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Human Rights and the Environment: In Search of a New Relationship. Synergies and Common Themes

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Abstract

The 2012 Oñati Workshop on Human Rights and the Environment sought to begin the important task of developing a new framework that could contribute to re-imagining the relationship between human rights and the environment. Doing full justice to the vibrant and sustained discussion that took place in response to the papers delivered in the Workshop is near impossible in an ex post facto account that can only convey the merest flavour of the richness and complexity of what took place. Nonetheless, the following sections briefly recollect common themes and valuable insights that emerged during the workshop discussions and attempt to

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reflect the energy and creativity that accompanied them, with a view to setting out the general context within which the various individual papers in this volume should be considered. We have arranged the subsequent discussion to centre on the core discrete yet interrelated themes that emerged and developed during our workshop deliberations, namely: vulnerability; the limits of the law; the limits of rights; responsibility; interconnection; and thinking ecologically.

Key words

Vulnerability; limits of law; limits of rights; responsibility; interconnection; ecological reorientation; ecological thinking

Resumen

El seminario sobre Derechos Humanos y Medio Ambiente celebrado en Oñati en 2012, buscó iniciar la importante tarea de desarrollar un nuevo marco que podría contribuir a re-imaginar la relación entre los derechos humanos y el medio ambiente. Haciendo justicia a la discusión vibrante y prolongada que tuvo lugar en respuesta a las ponencias presentadas en el taller, es casi imposible en un recuento ex post facto que sólo puede transmitir una mínima parte de la riqueza y complejidad de lo acontecido en Oñati. No obstante, las siguientes secciones recogen brevemente temas comunes y valiosas ideas que surgieron durante las discusiones del taller y tratan de reflejar la energía y creatividad que los acompañaba, con el fin de establecer el marco general dentro del cual las diversas ponencias individuales de este volumen deberían ser consideradas. Hemos organizado el debate posterior para centrarnos en el discreto núcleo aún interrelacionado con temas que surgieron y se desarrollaron durante nuestras deliberaciones de los talleres, a saber: la vulnerabilidad, los límites de la ley, los límites de los derechos, la responsabilidad, la interconexión, y el pensamiento ecológico.

Palabras clave

Vulnerabilidad; límites de la ley; limites de los derechos; responsabilidad; interconexión; reorientación ecológica; pensamiento ecológico

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1. Vulnerability

It was striking that the starting point of many of the papers and certainly of much of the discussion was a profound consciousness of vulnerability – our own as human beings and that of the biosphere and indeed, of the complex nexus that operates between the two. While the term vulnerability is used in a diversity of fields in increasingly technical ways to assist in the analysis of specific hazards or risk factors (Kirby 2011), the shared sense in our discussion was the acceptance that, as humans, we are entirely dependent on the earth and that we are therefore placing ourselves at increased risk through our degradation of the planet. The theme of interconnectedness between humanity and the biosphere was thus an important aspect of how vulnerability was conceived of by the workshop participants; there was a clear understanding throughout our discussions that human vulnerability and the vulnerability of the planet are interconnected at a multiplicity of levels and in myriad ways.

Vulnerability can be said to be a universal human condition – it arises from the fact of our physical embodiment (Grear 2011). We, as human beings, are vulnerable to each other, vulnerable to the operation of natural forces, and vulnerable to anthropogenic impacts on the latter. Thus our own vulnerability as a species, both now and in the future, has been exacerbated, as has that of the biosphere as a whole, by human action which is destroying our planet (see, for one example amongst many, the World Meteorological Organisation (WMO) Summary of current climate change findings and figures (March 2013) http://www.unep.org/climatechange/Publications/Publication/tabid/429/language/en-US/Default.aspx?ID=6306). There was therefore a strong emphasis in the discussions on the multiplicity of interconnections between human vulnerability and the vulnerability of the natural world, embracing the vulnerability of all aspects of the natural world, other species, and habitats as well as the vulnerability of human communities, societies and individuals. There was also agreement that human institutions are vulnerable, as are human rights themselves; both being threatened by corrupt and indifferent regimes and by the increasing power of corporations (see, for example, Turner 2006, Baxi 2006).

The papers presented and the ensuing discussions thus sought to unpack some of these diverse but interconnected dimensions of vulnerability. In relation to human vulnerability, it was particularly noted that while we are all vulnerable as human beings, our vulnerability is complex and differs in degree and nature depending upon our situation. Those with political and economic power are better able to mitigate their vulnerability. In the short term, those with power and wealth, especially in the global north, are able to insulate themselves against the anthropogenic environmental ills that express the vulnerability of the biosphere and impact, in turn, upon human vulnerability, such as climate change and other pollution-induced environmental degradation. In contrast, the poor and powerless, especially in the global south, are ill-equipped to assuage the impacts of such phenomena and so bear the brunt of the effects of human degradation of the biosphere. Invariably the poor are most vulnerable to both acute and chronic problems brought about by climate change and to related aspects of environmental degradation such as water and food shortages (World Bank 2013). And it is also most often in this context that social and economic human rights come into conflict with protection of the environment, as is aptly illustrated by Feris's contribution in this collection.

There was also discussion of the extent to which both human beings and the natural world are made more vulnerable through the operation of the law. The anthropocentrism of Western law, which views human beings and human society as being separate from and above the natural world (Bosselman 2011), renders the planet more vulnerable and inevitably results in escalating patterns of

environmental exploitation that in turn make humans more vulnerable (see Philippopoulos-Mihalopoulos 2013).

The link between vulnerability and responsibility (of which more below) was also keenly debated. Unique among species, humans have the power to both destroy and to act to prevent further destruction, placing us in a position of profound responsibility. The participants acknowledged that while we humans are undoubtedly polluters, destroyers of habitats and the drivers of climate change, at the same time we are in an exclusive position to respond to and reform these toxic behaviours. Our common understanding was that it is humans, especially but not uniquely in the industrialised West, that are putting the future of both the planet and all life at risk and that we have the capacity to change our practices. As humans, we have the responsibility to address and to reverse the environmental deterioration inflicted on the earth by current policies and practices – those of us who live in the industrialised West having a particular responsibility. The view taken in the discussion overall, was that although, as individuals, we cannot change the dominant power structures, we can and should add our voices to the voices of those who oppose policies and practices harmful to the environment.

The discussions highlighted that the lens of vulnerability allows us to view the human rights and environment debate from a particular perspective in which the interconnectedness between humans and the environment is made visible. It allows us to see ourselves, and the planet, as having a profound vulnerability in common; thus sharing a common situation in the face of crisis. This understanding renders the need for a new approach, one in which our shared vulnerability is recognised and expressed even more urgent.

2. The limits of law

The inability of existing legal frameworks satisfactorily to address the reality of environmental destruction and its impact on humans and other species was the second theme that featured prominently in our discussions. One aspect of this part of our discussion focussed on the argument that as a rule we expect too much of our legal systems, both domestic and international, leading to an abdication of individual moral responsibility. As noted above, and below in more detail in the specific discussion of responsibility, humans are uniquely powerful in the biosphere as moral agents and political actors. As humans, we must take responsibility for our own actions that contribute to environmental degradation and climate change rather than expecting the law alone to provide us with constraints and boundaries. At the same time, as lawyers, policy makers and activists alike, we need to take responsibility for reclaiming the law, accepting that the legal framework is man-made and that it can therefore be reimagined and redirected to address the vulnerability of both humans and the biosphere. However, the participants felt that in order to do so we need to understand the current limits of the law and to become involved in challenging those limits as well as in the struggle for transformation of the legal frameworks, both in the jurisdictions in which we work and internationally.

One of the primary limitations of existing legal frameworks is the fragmentation of the law (Turner 2006). There is a tendency, common to legal systems, for legal specialisms to develop in isolation from one another, leading to lack of co-ordination which makes it more difficult to tackle cross-cutting problems such as climate change. Moreover, attempts to solve problems in one area of law may often exacerbate difficulties in other areas. Clearly the separate development of environmental law and human rights law is one example of such fragmentation. In cases in which both environmental and human rights concerns arise (see, for example, Feris 2013), solutions provided by environmental law focus on the green agenda and do not address the human rights issues at stake, while human rights law generally disregards the environmental dimension (see also the discussion in sections 6 and 7 below). But there are many other examples of fragmentation, such

as the development of company law, contract and property law without proper consideration of either environmental or human rights concerns (see Turner 2013).

The workshop participants took the view that a transformed legal framework should therefore, in the first instance, address the problem of fragmentation by rejecting silos and embracing the interconnectedness of all areas of law. A number of very different approaches as to how this could be achieved were discussed. Burdon's approach, for example, is to focus on the creation of an ecological conception of law (see Burdon 2013). The essence of this proposal is that principles such as ecological integrity are inherent to the law and must permeate the concept of law from within rather than being imposed from outside. In this way, ecological thinking will become part of all law, rather than being restricted to environmental law (see also sections 6 and 7 below). Phillipopoulos-Mihalopoulos proposes a rejection of the old dialectical, hierarchical approach to environmental law and a reconceptualization of what he calls critical environmental law as 'an invitation to disciplinary and ontological openness'; 'a body (of discourse) that affects and is affected by other bodies (in every sense)' (see Phillipopoulos-Mihalopoulos 2013). Powerful arguments were also made for a reframing of the human rights framework to create a united approach to human rights and the environment (see discussion of the limits of human rights in section 4 below). Expanding on this theme, Donald discusses a number of different ways in which human rights language and practice can be used in the struggle for environmental justice. At the same time, she argues, the use of human rights ideas and discourse in such struggles has the potential to radically transform and renew human rights (see Donald 2013). Turner, on the other hand advocates the framing of a new global environmental right that is not constrained by existing human rights approaches (see Turner 2013).

The second requirement for transforming the existing legal framework is to rethink the concepts on which the law is based. The dominant paradigm of Western law, which places humans at the centre of the legal system must be replaced with a conception of humans as part of an Earth community in which all natural beings, systems and the like are considered to be 'subjects, not objects' (Burdon 2013). At the same time, as discussed above, human beings have a unique responsibility to protect the environment. Thus the law should situate human beings in the environment and not focus primarily on human needs, but on preserving the integrity of the earth for the benefit of both the human and non-human community. The discussion of vulnerability above suggests another dimension to reconsidering the meaning of the 'human'. While all humans are vulnerable, we are all differently situated and the ways in which we are vulnerable vary considerably. Incorporating these insights into the legal framework has the potential profoundly to change the way in which the law responds to both human needs and environmental concerns.

A range of other issues that need to be addressed in rethinking the legal framework was proposed in the course of our conversations. For example, there was general agreement on the need to integrate intergenerational justice into the law. The inclusion of both rights and responsibilities in relation to the environment was suggested (see the discussion of responsibility in section 4 below), and clarification of the right to the environment was advocated. The need to reconsider how environmental concerns can be reflected in diverse areas of law such as company law and administrative law was noted and the protection afforded by constitutional environmental rights was questioned. A number of suggestions relating to legal procedure were also put forward. One of these was how public participation could be incorporated into both the development of the law and into decision-making in specific environmental cases. Another question raised in relation to legal procedure was whether the adversarial process is the one most fitted to dealing with environmental issues.

There was also an unequivocal acceptance that confining the conversation to lawyers and seeking answers by looking only at the law and legal theory was

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limited and limiting. The need for a broad view, integrating perspectives from different disciplines with legal discourse was widely recognised. Delegates were excited about the potential to develop a greater understanding of different approaches to rethinking the law from the perspective of different disciplines, from law to philosophy, economics, geography, science, politics and others.

Finally, and of particular importance for the participants, was a general acknowledgement that the recognition of the limits of the law and the way in which we seek to reimagine the law has profound implications for how we, as educators, both lawyers and non-lawyers, think, teach and write about the law.

3. The Limits of rights

The centrality of the human and therefore, necessarily, of human rights concerns to our discussions was acknowledged by all participants. While our discussions acknowledged the very real limitations of the human rights framework, its strengths were also readily accepted: it is already well-developed (arguably representing the dominant paradigm in human affairs at an international level); it enjoys enormous resonance with people and by its very nature it recognises the unique position of the human. Thus we concluded that, while it might be desirable in principle to develop a completely new paradigm to appropriately address the human/earth relationship, given the pressing threat posed by environmental degradation, it is both necessary and pragmatic to work instead with a reframed version of the predominant human rights framework. It was acknowledged that this requires that we re-imagine and reclaim the human rights framework as a particular area of emphasis in our re-envisioned view of the law more generally (discussed in section 3, above). After all, the human rights framework itself is a human construct and ultimately constrained only by limitations in our imagination, and therefore there is no inherent reason why an understanding of human rights cannot be reframed. This re-imagination could take any number of forms, for example: encapsulating collective rights; or rights for future generations; or indeed, more radically, fundamentally re-envisioning the concept of rights and extending their application beyond humans to nature itself (see also section 7 below).

For present purposes, our discussions in this area can usefully be gathered into three main strands: the most abstract of these considered the limits of rights as legal claims and looked beyond law to the almost talismanic nature of rights claims and to their consequent moral and societal currency and import. While it was agreed that, for all this, human rights claims are by no means ‘magical sources of supply’ of social, economic, and indeed environmental goods for rights holders, it was also acknowledged that they do provide opportunities to assert such claims – opportunities which have value in their own right. This first strand of dialogue was prompted in particular by issues raised in the papers presented by Donald and Kerns, albeit in very different ways (see papers by Donald (2013) and Kerns (2013)). It was intimately linked to the second more prominent and practical consideration of the specific limits of human rights *qua* rights for poor and otherwise under-resourced vulnerable individuals and communities as made manifest in and by environmental degradation. These issues, centring on the dissonance between enjoying rights entitlements on paper and the ability to access and enforce these rights in law, were raised in a number of contexts drawn from experience on the ground, notably in the papers delivered by Code, Du Plessis, Feris, Gill, and, once again, Donald and Kerns. This in turn inevitably prompted discussion of (sustainable) development and the right to development as being highly contested concepts that are nonetheless of crucial importance in informing debate about, and praxis on, the current and future relationship between human rights and the environment. The significance of the dominance of the Western, unsustainable model of development and the need for developing nations to be liberated from, rather than aspiring to, it to pursue alternative creative and

sustainable models of development, formed a sub-strand of the discussion here. So too did the understanding that the inter-connected nature of human rights inevitably means that failures to protect rights or their active abuse in one context exacerbates failures and abuses elsewhere and inevitably creates or escalates existing vulnerability.

The second strand of discussion prompted the third, arguably most radical, line of rights talk in this area, which pointed to the damaging myopia often associated with even the most boundary-pushing and reflexive approaches to human rights that loses sight of the fundamental fact that any sustainable pursuit of human rights is predicated on the continued flourishing of the biosphere (discussed in section 1, above). The need to recognise the nature and implications of our ecological interconnectedness was very apparent in Burdon's paper which in turn prompted discussion of the need to extend rights protection beyond the human into the natural world as part of a wider discussion centred on interconnection and ecocentrism (see section 3 above and 5 below and Burdon (2013)). It also entailed the recognition of the practical vulnerability of even privileged rights-holders in the face of threats to the viability of the biosphere. Phillipopoulos-Mihalopoulos' paper added another dimension to this strand of our discussions by questioning the artificiality of the human/nature distinction, pointing to the importance of the "situatedness" of our gaze when applied to the Earth/human paradigm (see Phillipopoulos-Mihalopoulos 2013). In the first place this makes fully and accurately articulating the nature of the interconnection between humans, our rights and the environment/biosphere a pressing priority. It also goes much further, positing the need to locate human rights in an ecological setting, though in our discussions we stopped short of advocating a purely ecocentric approach, recognising our inability to separate ourselves from our humanity in this regard (see also section 7 below). Instead we sought to identify some sort of 'middle way' that might be possible to re-imagine and rearticulate the Earth/human relationship, in all its rich interconnectedness, in a more realistic way. Our starting position here was the understanding that as humans we are both in and of the environment. This was supplemented by the acknowledgment that we are also responsible for the state of the environment as we occupy a unique position in the biosphere both in practical terms (as a species with unique abilities to shape, mould, improve and damage the environment on all scales from the micro to the macro) and as moral agents (we are capable of appreciating the implications of our acts and omissions in this regard and of acting upon them) (see also section 3 above). This approach is therefore founded on an understanding of the uniquely powerful yet vulnerable position of humanity in relation to the biosphere. The key interconnected themes that emerged here therefore, were the need to recast the environment/human rights paradigm predicated on ecological thinking, prompting consideration of both the import of anthropocentrism and its imperative review in light of its contribution to ecological and human vulnerability. Thus the recognition of the inevitability of anthropocentrism in our dealings with, and as part of, the environment ultimately came to the fore. This raised the question: what should anthropocentrism ideally be? We posited an amended anthropocentric approach which accepts that while we cannot be other than as we are in this regard – humans acting within human systems – truly assimilating the understanding that our activities are not to be endlessly supported, but will ultimately be limited by the constraints imposed by our environment, requires that our anthropocentrism be re-thought in ecological terms (see also sections 5 and 7 below). It was also thought that the need to do this is set to become increasingly pressing in the context of claims raised by resource scarcity and the distributional questions that these will inevitably raise. The need to re-cast anthropocentrism also allowed us to articulate the oft-ignored fact that the current operation of anthropocentrism (as is the case with human rights, discussed in section 2 above) is both partial and inequitable, benefitting only a privileged minority of (usually wealthy, white, Western, male) humans.

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At its most profound, our discussion of the limits to rights raised what we termed the 'identity question' in intra-human rights contexts and extra-human rights contexts. To this end we questioned humanity's (and particularly, but by no means uniquely, the Western world's) usually unspoken and certainly assumed sense of entitlement to exploit one another and the biosphere, which prevails unless checked by enforceable claims by the 'other'.

4. Responsibility

A recurrent theme grounding our discussion lay in the participants' understanding that, for all of the undoubted dominance of 'rights talk' in society generally, and its current rise to prominence in respect of the environment, the concomitant concept of responsibility has rarely been viewed as being equally important. In mainstream human rights law this is perhaps because notions of individual responsibility have been subordinated in what has come to be viewed as something that falls primarily within the realm of state responsibility – the state being legally responsible both for the framework that guarantees individual rights and for providing mechanisms for redress when these rights are infringed. This is not to say that we thought responsibility at state level and within the legislature, executive and judiciary was unimportant – indeed it is crucial. However, we did conclude that this institutional view of responsibility cannot tell the whole story – it is too reductionist and has tended to create a zone of false comfort by ensuring that the gaze of the individual rarely strays beyond the invocation of their own rights to consider that enjoying rights necessarily brings with it the notion of responsibility owed towards other rights holders (and arguably extending beyond this to the natural world) in exercising them. In the current context, this problem is exacerbated by the fact that the legal system is not alive to our environmental predicament and while it needs to become so, we continue to expect too much of it, using it as an excuse to abdicate our own responsibility for engaging with the implications of our own choices and behaviours (see also section 3 above). Even in the absence/imperfection of state action, it remains open to us to take voluntary action to change our attitudes and practices as individuals in this regard, but, it remains the case that, for the overwhelming majority of humanity, unsustainable lifestyles remain the norm (illustrated for example in Planetary Boundaries thinking (Rockström *et al* 2009.)).

The need to balance rights with strong and enforceable duties, laying out our responsibilities in clear terms, was a recurring theme in our conversations. If, however, we are to see rights based approaches make the paradigm shift that an ecological approach would require (see Burdon 2013), extending this methodology of rights-based legal protection to the non-human world, then notions of human responsibility (applicable on both an individual and a collective basis) cannot be relegated to the background. This is centrally because the invocation of such rights will require human articulation and recognition of them in the first place and subsequent human advocacy and adjudication in order to activate any protection so accorded. Thus it was no surprise that responsibility emerged as a key element in our discussions. Interestingly this aspect of our consideration of rights for non-humans also brought the issue of responsibility to the fore in discussions of purely intra-human rights claims. Notions of responsibility, in particular in tandem with our discussion of vulnerability (as applied both to humans and the biosphere) which we concluded was its inseparable counterpart, emerged repeatedly in the papers and the group discussion that they fuelled. The notion of vulnerability as applied to what one participant termed, 'vulnerable creatures, fundamentally exposed to one another and given over to each other's keeping' is clearly relevant in terms of intra-human rights claims. Much intra-human vulnerability is created, aggravated or perpetuated and mythologized by our own activities and those of other humans, and the same is true of the power that humans exert over the vulnerable biosphere and its many and varied components. Exposure and the power to exploit the other,

be that other humans or nature, and the deep-seated mutuality of such relations brings with it moral responsibility that is not necessarily easy to carry over into legal duties, and too often this seems to be an assumed element of a rights regime rather than a fully thought through and articulated integral part of the whole. If we are correct in our conclusion that vulnerability is an individual, collective and ecological condition, a corrective moral responsibility and ultimately legal accountability necessarily need to share and respond to its multi-layered character.

Our discussions in this area chimed with other developments in the international polis that suggest that a reprioritization of responsibility is indeed timely, not least in its prominent presence in the civil society People's Sustainability Treaties that emerged alongside the recent United Nations Conference on Sustainable Development (Rio+20), specifically in the Charter of Universal Responsibilities (CUR) (Rio+20 CUR http://rio20.net/en/iniciativas/proposal-for-a-charter-of-universal-responsibilities). The CUR demonstrated a creative engagement between mainstream human rights law and the environment, extending recognition beyond what it termed established 'interdependences' within the human community to those between 'humankind and the biosphere' (Principle 1). Significantly the CUR's approach was founded on 'awareness of our shared responsibilities to the planet' as a 'condition for the survival and progress of humankind' (Principle 5) (PST, 2012).

5. Interconnection

As is clear from the discussion so far, the workshop participants agreed that humans enjoy a unique position in the biosphere in practical terms and as moral agents, yet that humans are in and of the environment for which we are also responsible. Such an understanding goes well beyond an ecocentric approach, as it recognises the unique powerful and vulnerable position of humanity in relation to the biosphere. To this extent, the participants also focused in their deliberations upon the deep disconnection between humans and the environment: If we humans are to become responsible moral agents of the environment in fact and not just in theory, humans and the environment should be reconnected. This also implies that rights should be reconnected or interconnected and not be placed in hierarchy. The workshop participants therefore acknowledged that giving due regard to interconnectedness is important when re-thinking the relationship between human rights and the environment. The need for interconnectedness stems from the reality of a disconnect between, *inter alia*: humans and the environment; human rights and the environment; human rights and environmental rights; the various issues that rights seek to address (principally as a result of rights hierarchy); a disconnect within the human rights regime and environmental rights regimes respectively; and finally a fragmented rights discourse.

Some participants felt that much of the disconnection that prevails in the human rights and environment context is the result of conflict. For example, rights create conflicting challenges and we often simply assume that they complement each other when, in fact, they do not. One of the problems arising from this concerns how this conflict should be addressed, and indeed whether this is even possible to address, in order to circumvent this disconnection. Moreover, the relationship between rights is not always clearly articulated, which of course raises the question of hierarchy of rights. The workshop discussion highlighted some pertinent questions in this respect: Can conflict be addressed through hierarchy? Or does hierarchy merely serve to disconnect rights further?

The deep disconnection affecting all the foregoing considerations is exacerbated by a rights discourse that is itself fragmented. First, human rights and the environment mean different things to different people and therefore represent contested areas. Secondly, environmental and human rights have many dimensions: philosophical; constitutional; substantive and/or procedural; and differing conceptions stemming from the entrenched United Nations human rights

paradigm and from established domestic paradigms. In terms of addressing such disconnection between rights issues, human rights in the environmental context could possibly serve an equally interconnected brown (socio-economic) and green (ecological) agenda, which, we admitted, is a monumental challenge. The discussion on this point highlighted the fact that the brown agenda prioritizes pervasive challenges related to improving human well-being without harming the environment, especially in developing country contexts; yet the fear of over-emphasising the green agenda must not be over-stressed. Ideally the intricate, and often conflicting, interconnection between brown and green issues should be recognised and responded to in a non-hierarchical and integrated way that best mediates potential dichotomies arising from seemingly opposing interests. Participants, however, recognised that this will not be easy, because the issues that human rights raise are multifaceted, and therefore potentially "disconnectable" in the sense that they could concern individuals, communities, the world, and future generations, for example.

It was generally agreed that the fragmented and disconnected reality of rights, issues and discourse ultimately requires a holistic (re)consideration of rights and rights discourse in order to rethink the relationship between rights and rights claims. A variety of practical ways to reconnect human rights and the environment, were debated, including the creations of a new global treaty which encompasses both using existing human rights instruments to tackle environmental harm and using environmental rights in human rights practice (see Donald 2013). Notably, a reconceptualization and reformulation of human rights is already emerging from practice and community struggles, and collectively this emphasises the increased importance of the reflexive use of human rights discourse.

At a more conceptual-theoretical level, Feris, for example, made the case that in thinking about the interconnectedness of human rights in the environmental context, the idea of equality needs to be incorporated into the discourse (see Feris 2013). The argument is that seen through the equality lens, human rights and the environment become non-exclusive values that often overlap. Thus, while equality is recognised as being a loaded term, it was suggested that it could be a useful point of departure and a central theme to reconnect human rights and the environment. Some participants felt that the introduction of equality into the human rights and environment discourse might even require the proponents of anthropocentrism to acknowledge all of humanity and the myriad interconnected relationships and issues that prevail in this setting; not, as it currently does, only those interests and relationships of a small part of the population that benefit from rights-based claims.

6 Thinking ecologically

Following from the last point, participants considered that despite a growing interest in ecocentric perspectives, environmental and human rights law remain predominantly anthropocentric and dominated by Western (Eurocentric even), socio-cultural assumptions of law and governance (see also the Editor's introduction to this volume (Grear 2013)). It was generally accepted that the core philosophy behind anthropocentrism could be understood in light of the way that humans perceive themselves and their place and function on earth and in the universe; or put differently, the way in which humans conceive of what it is to be human and, in particular, how humans take for granted their mastery over the world (Code 2006). This leads to a view of rights entailing a negative sense of entitlement that takes the liberal individual for granted as the hallmark of the human. Western legal anthropocentrism is an exclusive approach, disconnected from ecological sensitivity, which is exemplified by the fact that human rights law only protects the human (and then in only a partial manner that fails, amongst other things, to focus on the importance of long-term and contextual concerns). However, the "human" that environmental or human rights law must protect should ideally transcend "the

human" as we currently understand it. Participants therefore suggested that an ontological reformulation of "the human" of human rights is necessary in order to reflect the human as an ecological subject or being (see also the discussion on the limits of law in section 3 above).

The workshop discussions also reflected on the need to re-cast the human rights-environment relationship in ecological terms, or at least to think ecologically when contemplating this relationship. We acknowledged that entering the ecocentric paradigm would not be easy, but it could be facilitated by, among other things, adopting an "Earth Community" approach through an eco-sensitive guiding cultural narrative (Burdon 2013). Such a narrative could include an "Earth Community" which sees the biosphere as a community of subjects that (also) includes humans, which, as some participants pointed out, could provide an intellectual space within which to expand the circle of human ethics to focus on preserving the integrity of the earth and planetary systems, rather than focusing on human needs alone.

Participants nevertheless acknowledged that "thinking ecologically" has its limitations. We accepted that, to think ecologically about the law and about the relationship between human rights and the environment, would probably not change behaviour unaided. But it will be a necessary first step to change minds with the view to radically re-imagining the human rights-environment relationship, which is the necessary precursor to behavioural change.

7. Conclusion

The authors hope that we have managed to convey to the reader a sense of the dizzying variety of issues, ranging from the profoundly philosophical to the eminently practical that emerged in our discussions. In sum, we raised many more questions than we answered – though this we think is no bad thing. The problems that we face in re-articulating the Earth/human relationship are certainly daunting but the unanimous view of the workshop participants was that the constructive dialogue that we engaged in left us energised and fired our imaginations, giving real cause for optimism. We hope that the papers contained in this volume provide the reader with as much food for thought as they did to those of us who witnessed their passionate advocacy in Oñati.

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