational insights which enable us to tell old stories in new ways, and so reveal the interconnectedness and interdependence of all beings, while accounting for power and difference”.

Paola Villavicencio Calzadilla examines a different aspect of business as usual in *The Sustainable Development Goals, climate crisis and sustained injustices*. She discusses the prospects for climate justice in the 2030 Agenda for Sustainable Development. She

¹ The litigants, Friends of the Earth Netherlands and six other Dutch NGOs, allege that Shell’s actions violate Articles 2 and 8 of the European Convention on Human Rights, namely the right to life and the right to family life. Roger Cox, who as one of the originators of the landmark *Urgenda* case, is representing the plaintiffs. *Milieudefensie et al. v Royal Dutch Shell plc*.

focuses on SDG 13, which exhorts signatory states to “Take urgent action to combat climate change and its impacts”. She demonstrates how the 17 SDGs and their 169 targets reflect the generally hortatory nature of international environmental law, and how the SDGs are contradictory assuming that it is possible to grow our way to sustainability. If the SDGs are as poorly implemented as the Millennium Development Goals they replace, they are unlikely to deliver climate justice in any meaningful way. Villavicencio Calzadilla argues that the focus of the SDGs on economic growth and extractive development limits their ability to address the inequalities and injustices of the climate crisis. Instead, and worryingly so, the SDGs ‘maintain the *status quo* and continue to fuel the climate crisis while leaving millions behind’.

4. Law as usual

A strong theme in this special issue is that law as usual inhibits or precludes climate justice: all the contributions to this issue engage in critical analyses of liberal law in general and domestic and international environmental law in particular, and in doing so they reveal several concerns. The climate crisis is also a crisis of law, characterised as it is by continuing hierarchies of exclusion on the basis of race (Gonzalez) and gender (Morrow). Sam Adelman describes impediments to climate justice that are hardwired into the form of law; Annalisa Savaresi examines specific legal obstacles such as attribution, causation and retrospectivity, the extraterritoriality of human rights, and a general lack of adequate remedies (“no court has [yet] found that the greenhouse gas emissions of a particular actor relate causally to adverse climate change impacts for the purpose of establishing liability”, as she observes); while Gonzalez critiques the outmoded, dysfunctional Westphalian system that privileges sovereign immunity and impunity.

Law’s limitations prompt calls for a paradigm shift in legal theory more generally (Adelman), and specifically in relation to the post-Enlightenment rationalities of modernity (Jaria-Manzano), while radical transformations of law and legal systems (Seck; Kotzé, Du Toit and French) commensurate with the scale and urgency of the climate emergency are urgently needed. The abstract legal person at the apex of liberal law’s hierarchy – the wise, strong, white, property-owning, “Northern” male human subject (and master of nature) – embodies some of the legal barriers confronting those seeking climate justice.

In *Friend or foe? International environmental law and its structural complicity in the Anthropocene’s climate injustices*, Louis Kotzé, Louise du Toit and Duncan French analyse the persistent failings of international environmental law and its structural complicity in causing and exacerbating climate injustices. They argue that international environmental law aspires to protect biota and the biosphere, but too often deliberately creates, sustains and exacerbates the many paradigms that drive climate injustice in the Anthropocene. They focus on three specific problems: international environmental law’s neoliberal anthropocentrism; its entanglement with (neo)colonialism; and its entrenchment of the sovereign right to exploit energy resources. Kotzé, Du Toit and French call for thoroughgoing and urgent reform of international environmental law, in particular of its lack of normative ambition. Using Henry Shue’s idea of “compound injustice”, Kotzé, Du Toit and French describe how an initial injustice such as colonialism deepens and

perpetuates further injustices. To confront the climate and ecological crises, IEL must, they argue, “move into crisis mode, and not at a moment too soon”.

As might be expected, this special issue contains substantial critiques of the UNFCCC and the Paris Agreement. Several of the contributors argue that these instruments alone are inadequate to serve as the basis for achieving climate justice. The Paris Agreement is a flawed instrument but, *faute de mieux*, it is the framework within which we must seek climate justice. As George Monbiot argued, “[b]y comparison to what it could have been, it's a *miracle*. By comparison to what it should have been, it's a disaster” (Monbiot 2015). It is this questionable history of the UNFCCC, and its future prospects, that frame Karen Morrow's analysis of the relationship between climate and gender justice and Seck's examination of ways of making corporations accountable.

One concern is that climate justice and human rights are confined to the preamble to the Paris Agreement rather than the operative text. The preamble states:

Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

The preamble condescendingly notes “the importance for some of the concept of ‘climate justice’” in language that implies that this is not an urgent global concern for everyone. Equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances are the guiding principles of Paris Agreement, but the document is deliberately vague about the duties and obligations on climate justice that flow from them. As Gonzalez writes, the Agreement provides little help for individuals displaced by climate change. Loss and damage is recognised in Article 8 but as Savaresi maintains, the Paris Agreement's provisions do not provide means to redress these harms. As she notes, paragraph 52 in the accompanying Paris Decision, explicitly states that this “does not involve or provide a basis for any liability or compensation” – an exclusion at the behest of developed countries seeking to exclude the jurisdiction of domestic and international tribunals that constitutes a fundamental assault on climate justice. Savaresi argues that these flaws make it difficult, but not impossible, for plaintiffs to use the Paris Agreement in climate litigation.

The temperature targets in Article 2 are being used to hold countries to mitigation obligations, rights-based litigation is increasing despite the failure of negotiators in Paris to give greater weight to human rights, and NDCs may be expected to play a greater role in climate litigation cases after COP 26. Landmark climate decisions reflect increasing public concern about climate change and a greater willingness of tribunals to accept innovative, imaginative and insurgent legal arguments. However, landmark cases are still exceptional, litigation is typically slow and costly, and favourable decisions do not guarantee enforceability and accountability, and we are fast running out of time.

The United States' return to the Paris Agreement is welcome after the chaotic years of the Trump presidency, but will count for little unless COP 26 succeeds in promoting climate justice in ways its 25 predecessors have not managed to do. One way to do so would be by convincing developed countries to fulfil and even increase their (inadequate) pledge to contribute \$100 billion annually to the Green Climate Fund. In

sum, the contributions suggest that to the extent it has succeeded, the climate regime has so far been a triumph of hope over expectation.

5. Human Rights

A fourth theme in this issue is the relationship between climate justice and human rights. Seck considers the human rights responsibilities of business enterprises, while Gonzalez discusses the absence of an adequate legal framework to protect the rights of climate displaced persons.

Savaresi's article on *Human rights and the impacts of climate change: Revisiting the assumptions* examines highlights both the limitations of international environmental law and its indispensable role in using law to seek climate justice. She argues that the Paris Agreement does not provide the means to hold state and non-state actors accountable for climatic harms to people, property, and the environment. She traces the ground covered since 2009, when the UN Office of the High Commissioner on Human Rights concluded that climate change threatens but does not violate human rights, to the more recent and growing use of human rights instruments in a range of tribunals such as domestic courts, for example, the *Urgenda* decision, the 2017 Advisory Opinion of the Inter-American Court on Human Rights, and the report of the Philippines Human Rights Commission on the violation of Filipinos' human rights by the carbon majors. Savaresi argues that such bodies are in the vanguard of attempts to bridge the accountability gap in the Paris Agreement by using human rights as an interim "gap-filler" in the absence of "better tools to tackle the impacts of climate change". Savaresi notes the worldwide increase in rights-based litigation, but concludes that the full scope of rights-based remedies "largely remains to be explored". Significant milestones have been passed as the boundaries of the law have shifted but more needs to be done to address the accountability gap left by the Paris Agreement.

6. Vulnerability

Rights violations are linked to vulnerability and resilience. People of colour, indigenous peoples, women, children, the elderly, and especially the impoverished, as well as the more-than-human world, are most threatened by climatic harms.

Seck and Adelman use feminist theories on vulnerability, drawing on writers such as Martha Fineman and Anna Grear. Adelman argues that liberal law's abstractions and formalism render it an inadequate means for achieving climate justice for embedded, connected, corporeal entities of all species. Seck draws on Jennifer Nedelsky's work and Angela Harris's conception of "environmental vulnerability", and notes the close link between relational and vulnerability approaches that emphasise the significance of relationships.

Gonzalez's article demonstrates that climate displaced persons are highly vulnerable to harms such as inundation by rising sea levels but they continue to enjoy little legal protection. Whereas the other articles in this issue address the limitations of existing legal frameworks, Gonzalez specifically describes the problems that arise from legal lacunae. Climate justice is ever more urgent for small island developing states (SIDS) threatened by inundation from rising sea levels whose citizens are forced to migrate without adequate legal protections. SIDS urgently need both financial resources and

resources in kind, primarily in the form of a right to relocation and resettlement. Gonzalez highlights the inadequacy of existing international law, international environmental law, and international human rights law and the concomitant risk that climate displacement will be addressed through ad hoc humanitarian interventions instead of a coherent international legal framework.

She also describes the interrelationships between racial subordination, environmental degradation, and extractive capitalism and uses these insights to develop her critique of current responses to climate displacement. Her analysis of racialised communities that have borne the brunt of carbon capitalism draws on climate justice, racial capitalism, and coloniality literature. Gonzalez's central contention is that race-conscious analyses of climate change and climate displacement reveal the links and continuities between ostensibly distinct forms of oppression and thereby facilitate the forging of alliances necessary to achieve just and emancipatory outcomes. She concludes that a concept of climate justice grounded in racial capitalism can bring together diverse social movements by articulating the links between different forms of exploitation and oppression in "a global economic order that systematically subordinates the global South and undermines the livelihoods of many in the global North".

Narita Roy Chaudhuri lays similar emphasis on resistance from below and the need to listen to the voices of vulnerable subalterns such as India's farmers. Her article on *Social movements and grassroots discourse of climate justice in the context of droughts in semi-arid regions: A case study in India* highlights the increasingly desperate plight of farmers in one of the most drought-stricken countries in the world. Farmers, who are vital to India's food security, are directly threatened by the combined impacts of global heating and the country's steadfast course of neoliberal development.² Chaudhuri focuses on legal and extra-legal resistance of grassroots social movements to the central state's monopoly over the production of law and their attempts to protect farmers' fundamental rights. Discussing the strategies used by these actors to frame the contours of climate justice, she emphasises their demands that government policies should be aligned with procedural and distributive justice through recognition of and redress of the structural roots of vulnerability and genuine ecological sustainability. Chaudhuri highlights the failure of business as usual and of law as usual, while calling for radical socio-political and economic transformation in pursuit of climate justice. Chaudhuri's case study explains why an exclusive reliance on top-down, market-based approaches is insufficient to mitigate the local impacts of climatic harms; in fact, it is more likely to aggravate pre-existing social injustices. She highlights the ways in which climate justice framed from below offers "socially and ecologically sustainable agricultural solutions that can only be aligned with transformational changes in the growth-obsessed meaning attached to 'development'".

7. Alternatives

A sixth theme is the need for alternatives to business, law and development that reflect the needs, interests and views of the disempowered and marginalised such as indigenous peoples (Seck), displaced people of colour (Gonzalez), women (Morrow),

² As we write this, one of the biggest protests in Indian history is taking place against the Modi government's agricultural reforms designed to benefit agribusiness (BBC News 2021).

and the poor (Chaudhuri). Contributors to this special issue specifically recognise the need for legal reforms as part of more radical social, economic and political transformations required to deal with climate breakdown. Adelman and Jaria-Manzano, in particular, call for thoroughgoing paradigm shifts in legal theory and dominant modes of thinking in and about the Anthropocene. Adelman agrees with Gonzalez that the civilizational Enlightenment hierarchies imposed by colonialism and neo-colonialism remain deeply entrenched in liberal law and indicate the need to be open to subaltern voices and alternative onto-epistemologies. In *A legal paradigm shift towards climate justice in the Anthropocene*, Adelman argues that unsustainable law is an impediment to climate justice. He suggests that Western epistemologies of dominance and mastery must give way to epistemologies of humility and harmony such as Andean cosmovisions in the various forms of *buen vivir* that offer alternative conceptions of law, rights, and neoliberal models of development.

Adelman argues that while there is widescale understanding of how legal rules militate against climate justice, insufficient attention is given to the role of law's form – its doctrines, divisions, ideologies, jurisprudence, myths, and principles – as a driver of climate breakdown and a barrier to climate justice. This will persist as long as liberal law protects property owners and investors more than nature. Adelman calls for a paradigm shift in legal theory, practice and teaching to reflect the scale and urgency of the unfolding ecological catastrophe. He suggests that new materialist legal theory offers possibilities for achieving a legal paradigm shift that reflects the agentic capacities of nature and overturns the anthropocentrism embedded in liberal law's DNA. Whereas legal systems that emerged from Enlightenment rationality erroneously treated nature as inert, anthropogenic climatic harms clearly influence not only environmental law (which does not adequately reflect nature's agency) but also company, insurance, and trust law. He argues that new materialist "reconceptualisations of matter, mattering and agency offer an expanded conception of justice in general and climate justice in particular".

Jordi Jaria-Manzano expresses similar concerns about the legacies of Western modernity and calls for a broader paradigm shift in Western rationality. In *Di-vision: The making of the "Anthropos" and the origins of the Anthropocene*, Jaria-Manzano argues that the Anthropocene indicates the necessity for new narratives in pursuit of a paradigm shift in dominant social practices and modes of thinking to address the unstable global socio-ecological complex that is characterised by "comprehensive, irreversible and uncertain human agency". He discusses the narratives that produced the anthropogenic transformation of the planet and the limited capacity of business as usual to facilitate sustainability and justice. His argument highlights the centrality of a particular conception of modernity and its contribution to the establishment of hierarchies through the "di-vision" between the "in-di-vidual" and nature that is untenable in the Anthropocene. Jaria-Manzano concludes that "the Anthropocene should be taken less as a description of a Faustian era of Earth System Governance, than an adjudication of responsibilities".

8. The Indivisibility of Justice

Human rights are understood to be indivisible; the contributions to this special issue highlight the links between civil and political and socioeconomic rights, as well as

between the right to life and the right to self-determination. Several articles address an issue that tends to receive less attention in the literature dealing with climate justice: the indivisibility of justice. For example, Gonzalez describes the connections between environmental justice, distributive injustice, corrective injustices arising from inadequate legal redress for environmental harms, and social injustice caused by environmental degradation, as being inextricably linked to broader social ills such as racism and poverty.

Morrow's article, *Tackling climate change and gender justice - integral; not optional*, provides a sustained analysis of the links between climate justice and gender justice (in addition to addressing human rights, vulnerability, agency, and the limitations of international environmental law). Morrow situates her analysis against the backdrop of Earth system science and the planetary boundaries framework. She outlines the common ground between the environmental justice movement and the drive for gender justice. As Morrow demonstrates, gender is closely tied to individual and collective adaptive capacities and resilience to climatic harms.

Morrow examines the patchy history of gender in the UNFCCC in promoting equality and inclusivity. She argues that it is important to engage not only with matters of theory and principle, but also with the processes and social relations of gender exclusion and the practical defects of global climate governance. Morrow considers key gendered social, political, scientific and academic discourses that shape our understandings and experiences of the realities of climate change and the global climate change regime. These discourses explain why, despite systemic acknowledgment of the need to act on gender issues in the UNFCCC, the Convention's effectiveness is far from given. Such a realisation prompts us to consider how global environmental governance should be enhanced to facilitate climate justice. Morrow argues that prioritising gender inclusivity enhances possibilities for climate justice through climate litigation and the empowerment of those excluded from or under-included in global climate governance. Women may not be as invisible as they were at the inception of the UNFCCC but, as Morrow argues, the "next step must be securing the substantive influence of women in global climate governance". Since climate change affects everyone and everything, everywhere (albeit to very different degrees), climate justice necessarily involves gender justice and procedural justice as well as environmental, distributive, corrective and reparative justice.

Morrow's article also highlights the importance of procedural justice for historical marginalised groups not only in the UNFCCC but also in the development of adaptation and mitigation policies. The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; and the more recent Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean provide international frameworks for procedural justice. Yet it is likely that wider democratic consultation will be needed to confront growing calls by ecological modernisers to deploy geoengineering technologies such as solar radiation that are unproven, and potentially risky and irreversible. Unilateral deployment of technologies that might alter the planet's precipitation patterns may threaten the food and water security of millions, and would therefore require the recognition and participation of all possible interested

and affected parties, including especially vulnerable people and the more-than-human-world.

The articles in this collection show that climate justice is indivisible, urgent and that it has been neglected for far too long. Climate justice requires radical social, economic and legal transformation because we are running out of time. Declaring a climate emergency is the easy bit; we now have to act very quickly and very deliberately because we are already in the midst of a rapidly unfolding existential catastrophe. There is no other option.

References

- Adelman, S., 2016. Climate justice, loss and damage and compensation for small island developing states. *Journal of Human Rights and the Environment*, 7(1), 32–53.
- BBC News, 2021. India protest: Farmers breach Delhi's Red Fort in huge tractor rally. *BBC News* [online], 26 January. Available from: <https://www.bbc.co.uk/news/uk-55793731> [Accessed 26 January 2021].
- Carrington, D., 2021. Climate crisis: world is at its hottest for at least 12,000 years – study. *The Guardian* [online], 27 January <https://www.theguardian.com/environment/2021/jan/27/climate-crisis-world-now-at-its-hottest-for-12000-years> [Accessed 27 January 2021].
- Derrida, J., 1992. Force of Law: The Mystical Foundation of Authority. In: D. Cornell, M. Rosenfeld and D.G. Carlson, eds., *Deconstruction and the Possibility of Justice*. New York: Routledge.
- Milieudefensie et al. v Royal Dutch Shell plc* [online]. Available from: <http://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/> [Accessed 26 January 2021].
- Millman, O., 2021. Biden signals radical shift from Trump era with executive orders on climate change. *The Guardian* [online], 27 January https://www.theguardian.com/us-news/2021/jan/27/joe-biden-climate-change-executive-orders?utm_campaign=Carbon%20Brief%20Daily%20Briefing&utm_content=20210128&utm_medium=email&utm_source=Revue%20Daily [Accessed 28 January 2021].
- Monbiot, G., 2015. Grand promises of Paris climate deal undermined by squalid retrenchments. *The Guardian* [online], 12 December. Available from: <https://www.theguardian.com/environment/georgemonbiot/2015/dec/12/paris-climate-deal-governments-fossil-fuels> [Accessed 25 January 2021].
- Yeats, W.B., 1921. *Easter, 1916*.