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## Regenerative equality laws for a changing climate

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### Abstract

Climate change is both a consequence and a cause of inequality. Deep system recalibration is needed to repair the harms that the dominant economic system has inflicted on humans and the non-human world. This includes rethinking our legal frameworks and the way we address equality in law. The article draws on ecofeminist and Indigenous ideas of human/non-human relationality to consider how new equality frameworks might reorient the law in service of social and ecological transformation. It looks to the concept of regeneration to inform how we expand: the subject of the equality inquiry beyond the human; our conception of the harms being addressed through equality law; and the nature of the remedies we are seeking. It illustrates this reconceptualisation of equality law through two examples. The article is an invitation to others to begin to decentre humans in our legal conceptions and consider how to repurpose equality law towards regeneration.

### Key words

Equality, climate change, regeneration, gender equality, equality and discrimination law

### Resumen

El cambio climático es tanto consecuencia como causa de la desigualdad. Hace falta una recalibración profunda de los sistemas para reparar los daños que el sistema económico dominante ha infligido en los humanos y en el mundo no humano. Eso incluye repensar nuestros marcos jurídicos y el modo en que abordamos la igualdad en el derecho. Este artículo parte de ideas ecofeministas e indígenas sobre la relacionalidad

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This article was written on the unceded lands of the Gadigal people, the Traditional Custodians of the land where I live and work, which was always a place of law. I approach the argument in this article as a non-Indigenous person hoping to contribute to rethinking Western legal framings. Thanks to the convenors and participants of the Gender Just Transitions project, Cristy Clark, and the anonymous reviewers who provided helpful feedback on earlier versions of the article. Thanks also to the IISL and the University of the Witwatersrand for their gracious hosting of the project workshops.

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humanos/no humanos para reflexionar sobre cómo los nuevos marcos de igualdad podrían redirigir el derecho al servicio de la transformación social y ecológica. Se fija en el concepto de regeneración para informar cómo nos expandimos: el objeto de la indagación sobre igualdad más allá de lo humano; nuestra concepción de los daños, abordada desde la legislación sobre igualdad; y la naturaleza de los remedios que buscamos. Ilustra esta reconceptualización del derecho sobre igualdad a través de dos ejemplos. Este artículo es una invitación a empezar a descentralizar lo humano en nuestras concepciones jurídicas y a considerar cómo volver a dotar de propósito el derecho de igualdad en dirección a la regeneración.

### **Palabras clave**

Igualdad, cambio climático, regeneración, igualdad de género, legislación sobre igualdad y discriminación

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## 1. Introduction

As the world passes 1.5 degrees warming, the enormity of the impacts of climate change have become increasingly apparent (IPCC 2023). Global temperature records are being broken, “once in a century” storms are becoming routine, and floods, droughts, fires and heatwaves are causing devastation to human and non-human life. These events, and the changing climate more generally, are impacting food production and water security, health and livelihoods, with disproportionate impacts on those most vulnerable who have contributed least to climate change (IPCC 2023). While an “energy transition” and other supposed mitigation measures are under way around the world, these are not replacing carbon-fuelled growth (Fressoz 2024), and emissions reduction efforts by the major polluting countries are inadequate (Smith *et al.* 2024).

It is increasingly clear that a model of continued economic growth, especially in the largest economies, fed by limited natural resources, is unsustainable for people and planet (Raworth 2017). The climate crisis necessitates deep system recalibration at every level if we are to mitigate the harmful impacts of the way we currently pour carbon into the atmosphere and treat nature. These systems also require extensive redesign to enable us to adapt to very different climatic conditions. Added to this, and integrated into such mitigation and adaptation systems (which must be connected), is the task of repairing centuries of human injury to the environment. The form of extractive, colonial capitalism that treats the rest of nature as a resource in service of (some) humans without thought for its capacity to regenerate is clearly short-sighted, morally impoverished and impractical even on its own terms.

Along with the enormous challenge this presents, it is also a significant opportunity to craft better systems that are regenerative and accordingly in harmony with the natural world in which we are embedded (Haraway 2016). This will need system change at social, political and economic levels. New governance and regulatory frameworks that look very different from the ones we are used to will be needed to support these system changes. New laws and ways of understanding “law” itself are therefore essential to help us transition to these new forms of social organization (Davies 2022). All areas of law will require reimagined foundational principles and operational mechanisms: for example, property and planning laws that alter concepts of ownership and create increased responsibilities towards land, and tort laws that extend a duty of care to the environment and to future generations. These legal changes are already being imagined or occurring in some fields and in different legal contexts. Human rights law and its subset, equality and antidiscrimination law, directed to the pursuit of justice, are also being reconsidered.

This article aims to contribute to this reconsideration of how equality law can serve the system wide transformation to forms of social organisation that support human and planetary flourishing. In particular, it focuses on the gender dimensions of climate change and how new equality frameworks might advance a vision of gender equality that embeds a regenerative approach. This reconceptualisation builds on ecofeminist and Indigenous thinking about the relationality between humans and the rest of the environment in which we are enmeshed, and proposes an ontological shift away from treating the human as the sole subject of equality law. It considers how to operationalise the principle of regeneration within equality and antidiscrimination law to ensure it is

built into the analysis of the interlinked harms of inequality to people and ecosystems and is central to nuanced remedial responses that redress inequality while regenerating the natural world within which we are situated.

The article begins by exploring the relationship between climate change and inequality (**Part 2**). It goes on to consider how climate harms contribute in specific ways to gender inequality (**Part 3**). It then critically examines existing human rights articulations of the relationship between climate change and gender equality, showing that while there have been important developments in this area in recent years, they remain stubbornly anthropocentric and under-ambitious in terms of their transformative potential (**Part 4**). This points to the need for regenerative equality approaches to shape new, adapted legal responses. The article considers Indigenous approaches that decentre humans in law and ecofeminist thinking that links anthropocentric systems and their conceptual underpinnings to gender inequality and climate harms, proposing new understandings of justice and law (**Part 5**). It draws on these ideas to develop the concept of regenerative equality and its key component inquiries (**Part 6**). It considers how this concept might be operationalised to advance gender equality and ecological repair through some imagined examples (**Part 7**). In concluding, it suggests some of the further thinking that is needed to advance this equality law model and its applications.

## 2. Climate change and inequality

Climate change is both a consequence and a cause of inequality. It has historical roots in colonialism and the global economic system that has privileged global North industrialization over global South disadvantage (Burkett 2020). Just as nature has been treated as an unlimited resource to be extracted and exploited, so too have the bodies and lives of those in the global South or within racialised strata within the global North (Scott 2010, Harris 2015). This structural inequality was acknowledged in 1992 in the UN Framework Convention on Climate Change with the principle of common but differentiated responsibility, which recognised that there are different obligations on State parties based on their roles in creating climate harms and their capacities to remedy these (UNFCCC 1992). This understanding informed the Paris Agreement's reference to responsibilities by developed countries to assist developing countries with mitigation and adaptation efforts, and has also informed discussions of loss and damage for climate harms (Paris Agreement 2015: Art. 9 (developed countries' financial assistance), Art. 8 (loss and damage)). Acknowledging historical inequalities and requiring that those who benefitted address them is a key concern of global efforts to respond to climate change.

This history has left deep scars on many countries in the global South, with some of the harshest climate harms resulting from a combination of geographic location, past or ongoing environmental damage, and lack of resources to respond and adapt to climate change. Already disadvantaged populations in parts of the world are under greater strain to cope. The Intergovernmental Panel on Climate Change (IPCC) noted that:

Regions and people with considerable development constraints have high vulnerability to climatic hazards. Increasing weather and climate extreme events have exposed millions of people to acute food insecurity and reduced water security, with the largest adverse impacts observed in many locations and/or communities in Africa, Asia, Central and South America, LDCs, Small Islands and the Arctic, and globally for

Indigenous Peoples, small-scale food producers and low-income households (IPCC 2023, para. a.2.2 [Summary for Policymakers]).

An additional inequality is the connected temporal issue of generational inequity. Current young people and future generations are being faced with a depleted future due to climate change (Brown Weiss 2008). However, a focus on the greater harms facing future generations should not assume that current generations experience current climate impacts equally (Humphreys 2022). As already shown, this generation is deeply divided into haves and have nots, shaped by past and present injustices which, in turn, shape their descendants' futures (Eisen *et al.* 2018, Wilkinson Cross 2023, Jones 2025).

In both the global North and South, climate change exacerbates and generates new forms of inequality for certain groups in society (Islam and Winkel 2017). Older persons, people with disabilities, racialised groups, Indigenous people, women, children, economic underclasses, refugees and migrants, sexual minorities and gender diverse people encounter unequal impacts and challenges for reasons of social location, economic and political power, and embodied life experiences (UN Special Rapporteur on Extreme Poverty and Human Rights 2019). These inequalities are deeply intersectional — for example, people with disabilities who are economically disadvantaged may encounter particular challenges in managing the impacts of climate disasters (Stein and Stein 2022). Islam and Winkel point to three main means by which climate change aggravates inequality of disadvantaged groups: 1) increased exposure to adverse effects; 2) increased susceptibility to damage; and 3) decreased ability to cope and recover from this damage (Islam and Winkel 2017). These climate-related harms map onto inequalities that are distributive, status-based and affected by the capacity of such groups to participate in decisions affecting their lives (Fredman 2022).

All these inequalities concern the effects on humans; however, climate change is a justice issue for all life on Earth (IPCC 2022).<sup>2</sup> Our understanding of inequality and our responses to it should not be viewed through an anthropocentric lens. As discussed below, by considering our role in relation to the non-human or “more than human” aspects of the natural world in which we are enmeshed, we may start to reconsider what we mean by equality based on a vision of justice where our relationship to the rest of nature is regenerative rather than destructive.

### **3. Climate change and gender inequality**

Climate change is contributing to and producing new forms of gender inequality. Men and women, as well as gender diverse people, are differently affected by increased heat, disasters and other impacts of the changing climate for reasons of both biology and social position. Bjornberg and Hansson identify five interacting mechanisms that reinforce gender inequality in relation to climate vulnerability: differences in power; differences in income and economic resources; gender-bound patterns in the division of labour; cultural patterns and social roles; and biological differences (Björnberg and Hansson 2013). The gendered impacts of climate change must be understood intersectionally, as gender cuts across race, age, disability, sexual orientation, as well as other categories of

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<sup>2</sup> The IPCC draws on these aspects of climate justice — distributive, procedural and recognition— noting that this human justice must also secure ecological and planetary health as these are entirely interdependent.

discrimination and disadvantage, creating distinct new harms. The recent successful case brought by women pensioners against Switzerland to the European Court of Human Rights is a good illustration of this (ECtHR 2024). The women provided evidence to show that older women are one of the categories at highest risk of death during heatwaves, and that their country is not doing enough to reduce emissions causing increasing temperatures (ECtHR 2024, para. 67). The women also noted that aside from direct health risks, there are other social consequences of rising temperatures for older women:

[B]eing confined at home and cut off from the outside world, they closely follow weather forecasts and organise their life around it. They often stay at home with blinded windows. This deprives them of daylight and fresh air. They resign from outside activities. All of this results in increased loneliness, sadness and anxiety (ECtHR 2024: para. 4).

Health impacts are shaped by gender in a number of other respects, particularly in relation to reproduction (Sasser 2024, 1-13, 7-8). Preterm births and low birth weight are correlated with higher temperatures (Sasser 2024, 7). Fertility and maternal health are likely to be impacted by diseases worsened by climate change, such as cholera and malaria, and high temperatures (Resurrección *et al.* 2019). The mental and physical impacts of disasters directly affect health outcomes of pregnant women and child development (Albertyn 2023, O'Sullivan *et al.* 2023). Health services may be limited in climate emergencies, including access to contraception and pregnancy care. Men and boys may be differently affected than women and girls by the mental health impacts of climate change (van Daalen *et al.* 2020, Stone *et al.* 2022). Finally, there is evidence that violence against women increases after disasters, including climate related disasters and conflicts, and with increasing temperatures (Maguire 2023).

Much of women's work in the world is unpaid, with women responsible for the bulk of domestic and care labour. Some of this subsistence and caring work is directly impacted by climate change. Women are often responsible for water and fuel collection and waste disposal, alongside small scale agriculture, with climate and environmental damage adding to their burdens as water sources dry up and they must travel greater distances for resources to support the household (Sellers 2016, Pearse 2017, Hailemariam *et al.* 2023). Collection of water in urban settlements is also becoming more challenging for women, with greater water scarcity and higher costs leaving less time for work and requiring girls to miss schooling (Sellers 2016, 17). The impact of food scarcity is gendered, harming women and girls more than men and boys in some parts of the world, and this is likely to become more severe due to climate change (Sellers 2016, 25). Women are often responsible for caring for young children during the heat of the day or fetching older children from school, with housing, transport systems and infrastructure not always well-suited to these needs. The changing climate is also impacting migration and displacement, with many gendered dimensions related to the division of labour and women's participation in decision-making alongside safety issues (Serraglio and Thornton 2024).

In some cases, male workers are more at risk due to forms of employment in which they predominate, such as construction and mining (Girardeau *et al.* 2021). There is evidence that men's lives may also be more at risk in floods and bushfires and in relation to suicide as a result of the mental impacts of climate change (Sellers 2016). Certain categories of

work, such as home-based work, are primarily undertaken by women, who face increasing challenges of insufficient access to cooling infrastructure (Shetty 2022).

The transition away from fossil fuels to renewable energy is affecting men and women differently (Johnson *et al.* 2020). For example, it is often men who hold formal jobs in mining and are provided with alternative opportunities, while women who work to support this industry usually do so informally and cannot access these opportunities. Some of the men leaving mining are taking jobs previously filled by women in manufacturing and services, pushing women into lower paid work in sectors such as agriculture. New energy sources are not necessarily improving gendered poverty. For example, renewable energy projects are leading to loss of land, often impacting women's capacity to engage in subsistence agriculture. Women are generally underrepresented in decision-making relating to so called "just transitions" and less able to provide input into climate finance policies (Resurrección *et al.* 2019, 25).

While there are many negative impacts on women and girls due to gender inequality and gender difference, there is some evidence that women are more likely to have knowledge and "pro-environmental behaviours, such as promoting circular economy and recycling rates and adopting climate-smart agriculture (CSA) technologies that contribute to adaptation of agriculture to climate change and reduce greenhouse emissions" (Hailemariam *et al.* 2023, 3). The inclusion of women in decision-making in response to climate challenges is critical at every level (Maguire and Lewis 2018).

#### **4. Climate change, human rights and gender equality**

The international climate framework, initially quite technical in its attempt to generate multistate negotiations towards emissions targets, shifted, especially with the Paris Agreement, towards acknowledging the human rights dimensions of climate change (Paris Agreement 2015, Preamble). The Agreement also makes reference to adaptation and capacity building measures being "gender-responsive" (Paris Agreement 2015, Arts. 7(5) and 11(2)). At the same time (though quite belatedly), the human rights focus in climate struggles has led to the "greening" or "climatizing" of human rights in important ways (Rodríguez-Garavito 2022). Notably, the climate crisis has spurred the recognition of a right to a clean, healthy and sustainable environment at United Nations' level (UNGA 2022). Climate litigation is proving significant in foregrounding equality and non-discrimination, which is itself affecting thinking in this area of law (Clark and Mitchell 2020, Grahn-Farley 2022, Goldblatt 2023).

The human rights treaty bodies and other UN human rights mechanisms have begun some important work on gender equality in the context of climate change. The UN Special Rapporteur on climate change, Elisa Morgera, compiled a report on the current articulation of all human rights obligations related to climate change prepared by the various UN bodies (UN Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change 2024). This involved a thematic consideration of mitigation, adaptation, just transition, finance, and loss and damage, with a cross-cutting consideration of equality and non-discrimination. Based on her report, it seems clear that the combined work of the treaty bodies and special mandates holders is building up a strong set of guidance for State parties. The recent separate opinion of Justice Charlesworth in the International Court of Justice Opinion on Climate Change

notes the different impacts on “climate vulnerable groups” including women (International Court of Justice 2025, Separate Opinion of Judge Charlesworth, para 18-19). The treaty committees have been somewhat slow in developing clear interpretive statements (Atrey 2023);<sup>3</sup> however, a joint committee statement and general comments/recommendations from the CEDAW Committee (UNCEDAW 2018, UN Special Rapporteur Boyd 2023, Campbell 2023), the Committee on the Rights of the Child (UN Committee on the Rights of the Child 2023), and the Committee on Economic, Social and Cultural Rights (UNCESCR 2025)<sup>4</sup> have gone somewhat further.<sup>5</sup> This evolving human rights guidance requires further work to deepen the equality frameworks needed to respond to the climate challenge.

Shifts over the past decade raise questions about the extent to which new understandings of human rights in relation to climate change fully engage with human responsibilities towards the environment. In some cases, the health of the environment is understood as instrumentally necessary for humans rather than intrinsically valuable (Lewis 2018). While rights of nature are emerging globally, there are many challenging questions about how these still locate nature within a human legal framing and what it means to operationalize human responsibilities for the non-human world (O’Donnell 2018, Tănăsescu 2022, Gilbert *et al.* 2023).

There are broader critical concerns with human rights as inappropriate vehicles for environmental or climate struggles. Natarajan, for example, points to the colonial origins of human rights; their complicity in or inattention to global economic and political power; their focus on states rather than global corporations; their anthropocentric and dualist nature; their focus on rights rather than obligations; their inherent individualism and failure to appreciate relationality; their lack of enforceability; and finally, their malleability based on a misplaced narrative of progress and hope (Natarajan 2022). She concludes that while law may be of value, human rights are “innately (...) possessive, narcissistic and alienating” and hence irredeemable (Natarajan 2022, 223). She calls for attention to non-Western ontological understandings of the relationship between humans and nature and ideas of relationship and connection rather than hierarchical separation (Natarajan 2022, 227).

Some of these critiques map onto or sit alongside critical concerns with equality and anti-discrimination law: that they address individual rather than systemic inequalities, that they are inadequately distributive in response to material inequalities, that they are inadequately intersectional, and, from an eco-critical perspective, that they are anthropocentric in orientation. Others see value in working to salvage, reshape or repurpose human rights to address the challenge of climate change, including through tackling features of the capitalist economic system (UN Special Rapporteur on Extreme Poverty and Human Rights 2019, 2020, 2024, Salomon 2023, Bueno de Mesquita 2024). Like other parts of the law, human rights is seen as a contested space that offers

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<sup>3</sup> Mapping the slow development of international human rights law in response to climate change, including in relation to intersectional gender inequality.

<sup>4</sup> Also note the important work of the Human Rights Committee including in UN Human Rights Committee 2022.

<sup>5</sup> Also note the references to equality rights within two recent and significant opinions from international courts: *Obligations of States in Respect of Climate Change (Advisory Opinion)* (23 July 2025); ICJ: paras. 382-5; *Climate Emergency and Human Rights (Advisory Opinion)* (29 May 2025), AO-32/25: IACHR: para. 223.

possibilities to reshape ideas and prefigure alternative futures, in alignment with demands emerging from grounded struggles for change.

The quest for equality through law has been critically considered as well as reimagined by critical race, feminist, queer, disability, and other scholars and actors, and mobilised, with varying success, to contribute to struggles for change. From its Aristotelian formalist origins, it has been expanded to entail a more substantive, contextual, relational and far-reaching set of ideas, which are capacious and flexible. This work is evolving and ongoing and now needs to meet the challenge to decentre the human in equality law by considering what equality means in our relationship to the natural world. Margaret Davies has exhorted critical legal thinkers to engage in the “complete reconceptualization of fundamental legal concepts for an eco-social future” — what she terms post-human law or eco-legality (Davies 2021). The conceptual project facing equality law is to develop an eco-centred approach that considers what equality means for the environment and ourselves within it, and how our human laws might contribute to its regeneration.

## 5. Conceptual resources to reimagine equality law

Ecofeminist and Indigenous ideas are rich sources in the project to develop regenerative equality law. Many Indigenous thinkers<sup>6</sup> point to the Western separation of humans from the rest of nature, with humans positioned at the pinnacle of a false hierarchy (Yunkaporta 2019). This leads to the destruction of nature based on ideas of entitlement rather than obligation to the land, which is the source of all life as well as the origin of law (Redvers *et al.* 2020, Graham 2024). This law or “First Law”, which is earth-centred aims to “maintain the balance, sustainable lifeways and sustainability of all life” (Poelina 2024). Watson stresses that the Aboriginal relational connection to land entailing obligations of care is fundamentally different from the way colonial legal systems treat land as “property and a mere commodity” (2018, 119). Despite colonisation, Aboriginal peoples “continue to hold the lawful authority to carry out ancient obligations to care for country”, obligations shared with many other First Nations peoples, so that future generations of all species have a sustainable future (Watson 2018, 125). This critique of Western law, an insistence on sovereignty, and a commitment to human relationality with, and responsibility for, all of nature contain profound insights for reimagining equality law.

As with feminist theory generally, there are a range of ecofeminist approaches that draw on other schools of critical theory (Morrow 2013, Wilkinson Cross 2023, 48-53). Underpinning much of ecofeminism is the idea that women and nature are oppressed in interconnected ways by systems of patriarchal capitalism and colonialism. Women are frequently “othered” and placed with nature as the opposite of rational, economic man, based on the human/nature binary so central to Western liberal thought (Plumwood 1993).

Marxist ecofeminists argue that women are exploited in the way nature is exploited, as an unlimited and free resource through their unpaid reproductive and social

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<sup>6</sup> This is not to suggest that Indigenous Peoples are homogenous or share a common set of ideas. In this discussion I have drawn on Australian Indigenous scholarship.

reproductive labour (Mellor 1997, Federici 2019). Women are embodied and embedded in nature through reproduction in contrast to the way that the idealized male economic subject is separated from it. As capitalism works to enclose and commodify all of nature while reducing social supports, it depletes the capacity of those doing this labour to subsist, survive and support their families and communities, just as it depletes the environment (Perkins 2019, Rai 2024). Ecofeminists have also drawn on new materialist ideas of relationality to explain human interconnectedness and entanglement with the physical world and its gendered impacts and implications (Haraway 2016, Braidotti 2021). These ecofeminist and Indigenous insights have informed legal theory in important ways, particularly in challenging its anthropocentric assumptions and in recognising that law should emerge from our relationship to the Earth rather than sit above it.

The climate crisis has seen a new wave of ecofeminist legal arguments, drawing on traditional ecofeminist arguments while also attempting to repurpose feminist legal theory in an ecological or climate-oriented direction. Just as climate change demands adaptation of our physical infrastructure, these theorists are attempting to adapt our legal framings to a new environmental reality. For example, Hirokawa and Carlane draw on Catharine MacKinnon and other feminist work on inequality as “dominance” to consider how:

A critical approach to climate dominance thus allows us to lift difference to illustrate how climate-relevant differences manifest and matter. It allows us to understand the role that law can play in exposing and dismantling difference and dominance in order to facilitate more equitable systems of climate adaptation (Hirokawa and Carlane 2023).

In another reframing of feminist theory that tackles anthropocentrism, Angela Harris has drawn on Martha Fineman’s “vulnerability theory” that recognizes our fragile embodiment and dependent state to “integrate critical legal theory and environmental scholarship” (Harris 2015, 105). She argues that the concept of “ecological vulnerability” can help us understand human embeddedness in the natural world and the entwined obligations on the state to both humans and “nature” (Harris 2015, 142). She suggests:

Ecological vulnerability, understood as a fundamental condition of human existence to which the state must respond, usefully resituates the human subject within a trans-human world that must be protected and sustained in order for humanity itself to survive (Harris 2015, 142).

This, she argues, must be coupled with an “antissubordination principle”, advanced by various feminist legal theorists including Martha Minow, “which requires us to look for power and injustice even in our language and our frameworks for research and policy” (Harris 2015, 149). The conclusion of her argument is: “To care for its citizens, the responsive state must care for the systems that make its citizens’ flourishing possible”, which includes ecological systems (Harris 2015, 127).

A further strand of feminist legal thought, relational theory, associated with the work of Jennifer Nedelsky (2011) and others, has been extended to the non-human world (Macpherson 2022).<sup>7</sup> Relational theory challenges the idea of an autonomous liberal subject. As with vulnerability theory, this shifts the focus to situated, embodied and

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<sup>7</sup> The relational turn in the environmental literature is also relevant to these arguments.

interdependent humans in relation to each other. Eisen, Mykitiuk and Scott argue for the extension of this understanding of relationality to the broader environment within which humans are enmeshed, drawing on material feminism (such as in the work of Elizabeth Grosz and Jane Bennett) and critical disability theory (Eisen *et al.* 2018, 31). While their focus is on inter-generational rights, their arguments are also applicable to feminist environmental and climate legal theory and perhaps go further than some of the more instrumental approaches.

Ecofeminist legal theories inform our understanding of the connections between gender inequality and environmental harm and the ways in which law is implicated. They are also located within a larger set of eco-critical theories, including Indigenous understandings, that challenge the anthropocentrism of law, along with other relevant critiques of the spatial/jurisdictional and temporal concerns with law in a changing climate (Lustig and Gabison 2025, Petersmann 2026). Equality and anti-discrimination arguments in climate litigation are also pushing at the boundaries of traditional human rights approaches (Grahm-Farley 2022), while challenges by Indigenous peoples in climate litigation are exposing the problems with Western, colonial knowledge systems (Clark and Goldblatt 2024).

## **6. Regenerative equality law**

These insights provide motivation for and guidance to the task of reshaping equality law in a climate changed world. A relational ecofeminist approach allows us to start imagining what regenerative equality law might look like. To begin, it is important to note that the aim of this rethinking is not a totalising one. Equality law is posited as universal within international law, but its articulation and impact are experienced locally at the domestic (and even more localised) level. Any legal framing needs to both emerge from the ground up and remain “grounded” within its context to prove appropriate, useful and adaptive/adaptable (Davies 2017, 2022). As noted, Australian Indigenous thinking sees law (First Law) emerging from the land (Country) itself (Graham 2024, 33). Equality law has proved most transformative when it is deeply contextual in its inquiry and its remedy. Equality law directed at transformation has also had to take on board the challenges to be fully intersectional, to engage with complexity and to advance structural change. Albertyn, drawing on ideas of multidimensional inequality and Sheppard’s model of multiple layers of context, considers how the micro, intermediate and macro levels (individual/group, institutional and structural) might inform an inequality analysis in the context of environmental or climate harms (Sheppard 2010, Albertyn 2018, 2023). Regenerative equality must do all of these things, and must go further, leading to an ontological shift away from the human-centeredness of its past approaches to avoid instrumentalising nature.

Regeneration is a biological term that describes the process of regrowth and renewal that is essential for all living organisms and systems. The term has been used in economics, systems theory, urban planning and other fields to create a goal that moves beyond sustainability and even repair towards active cooperation with the rest of the natural world to nurture living systems within which we are embedded (Wahl 2016). The term “regeneration” also contains the word “generation”, which helps bring focus to the future generations of humans and other life on Earth that must be considered in the way

in which we live and organize our systems currently.<sup>8</sup> We can begin to construct an idea of what regenerative equality law might look like, but we are in the early stages of learning how to set aside Western mindsets and generate eco-legality (Davies 2022). This new law is iterative and emergent, and, as noted, must be embedded in grounded experience of what law needs to be for specific communities living in changed climatic conditions based on close observation and active listening to humans and the non-human world. What I am proposing here is a set of conceptual provocations rather than a fully worked through theory to begin discussion and support engagement with the concept of “regenerative equality”.

Adapting equality law regeneratively involves reconsidering the following features of the equality inquiry by bringing the non-human into the frame: 1) the group being harmed; 2) the harm itself; and 3) the remedy. As noted, this requires a contextual method that is multidimensional, multi-layered and intersectional as well as eco- rather than human-centred.

Starting with the group being harmed and using a situated, embedded and relational lens, the focus of the equality enquiry is no longer just *the group claiming harm* but the group that is constituted by and dependent on the natural environment within which it is a part. Attending to the claims of this group is necessarily about understanding and acknowledging the broader environmental relationships involved. An intersectional lens thus looks not just at group interactions and complexity, but also at embedded complexity beyond the human subjects. This conceptual step, seemingly awkward and challenging given a contemporary, Western, anthropocentric orientation, is obvious to many Indigenous peoples<sup>9</sup> and many human societies prior to industrialisation. A regenerative equality law needs to question the centrality of humans as the (only) subject of equality law and the heart of the justice project that equality law aims to serve.

In developing our understanding of *the harm*, we can usefully apply the important work undertaken in equality theory to unpack the dimensions of inequality, to the physical world and humans in interrelationship with it. For example, Iris Marion Young’s typology of oppression comprising exploitation, marginalization, powerlessness, cultural imperialism and violence can be adapted to consider what extractive capitalism has done to nature and the impacts on humans within it (Young 1990). Transformative understandings of inequality can draw on ecofeminist insights to consider how gender inequality is co-created by systems that treat women and the environment as expendable, inferior and undeserving of full recognition, support and inclusion. Again, a deeply contextual, relational and anti-anthropocentric approach is needed to comprehend situated and embodied harm in all its complexity.

Lastly, the consideration of *remedy* can be a space for creative responses aimed at transformation that address structures and promote both repair and regeneration. The climate and broader environmental crises require remedies aimed at regeneration — undoing damage caused by human misuse and creating systems that enable nature to rebuild, thrive and support all life. Humans, in relation with the rest of the environment, must be part of these regenerative processes, which should also serve to address

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<sup>8</sup> For an inspiring watch, see: Gameau *et al.* 2022; see also: Clark *et al.* 2024.

<sup>9</sup> If, cosmologically, a river may be our mother, the fish in it our brothers, the rocks our ancestors or the plants our kin, then treating them justly makes complete sense/comes “naturally”.

gendered depletion and create conditions for human and non-human flourishing. Remedy in law is often viewed as a one-off and time-limited response to harm, but a regenerative approach challenges this temporal frame by requiring a longer term or ongoing process of addressing harm (Clark *et al.* 2024).

## **7. Applying regenerative gender equality law – some worked examples**

Operationalizing regenerative equality law will require significant education for claimants and decision-makers supported by regulatory guidance on regenerative principles and the skills, knowledge and evidence needed to apply these. The following thought experiments suggest how this might work in practice.

In a previous article, I considered how equality law might serve to achieve transformative adaptation in the context of a public swimming pool in the Australian town of Moree (Goldblatt 2023). In the summer of 2019/2020, during the worst bushfires in Australian history accompanied by extreme heat, the local council of Moree increased the price of entry to the pool to the second highest in the state of New South Wales. The article noted the historical racism and its legacy in this town with a large Aboriginal population facing economic disadvantage. It made an indirect race discrimination argument for the reduction of the entry fees, linking the need for access to the pool to increasing heat caused by climate change.

Here, this argument can be developed, using an intersectional lens, to consider the gender inequality at play in this context. Applying a regenerative equality approach can advance my earlier more instrumental and anthropocentric approach to equality for climate adaptation. In so doing, rather than suggesting that equality law can be used merely to support adaptation, I aim to adapt equality law itself.

While many of the people locked out of the pool are Aboriginal, a large part of this group are grandmothers and mothers responsible for the care of children, who look to the pool as a site of cooling, recreation and a facility within which to undertake care for extended families. Race intersects with gender and family responsibilities, as well as socio-economic disadvantage for this group. Understanding the situatedness of this group within their ecological context requires attention to the weather conditions, the physical infrastructure of their town and their homes, and the inability to swim in the local river due to pollution caused by runoff from farming. Examining the discriminatory act of the Council through the lens of embodied harm requires a deep attention to context, including resort to history, geography, economics, ecology and more. The land on which the town sits was cared for over millennia by the Gomeroi peoples prior to colonisation. They have limited representation on the Council and little access to determine not just the rules relating to the pool, but also the conditions of their housing, the nature of other public facilities and the state of the river. As with the river, Aboriginal women have been treated as expendable and left with responsibilities to fend for themselves and their communities, depleted by colonial harms and cut off from their connections to land/Country. A claim of discrimination against the Council in raising the fees of the pool provides an opportunity for creative and far-reaching remedies that promote regeneration.

The claim can lead to both greater access to the pool but also ongoing attention to the health of the river. The remedy expands (geographically, temporally and even

administratively to other levels of government) as the focus moves downstream to the agricultural practices that could become more regenerative with regulation and support. There are many examples from around the world of “rewilding” land, developing regenerative agriculture and restoring river systems, including for public swimming (such as in Paris) (Massy-Beresford 2025). Enabling women in the community to share knowledge and lead river restoration projects, including through new employment opportunities and support for their care obligations, could regenerate nature and the human communities embedded within it. While equality law is not always well-suited to generate complex cross-government remedies, a regenerative lens could lead decision-makers to make creative and more far-reaching orders that require these policy considerations.

A second example is drawn from the initiatives in some Indian cities to provide free transport for women. These have been developed to address safety concerns and to promote economic and educational inclusion of women and girls. Assuming a challenge to the discontinuation of a free transport program is brought using gender equality arguments, a regenerative approach might encourage not just the maintenance of the policy, but also additional measures such as updating the bus fleet with electric vehicles and including women users in the policy development and governance of the transport system. Electric public transport might reduce air pollution, improving health outcomes and reducing caring work as a result. Cleaner air would also allow animal and plant life to flourish, creating greater connection to nature and entailing human responsibility for respectful coexistence and custodianship of the natural world. Creating parks and food gardens at train stations or bus stops could assist with “rewilding” of urban space, creating corridors for nature, greater communal use of cities and greater resourcing of women.

In both examples, regenerative equality requires the decision-maker to consider the problem from a combined eco-centred and gender equality perspective by seeing the entangled connections between women’s hardships and environmental harm. This lens leads to deeper and more far-reaching analysis of inequality as entailing injustice to the human and non-human world. In shaping remedies, it requires a reimagining of the scope of equality law to not just reset unequal human relationships but to attend to environmental injustice within which these inequalities are situated, embedded and embodied. This avoids an instrumental use of equality law as serving humans alone because it asks not just how to improve the environment/climate for humans but how to attend to its repair and regeneration for the sake of the whole ecosystem/s.

## **8. Conclusion**

The article pointed to the unequal impacts of climate change, including on the basis of gender. While efforts to consider these issues and responses to them within human rights law have begun, it suggested that more is needed to develop our equality laws, particularly in challenging their anthropocentric orientation. This project of reimagining drew on Indigenous insights that decentre the human in law and ecofeminist ideas that understand harms to the environment and gendered bodies as deeply interrelated. Using a contextual method that considered humans in relation to the rest of their environment and that promotes ecological regeneration, it reconsidered the central

inquiries into the subject of equality law, the nature of the harm and the possible remedies. It illustrated how this method might look in relation to two examples.

This proposal is preliminary and an invitation to others to join in the journey of adapting our equality law frameworks in the context of a climate and environmental crisis caused by human failure. There are many concerns that need to be overcome including how we shift the thinking of decision-makers towards more complex contextual methods and more creative remedies. The way in which we centre the non-human in our analysis (and in our laws and court rooms) is an evolving discussion including in relation to rights of nature approaches. Regenerative equality law frameworks will also need to be refined to respond to some of the complex tensions that are arising, for example, where renewable energy projects are displacing poor communities subsisting on land. By engaging with the connected human and environmental harms involved, by reorienting attention to look beyond human-centred law, and by embracing analytical and remedial complexity, equality law can work to expose the limits of colonial, patriarchal and anthropocentric law and contribute to regeneration.

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