Holt-Giménez, Eric, and Justine M. Williams. "Conclusion: Together Toward Land Justice." *Land Justice: Re-imagining Land, Food, and the Commons in the United States*, edited by Justine M. Williams and Eric Holt-Giménez, Food First, 2017, pp. 258–263.
People of Color Environmental Leadership Summit. "Principles of Environmental Justice." 1991. *Energy Justice Network*, 6 Apr. 1996, http://www.ejnet.org/ej/principles.html.
"RUMSFELD / KNOWNS." *Youtube*, uploaded by CNN, 31 Mar. 2016, https://www.youtube.com/watch?v=REWeBzGuzCc.
#Trust Black Women. "What is Reproductive Justice?" *SisterSong*, n.d., https://www.trustblackwomen.org/our-work/what-is-reproductive-justice/9-what-is-reproductive-justice.
Weheliye, Alexander G. *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human*. Duke UP, 2014.
Whyte, Kyle Powys. "Indigenous Women, Climate Change Impacts, and Collective Action." *Hypatia*, vol. 29, no. 3, 2014, pp. 599–616.

Law & Critique: Hubris in a Time of Environmental Change

USHA NATARAJAN

Thank you to Dayna Scott and Sonia Lawrence for this event. It is an honour and pleasure to have the opportunity to engage with and learn from my fellow panelists. I will elaborate on some of the themes raised by Angela Harris about producing knowledge with humility. I want to think about why it is so hard for lawyers, particularly international lawyers (and I include myself in this group) to produce knowledge in such a way.

Before getting to "Critical Theory for the Future," I begin with some background about myself and my discipline. I am an international lawyer. My interest in international law and understanding of it are shaped by where I come from. I was born in India and became an Australian citizen when I was a teenager. My interest in international law began after moving to Australia because I wanted to understand the disparities of power and wealth between the so-called First and Third Worlds, and international law seemed the appropriate field to grapple with questions of global injustice.

I was drawn to various critical movements within law that explained the discrepancy between the promises of equality that are repeatedly reiterated and inscribed within international law, and the increasingly unequal world we live in. Specifically, I was drawn to "TWAIL" or "Third World Approaches to International Law," which is a postcolonial movement that unpacks the ongoing colonial legacies of international law, and demands decolonization and inclusiveness.

In Australia, law is an undergraduate degree and, while I was studying law, I undertook a parallel undergraduate degree in the history of art. The juxtaposition of these two fields of study was an apt illustration, very early on, that in law we are dealing with a deeply conservative discipline. Critical theory enters law slower and later than it does other fields, such as art history, literature, and so on—sometimes with a gap of many decades, with postcolonialism being just one example. It is from this background that I ponder the future of critical theory within law. Without question, the central challenge is how critical legal theory responds to environmental change.

The international law response to environmental degradation is a specialization called international environmental law. It is a high-growth specialization. Commencing in the 1970s, it now consists of an increasing number of treaties, international organizations, research centres, funds, textbooks, graduate degree programs, courses, and so on—all the accoutrements of a successful legal specialization that has staked out its space and is busy putting down roots and putting up shoots.

The initial response of critical international lawyers to international environmental law was interesting. For many decades, international lawyers in the global South—whether critical or mainstream—were largely united on the environmental issue. Both critical and mainstream international lawyers from the South emphasized that environmental problems were caused for the most part by the global North and hence the global North should shoulder the bulk of the burden of fixing these problems. Additionally, as the global North had enriched itself through environmental destruction, the global North also had much greater capacity to shoulder the burden compared with the impoverished global South. Critical legal scholars in the global North rarely engaged with the environmental question at all but, on the rare occasions when they did, they largely supported the stance of Southern scholars.

With Southern lawyers engaged in the international environmental law project, legal principles reflecting the Southern position were successfully proclaimed within international environmental law, such as an acknowledgement of our common but differentiated responsibility for the global environment. The legal concept of sustainable development also incorporated an understanding that those who cause environmental harm and those with the greatest capacity to mitigate it should take the lead. These ideas were incorporated in various ways within treaties, the best-known example being the Kyoto Protocol.

However, these principles and ideas have been to no avail. In each of the environmental issues that international law has tackled—climate change, biodiversity preservation, combatting desertification and deforestation, fighting pollution in the air, water, and earth—we have failed. Each of these problems is worse now than before the advent of international environmental law. Yet international environmental law has grown in leaps and bounds and will continue to do so.

In light of this state of affairs, what is the response of critics today? Have they changed their stance? For some, not much has changed. Some scholars,

especially those from the postcolonial school, point to the obvious: the North refused to live up to its legal obligations, and thus we have failed to stem environmental degradation. While this is true to a certain extent, and we should certainly continue to say so, past experience indicates that this critique by itself has proven neither tactical nor helpful in combatting environmental degradation.

Other critics within international law refuse to engage with environmental questions altogether; they see the proliferation of international environmental law as part of the reproduction of longstanding structures of economic, political, and social violence and see no tactical value in engaging with this particular manifestation. They particularly resist the mainstream's obsessive focus on climate change, insisting that it is a distraction from broader underlying inequities.

Many of these critical stances are reiterated in the pushback against the term "Anthropocene," and it is very understandable. In a world where New York emits more greenhouse gases than the whole of sub-Saharan Africa, any claims about humanity as a whole—our agency and power as a species—are nonsense, especially when sub-Saharan Africa—human and non-human—feels the unmitigated brunt of climate change at an exponentially greater degree than those who caused it.

I can understand this stance. I have studied inequality all my life, starting with the laws of war, then looking at trade, economic, and investment law. But I have never seen greater inequity and injustice than that being wreaked by climate change. We see it everywhere, but I take an example from my own region, North Africa, where I have lived and worked since 2010. We are the most water-scarce region in the world; the most import-dependent for food; our political problems are well known due to the ongoing Arab uprisings; and we are unsurprisingly unable to cope with fast-moving changes in the deserts, and deltas, and the large tracts of land that are fast becoming uninhabitable. The last drought in Somalia displaced 4,000,000 people, and 100,000 people died, mostly women and children. How can Somalia, the subject of relentless international interventions for every other conceivable reason, be expected to cope with longer and more severe droughts alone—a situation that it did not cause and has no means of preventing?

So, I too share the concerns and frustrations that characterize existing critiques. *But much more needs to be said.* Environmental change requires more than our long-standing demands for fairness and redistribution. Environmental change forces a more fundamental change in our ways of knowing the world. While questions of redistribution remain relevant, even revolution and radical redistribution of power and wealth will not provide a solution to environmental change without a revolution in thought. Today, it is possible that a revolutionary condition is looming and a force beyond our timeless socio-economic conflict is a driving element. It is likely that natural contingencies will arise faster than humankind's ability to negate systemic collapse. So, the revolution may be ready for us, but we may not be ready for the revolution.

For lawyers, environmental change provokes a rethinking of what law is, given the significant role of law in creating the difficulties that we face today. As it stands today, the concepts that law is built on are wedded to environmental destruction. The basic building block of international law—the sovereign state—must master nature and submit it to the task of infinite economic productivity. Societies that do not do this will not be sovereign. A world of sovereign states is further atomized into a world of individuals possessing human rights. Legal doctrines such as sovereignty and human rights are examples of the many ways in which societies and individuals have become abstracted from their natural environments. Scientifically and spiritually, we know that we cannot exist without the non-human entities that enable us to breathe, grow, and live. We are inseparable from all of nature in life and in death. Yet, notions such as human rights assert a clear demarcation of our species from all others. Notions such as sovereignty assert our mastery of nature even in the face of our diametrically opposite experience: our inability to stem the sixth mass extinction, or the changing climate, or the spread of deserts and decimation of forests, or the pollution of the soil, water, and air. Similar critiques can be levelled at other fundamental legal concepts such as territory, jurisdiction, and legal personality, to name but a few, all of which have underlying assumptions about the natural environment that are harmful, destructive, and inaccurate.

Disciplines such as law and economics—indeed most knowledge production in the Enlightenment era, critical or otherwise—take for granted the underlying stability of natural systems. However, this is no longer the case. The development patterns of the rich have destabilized natural systems. So, at the very least, we have to contend with whether our understandings of development and progress are mistaken; whether the directionality and hierarchy that give meaning to the developed and developing dichotomy are misguided; and whether we have something to learn from the human and non-human cultures that have proved less destructive than our own.

If the central tenets of international law destroy the environment, reinvention of the discipline could start with acknowledging that the environment—or nature—is not an object that we can cast the net of our knowledge or critique over. On the contrary, it is what encompasses, surrounds, and regulates us; keeps us alive, breathing, growing, and learning. It has laws of its own from which we can learn if we listen.