Towards a New Horizon: in Search of a Renewing Socio-Juridical Imaginary

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Abstract

This chapter offers one passing presentation of the goal that the Oñati workshop set out towards. It is an attempt to draw together threads of philosophy, doctrine, policy, praxis and activism as an uneven thread in a far wider, urgent conversation bringing human rights and the environment into a new relationship. This new relationship necessarily requires, as I argue below, a radical worldview transformation inaugurating a new 'human' subjectivity and, inseparably, a new socio-juridical imaginary reflecting a new vision of 'the world'.

Key words

Human rights; environment; philosophy; processual ontology, epistemology and ethics; legal subjectivity; re-imagination; intra-action; policy; praxis; activism.

Resumen

Este artículo ofrece una presentación del objetivo que se marcó en el seminario celebrado en Oñati. Es un intento por unir aspectos de filosofía, doctrina, política, práctica y activismo en un único hilo, ofreciendo una conversación más amplia y urgente, que establezca una nueva relación entre los derechos humanos y el medio ambiente. Esta nueva relación requiere necesariamente, como se argumenta a continuación, una transformación radical en la visión del mundo, que dé paso a una nueva subjetividad "humana" e, inseparablemente, un nuevo imaginario socio-jurídico que refleje una nueva visión "del mundo".

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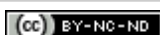
Palabras clave

Derechos humanos; medio ambiente; filosofía; ontología procesual; epistemología y ética, subjetividad jurídica; re-imaginación; intra-acción; política; praxis; activismo.

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1. Introduction

This paper's function in this edited collection is to offer a reflection based on the Onati workshop's themes of philosophy, doctrine, policy, praxis and activism in an attempt to trace out an outline within which the relationship between human rights and the environment might be reconfigured. Accordingly, the structural organization of the paper follows the Oñati workshop's structure to offer a contingent weaving[1] of selected themes suggested by the ebb and flow of notes taken during discussions[2] and by selected themes related to the contributions to this collection. While the threads of reflection offered here could be organised in other ways – re-framed, inverted, moved to new positions to yield new insights – here, they are set out in a theoretical meditation upon selected socio-juridical challenges and possibilities.

In offering its reflection, this paper explores continuities between a set of ideas yielding insights for the future formation of a renewing socio-juridical imaginary[3] more suitable for responding to the challenges facing law and society than is the current dominant framework informing both human rights and environmental law. The framework traced in this chapter draws directly upon a processual ontology and epistemology in order to suggest the central importance of re-imagined formal processual juridical mechanisms. It also suggests the need to embrace new modes of achieving substantive ecological justice by broadening law's community of concern to embrace non-human living beings and systems as dynamic elements in the production of norms and knowledge alike. In this endeavour, the construction of juridical subjectivity is necessarily a central concern, for the way in which law constructs its 'subjects' is a central mechanism for the award or denial of juridical privilege and/or significance – a key mode of inclusion/exclusion in the operation of law – which explains why there is so much recent concern to extend legal personhood to elements of eco-systems and to the earth system itself (Burdon 2013). Accordingly, the question of juridical subjectivity will be a core theme of this exploration.

2. Contextualising the concerns of the chapter: the urgency of the times

The task facing law and other systems of social coordination is now immense. It seems increasingly obvious that 'we humans' need to face up to unprecedented gradients of eco-threat thoroughly uniting us with countless 'other species' and living systems: 'Earthlings' (whether thought of as 'human' or 'non-human') now live in conditions of extreme and deepening precarity (UNEP, GEO 5 Report, 2012). Importantly, the best available scientific evidence suggests that it is we, the human species (or significant numbers of us), who have brought the Earth-system to its current state of crisis (Oreskes 2004). Indeed, the trajectories of capitalism, in particular, have been emphatically linked to the genesis and development of climate crisis (Koch 2012).

Yet, while growing awareness of climate change forces many of us to face up to the unsustainability of past and current industrial capitalist and consumer processes, priorities and practices, neither human rights law nor environmental regulation and

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[1] This 'provisional weaving' reflects the perception offered by Deleuze and Guattari on the nature of a book: 'A book has neither object nor subject; it is made of variously formed matters, and very different dates and speeds. To attribute the book to a subject is to overlook this working of matters, and the exteriority of their relations' (Deleuze and Guatarri, 2004, p.4).

[2] I am especially grateful to Louis Kotze, Karen Morrow and Evadne Grant for a set of notes taken at the conference from which the present paper is formed as a kind of reflection upon their contents in 'conversation' with my own readings in a wider range of scholarship.

[3] The use of the term 'imaginary' is here intended to evoke the ways in which liberal law functions as a living manifestation of a dominant worldview, now operating globally as a frame for sense-making and action. The term invokes a socio-juridical habitus in and through which, arguably, juridical formations do some of their most powerful work as constructs for the 'normalisation' of a particular, dominant construction of 'reality'.

governance regimes have to date delivered the paradigm shift required (Bosselmann 2010a). Law and legal regulation and governance regimes have failed thus far to respond in any way that really counts. If anything, there seems to be a *deepening* of neoliberal capitalist ideology's grip on mainstream international strategies for addressing the eco-crisis, and much of Western law and culture – which includes international law as an extension of Western commitments and power – seems committed to maintaining 'business as usual' – a reductive set of capitalist globalised practices directly linked to climate destruction (Newell and Patterson 2010, Koch 2012). Developments such as the recent corporation-friendly failure of Rio+20 to deliver anything beyond market mono-culturalism (Adelman 2013); the installation of discursive and legal strategies such as 'eco-system services' at the heart of environmental regulatory responses (and examples of the so-called 'green economy' could be multiplied) signal, if anything, the resistive entrenchment of a continuing commitment to eco-destructive capitalist commitments. These commitments, moreover, are still complexly dominated by the fundamentally Cartesian philosophical commitments (Code, 2006, Bosselmann 2010a), expressed in the persisting ontological, epistemic, ethical and legal primacy of human centrality (Code, 2006, Curry 2006). 'Nature', meanwhile, is constructed not just as exploitable, but as both priced and fungible: just another interchangeable global commodity-element within a hegemonic market system in which, like 'nature', the human body is thoroughly commodified – processes in which Cartesian and Kantian subject-object relations are operatively fundamental (Halewood 1996).

In the light of the antecedents of eco-crisis in Western ontology and epistemology it is not surprising that there is now an urgent need for a foundational re-imagination of *who 'we' are* in the 'world' (Code 2012, p. 92-99, Grear 2011).[4] There is an urgent need for a renewing imaginary and a set of human practices capable of giving birth to a new socio-ecological situation – one doubtless requiring the emphatic rejection of the Cartesian/Kantian subject and its ontological and epistemological foundations and implications. How, though, might 'we' inaugurate a renewing imaginary to displace the stubborn destructiveness of the existing one? How might the Cartesian/Kantian subject and the subject-object relations so fundamental to capitalist exploitation and to climate degradation be rejected and replaced? Such questions have no easy answer.

Precisely because such questions have no easy answer, the search for new foundations will need to draw upon a wide range of constituencies – on diverse ecologies of insight. There is a particular need, in this regard, for a deep sensitivity both to the complexities of our situation (with all its commonalities and radical diversities) – and for profound and consciously chosen epistemic humility. In short, our future socio-ecological imaginary and life-world should seek to be (and should be understood to be) richly *co-constructed – negotiated* in an explicitly trans-cultural, trans-disciplinary set of conversations and encounters. Furthermore, and as significantly, any adequate human response requires both our philosophy and law to move into a radical encounter with the irreducible complexity, movement, shifts and energies of the living order itself. There is also a related need to make immanent to legal epistemology a recognition that all our human descriptions of the living world, and all our attempts to co-ordinate relations in it, function within a greater complexity *irreducible* to linguistic or conceptual categories of our making. We humans – and our legal processes – need to embrace, I suggest, a new sense of *productive contingency* able to destabilise habitual assumptions and practices and to render law and legal process open to dynamic insights emerging from the

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[4] Code seeks to present the question 'who do we think we are?' in a distinctively provocative mode specifically designed to expose the false sense of entitlement implicit in the construct of the modern subject. Her question presents a timely, urgent and original political-ontological challenge entirely apt to the task of displacing the instituted imaginary with a new, ecological imaginary.

living, breathing engagements of the beings (human and otherwise) now differentially yet commonly situated in front of the current crisis.

We begin, appropriately enough, as the Onati workshop did, with philosophy. However, first, a brief caveat is in order: Philosophy, like all theory, is misunderstood when it is seen as being a purely cerebral activity. Philosophising is always an act of the embodied personality and always a product of relations in a lived world from which, necessarily, the body is never separated (Lakoff and Johnson 1999). Philosophising/theorising, in that sense, is always socio-haptic.[5] The philosopher, far from being the lonely Cartesian cogito with all-seeing-eye-from-nowhere (so beloved of Western intellectual myth) is always and everywhere an embodied being formed socio-relationally. Thus, in 'beginning' with philosophy, it is important to note that this is not a choice to prioritise the cognitive or to elevate disembodied abstractions. 'Beginning' with philosophy, in the context of the present reflection, is to search for a set of fundamental and renewing ways of seeing that reach beyond the tired closures of the foundational commitments that have brought the world to its present human and ecological crisis.

3. Philosophy

Philosophy has always been a pivotal site for the re-imagination of the world, and it is important to give theoretical thought its place in the search for a renewing socio-juridical imaginary. Theory at its best, as Bell Hooks has observed, is a "location for healing" (Hooks 1995, p. 59).[6] Theory is the practice of thinking differently – of asking transgressive questions, moving beyond settled patterns and challenging the dominant order of thought in the world as it is to reach for possible worlds otherwise. Theory is thus what, in Rhadakrishnan's terms, "states and elaborates the conditions of its non-acceptance of the world. [It] cannot be an acquiescence in the status quo … [the sole condition of its legitimacy is that it possesses an] ineluctable and dissenting worldliness" (Radhakrishnan 2003, p. *vi*).[7] Ideas have legs, and they never stand still. They manifest themselves in the world in multiple, sometimes untraceable, ways – and as Gatens has argued, "philosophy … has much to answer for in relation to the character of the images and representations which dominate the everyday consciousness… philosophy [has] contributed to the cache of everyday consciousness" (Gatens 1996, at xii). Indeed, philosophy has contributed to everyday *un*consciousness (the taken for granted 'normal' we inhabit and embody in our day to day movements and choices in multiple social spheres).

Philosophy is foundational to the practices and images constituting the dominant socio-juridical imaginary: The dominant rationalist European philosophical suppositions informing science, markets, politics and law (and – importantly – current international legal approaches to human rights and the environment) are *decisively influential* foundations of the road to eco-crisis (Code 2006, Curry 2006) – implicated – on a wide range of accounts – in the commitments leading to the destruction of eco-systems; the devaluation of living creatures; the wholesale exploitation of the Earth and the related oppression of multitudes of human beings (Nibert 2002, Code 2006, Curry 2006). Western liberal law has been pivotal in such

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[5] This term is intended to capture the sense in which even our most abstract concepts rely upon the use (both literally and virtually – or vicariously) of combinations of tactile environmental information, kinaesthetic analogies ('more' is 'up' and so forth – as Lakoff and Johnson (1999) argue) and of our ingrained sense of personal and social situatedness.

[6] There are various ways of conceptualizing the relationship between philosophy and theory. At one level, philosophy is simply a mode of theoretical enquiry. However, there is also a sense in which philosophy and theory have been understood to be at odds: theory being associated with critical and the resistive energies and suspicious of the 'truth claims' of philosophy. Theory – in this register – can be most closely associated, perhaps, with the work of Derrida, Deleuze and Foucault, but also with earlier critical theory emerging from the Frankfurt School. For a stimulating discussion of the relationship between philosophy and theory, see J McCumber (2008-9).

[7] Such dissenting critique of the status quo, moreover, has always been a characteristic of the Philosophy of Right, as Douzinas has argued (Douzinas, 2000).

processes and has played a central role in the transmission and reinforcement/construction of fundamentally Cartesian and Kantian commitments expressed in the centrality of a particular conception of the human (juridical) subject and the subject-object relations implied by it (Halewood 1996). Law (and legal subjectivity) thus functions as a central inhibitor and facilitator of multiple practices, and the dominant socio-juridical imaginary is a central site of the bio-political power of the state over life (Agamben 1995, 2005) – and not just – it must be emphasised – over human life.

In short, there is a compelling body of scholarship linking the philosophical foundations and ideological commitments of Western law with globally salient forms of interlinked oppression that functionally unite non-dominant humans, animals and ecosystems (Nibert 2002, Ibrahim 2007). This scholarship is amply supported, moreover, by myriad day-to-day events and situations: Contemporary society is increasingly characterised by patterns of marginalisation that persist no matter how the capitalist media tries to smooth them over with glossy images conveying unfettered individual choice and consumer freedom in a market age. Contemporary national and international legal orders (whether aimed at the protection of the environment or at the protection of human rights) stand widely accused of being instruments both of Western colonialism and of related forms of capitalist neo-colonialism implicated in well-practiced distributions of life and death, both historically and contemporaneously (Gill 1995, Anghie *et al.* 2003, Baxi 2006, Evans and Ayers 2006, Kapur 2006). It is also clear in a wide range of scholarship that the current environmental crisis is legible (amongst other things) as a crisis of human hierarchy – a hierarchy intimately linked to the ontology and epistemology of the subject-object relations privileged by Cartesian and Kantian accounts of the person (and its 'environment'[8]) (See Jung 2002). The search for new philosophical foundations thus forms an indispensable element in any search for a renewing socio-juridical imaginary. Relatedly, the question of 'the subject'– and how it is constituted – remains central to our enquiry – as does its unsustainability and its need for replacement by new, more fluid and ecumenical forms of subjectivity.

3.1. Ontology

> I have convinced myself that there is absolutely nothing in the world, no sky, no earth, no minds, no bodies. Does it now follow that I too do not exist? No: if I convinced myself of something then I certainly existed. But there is a deceiver of supreme power and cunning who is deliberately and constantly deceiving me. In that case I too undoubtedly exist, if he is deceiving me; and let him deceive me as much as he can, he will never bring it about that I am nothing so long as I think that I am something. So after considering everything very thoroughly, I must finally conclude that this proposition, I am, I exist, is necessarily true whenever it is put forward by me or conceived in my mind. (R Descartes, *The Second Meditation* at 7:25)

As is well-rehearsed in critical literatures, a core factor in the destructiveness of the Cartesian and Kantian philosophical imaginary is the centrality of a form of disembodied rationality – the shearing of the mind from both embodiment and emotions (Gatens 1996, Halewood 1996, Bottomley 2002) – and a related objectification of the living order (Jung 2002). Any adequate response to the urgencies of the material exigencies and injustices characterising the early twenty-first century requires an alternative ontology (including an alternative juridical ontology) unambiguously embracing the radical centrality and inescapability of embodiment and its implications. This insistence on the importance of the body,

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[8] Indeed, as Philippopoulos-Mihalopoulos points out, the etymology of the term 'environment' is French – deriving from 'environs' which in turn derives from en ('in') and virer ('to turn'): 'This implies an inside that stands erect and an outside that surrounds this and turns around it. Environment is the "thing" that surrounds us, the dervish-like outside that whirls like a frilly skirt around a stable pivot ... not only stable, fixed and unyielding but significantly "central"' (2011a, at 22). Code deploys the term 'ecological' in order to avoid the implication of the environment surrounding or centering 'us'.

however, should not be misunderstood. This is not an insistence on a form of bio-essentialism. The body should be understood to be an inseparable intertwining of bio-materiality and social construction thoroughly expressed in and through our corporeality (Williams and Bendelow 1998): We humans are always *co*-formed. The body is thus quintessentially *social.*

In order to begin to outline an ontological account responsive to embodiment, I turn to Merleau-Ponty's rich philosophy. In Merleau-Ponty's ontology, we are thoroughly inter-carnal beings, and the inherent sociality of our bodies emerges from the inescapable centrality of its feeling or perceptive faculties, the sense in which the body reaches out (even pre-cognitively) towards a world from which it is never separated. There is a sense in which the body is a living inter-corporeal flow: inescapably, we participate in a continuing, animate reciprocation with the 'world' that our bodies perceive. This flow takes place ceaselessly, and mostly far beyond the level of our ordinary consciousness. The being-ness of the body, moreover, should be understood to be thoroughly *practical*, *sensory* and *involved*. Adams argues, importantly, that the body emerging from Merleau-Ponty's account is naturally '"ethesiological" – it is sensing, feeling, libidinal, erotic, desiring, empathic, and thus, as an immanent feature of its corporeal structure, "[t]he body asks for something other than… its relations with itself" (Adams 2007).

The body is also vulnerable – and this vulnerability – like the body's ethesiological yearning for something other than its relations with itself – is a quintessential component of our corporeal constitution as beings. Our bodies emerge vulnerable from vulnerable bodies in which we are formed relationally. We emerge into life already inescapably woven into a rich matrix of 'others', and, initially, utterly dependent upon them. Our embodied human vulnerability, moreover, is also a marker of a fundamental trans-species ontic commonality: Embodied vulnerability is a form of corporeal *affectability* shared with myriad other beings as a condition or quality of creaturely existence itself. We live in a "condition of non-intentional, heteronomous and more or less *vulnerable* openness to the surrounding world" (Vasterling 2003, p. 214), as do all corporeal living beings – and this common ontic vulnerability is experienced in myriad, situated ways – notwithstanding its universality (See Fineman 2008, Satz 2013).

Our corporeality means that we are porous – our bodies are a living sensory circuit with the world (Merleau Ponty 1964). Importantly, in Merleau-Ponty's ontology, the body is part of "a single *reversible* fabric or *flesh*" (Williams and Bendelow 1998, p. 53). The fundamental structure of *existence itself* is thus thoroughly *intercorporeal*. This ontological claim has implications far beyond the traditional liberal legal ontology of the human subject and which are highly germane to the search for a reimagined relationship between human rights and the environment. Such radically interwoven ways of being signal possibilities un-reflected by our legal regimes, built as they are around the assumption of atomistic, separate subjects and objects. Consider the way in which law – and legal rights discourse – presuppose a unitary (quasi-disembodied) self as the ontological foundation of the human legal subject (Grear 2010a): singular, self-authorising, separative and bounded (Nedelsky 1990). Then consider the gap between law's account of its subject and the biological account of interwoven beings provided by Haraway, who describes dense socio-organic inter-permeations revealing, not a separative and bounded self but its *very opposite* – a thoroughly *interwoven self*: "human genomes can be found in only about 10 percent of all the cells that occupy the mundane space I call my body; the other 90 percent of the cells are filled with the genomes of bacteria, fungi, protists and such, some of which play a symphony necessary to my being alive at all… to be one is always to *become with* many" (Haraway 2008, p. 3-4).

Haraway speaks of "world-making entanglements" and the "material-semiotic nodes or knots in which diverse bodies and meanings coshape one another" (Haraway 2008, p. 4). Drawing Merleau-Ponty's ontology together with Haraway's

account of our socio-biological and semiotic interwovenness allows us to appreciate, with fresh clarity, the fact that if our ontological accounts are to be adequate to the incidents of our situated existence, then they need explicitly to embrace dynamic flows and active knottings of all kinds and, relatedly, the factity of our co-constitution with multiple others.

While the legal implications of this are explored further below, it is worth noting that this broad genus of ontological insight is well reflected, for example, by the Buddhist term "inter-being". Here, however, I will use the term "intra-being" – a term intended to drive at the reality of world-making material and material-semiotic knottings *all the way down*, not merely 'between subjects' or 'between subjects and the world'.[9] Indeed, a key implication of Merleau-Ponty's philosophy is that the very distinction between subject and object is itself rendered *inapt* – or more radically, ontologically *impossible.* The implication of intra-being for how we conceive of the ontological subject is profound. The ontological subject is always a 'becoming'. It is never a pre-existent, fully formed entity or figure. As Haraway argues, we – *all of us* – are "constituted in intra-and interaction. The partners do not precede the meeting; species of all kinds, living and not, are consequent on a subject- and object-shaping dance of encounters" (Haraway 2008, p. 4). The structure of our existence is always a form of dynamic, iterative folding – or an intertwining or "chiasm"(Merleau-Ponty 1968) which is intrinsic to the structure of subjectivity and lived reality (Adams 2007). One implication of this ontology is that subject and object are never separated at all – but instead, in the words of Merleau-Ponty, form "two abstract 'moments' of a unique structure which is *presence*" (Merleau-Ponty 1964, p. 4).

This view radically challenges the Cartesian subject-object relations so fundamental to the history of environmental exploitation and abuse. It also brings corporeal beings into a fundamentally intimate proximity – bridging the distance imposed between them by the construction of 'the subject' (mind) and objectified 'matter'. This intimate proximity should, moreover, be understood to be foundational to corporeal existence. For Merleau-Ponty, the "chiasm" (his most important ontological figuration) is precisely a dynamic crossing-over, an inter-permeation, a "shared world of *intermundane* space which crosses over and intertwines with that of similarly embodied human beings" (Williams and Bendelow 1998, p. 53).

We can, with Haraway (2008), Code (2006) and Philippopoulos-Mihalopoulos (2011a, 2013) remove the qualifier 'human' in this observation and extend the intersubjectivity implied by this rich ontological account to all the interwoven cohorts caught up in the structure of *earthling* reality. We can understand corporeal inter-permeation as being the very core of a dynamic, vulnerable planetary ontological structure. This means that there is simply *no possibility* of a separate human subject surveying the world – especially not from the panoptic heights of a Cartesian or Kantian disembodied rationalism. It is an ontological impossibility. There is only this incarnate and vulnerable knowing by bodies in constant inter-flow with what we humans perceive to be 'the world'. Haraway's biologically-informed account, in particular, allows us explicitly to embrace the "spatial and temporal web of interspecies dependencies" (Haraway 2008, p. 11) characterising our world. In this light, existence, it turns out, is *ecological* in a deeply immanent sense, and we humans ourselves are also *ecologies* (again, see Haraway 2008, p. 3-4).

Philipopoulos-Mihalopoulos takes this ecological ontology all the way into the post-human (along with Haraway herself to an extent (Haraway 1991)) when he speaks of the '*ontological plane'* as being an "open" ecology of the "natural, the human, the artificial, the legal, the scientific, the political, the economic and so on, all of which [co-exist] on a plane of contingency and fluid boundaries"(Philippopoulos-

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[9] This is not intended to imply that Buddhist accounts do not embrace 'intra-active' or 'intra-constitutive' notions of formation or being – simply that because most likely readers of this argument are Western, 'inter' will imply interrelationalities between subjects or between subject and object.

Mihalopoulos 2011a, p. 2). This move, moreover, provides a direct bridge into the ways (to be discussed further below) in which legal processes and concepts can be transformed by an open ecological ontology as the foundation for a more life-responsive juridical ontology. For now, however, returning to the most relevant immediate implications of Philipopulos-Mihalopoulos's account for this part of our reflections, it is clear that his ecological ontology functions both at the level of the *on* (being) and of the ontic (beings) and that it is an ontology of aliveness – of *movements* and *processes*. The *on* is revealed as *a becoming* in a multitude of ontic becomings – a dynamic unfolding and re-folding of movements and relations in a ceaseless living circuit. What *is,* it turns out, is a cascading, porous *multi-poesis*[10] expressing itself across multiple planes.

What then, are the implications of such ontological accounts for how we might re-imagine our own human subjectivity? This is an important question, for as noted above, we need to step away from the ontological imaginary of the separative, atomistic self so implicated in the genesis of climate crisis.

I suggest that the alternative ontological account outlined here allows us to see that subjectivities are always, and everywhere, an 'I' in the making – never *singular* yet always *unique*. We are forms of embodied *emergence* – formed multi-poetically by a tumult of social and material factors. Importantly, however, because of the inexorable play of human power relations, we are also a 'self' agonistically constructed under conditions of conflict and injustice – as is the 'world' that we experience and perceive. Radical intra-relationality cuts all ways and is not always benign. (This is a point that becomes particularly clear when we think about the context of deepening human and planetary vulnerability under the conditions of advanced neoliberal globalisation and the predations associated with it (Kirby 2006) (to be discussed in more depth below)).

The meaning of the *human*, in the light of all this, remains an open question. It is, in a very real sense, *undecided*. How then, are we to negotiate – or to compose – a movement towards re-imagining the meaning of 'we'? For reflections upon this we must now turn to the project of ecological subjectivity in the making and to epistemology – and particularly to the work of Code.

3.2. Epistemology

Code's ecological epistemology represents an important search for the meaning of a fully ecological subjectivity, and is exactly the kind of critical philosophical reformulation we need when searching for a move beyond the modern 'subject' towards renewing forms of subjectivity. Code argues that just as the traditionally dominant ontology of the West needs dethroning in favour of a more radical, open ontology, so the "epistemic monolingualism" (Code 2006) related to traditional Western epistemology needs replacement by a dynamic ecological epistemology embracing diverse ways of knowing. Given that the meaning of the 'human' remains an open question, the importance of practices of knowing and the construction of 'knowledges' move centre stage – and Code's argument has profound implications for law as a dominant site of epistemic power (amongst other things).

Code opens her book, *Ecological Thinking* (2006) with a statement revealing the exclusory tendencies of the ontological suppositions of the Cartesian and Kantian philosophy so foundational to the dominant socio-juridical imaginary. In particular, Code links the philosophy of Kant to the epistemic hegemony undergirding the instrumentalism and reductionism characterising Western patterns of dominance

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[10] 'Autopoiesis' suggests 'self-production' ('auto' for 'self'; 'poiesis' for 'production'). The term multi-poiesis is my term, and is intended to allude not only to the multiplicity of auto-poietic systems, but also to the fundamental sense in which the entire ontological plane (and earth system) can be understood as a cascading multiplicity and as a flux of dynamic multiplicities in process. It drives at the fecundity and complexity of the energetic emergences characterizing the 'world'.

and oppression. Her opening words concerning the subject of Kantian philosophy also underline the sense in which the climate crisis, as noted above, is also legible as *a crisis of human hierarchy* mediated through the traditional Western construction of 'the (human) subject'. For Code, "the Kantian moment" was decisive for what she calls the "epistemology of mastery":

> In this book, I propose that *ecological thinking* can effect a revolution in philosophy comparable to Kant's Copernican revolution, which radically reconfigured western thought by moving 'man' to the center of the philosophical-conceptual universe. Its effects were constitutive of the humanistic, post-Enlightenment world that members of present-day affluent western societies have known. Yet Kantian philosophy was parochial in the conception of 'man' on which it turned: a recognition central to feminist, socialist, postcolonial and critical race theory, among other theoretical stances … In placing *man* at the center of the universe [, Kantian philosophy] tacitly promoted a picture of the world, both physical and human, that privileged and was subservient to a small class and race of people whose sex required no mention because it was presumptively male and in any case irrelevant and who were uniformly capable of achieving a narrowly conceived standard of rationality, citizenship and morality (Code 2006, p. 1).

While of course, issue can be taken with the idea that Kant's was the first philosophy to place 'man' at the centre of its discursive frame, this moment – so richly symbolic of the epistemic mastery forming the key target of Code's work – reflects, nonetheless, a high point of humanism. Let us look more closely at Code's epistemological proposal.

Code's ecological epistemology is an open one. It "emerges from and addresses so many interwoven and sometimes contradictory issues … that its implications require multifaceted chartings" (Code 2006, p. 4). It is characterised, first and foremost, by responsible epistemic practices particularly sensitive to local, situated diversities and – importantly – "proposes a way of engaging – if not all at once – with the implications of patterns, places and the interconnections of lives and events in and across the human and nonhuman world … in projects of inquiry … where epistemic and ethical-political concerns are reciprocally informative" (Code 2006, p. 4).

Accordingly, Code's is an epistemology of humility entirely consistent with the claim that ecological subjectivity is a subjectivity *in the making*. In this sense, it signals an engagement inviting a deliberate and reflexive openness to a wide range of epistemic positions and modes of communicative interaction – and it is richly body-sensitive in its willingness to 'hear'. It invites a rich, responsibilist, sensitive engagement with 'location' – with the 'suchness' of the places and spaces in (and through) which we *are* in the world. The nub of her epistemic and moral-political hypothesis is that the transformative potential of ecological thinking can be realized by participants engaged in producing a viable habitat and ethos, prepared to take on the burdens and blessings of place, identity, materiality and history, and to work within the locational possibilities and limitations, found and made, of human cognitive-corporeal lives (Code 2006, p. 5).

When we bring Code's ecological epistemology into contact with the ontology discussed above, we see precisely how we might open our epistemic practices to a wide range of communicative interactions. These include, not just human speech, but action and habitus, a range of communicative openings that emerge from embodied, lived interactions and situations – and not just 'ours' as humans. Our epistemic practices may be enriched – rendered both more responsive and responsible – by 'hearing' from the patterned movements and stoppings of multiple earthlings.

In short, Code's definition of ecology maps without too much resistance onto the ontological framework proposed here. Her working definition of ecology is "a study of habitats both physical and social where people endeavour to live well together; of ways of knowing that foster or thwart such living; and thus of the ethos and

habitus enacted in the knowledge and actions, customs, social structures and creative-regulative principles by which people strive or fail to achieve this multiply realisable end" (Code 2006, p. 25). Significantly, Code draws on Deleuze to fill out the notion of 'ethos' in this formulation – noting that for Deleuze, *ethology* refers to "the capacities for affecting and being affected that characterize each thing ... [it studies] the compositions of relations or capacities between different things ... It is ... a matter of sociabilities and communities" (Deleuze 1988, p. 125-6, cited by Code 2006, p. 26). The links between a Deleuzian ethology, the "ethesiological" (Adams 2007) relations of vulnerable/open corporealities and epistemic openness to the implications of a wide range of ethological encounters is clear here. Code's ecological epistemology implies – not least through its invocation of Deleuzian *ethology* – a place for radical epistemic sensitivity to a wide range of inter-communicative and co-constitutive encounters.

These encounters, moreover, are fully capable of bearing juridical implications. Quite apart from their implications for how we might re-imagine legal process values (of which more below), I have in mind, at this point, the kind of legal normativity produced by sheep and humans together in upland commons in the United Kingdom (UK). There, bodily habits and repetitions, practices, movements and modes of dwelling are used to guide property relations and suggest new ways of seeing property as being the "contingent product of [both] humans and non-human animals" (Pieraccini 2012, p. 273). Pieraccini has in mind an appreciation of the agency of sheep in a "mutual and dynamic crafting of people and environments" (Pieraccini 2012, p. 280). The particular context is the example of hefts and sheep walks on upland commons in the UK – a "heft being a unit of land to which sheep are attached. Sheep learn to recognize their heft as home and are unlikely to stray unless the overall hefting system is jeopardized" (Pieraccini 2012, p. 281). The agency of the sheep, in this story, is pivotal to the production of proprietary relations with the land, for the normativity of these relations arises directly from their movements. Philippopoulos-Mihalopoulos (2012) and Haraway (2008), likewise, chart other such ethological interplays and co-formations between humans and non-human animals and others in the shaping of the world. And the work of Pieraccini (2012) and Philippopoulos-Mihalopoulos (2012), in particular, emphasises that these interplays give rise to distinctive, situated socio-juridical relations.

The world arises from such accounts as being a living, communicative field of interactive intelligences. Far from being a dead field upon which human epistemic mastery is enacted, the world emerges as an 'aliveness' rich with signification – including normative-juridical signification. This insight suggests the transformative possibility of transcending epistemic mono-culturalism (including the relatively monocultural *episteme* of the liberal legal system) to allow (and *by allowing*) non-human intelligences their place in the making of the world and the formation of law.

Ecological epistemology – in short – invites precisely the kind of epistemic humility suggested by the fact that the 'world' is *multi-poetically* emergent, and allows us imagine a human ecological subjectivity (or subjectivities) thoroughly responsive to the interconnectedness of multiple modes and ways of being and knowing. It allows the imaginative space for the forming of a juridical ecology responsive to the emergence of norms from the midst of these modes of being and knowing. An ecological epistemology will be open, additionally, to what some scholars of indigenous epistemologies call "percept ambiguity": "Open-ended thought categories" characterised by implication, mystery and indeterminacy (Smith 1998, p. 412). This in turn suggests a form of ethics responsive to both positionality and to contingency – emerging from *in-the-midst-of* a far richer epistemic ecology – rather than from an assumed epistemic centre – for as Code insists, "the center cannot hold" (Code 2006, p. 29).

3.3. Ethics

A key implication of the ontology and epistemology traced out above is the need for ethics to be ecological in the sense proposed by Code's epistemology: Ethesiological bodies that spontaneously reach for relations beyond themselves (Adams 2007), ethologically-informed epistemologies and ethics/ethos find new and refreshing continuities. In these continuities, ethics gains a host of freshly awoken receptor sites sensitive to a broadening range of normative impulses emerging from a widening range of inputs. An ethics continuous with the ontology and epistemology outlined here will necessarily emerge from *the midst of* the situations into which corporeal beings are "thrown" (to invoke a Heideggerian concept (Heidegger 1962)) and will be responsive, concomitantly, to the vulnerability characterising our socio-embodied experience of the world (Philippopolous-Mihalopoulos 2011b). Such an ethics will need to be thoroughly receptive, responsibilist and humble. It will need to embrace multiple nodes of concern. It should aspire, moreover, to possess the theoretical adaptability to respond to non-static and deepening forms of complexity in a world understood as a differentiated continuity characterised by ruptures, emergence, uncertainty and contingency.

Additionally, in the light of the challenges facing the contexts in which human rights and environmental law and governance are called to work, a renewed ethics will also need to be responsive to our growing awareness of the inseparable relationship between the most global and the most micro-situated of concerns. In particular, the deepening vulnerability characterising the material conditions of life under advanced neoliberal globalisation (Kirby 2006) and climate peril (Curry 2006) requires a inclusive response from our ethical and juridical systems alike: Our globalised age is marked by a pressing palpability of both precarity and power. It is marked, not just by deepening environmental crises but by destabilising mass human displacements and crises marked by spiralling socio-economic inequalities and the perpetration of injustice on an unprecedented scale – including forms of environmental racism (Westra and Lawson 2001), socio-economic apartheid and the violations enacted by deadly corporate bio-power (Nkrumah 1965, Baxi 2001, Baxi 2006). It is marked by intense forms of destructiveness enacted upon human and non-human animal populations – especially by the imposition of unconscionable levels of suffering both within the machinery of industrial corporate production (Nibert 2002) and as a result of its toxic fallouts (Pearce and Tombs 1998, Baxi 2010). Accordingly, in fashioning urgently needed new modes of ethico-juridical responsiveness to the complexity, affectability and vulnerability of the living order, law must face up to the *ethical* demands presented by living materiality itself. This includes the ethical demand presented by globalisation's stark inequalities and the socio-material vulnerabilities linked to globalising processes (Kirby 2006) – as well as the ethical demand presented by a vulnerable living order in crisis (Grear 2011).

Turning our reflections back our earlier discussion, we encountered an 'ecological' ontology and epistemology resisting the destructive closures of the humanist disembodied rationalist 'subject' (and its subject-object relations) to reveal an *embodied eco-subjectivity.* This subjectivity, far from comprising a decontextualized, ocular-centric mastery of the world reflects a thoroughly embodied human being in an open, living circuit with endless flows of intra-active modes of aliveness. Ethics, in this light, could become more deeply responsive to the "condition of non-intentional heteronomous … openness" (Vasterling 2003, p. 214) characterising, not only the human condition, but a fundamental trans-species ontic commonality: the quintessential *affectability* of creaturely existence itself. In short, corporeal vulnerability presents a compelling case for placing, in Fineman's words, "actual lived experience and the human condition … at the center of our political and theoretical endeavours" (Fineman 2008, p. 2) – *but not just the human* condition*. A core component of ethical reasoning should thus concern the way in which humans *relate* (both within *and beyond* our sense of 'our own species') as "interwoven" beings.

Ethical reflection upon a vulnerable eco-subjectivity points us towards an enduring and universal sense in which we are all, indeed, socially-located or situated – in part, by our very embodiment – and how that might count in ethical reasoning. To return to a theme implicit in the discussion of Merleau-Ponty's work above, we can speak of an ethics and an ethically inspired politics that speaks from *positionality*. The body always has a position in space. This position is not fixed or static – indeed, we move more or less ceaselessly in the sense that our bodies are a form of spatial and temporal *aliveness* that is never still (even when we temporarily arrest our movements to hold a position in a space). However, we can never be *non*-positional. In other words, embodied beings are always characterised by a corporeality that implies, necessarily, the quality of *positionality*. This may be an unfixed positionality, but the human body can never escape it to become the Cartesian eye from nowhere and everywhere. Our ontological structure necessarily *locates* us, no matter how fleetingly or uneasily or contingently, *somewhere which is not elsewhere.* Being embodied means that we necessarily look from *a direction – a viewpoint*. This remains true even if we think of ourselves as being "thrown in the middle" (Philippopoulos-Mihalopoulos 2011a) rather than controlling an impossible epistemic centre (Code 2006). The inescapable fact that we always look from *somewhere* has ethical implications. Positionality underlines the fact that the vulnerability of the earthling (howsoever constituted, understood or constructed) is also radically *particular* and differentially experienced, reflecting, in a suitably paradoxical sense, the radical universal particularity of *corporeality itself* (Grear 2010a, chapter 9). Importantly, then, the ethical theory implied by positionality will not inherently privilege any one outcome of ethical deliberation: The ecological subjectivity implied by the work of Code and others invites, if anything, a high degree of epistemic humility in ethical reflection and deliberation, precisely because *subject-positionality emerges as a central concern of how we structure ethical encounter itself.*

4. Law – Steps towards a renewing socio-juridical imaginary?

4.1. Legal subjectivity

How then, do these reflections relate to the important question of the constitution of juridical subjectivity – or to the closely related question of who we think 'we' are *in law*? As intimated above, law and legal theory have long downplayed the role of embodiment (Sclater, 2002, at 1), adopting a fundamentally disembodied conception of the rational actor descended from the body-excising ontological commitments of Descartes and Kant (Halewood 1996). These ontological commitments, and their related epistemological schemes, systematically undermine respect for both non-dominant human beings (and their varied ways of knowing and being and for the living world (Tuhiwei Smith 1999, Code, 2006) – and still have a profoundly progress-inhibiting impact upon environmental law and governance regimes (Bosselmann 2010a). Now, more than ever, the selective *juridical* excision of embodiment/living materiality and of its ethical implications requires a reversal. It is urgent for a vigorous 'politics of disembodiment/embodiment' (Baxi, in Grear 2010a, p. xvi) to provoke juridical transformation – to catalyse the kind of changes that could enable law to respond to the vulnerable, complex, dynamic, mutable aliveness woven through and beneath legal categories and constructs.

Accordingly, an urgent challenge now facing law and legal theory concerns precisely *how* to enable juridical categories and structures to respond to a radical ontology of openness, vulnerability and embodiment, and to facilitate new forms of epistemic humility in the place of the epistemology of mastery that has shaped Western liberal law and legal processes.

The challenge is profound. Liberal law is thoroughly committed to and implicated in the continuing power of disembodied ontology and its epistemology of mastery.

These commitments are thoroughly implicated in the *juridical* facilitation of a highly predatory global capitalist order relentlessly favouring, through its international *legal* structures and global regulatory institutions, the traditional violence, both discursive and material, of Western capitalist colonialism (Gill 1995, 2002, Marks 2003, Anghie *et al.*, 2003). Such impulses are intensified in a neo-colonial global corporate hegemony demonstrating scant regard for life in any form (Nkrumah 1965, Pearce and Tombs 1998). In short, all life on earth now stands thoroughly exposed to the draughts, predations and complexities of a *distinctly uneven globalised order* (Radhakrishnan 2003) in which law and regulatory institutions are thoroughly *complicit* and *productive* (Gill, 1995, 2002, Baxi 2006, Evans and Ayers 2006, Kapur, 2006, Smith 2011). Indeed, it is not difficult to see the continuing appeal of a disembodied ontology and its implications – nor the traction of the epistemology of mastery as a way of 'knowing best' from an elite, plutocratic 'centre' (Code 2006, Philippopoulos-Mihalopoulos 2011a) exerting its power over the 'rest'.

Relatedly, it seems relatively clear that a disembodied ontology and an epistemology forged by disembodied, ocular-centric rationality are the perfect philosophical and juridical accompaniments to the facilitation – in particular – of the immense advantages accruing to the capitalist corporation through the mechanism of legal personification and the liability shield of the corporate veil (See Dine 2012). The globalised neoliberal order, if anything, facilitates and extends the implications of the complexly disembodied personification of capital in the corporate form (Neocleous 2003) – particularly in its transnational manifestations – allowing corporations to deploy protean powers of mutation unavailable to corporeally specific human beings. Moreover, depressingly, this very mutability enables transnational corporations effectively to evade liability for multiple and even irreversible harms enacted against life itself, even when states *do* attempt to hold them to account (Dine 2012) rather than acting as midwives (as developed states, in particular, predominantly do) to the neoliberal order (Baxi 2006).

The question of entrenched corporate juridical advantage – and its relationship with processes of disembodiment – is a critical backdrop against which to locate reflection upon the need for a renewing socio-juridical imaginary within which to re-imagine the relationship between human rights and the environment. In this connection, it is salutary to recall that the sociology of human rights reveals that the realisation of an order of international human rights for embodied vulnerable human beings has now effectively become dependent upon the prior recognition of an order of rights for global capital (Baxi 2002, 2006). Moreover, that the fate of international human rights law, which has been "critically appropriated by global capital" (Baxi 2002, p. 147), is echoed by the way in which sustainable development and (its intended critique) sustainability discourse (even within progressive multi-level governance settings) is incrementally captured by the ideological and procedural dominance of corporate actors (Bosselmann 2010b, Grear 2010b). It is important to recall that the transnational corporation's uncanny powers of evasion and mutation rest, in significant part, upon *juridical characteristics* constructed as intrinsic to its current form as a legal person. Thus, while the globalised world remains full of policed borders for vulnerable embodied beings – including those human beings driven to migrate by climate change, violence, socio-economic privation and other exigencies – it remains fundamentally borderless for disembodied formations and flows of capital (Baxi 2006), which retain potent ideological and practical advantages arising from the special form of corporate juridical subjectivity.

Accordingly, one of the most important implications of the argument just made concerns the need for *vigilance* surrounding the constitution of juridical subjectivity. If, as I have argued, our human situation demands a fundamental reformulation of our very sense of who we are, how we know and what our responsibility 'in the world' looks like, then our theorisation and agenda for doctrinal reformulation must

necessarily revisit the question of law's subject or person – a point rendered even more powerful in the light of the unevenness between corporate legal subjects and other subjects of law – including human beings. Legal theory needs to unmask, in particular, the dense linkages between the archetypal liberal legal actor (the rational man of property) as a *construct* and the dominant legal subject of our age (the corporation). In fact, the corporation is arguably the perfect instantiation of *homo juridicus/homo economicus*) (Grear 2013) – a correspondence rendering human beings, in law, 'infinitely more fictitious than the corporate form' (Douzinas and Gearey 2005, p. 163).

The question of how to reimagine the subjects of law now seems unavoidable – yet it is a question almost routinely ignored by the courts (which award legal subjectivity, frequently without adequate normative enquiry (see, Finnis 2000, Emberland 2006, Grear 2010a), by most doctrinal legal theory (see Harvard note, Naffine 2003, Berg 2007), and by campaigners – whether anti-capitalist (Neocleous 2003) or pro-animal rights and the like. In the light of rights for nature arguments and related developments, there is an intense irony in the gap now attending the question of law's subject (Berg 2007) in an age of ecological crisis.

The compelling need to reimagine law's subject is clear. We simply cannot afford to leave the question under-addressed and we cannot afford to continue to operationalize the dislocated, disembodied subject presupposed by liberal legality (Halewood 1996), with its pernicious effects, hierarchies of being and unequal distribution of power.

In reality, the construction of legal subjectivity is always a socially, materially and spatially determined practice. The vulnerable, embodied living beings to and for whom legal subjectivity is operationalized – and upon whose bodies, law acts – need to become theoretically central to any enquiry directed at exposing the law's constitution of the ways in which situated, vulnerable embodied subjects are unevenly oppressed and privileged by the forms of legal subjectivity itself.

4.2. Transforming legal ontologies

Relatedly, the socio-material location of embodied, situated earthling subjects is functionally shaped by the overarching socio-material operations of law as a system. The question of what re-imagining of law means, however, remains fractious. Two different possibilities are offered within the Onati discussions and chapters, both of which transcend the current 'business as usual' ideology instantiated in tendencies such as the 'ecosystems approach'. As is well known, current approaches tend to leave the fundamental ontological suppositions informing the construction of human subjectivity in relation to 'the environment' largely untouched. Indeed, it can be argued that existing strategies such as ecosystems approaches, in reality, merely attempt to minimise damage to natural ecosystems while facilitating, as far as is possible, the priorities of capitalism, and that various 'eco-centric' initiatives within the existing international environmental law and governance system are entirely continuous with capitalist strategies of expansionism (See, eg: Bohm, Misoczky and Moog 2012 – and the references cited therein).

At Onati, two main alternative theoretical visions were offered in service of producing a more radical ecological juridical ontology (and its related epistemology). They are, respectively, 'Earth Jurisprudence' (Burdon) and 'Critical Environmental Law' (Philippopoulos-Mihalopoulos). Both of these visions are discussed in their respective papers in this collection, but a few reflections upon them here seem apposite – since both of them, broadly, move in the direction intimated in this paper's discussion. There are, however, some relevant distinctions between them.

Earth Jurisprudence takes a critical stance in relation to the ontology and epistemology founding the dominant Western tradition. By drawing on the concept of 'Earth community', Earth jurisprudence draws attention to a more inclusive framework of reference to which juridical structures need to become fully responsive if it is to be possible to move law onto genuinely ecological foundations (Berry 1999, Cullinan 2002-2011, Burdon 2013). To the extent that all the various elements of the energetic exchange characterizing life on earth are to be given respect under this jurisprudential scheme for their intrinsic value as 'members of a community', there is an overt attempt to collapse the binary construction of humanity and 'the environment' founded upon the subject-object relations of Cartesian and Kantian philosophy. This collapsing of a binary (subject-object; humanity-environment) through uniting humanity and environment in an overarching jurisprudential order, however, may not escape certain fundamental problems at both a theoretical and practical level. Taking the practical level first, Burdon (2013) is right to emphasise the mutability of law as a human social project. Law certainly possesses the reflexivity to respond to new candidates for legal subjectivity and the theoretical capacity to evolve in response to new foundational values – but, and this is an important caveat – the question of the constitutive intimacy between law and capital suggests that there is good reason to doubt that Earth Jurisprudence can straightforwardly achieve its vision without a fundamental engagement with the question of corporate socio-juridical power – and also with the matter of state sovereignty (see the rich discussion in Smith 2009). Fulfilling the dream of Earth Jurisprudence requires a change in the order of constitutive power (a question also thoroughly implicated in the constitution of the juridical subject). It also requires, arguably, a fresh appreciation of the dynamism and unpredictability of a politics (Smith 2009) addressing the practical problem of precisely how to counter the resistive and highly adaptive strategies of the capitalist power and mastery woven into law (including international law). This challenge remains as yet unanswered – to my mind at least – by the noble dream of Earth Jurisprudence in its rather top-down approach to juridical transformation.

At the theoretical level, additionally, a further challenge remains for Earth jurisprudence. In its attempt to either transcend or collapse the human/environment binary, Earth jurisprudence nonetheless retains an implicit human/environment distinction linked to an anthropocentrism-ecocentrism binary. Critical Environmental Law (Philippopulos-Mihalopoulos 2013), by contrast, entirely rejects the dialetics of 'human'/'environment' and 'anthropocentric'/'ecocentric' invoked by Burdon and other Earth Jurisprudence theorists. Valuable as both an emphasis upon a human/environment distinction may be for discursive and political purposes, and valuable as arguments about anthropocentrism and ecocentrism may be, for Critical Environmental Law such categorisations cannot fully capture an immanently ecological ontology.

For present purposes, however, the most crucial move distinguishing Critical Environmental Law's ecological ontology is its central suggestion that Barry Commoner's first law of ecology (that "everything is connected to everything else" (Commoner, 1971, at 7)) is *best realized* in an ecology that is "*processual*" rather than through *values* (Philippoloulos-Mihalopoulos 2011a, p. 2, emphasis added). This, I suggest, introduces a rather different frame of concentration. Such an approach, based as it is upon a broadly Deleuzian foundation, focuses upon what it is that concepts *do,* rather than what they *are.* The processual ecology of Critical Environmental Law turns us towards an ontology of movement, to "various elements that repeat themselves in nature and humanity in the form of *processes/products*" in an *open ecology* that "combines the natural, the human, the artificial, the legal, the scientific, the political, the economic and so on, all of which co-exist... on a plane of contingency and fluid boundaries" (Philippopoulos-Mihalopoulos, 2011a, p. 2, see also Philippopoulos-Mihalopoulos 2012). On such an account, *all* categorizations become contingent. The focus is placed upon the

knottings, the weavings, the constant circulation and ontological flux in which human beings as cognitive-corporeal beings (to use Code's descriptor) are inescapably engaged as living systems within living systems always becoming one as 'many' (to evoke Haraway's insight). In this sense, Critical Environmental Law offers a more multi-planar (albeit incomplete) dislocation of the 'human' viewpoint than does Earth jurisprudence. Critical Environmental Law opens us up, epistemically, to a new, open ecology of knowledges in a plane of dynamic uncertainty. We can suppose no transcendent or immanent higher law of the Earth or of the Universe. We are thrown away from any epistemic centre and invited to rely upon a multiplicity of insights from which we can choose – in full knowledge of the contingency of our choices – to embrace processes and strategies reflexively sensitive to the interplay of vulnerabilities, capacities and movements characterizing life on Earth *as far as we understand them for now and even then, incompletely*.

The differences between Earth Jurisprudence approaches and Critical Environmental Law may seem rather finely nuanced, but I suggest that the implications of the processual emphasis of Critical Environmental Law's ecological ontology are particularly profound for law.

First, as just noted, the epistemic centrality of contingency is thoroughly implied by such a philosophy. This invites, directly, the kinds of responsible epistemic engagements at the heart of Code's call for ecological thinking (Code 2006). The subjectivity implied is, as noted above, a subjectivity of the in-the-midst of (rather than of the knowing subject as the 'centre') – a subjectivity inviting an epistemology of openness – of humility – of a willingness to 'hear' from multiple situated beings and constituencies. In turn, this implies certain key juridical mechanisms as a form of responsiveness: A processual ontology suggests a processual epistemology pointing towards the importance of processual mechanisms – both formal and informal.

What then, does this imply for law? Minimally, it implies the centrality of juridical participatory processes as a fully ecological concern. It points (as Code would agree) towards transformed advocacy practices – and as Stone would argue – for the widening of rules on standing (Stone 1972). It points beyond this to the juridical empowerment of informal participatory processes – to the vital role of constructing *fora* of situated encounter in which diverse insights, interests and vulnerabilities are brought into productive negotiation (albeit contingently). Such negotiation, moreover, would need to call on the best of law's ability to respond to situated subjectivities, consciously *positional* viewpoints (and their limits) and an awareness of both the cooperative and agonistic nature of such engagements. This suggests, in short, the need for the juridical deployment of a fully ecological epistemology in Code's rich sense.

Even within traditional formal legal process it might be possible to expand the horizons of reference, for example, to explore a broader, renewing concept of natural justice. The ecological meanings of *audi alteram partem,* for example, could be explored – perhaps opening the principle's inference to involve a far wider range of modes of listening and hearing from as yet un-considered constituencies of 'speech'. Quite apart from the obvious need to hear from a range of indigenous traditions and other situated communities of knowledge, legal processes will also need to 'hear from' wider constituencies of being – not only by opening up the rules of standing (Stone 1972) but by broadening the law's epistemic conception of the interactions between beings and systems. In this regard, I am reminded of Warnock's recent statement concerning the 'interests of' her lawn in the context of her argument that plants, rivers and so forth can meaningfully be understood to have interests, even if they cannot 'know' them for themselves in any sense of sentience or cognitive knowledge: "... I know when my lawn is in a good state and when it is not, even if the lawn does not know. Nevertheless it is in the interests of

my lawn, if it is to be a lawn at all, that it should be green" (Warnock 2012, p. 62). Behind Warnock's example, putting aside the explicitly Aristotelian teleology she invokes, we can read something consonant with the philosophical framework explored here: Warnock's argument implies an openness to the kinds of understandings that emerge directly from situated experience, embodied presence, living interactions. There is in her account an intimation of the kind of ontological, epistemological and ethical co-formation intrinsic to the arguments of Haraway, Philippopoulos-Mihalopoulos and Peiraccini and directly captured by Code's ecological epistemology. Warnock, as the gardener, is shaped and informed by the state of the grass, led towards a particular discernment of the requirements of the grass for flourishing by her perceptual, embodied, situated engagement with the ontic ebb and flow of the energies of the grass itself. The grass, in turn, responds, as an ontic matter, to the stewardly interventions (or failures) of the gardener – who is formed, as a *gardener*, in significant ways, by the 'learning' intrinsic to her engagement with the grass. Together gardener and grass as communicative living forms produce flourishing and mutual sustenance – or fail to. The epistemic sensitivity that Code is explicit in suggesting in her work implies rich and inclusive forms of knowing from the living order – an ecological juridical imaginary – not just more pluralistic forms of openness within and between human beings concerning, for example, questions of legal standing.

The central point is that legal processes can become more sensitive to the multiple implications of the materio-semiotic knottings of Haraway's rich invitation to 'meet', as it were, between species of all kinds. Juridical processes could facilitate and inform this meeting. Legal fora could allow the normative significance of such 'meeting' – embracing (for example) the kind of situated norm-generation implied by Pieraccini and Philippopoulos-Mihalopoulos and their accounts of interactions (the interwoven situation) of humans and sheep. The epistemic and normative significance of a wide range of interactions could be explored and embraced. Science could inform this process by directing a whole range of non-human 'inputs' into such an open juridical epistemology. This could produce, specifically, a more eco-inclusive notion of *audi alteram partem* – one responsive to measurements of ecological integrity (see Burdon 2013), but resisting assumptions concerning the completeness or epistemic dominance of scientific knowledge itself (Code 2006). Law and legal process, in other words, could be fed by the conduits of a redefined 'alteram'– the 'alter' or 'other' no longer being merely confined to a human or other existing legal protagonist (a company, a local authority and so forth), but being understood to embrace multiple life-forms and systems seen as *co-participants* in the formation of a new juridical ontology. This, arguably, requires more than a mere expansion in the rules of standing concerning individual matters of concern. It requires the emergence of a renewing socio-juridical imaginary. Only then, arguably, can legal processes expand explicitly to embrace (adequately) the ontological insistences of many different modes of being.

Equally, the de-centering of human mastery achieved by these moves also suggests richer potential depths to the *nemo judex in sua causa* element of legal process rules. Ecological ontology opens out an expansive, complex, dynamic understanding of reality. Epistemologically, it points towards a diverse ecology of knowledges and away from a privileged epistemic 'centre'. Ethically, it suggests far deeper, broader questions of inter- and intra-species justice than law typically embraces.

These broader questions of inter- and intra- species justice, at least in the context of present analysis, could also have particularly powerful implications for the imperative of addressing the radical unevenness of injustice in a neo-liberal global order – for de-centering, for example, the current dominance of corporations over participatory governance structures – including over environmental governance processes (Bosselmann 2010b, Grear 2010b). There is an absolute and pressing need to move far beyond the corporation-friendly laws, institutions, structures and locations currently dominating human rights and environmental governance

questions. This means, emphatically, that human rights and environmental law must now eschew 'business as usual' and move into far more energetic, critical and imaginative modes of engagement. While none of the questions concerned in reformulating legal process commitments in this way can be answered easily, the expansion of the questions themselves and the opening of the juridical horizon of reference would be, in and of itself, a useful development.

4.3. Reflections on policy, praxis and activism

With respect to policy, the ontological, epistemological and ethical shifts recommended here would imply the importance – again to draw on Code's work – of modes of transformed education[11] (including legal and human rights education) and the creation of responsible practices of listening and learning in all human social institutions – explicitly open, moreover, to the informatics arising from interwoven engagements between humans and non-human animals, plant species and so forth (as already exemplified above in reference to the work of Haraway and Pieraccini, as well as that of Code and Philippopoulos-Mihalopoulos). Policy formation, like legal process fora, would have to open itself to new data – to distance itself from reductive materialism and move towards an enriching sensitivity to the communicative dimensions and normative implications of living materialities in new ways. Such sensitivity would help to destabilize our existing dominant sense of the world, and introduce in the place of our destructive certainties the kind of productive doubts best able to found practices of reflexive wisdom in all our acting in the world and – importantly – to return science itself to a more open mode of enquiry and engagement (Sheldrake 2012).

At the level of policy concerning process mechanisms, this would imply the need for a diversification and multiplication of both formal and informal modes of hearing and representation in a wide range of fora and disciplinary settings – allowing a host of different initiatives and community level engagements to direct energies from below, to press law and governance into new forms of responsiveness. Such engagements could reflect – additionally – diverse forms of community custom and praxis, or what Weston and Bollier name "vernacular law" (Weston and Bollier 2013). For Weston and Bollier, these alternative non-state normativities or vernacular forms of law are forged in a fully socio-legal responsiveness to grassroots 'commoning' dynamics, activisms and self-organised local governance structures – the informal product of convergent and divergent networks of concern. Weston and Bollier argue that

> [c]ritically, commons-based governance could also help to sidestep the growth imperative of capital and debt-driven markets that fuel so much ecological destruction. Because commons typically function at a more appropriate scale and location than does centralised government, and therefore draw on local knowledge, participation and innovation, they offer a more credible platform for advancing a clean, healthy, biodiverse and sustainable environment and its attendant human rights … (Weston and Bollier 2013, p. 6).

Importantly, we should note that in the formulation offered by Weston and Bollier, human rights have more in common with the juridical ontology offered here than with traditional international legal readings of human rights: human rights are, in their words, "reenvisioned as a more theoretically inclusive, operationally grounded force" (Weston and Bollier 2013, p. 80). Concomitantly, as Weston and Bollier suggest, this implies the need to promote "new policy structures and procedures

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[11] For me, this means returning to the etymological root of the term 'to educate' in the Latin word educere, meaning to 'draw out'. This 'drawing out', however, is multi-directional – embracing those who would 'teach' and those who 'learn' – in a diversification of modes of emergent knowings fully responsive to the manifold characteristics and movements of the on and the epistemic openness suggested here. Such education would have little in common with mainstream liberal notions of education –as might be expected, and would be fully consonant, I suggest, with Code's ecological epistemology.

that reward distributed, self organised governance and bottom up innovation as elements of complex systems" (Burns and Bollier 2013, p. 80).

Such dynamic, open modes of engagement will require, in addition (and as also implied by the analysis above), a ceaseless epistemic vigilance concerning the resilience of capitalism's power to re-invent itself in the structures, language and questions of its counter-values, and the dangers presented by the paradox of state sovereignty (Smith 2009). Indeed, an important unanswered question is whether such transformations and innovations as are imagined here will be enough, even taken together, to unseat the suffocating power of global corporate capitalism on law's central sites of power. Minimally, at least, there is hope that we might, with care and imagination, "redesign… our mental operating systems" (Weston and Bollier 2013, p. 80) and forge the conditions for the formation of a new juridical imaginary fully informed – philosophically, jurisprudentially, doctrinally, and in terms of policy and praxis, by the living interactions of a vulnerable ontic order. This, it seems to me, is now a vital component in the urgent task of re-imagining who 'we' are in the 'world' and for transforming the relationship between law, 'humanity' and the 'environment'.

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