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RESEARCH ARTICLE

Posthuman feminism and global constitutionalism: Environmental reflections

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Abstract

There is a need for the field of global constitutionalism to consider a wider array of voices, such as women's voices and perspectives from the Global South. Here, I argue that global constitutionalism must pay attention not only to a wider array of human perspectives, but also to non-human perspectives and to different understandings of what the law is and can be. Evaluating how international law categorizes the environment and non-human animals as things or objects to be exploited for human needs, I argue that posthuman feminism provides an alternative epistemic frame for rethinking both global constitutionalism and international law.

Keywords: posthuman feminism; global constitutionalism; women's voices; Global South; non-human exploitation

I. Introduction

As Ruth Houghton and Aoife O'Donoghue explain, global constitutionalism 'offers a utopic picture of the future of international law', one in which a governance system or systems can slowly fill in the gaps between current international law.[1] However, as these authors also note, global constitutionalism has been critiqued by feminists, who argue that the field largely represents dominant perspectives, silencing alternative visions of what international and transnational law is and can be.[2] Working to engage global constitutionalism in discussion with feminist critique, this special issue focuses on the role feminist manifestos can play in rethinking global constitutionalism. It is therefore essential reading for those within the field of global constitutionalism, which until recently has engaged only minimally with feminist critique.[3] Furthermore, the articles

[1]A O'Donoghue and R Houghton, '"Ourworld": A Feminist Approach to Global Constitutionalism' (2019) 9(1) *Global Constitutionalism* 38.

[2]Ibid.

[3]Existing articles that do engage feminist approaches within the global constitutionalism (outside the articles in this issue) include O'Donoghue and Houghton (n 1); A O'Donoghue and R Houghton, 'Can Global Constitutionalism be Feminist?' in S Harris Rimmer and K Ogg (eds), *Research Handbook on Feminist*

in this issue consistently focus on methods, and on new ways of thinking and envisaging global constitutionalism, and thereby international law. The issue must be commended for going beyond critique alone, providing some ways forward for those seeking to bring a wider range of voices to the global constitutionalism table. In this article, I seek to add to this discussion by drawing on posthuman feminist theory to think about what global constitutionalism can learn from conferring with not only a wider array of human perspectives, but also non-human perspectives.

In many ways, global constitutionalism comes from a sense that there is a need for a greater, more universal and more integrated international legal system, one that is clearly based upon constitutional principles. Multiple different proposals have been put forward on how a global constitutional order can be achieved, each presenting a different vision of the resulting global order. Perspectives include those drawing on legal pluralism[4] and global administrative law scholarship,[5] as well as calls for the application of the principle of systemic integration.[6] However, scholars within this field are united by an urge to create a more coordinated or universal system.

While the move towards solidifying further universal values is often proposed by scholars within the field of global constitutionalism as a solution to some of the problems faced within international law, one core tension for feminists working within this field is the universalism posed by such a project.[7] As Ratna Kapur has argued in relation to the proclaimed universalism of human rights, universalism risks not only the *exclusion* of peripheral voices and different forms of understanding, but the active *erasure* of alternative ways of knowing.[8] Universalism puts forward an argument that *these* values are

Engagement with International Law (Edward Elgar, Cheltenham, 2019) 81; and J Sapiano and B Baines, 'Feminist Curiosity About International Constitutional Law and Global Constitutionalism' (2019) *Journal of the Oxford Centre for Socio-Legal Studies* 1.

[4]N Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford University Press, 2010).

[5]B Kingsbury, '"The Concept of Law" in Global Administrative Law' (2009) 20 *European Journal of International Law* 28.

[6]C McLachlan, 'The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention' (2005) 54 *International and Comparative Law Quarterly* 279; C McLachlan, 'Systemic Integration Revisited' Essex Public International Law Lecture Series, 22 March 2021, available at: <https://www.youtube.com/watch?v=BrpDjcKsENU>.

[7]Matthew Craven argues that the fragmentation of international law is actually a sign of the discipline's diversity and the inability of the 'disciplinary centre' to be able to 'hold the forces of diversity in check'. In a sense, therefore, Craven notes the inherent inability of any proposed universal to be able to accommodate or account for diversity – this being similar to my critique of universalism. Similarly, Martti Koskenniemi and Päivi Leino argue that fragmentation is a positive expression of international political pluralism. However, as Gina Heathcote notes, there is a need to go further and note not only the difficulties with universalism as in tension with diversity, but also the power structures that any proposed universalism produces and replicates. This somewhat echoes Eyal Benvenisti and George W. Downs' argument that fragmentation is a central concern because powerful states actually perpetuate fragmentation as fragmentation serves their interests. See M Craven, 'Unity, Diversity and the Fragmentation of International Law' (2003) 14 *Finnish Yearbook of International Law* 3, 32; M Koskenniemi and P Leino, 'Fragmentation of International Law? Postmodern Anxieties' (2002) 15 *Leiden Journal of International Law* 553; G Heathcote, 'Fragmentation' in G Heathcote, *Feminist Dialogues on International Law: Successes, Tensions, Futures* (Oxford University Press, 2019) 71; E Benvenisti and GW Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law' (2007) 60(2) *Stanford Law Review* 595.

[8]R Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar, Cheltenham, 2018).

universal, and thereby are *the* values of all. Universalism is an inherent falsity; there are no universal values which we all hold to be true in exactly the same way.

II. Whose universalism?

The challenge to universalism has long been a central tenet of critical thought. The call for women, or people of colour or other marginalized groups to have rights too, is an inherent challenge to universalism at the level of inclusion. Thinking through the epistemic closures of universalism, Kapur challenges the universalism of human rights and the concept of 'freedom' promoted by human rights through a focus on epistemologies from the Global South.[9] On a related but slightly different note, Donna Haraway argues that any universal, totalizing theory is 'a major mistake that misses most of reality'.[10] The Xenofeminist Manifesto (outlined in more detail below) likewise discusses universalism. The Xenofeminist Manifesto, however, actually calls for universalism – albeit a universalism that must be made from the particular,[11] thereby inherently posing a challenge to the mainstream form of universalism upon which much legal theory, including global constitutionalism, is based and that it seeks. Writing on xenofeminism a few years after the Xenofeminist Manifesto was published, Helen Hester (one of the collective members who wrote the original manifesto) further clarifies the universalism of xenofeminism, defining it as an intersectional universalism, supporting the stance that the xenofeminist concept of universalism must have difference embedded within it.[12] This point has, of course, been raised within the field of global constitutionalism itself – including by feminist scholars working within this area, as referenced above, but also in relation to the need to decolonize global constitutionalism.[13]

The authors in this special issue all discuss the challenges of exclusion within global constitutionalism. In doing so, they adopt different methods and different frameworks for understating and tackling this exclusion. For example, Houghton and O'Donoghue, through their meticulous overview of the multiple feminist manifestos that have been written, argue that manifestos provide evidence of dissident voices and knowledges that have never been included in the so-called universalism of international law. On the other hand, Gina Heathcote and Lucia Kula adopt a related but different method, calling for a politics of listening and learning. While their article, like Houghton and O'Donoghue's, discusses the value of including what until now have been excluded knowledges, and calls for greater attention to be paid to those voices as part of a feminist praxis within global constitutionalism, Heathcote and Kula's article speaks not only to global constitutionalism as a field but also to feminists working within international law. Focusing in particular on feminist work and organizing within Lusophone Africa, Heathcote and Kula call for feminists to challenge their own assumptions about what feminist knowledge is and who

[9]Ibid.

[10]D Haraway, 'A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century' in D Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature* (Free Association Books, London, 1991) 149, 181.

[11]L Cuboniks, *The Xenofeminist Manifesto* (Verso, London, 2018), Parity 0×0F.

[12]H Hester, *Xenofeminism* (Polity Press, Cambridge, 2018), 460. For a wider discussion of the universalism within xenofeminism, see E Jones, 'Feminist Technologies and Post-Capitalism: Defining and Reflecting upon Xenofeminism' (2019) 123(1) *Feminist Review* 126.

[13]J Havercroft *et al.*, 'Decolonising Global Constitutionalism' (2020) 9(1) *Global Constitutionalism* 1; V Kumar, 'Towards a Constitutionalism of the Wretched' *Völkerrechtsblog*, 27 July 2017.

is being heard, critiquing 'white and mainstream feminisms' by drawing on feminist epistemologies from the Global South. Sheri Labenski, on a different note, calls for manifestos and other forms of knowledge to be considered as evidence of the forming of customary international law. By focusing more squarely on exactly how such knowledge can be used to rethink international law-making, Labenski's article provides another way of thinking and doing feminism within global law while also raising an important point about the value unfairly placed on some sources of international law as inherently more valid than others. Each article thereby takes a different approach to a similar theme: the need to listen to a wider array of voices and hitherto excluded knowledges, and take them as seriously as we do their powerful white, male counterparts. The special issue comes with a clear message: it is about time that the voices of those who are rendered peripheral are heard.

In this article, I add a further layer of exclusion to the analysis by drawing on posthuman feminism to think through global constitutionalism, focusing specifically on international environmental law. In short, I seek to add to the special issue, which focuses primarily on including a wider array of human voices and interests within global constitutionalism, arguing for the need to also think about the interests of non-humans.

III. Posthuman feminist theory

There are many strands of posthuman theory, so there is a need to be clear about what form of posthumanism we are talking about before engaging this theory. For example, transhumanism is a form of posthumanism that seeks to use science and technology to extend humans (usually men) beyond their human limits. This may be done through, for example, extending life – be that through cryogenics, seeking to upload the human brain to a machine or even lower tech forms of human enhancement through biohacking.[14] This form of posthumanism differs greatly from critical posthumanism. Transhumanism seeks to 'perfect' the white, able-bodied, middle class, heterosexual man, seeking to make him God-like, bringing Nietzsche's 'god is dead' thesis to the contemporary technologically mediated era.[15] Transhumanism is only posthuman in the sense that it seeks to expand upon the human; in short, humanism and its centring of the exclusionary white male subject remain at the core and are unchallenged by the transhuman paradigm.[16] Critical posthumanism, on the other hand, can be broadly defined as being located at the convergence between post-humanism (thereby seeking to dismantle hierarchies between humans such as gender, race and class) and post-anthropocentrism, seeking to challenge the hierarchical position the human subject holds in dominant Western thought over, for example, technology or non-human animals and the environment.[17] Posthuman

[14]For an interesting overview of some of these transhuman projects, including interesting ethnographic research, see M O'Connell, *To Be a Machine: Adventures Among Cyborgs, Utopians, Hackers, and the Futurists Solving the Modest Problem of Death* (Granta Books, London, 2018).

[15]See Nietzsche on 'The Death of God' in Friedrich Nietzsche, *The Gay Science, Book III* (Cambridge University Press, Cambridge, 2001) 125. See also Gilles Deleuze, *Pure Immanence: Essays on a Life* (MIT Press, Cambridge, MA, 2001) 71.

[16]R Braidotti, *Posthuman Feminism* (Polity Press, Cambridge, 2021). Though she does not explicitly mention transhumanism, Zylinska provides a strong feminist critique of the technologically enhanced, god-like male subject, or what she calls 'peak man'. See J Zylinkska, *The End of Man: A Feminist Counter-apocalypse* (University of Minnesota Press, Minneapolis, MN, 2018).

[17]R Braidotti, *The Posthuman* (Polity Press, Cambridge, 2013).

feminism is therefore a strand of critical posthumanism that draws upon a long lineage of feminist work, from intersectional feminism to queer feminism, cyberfeminism, ecofeminism and xenofeminism, to intervene in the posthuman condition.[18]

Posthuman feminism is intimately tied to manifestos. There are multiple manifestos written in the thread of posthuman feminism,[19] but here I will introduce two of the most prominent: Haraway's Cyborg Manifesto and the Xenofeminist Manifesto. Haraway's Cyborg Manifesto was originally published in 1985.[20] It was subsequently updated 'for the late 20th century'.[21] The manifesto questions human–machine relations, noting that we are all already intimately connected to technology and are therefore all already cyborgs.[22] The manifesto is careful to note the darker sides of technology, from the ways in which women –particularly women in the Global South – often do not experience the benefits of technology[23] to the intertwined nature of contemporary technology with capitalism and the military, and the possibility of a cyborg world ending in a '*Star Wars* apocalypse waged in the name of defence'.[24] However, in the end Haraway sees promise in the cyborg. The cyborg may indeed be the 'illegitimate offspring of militarism and patriarchal capitalism', but its contradictory and hybrid ways may also provide a path out of 'the maze of dualisms in which we have explained our bodies and our tools to ourselves'.[25] The cyborg already challenges many of the dominant gendered dualisms that permeate Western thought, including – importantly – nature/culture.[26] Haraway notes that 'high-tech culture' challenges dualisms: 'It is not clear who makes and who is made in the relation between the human and the machine.'[27] After all, as Haraway reminds us, 'illegitimate offspring are often exceedingly unfaithful to their origins. Their fathers are, after all, inessential.'[28] The cyborg thereby challenges the white, male, individual, rational subject (this being the central subject not only of Western thought, but also the law).[29] By noting the ways in which humans, machines, non-human animals and matter are interconnected, the cyborg provides an alternative model of the subject as interconnected, dependent and never fixed, but always partial. Of course, the cyborg is a 'dangerous possibilit[y]' but, Haraway continues, the struggle is to remain open to 'permanently partial identities and

[18]For a comprehensive genealogy of the links between environmental feminisms and the posthuman feminist turn, see Braidotti (n 16).

[19]As noted, for an extremely detailed overview of the multiple feminist manifestos that have been written, see Houghton and O'Donoghue's article in this issue.

[20]D Haraway, 'Manifesto for Cyborgs: Science Technology, and Socialist Feminism in the 1980s' (1985) 80 *Socialist Review* 65.

[21]Haraway (n 10) 149.

[22]Haraway (n 10) 150.

[23]Haraway (n 10) 168.

[24]Haraway (n 10) 154.

[25]Haraway (n 10) 181.

[26]Haraway (n 10) 151.

[27]Haraway (n 10) 177.

[28]Haraway (n 10) 151.

[29]N Naffine, 'Women and the Cast of Legal Persons' in J Jones, A Grear, RA Fenton and K Stevenson (eds), *Gender, Sexualities and Law* (Routledge, London, 2011) 15; A Grear, '"Sexing the Matrix": Embodiment, Disembodiment and the Law – Towards the Re-gendering of Legal Rationality' in J Jones, A Grear, RA Fenton and K Stevenson (eds), *Gender, Sexualities and Law* (Routledge, Oxford, 2011) 39; R Sydney Parfitt, 'Theorizing Recognition and International Personality' in A Orford and F Hoffman (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, Oxford, 2016) 583.

contradictory standpoints' and 'to see from both perspectives at once'.[30] Cyborgs are 'monstrous and illegitimate', states Haraway, concluding that 'in our present political circumstances, we could hardly hope for more potent myths for resistance and recoupling'.[31]

Another important posthuman feminist manifesto is the Xenofeminist Manifesto,[32] which broadly seeks to put forward a feminist understanding of technology that positions technology – much in the same way as Haraway – as holding feminist potential. The Xenofeminist Manifesto calls for an appropriation of technology for feminist aims, ensuring that such technology remains loyal to the politics feminists may wish it to promote. Such feminist aims include the will to ensure the free distribution of hormones (to allow people to undergo gender transition outside the medical and state apparatus) or to use technology to restructure gendered systems of reproductive labour and care,[33] declaring that, 'If nature is unjust, change nature!'[34]

The history of manifestos within posthuman feminism makes a lot of sense. Putting forward an alternative set of ideas or a new way of viewing the world is very much at the heart of the posthuman feminist project which, for example, problematizes the constructed binary between subject/object that has come to structure much Western thought, including legal thought, noting the links between the human, the non-human, and matter and the environment. As Houghton and O'Donoghue note in their article in this issue, this aim of rethinking the world equally sits at the heart of the manifesto form. It therefore seems fitting to analyse the role of posthuman feminism within this special issue on feminist manifestos and global constitutionalism.[35]

IV. What this means for global environmental law

International law is highly fragmented[36] and global constitutionalism as a field partly seeks to address this fragmentation.[37] However, it is not only international law that is fragmented: the different fragmented areas of international law are often each fragmented

[30]Haraway (n 10) 154.

[31]Haraway (n 10) 154.

[32]L Cuboniks (n 11).

[33]Ibid. Carry 0*16. For more on DIY gynaecology, see Hester (n 12). One way in which hormones can be appropriated, drawing on xenofeminist methods to reappropriate science and technology and make it our own, can be through creating home grown hormones and teaching others the same know-how. The project Open Source Gender Codes is one example of this. The project aims to create plants that would allow people to grow their own sex hormones at home. This project, if it or something like it succeeded, would not only massively challenge the pharmaceutical industry that produces these hormones, but would also allow people to make safe choices about whether or not they wished to take hormones outside the institutional contexts of the state and medicine. This could also, potentially, drastically change cultural attitudes to the taking of hormones, making transitioning more culturally acceptable due to its accessibility and the lack of an institutional framework. See Open Sources Gender Codes at: <http://opensourcegendercodes.com/projects/osg>.

[34]L Cuboniks (n 11) 0x1A. For an analysis of the Xenofeminist Manifesto from a feminist international legal perspective, see Jones (n 12).

[35]O'Donoghue and Houghton (n 1) have, however, discussed the ways in which feminist science fiction can help inform global constitutionalism.

[36]M Koskenniemi, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law* (International Law Commission, 2006) A/CN.4/l.682.

[37]See (n 7) for references and further discussion of this point.

internally in their own ways.[38] For example, in international environmental law, environmental, human and non-human interests are protected in different areas of the law and in different ways, with differing principles and approaches emerging accordingly.[39] Examples include treaties that focus on conservation and sustainable use of natural resources and biodiversity,[40] the obligation to preserve the marine environment[41] and instruments to decrease pollution,[42] among others. Positive obligations are thereby focused on specific areas. There is no general obligation in international law to protect the environment in and of itself.[43] While the UN General Assembly has taken up the task of environmental protection, most notably through the work of the UN Environment Programme (UNEP), there is no one specific international organization that has oversight of all environmental matters.[44] Fragmentation is therefore a key challenge for international environmental law. While certain areas of international environmental law are moving towards a more integrated approach, changes are still occurring within specific areas of focus only.[45] This fragmented nature means that consensus can be hard to find.[46] Despite the seemingly inherent fit, there has been little engagement within global constitutionalism with regard to international environmental law.[47]

[38]Benvenisti and Downs (n 7) provide a good overview of this phenomenon, providing several examples. For an analysis of how the structure of international law and its fragmentation works to limit feminist engagements and feminist possibilities within international law, see G Heathcote, 'Fragmentation' in G Heathcote, *Feminist Dialogues on International Law: Successes, Tensions, Futures* (Oxford University Press, Oxford, 2019) 71.

[39]See UN General Assembly, Report of UN Secretary General, 'Gaps in International Environmental Law and Environment-related Instruments: Towards a Global Pact for the Environment' 30 November 2018, A/73/419; Ecological Law and Governance Association, 'Oslo Manifesto', available at: <https://elgaworld.org/oslo-manifesto>.

[40]United Nations, Convention on Biological Diversity, 5 June 1992 (1760 U.N.T.S. 69).

[41]UN General Assembly, Convention on the Law of the Sea, 10 December 1982, Article 192.

[42]Conference of the Parties, Adoption of the Paris Agreement, 12 December 2015, U.N. Doc. FCCC/CP/2015/L.9/Rev/1.

[43]For example, looking at the Stockholm Declaration, it seems Principle 2 comes closest to seeking to protect the environment in itself. However, the wording of the Principle in the end still names environmental protection as necessary for the sake of 'future generations', thus retaining an anthropocentric stance.

[44]The UN Environment Assembly (UNEA) does do some important work here, however, working to set global environmental policies and develop environmental law. See <https://environmentassembly.unenvironment.org>.

[45]In terms of seeking a more integrated approach, Redgwell argues that ongoing developments within the remit of the UN Convention on Biological Diversity 1992 are possibly the strongest example. See C Redgwell, 'International Environmental Law' in Malcolm D. Evans (ed), *International Law* (5th edn, Oxford University Press, Oxford, 2018) 677.

[46]This is indeed true in the short term. However, Colin RG Murray and Aoife O'Donoghue have argued (not in relation to environmental law, but to international law more generally), drawing on lessons to be learnt from the history of the UK's constitutionalism process, that in the long run fragmentation may show evidence of the forming of constitutionalism within the global order. See Colin RG Murray and A O'Donoghue, 'A Path Already Travelled in Domestic Orders? From Fragmentation to Constitutionalism in the Global Legal Order' (2017) 13(3) *International Journal of Law in Context* 225.

[47]Although Peters has recently begun to bring environmental law into the global constitutionalism picture. However, she focuses primarily on animal law here. See A Peters, 'COVID-19 as a Catalyst for the (Re-) constitutionalisation of International Law: One Health – One Welfare' in M Mbengue and J d'Aspremont, *International Law and Crisis Narratives* (Brill, Leiden, 2021), available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3729488>. In contrast, environmental law scholars have engaged more with the idea of global constitutional values. See, for example, LJ Kotzé, *Global Environmental Constitutionalism in the*

While attempts have been made to provide a more overarching system of rules and approaches for environmental protection,[48] fragmentation within international environmental law remains a core issue. A recent attempt to create a more integrated system can be seen within ongoing negotiations on the Global Pact for the Environment. Initially a civil society initiative launched in 2017, the aim of the Pact was to bring together many existing international environmental law treaties into an more integrated and overarching instrument.[49] Negotiations between states on this issue were launched following a vote by the UN General Assembly (UNGA) in 2018.[50] In launching these negotiations, the UNGA requested the creation of 'a technical and evidence-based report that identifies and assesses possible gaps in international environmental law and environment-related instruments with a view to strengthening their implementation'.[51] Furthermore, the UNGA established a working group under its own auspices, which was created ready to consider the said report and 'discuss possible options to address possible gaps in international environmental law and environment-related instruments, as appropriate, and, if deemed necessary, the scope, parameters and feasibility of an international instrument'.[52] Following this and pursuant to the UNGA's resolution, the UN Secretary General published a report on the need for a Global Pact on the Environment. In the report, the fragmented nature of international environmental law is highlighted, with the report stating that the current law is 'piecemeal and reactive', noting the need for further coherence and clarity. The report thereby calls for the creation of a 'comprehensive and unifying international instrument that gathers all the principles of environmental law'.[53] Negotiations remain ongoing.[54]

A Global Pact for the Environment seems to align very much with the broader aims of global constitutionalism – that is, the unifying of key principles and the addressing of fragmentation. However, this special issue exemplifies the need for global constitutionalism to listen to a wider array of voices, noting the role manifestos may play in providing alternative visions for global constitutionalism. It is key, when thinking about including feminist voices, to return to Hilary Charlesworth's call for the method of feminism to be taken up and not just the message.[55] While feminism does indeed note the need for further perspectives to be evaluated, this goes beyond a mere inclusion of women

Anthropocene (Hart, Oxford, 2016); J Jaria-Mazano et al. (eds), *Research Handbook on Global Climate Constitutionalism* (Edward Elgar, Cheltenham, 2019).

[48]See, for example, the Stockholm Declaration: UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994.

[49]See IUCN, 'Global Pact for the Environment – June 2017', available at <https://www.iucn.org/commissions/world-commission-environmental-law/events-wcel/past-events/global-pact-environment-june-2017>.

[50]UN General Assembly, 'Resolution Adopted by the General Assembly on 10 May 2018: Towards a Global Pact for the Environment' 10 May 2018, A/Res/72/277.

[51]Ibid, para 1.

[52]Ibid, para 2.

[53]UN General Assembly (n 39).

[54]Global Pact for the Environment, 'Where are we now?', available at <https://globalpactenvironment.org/en/the-pact/where-are-we-now>. For a good overview of the Pact, see Y Aguila and JE Viñuales, 'A Global Pact for the Environment: Conceptual Foundations' (2019) 28(1) *Review of European, Comparative and International Environmental Law* 3.

[55]H Charlesworth, 'Talking to Ourselves? Feminist Scholarship in International Law' in S Kouvo and Z Pearson (eds), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?* (Hart, Portland, OR, 2011) 17.

(or people of colour, or queers, or disabled people, or working-class people). As Houghton and O'Donoghue argue elsewhere, the question for global constitutionalism thereby becomes 'whether it is possible for constitutionalism to change international law in ways that will open it up to alternate possibilities'.[56] Feminist concerns go beyond issues of representation, arguing that the very epistemic basis of international law (or, in this instance, global constitutionalism) represents a specific, dominant account of law and politics as applied primarily through Western-based and gendered legal norms. Feminist approaches, as this special issue well exemplifies, thereby call not only for the inclusion of voices, but for substantive changes. Through listening and learning (Heathcote and Kula), through taking seriously texts written by people not at the centre of power (Houghton and O'Donoghue) or through recognizing feminist texts as providing a completely different perspective on what international law is and can be (Labenski), feminist approaches, as this special issue exemplifies, cannot stop at the call for liberal inclusion without substance but must rather call for real, substantive change.[57]

Feminist scholars have long noted the inherent bias that underlies international law's structure, from the way the state is conceptualized through gendered paradigms[58] to the gendered and racialized norms upheld through international human rights law.[59] Similarly, posthuman feminism has identified how dominant accounts of Western philosophy uphold narrow and problematic epistemic frames,[60] with these modalities of thought having structured the law.[61] For example, posthuman theories of new materialism[62]

[56]Donoghue and Houghton (n 1) 38.

[57]In fact, as Rosemary Hunter's work shows, representation of a more diverse range of voices is not enough. What is also needed is (here, reflecting on judges but can be applied more broadly), 'the appointment of judges who have the commitment and courage to make a difference'. See R Hunter, 'More than Just a Different Face? Judicial Diversity and Decision-making' (2015) 68(1) *Current Legal Problems* 119, 141.

[58]K Knop, 'Why Rethinking the Sovereign State is Important for Women's International Human Rights Law' in in RJ Cook (ed), *Human Rights of Women* (Pennsylvania University Press, Philadelphia, PA, 1994) 153; Y Otomo, 'Endgame: Feminist Lawyers and the Revolutionary Body' (2009) 31(1) *Australian Feminist Law Journal* 153; H Charlesworth, 'The Sex of the State in International Law' in N Naffine and R Owens (eds), *Sexing the Subject of Law* (LBC, London, 1997) 251; K Knop, 'Re/Statements: Feminism and State Sovereignty in International Law' (1993) 3 *Transnational Law and Contemporary Problems* 293; G Heathcote, 'Sovereignty' in G Heathcote, *Feminist Dialogues on International Law: Successes, Tensions, Futures* (Oxford University Press, Oxford, 2019) 103; A O'Donoghue, 'The Admixture of Feminine Weakness and Susceptibility': Gendered Personifications of the State in International Law' (2018) 19(1) *Melbourne Journal of International Law* 227.

[59]Kapur (n 8); D Otto, 'International Human Rights Law: Towards Rethinking Sex/Gender Dualism,' in M Davis and VE. Munro (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Routledge, London, 2013) 197.

[60]See Braidotti (n 16); C Åsberg and R Braidotti (eds), *A Feminist Companion to the Posthumanities* (Springer, Dordrecht, 2018).

[61]M Arvidsson, 'Targeting, Gender, and International *Posthuman*itarian Law and Practice: Framing the Question of the Human in International Humanitarian Law' (2018) 44(1) *Australian Feminist Law Journal* 9; G Heathcote, 'War's Perpetuity: Disabled Bodies of War and the Exoskeleton of Equality' (2018) 44(1) *Australian Feminist Law Journal* 71; E Jones, 'A Posthuman-Xenofeminist Analysis of the Discourse on Autonomous Weapons Systems and Other Killing Machines' (2018) 44(1) *Australian Feminist Law Journal* 93; L Wilcox, 'Embodying Algorithmic War: Gender, Race and the Posthuman in Drone Warfare' (2016) *Security Dialogue* 1; L Wilcox, 'Drones, Swarms and Becoming-insect: Feminist Utopias and Posthuman Politics' (2017) 116 *Feminist Review* 25.

[62]See, for example, J Bennett, *Vibrant Matter: A Political Ecology of Things* (Duke University Press, Durham, NC, 2010); K Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of*

broadly challenge dominant understandings of subjectivity, stressing the 'force of living matter'.[63] Bennett, for example, challenges the binding of subjectivity to the fantasy of 'human uniqueness'[64] and the 'fantasy that "we" are really in charge of those "its"'.[65] Bennett thus re-centres matter as an 'actant',[66] challenging the idea objects are opposite to subjects through a focus on 'thing-power'.[67] Bennett notes that humans are part of a shared 'vital materiality',[68] arguing that humans impact and are impacted by things, yet also highlighting the fact that humans are themselves 'a particularly potent mix of minerals'.[69] Bennett, along with posthuman theory more broadly, thus challenges the idea that agency is something held by humans alone, rather stating that 'the locus of agency is always a human–non-human working group'.[70] As Braidotti shows, feminist thought on the environment is deeply connected to new materialism, from the feminist new materialists to posthuman feminism to longer histories of ecocritical and ecofeminist thought.[71]

Critical environmental law scholars have noted the inherent anthropocentrism that underlies international environmental law, where similar patterns of human exceptionalism and the upholding of the subject/object binary can be mapped.[72] What does, unfortunately, unite international environmental law is its constant privileging of human interests, including state economic interests, and its ultimate justification of environmental exploitation.[73] Even human rights and the environment – one of the most promising and radical areas of environmental law – is ultimately about human interests.

Matter and Meaning (Duke University Press, Durham, NC, 2007); S Alaimo and S Heckman (eds), *Material Feminisms* (Indiana University Press, Bloomington, IN, 2008).

[63]Bennett, *Vibrant Matter* 3.

[64]Ibid ix.

[65]Ibid x.

[66]Ibid viii.

[67]Ibid 2.

[68]Ibid 14.

[69]Ibid 11.

[70]Ibid xvi.

[71]Braidotti (n 16).

[72]D Otto and E Jones, 'Thinking Through Anthropocentrism in International Law: Queer Theory, Posthuman Feminism and the Postcolonial', LSE Centre for Women, Peace and Security blog, 2020, available at: <https://www.lse.ac.uk/women-peace-security/assets/documents/2020/Final-Jones-and-Otto-Anthropocentrism-Posthuman-Feminism-Postcol-and-IL-LSE-WPS-Blog-2019-002.pdf>; A Grear, '"Anthropocene, Capitalocene, Chthulucene": Re-encountering Environmental Law and Its "Subject" with Haraway and New Materialism' in LJ Kotzé (ed.), *Environmental Law and Governance for the Anthropocene* (Hart, Oxford, 2017); U Natarajan and J Dehm, 'Where is the Environment? Locating Nature in International Law', TWAILR, 2009, available at: <https://twailr.com/where-is-the-environment-locating-nature-in-international-law>; A Neimanis, 'Bodies of Water, Human Rights and the Hydrocommons' (2009) 21 *TOPIA: Canadian Journal of Cultural Studies* 161, 173. Post-anthropocentric conceptions of environmental governance have a long history that is also beyond the strict realm of *international* environmental law, although much of this work has, of course, heavily influenced the international realm. See, for example, CD Stone, *Should Trees have Standing? Law, Morality and the Environment* (3rd edn, Oxford University Press, Oxford, 2010); T Berry, '*The Great Work': Our Way into the Future* (Bell Tower, New York, 1999); C Cullinan, *Wild Law: A Manifesto for Earth Jurisprudence* (Green Books, Cambridge, 2003); A Naess, *Ecology of Wisdom* (Penguin, Harmondsworth, 2016); C Cullinan, *Wild Law: A Manifesto for Earth Justice* (2nd edn, Green Books, Cambridge, 2011); P Burdon, *Earth Jurisprudence: Private Property and the Environment* (Routledge, London, 2017); N Rogers and M Maloney (eds), *Law as if Earth Really Mattered* (Routledge, London, 2017).

[73]This can be seen, for example, in the Principle of Sustainable Development, which precisely seeks to provide a balance to these supposed competing interests. For a discussion of how sustainable development plays out in unequal ways, focusing on both economic issues and colonialism, see SA Atapattu and CG

This can be seen, for example, in the human right to a healthy environment, a right recently recognized for the first time in October 2021 by the Human Rights Council.[74] While indeed the right is potentially transformative,[75] it is a right that protects *human* rights to *live* within a healthy environment. The right does not protect the rights of the environment to its own health, or the rights of animals to live in a healthy environment. This means that environmental damage that does not impact humans but may, for example, impact other species, or cases where environmental damage is occurring a long way from human occupants (such as in international waters), cannot be enforced through this right in its current framing. International environmental law enforces a problematic subject/object binary under which humans are the central subject of the law and the environment is viewed as an object. This is the case both when the environment is being protected (where it is still seen as an object) and when it is being exploited – that is, as an economic resource. Non-humans and the environment are rendered objects – albeit differing in status.

The view of the environment as an object not only undermines the solutions possible under the existing logic of environmental law, but also helps support the rationalization of other masculinist solutions. As Joanna Zylinska argues, the apocalyptic narratives that surround the Anthropocene have always been about the fear of the end of the European man, and the idea that salvation will come from some supernatural elsewhere.[76] This can be seen, for example, in the logic of the billionaire tech giants who propose human migration to Mars as the solution to climate change.[77] Mars is envisaged by these people as the solution, the place to go once we have destroyed Earth. Actively deploying the terminology of colonization, men such as Elon Musk and Jeff Benzos seem unaware (or, more likely, all too aware) of the echoes of European colonialism in their proposed elite, uber-rich, white male utopia on Mars.[78] This phenomenon has led feminist scholars to call for a feminist founding constitution for Mars, noting the need to avoid the perpetuation of past and existing inequalities.[79] The

Gonzalez (eds), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press, Cambridge, 2021).

[74]Human Rights Council, 2021, A/HRC/48/13. See also Report of the Special Rapporteur on Human Rights and the Environment, 'Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment', Human Rights Council, 2019, A/HRC/40/55, para 11. For a wider discussion of the anthropocentrism of human rights, see A Grear, '*Human Rights and New Horizons? Thoughts Toward a New Juridical Ontology*' (2018) 43(1) Science, Technology & Human Values 129.

[75]Report of the Special Rapporteur on Human Rights and the Environment (n 76).

[76]Zylinkska (n 16).

[77]See, for example, Elon Musk's SpaceX Mars Program, which precisely seeks to 'colonize Mars'. See SpaceX, available at: https://www.spacex.com/human-spaceflight/mars>. Amazon's CEO, Jeff Bezos, has a similar project and aims to 'colonize the solar system'. See: Blue Origin, available at: <https://www.blueorigin.com>. For more on this phenomenon, see C Davenport, *The Space Barons: Elon Musk, Jeff Benzos, and the Quest to Colonize the Cosmos* (Hachette, New York, 2018).

[78]For an analysis of what outer space law can learn from the history of colonialism in international law, see: C Storr, '"Space is the Only Way to Go": The Evolution of the Extractivist Imaginary of International Law' in S Chalmers and S Pahuja (eds), *Routledge Handbook of International Law and the Humanities* (Routledge, London, 2021) 290.

[79]K Yoshida, 'A Constitution for Mars: A Call for Founding Feminists', International Law Grrls (2018), available at: <https://ilg2.org/2018/10/04/a-constitution-for-mars-a-call-for-founding-feminists>; E Jones, 'A Posthuman Feminist Approach to Mars', International Law Grrls (2018), available at: <https://ilg2.org/2018/10/17/a-posthuman-feminist-approach-to-mars>; K McNeily, 'What Feminists Can Teach Us About Law on Mars', International Law Grrls (2018), available at: <https://ilg2.org/2018/11/29/what-feminism-can-teach-us-about-alterity-and-law-on-mars>. For another analysis of outer space law from a posthuman feminist perspective, see Braidotti (n 16).

problem with such a solution, however, is similar to the problems outlined above with international environmental law and the creation of a Global Pact for the Environment. The law is, itself, fundamentally anthropocentric. This is possibly best exemplified in relation to outer space by recent attempts by the United States to shift the long-held view in international law that outer space is part of the global commons – that it cannot be used for commercial exploitation but rather is held by all of humanity in common.[80] In 2020, following an Executive Order by President Trump a few months earlier, which called for the inclusion of commercial partners in space exploration and encouraging exploration of space mining,[81] NASA released the Artemis Accords, which aim to 'establish a common set of principles to govern the civil use of outer space', seeking to 'facilitate exploration, science, and *commercial activities* for the benefit of humanity'.[82] The Accords propose a series of bilateral agreements in which 'partner nations' agree to follow US-drafted rules.[83] The move away from ideas of shared cooperation and ownership towards a property-based model that sees outer space as the next commercial frontier again works to uphold and perpetuate the anthropocentric nature of international law, whereby matter – outer space – is seen as an object to be exploited for economic benefit. Yet, given that the underlying anthropocentrism of international environmental law (and the anthropocentrism of dominant human understandings of the environment, matter and the non-human more broadly) has caused and justified vast environmental degradation, it is evident that anthropocentric, capitalist outer space laws and the great colonization of space cannot provide the solution to the journey towards destroying the planet that humanity is on course to complete. Rather, as Zylinska notes, a feminist counter-apocalypse is needed in the here and now,[84] seeking to 'interrupt the habit' of the oncoming apocalypse.[85] Zylinska's counter-apocalypse finds resolution in theories of relationality[86] but, from the perspective of international law and global constitutionalism, what becomes clear is that there is a need

[80]The legal principle that states outer space is part of the global commons to be held by all humankind is to be found in, for example, UNGA, The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (The Outer Space Treaty), 27 January 1967, UNGA Resolution 2222 (XXI); UNGA, Agreeing Governing the Activities of States on the Moon and Other Celestial Bodies (The Moon Agreement), 18 December 1979, UNGA Resolution 34/68.

[81]US Federal Register, 'Encouraging International Support for the Recovery and Use of Space Resources' Executive Order 13914 of 6 April 2020, available at: <https://www.federalregister.gov/documents/2020/04/10/2020-07800/encouraging-international-support-for-the-recovery-and-use-of-space-resources>.

[82]NASA, 'The Artemis Accords: Principles for a Safe, Peaceful, and Prosperous Future' (2020), available at: <https://www.nasa.gov/specials/artemis-accords/img/Artemis-Accords_v7_print.pdf>. Emphasis added.

[83]Ibid. For an interesting overview of this shift, see C Storr, 'Could Corporations Control Territory in Space? Under New US Rules, It Might Be Possible' *The Conversation* (2020), available at: <https://theconversation.com/could-corporations-control-territory-in-space-under-new-us-rules-it-might-be-possible-138939>; S Freeland and A Handmer, 'Giant Lead for Corporations? The Trump Administration Wants to Mine Resources in Space, but is It Legal?' *The Conversation* (2020), available at: <https://theconversation.com/giant-leap-for-corporations-the-trump-administration-wants-to-mine-resources-in-space-but-is-it-legal-136395>.

[84]J Zylinkska, 'A Feminist Counterapocalypse' in J Zylinska, *The End of Man: A Feminist Counter-apocalypse* (University of Minnesota Press, Minneapolis, MN, 2018) 53.

[85]C Keller, *Apocalypse Now and Then: A Feminist Guide to the End of the World* (Augsburg Fortress, Minneapolis, MN, 2004), 19.

[86]Zylinkska (n 84).

to challenge the epistemic basis of the law itself if humanity it to move beyond the same old story of masculinism, colonization, racism, speciesism and so on.

Discussing the anthropocentrism of international environmental law, critical environmental law scholar Anna Grear asks whether environmental law actually can respond to 'alternative modes of knowing' seeing and sharing the world.[87] On a similar note, Usha Natarajan and Kishan Khoday argue that international environmental law is set up in a way that re-enforces ecological harm,[88] with Stephen Turner similarly concluding that 'the very design of the law itself is fundamentally predisposed to environmental degradation and forms part of a dysfunctional global legal architecture which cannot achieve environmental sustainability'.[89] What becomes clear, therefore, is that unifying international environmental law through something like the Global Pact for the Environment, while useful, is not and cannot be enough because the existing provisions are not enough. While negotiations on the Pact do show the potential to create new principles, a core task is consolidation, with newly proposed principles being used to fill gaps in the same trend as existing provisions in other areas.[90] While some more radical shifts could occur, in the sense that the Pact can put forward new provisions that may even go beyond existing specialist treaties (providing the environmental protection purposes of that said treaty are not undermined), this seems unlikely given the wider context of the Pact, the difficulties in negotiating environmental law treaties and the realities of states' willingness to push forward environmental issues in a more radical way.[91] Bringing existing treaties and principles together into one Pact cannot, however, be the end point for those who wish to ensure international environmental law can and does protect the environment. This is because the very epistemic basis of the law itself needs to be rethought. The unification of international environmental law may indeed support better overall environmental protection, but in the end integrating existing treaties and principles can only go so far when those treaties and principles are themselves anthropocentric.

It is clear that global constitutionalism, if it is to be used in a transformative way that is genuinely open to alternative voices, cannot be used solely to integrate existing values or even to uphold them more strongly with the aim of addressing, for example, concerns around legitimacy. Rather, if global constitutionalism is to take feminist critiques seriously, more attention must be paid to 'how the institutions and structures of international law themselves dictate and produce circumscribed outcomes'.[92] Scholars must commit to being open to listening to and seeking to include, not only new voices, but alternative knowledges and new visions of what global law is and can be. Such perspectives may indeed include posthuman feminism, as I have tried to argue here, as well as other perspectives – including, for example, postcolonial feminisms, queer perspectives and

[87]Grear (n 72) 90. The Wild Law Judgments project is also interesting in this regard, seeking to rewrite key cases across multiple areas of the law from the perspective of an Earth-centred jurisprudence. See Rogers and Maloney (n 74).

[88]See U Natarajan and K Khoday, 'Locating Nature: Making and Unmaking International Law' (2014) 27 (3) *Leiden Journal of International Law* 573.

[89]SJ Turner, *A Global Environmental Right* (Routledge, Oxford, 2014) 32.

[90]Aguila and Viñuales (n 54).

[91]See, on the balance in the negotiations between consolidation and innovation and the ability of the Pact to put forward provisions which may go beyond those found in existing treaty regimes, Aguila and Viñuales (n 54).

[92]Heathcote (n 7) 82.

feminist science fiction, among others.[93] Feminist theory can be used to help rethink the underlying values of international law, and thereby the underlying values adopted by much of the literature within global constitutionalism.

V. Conclusion

This special issue exemplifies the urgent need for global constitutionalism, as a field, to centre a wider array of intersectional voices. The articles in this issue, however, go beyond a mere call for greater inclusion. Exemplifying the ways in which feminist theory can be used within global constitutionalism to discuss not only issues relating to women *per se*, but how feminist epistemologies may provide new ways of thinking about all areas of international law,[94] the articles in this issue present a series of methods for doing precisely that. These methods include the need to take heed of counter-voices found in the texts of documents such as manifestos (Houghton and O'Donoghue), the need to take a step back to listen and learn from voices that have been rendered peripheral (Heathcote and Kula) and the need to re-evaluate which texts are given more weight and value as legitimate sources of international law, and which are not, and asking why that is the case (Labenski).

Similarly, in this article I have drawn on posthuman feminism to exemplify how feminist epistemologies can be used to rethink international law and global constitutionalism, including – as I have shown here – international environmental law. While the articles in this special issue importantly call for a wider array of intersectional human perspectives to be heard within global constitutionalism, I sought to add a further layer of analysis by asking what happens if we add the non-human perspective. Evaluating existing attempts to address the fragmentation of international environmental law, focusing in particular on attempts to create a Global Pact for the Environment, I argued that the challenge for global constitutionalism is not merely whether and how global constitutional values can be promoted, or even how to include a wider array of voices within the field, but rather whether global constitutionalism is able to incorporate alternative epistemologies on what the law is and can be when seeking to inform and understand global constitutional values. Drawing on posthuman feminism, I argued that international environmental law is inherently anthropocentric, rendering any attempt to consolidate, integrate or universalize international environmental law, and thereby the attempt to create a Global Pact for the Environment, inherently flawed. This is because the existing values upheld by international environmental law are themselves inadequate, promoting the idea that the environment and non-human animals are objects to be exploited for human interests. Consolidating these existing, flawed values can only ever have a limited impact: new values are needed. Posthuman feminist theory may provide some of those much-needed alternative framings.

Overall, this special issue presents a clear message to those working within global constitutionalism. That message, to draw on the words of Houghton and O'Donoghue, is that 'end-state narratives' must be challenged in a process where a continuous 'scope for reflective practice and change' is fostered.[95] Global constitutionalism is, as this special

[93]For the science fiction perspective, see O'Donoghue and Houghton (n 1).

[94]As feminists have called for elsewhere. See C Charlesworth, G Heathcote and E Jones, 'Feminist Scholarship on International Law in the 1990s and Today: An Inter-generational Conversation' (2019) 27(1) *Feminist Legal Studies* 79.

[95]O'Donoghue and Houghton (n 1) 70–71.

issue exemplifies, slowly recognizing the need to listen to a wider array of voices, including women's voices and perspectives from the Global South. That is to be commended. The real challenge, however, will be whether scholars in this area are open enough to not only include some different-looking people on their panels and in their journals, but to also take seriously the epistemic challenges they pose to the field.

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