

# Online Research @ Cardiff

This is an Open Access document downloaded from ORCA, Cardiff University's institutional repository: <http://orca.cf.ac.uk/104524/>

This is the author's version of a work that was submitted to / accepted for publication.

Citation for final published version:

Grear, Anna 2018. Human rights and new horizons? thoughts towards a new juridical ontology. *Science Technology and Human Values* 43 (1) , pp. 129-145. 10.1177/0162243917736140 file

Publishers page: <http://dx.doi.org/10.1177/0162243917736140>  
<<http://dx.doi.org/10.1177/0162243917736140>>

Please note:

Changes made as a result of publishing processes such as copy-editing, formatting and page numbers may not be reflected in this version. For the definitive version of this publication, please refer to the published source. You are advised to consult the publisher's version if you wish to cite this paper.

This version is being made available in accordance with publisher policies. See <http://orca.cf.ac.uk/policies.html> for usage policies. Copyright and moral rights for publications made available in ORCA are retained by the copyright holders.



# Human Rights and New Horizons? Thoughts Towards a New Juridical Ontology\*

## Abstract

The much-lamented anthropocentrism of human rights is misleading. Human rights anthropocentrism is radically attenuated and reflects persistent patterns of intra- and inter-species injustice and binary subject-object relations inapt for 21<sup>st</sup> century crises and posthuman complexities. This article explores the possibility of re-imagining the “human” of human rights in the light of anti- and post-Cartesian analyses drawing—in particular—upon Merleau-Ponty and on new materialism. The article also seeks to re-imagine human rights themselves as responsabilized, injustice-sensitive claim-concepts emerging in the “midst of” lively materialities and the uneven global dynamics of 21<sup>st</sup> century predicaments.

## Keywords

human rights, anthropocentrism, subject-object relations, inclusion/exclusion, post-Cartesian, Merleau-Ponty, new materialism, human rights as injustice-sensitive claim concepts, lively materialities, uneven global dynamics, 21<sup>st</sup> century predicaments

## Human Rights and “Humanity”

Human rights have long been haunted with questions concerning the constitution of “the human” that makes up their privileged “species category.” In the 21<sup>st</sup> century, such questions take on new and urgent dimensions. Arguments concerning the failure of human rights to represent the human being *qua* human being have been steadily mounting under intense pressure from critical human rights positions. Human rights, it has been argued, represent the imposition of Western, Eurocentric values—the so-called paternalistic “gift from the West to the rest” (Baxi 2008 p. 33; Mutua 2001)—and are *still haunted* by a 21<sup>st</sup> century “dark side” (Kapur 2006) in an international order *still* stubbornly predicated upon unjust capitalistic “relations between imperial and subordinate states” (Woods, 2005 p. 12). In the context of globalization, human rights have been called out as “trade-related, market-friendly” constructs pervasively colonized by global corporate capital (Baxi 2008) in the savagely and structurally uneven conditions of neoliberalism (Evans and Ayers 2006). The individualism and human exceptionalism of human rights have been accused of a “philosophical speciesism” (Gearty 2010 p. 8) intrinsically at odds with collective, ecological imperatives in an age of climate crisis. And importantly, it has been suggested that human rights has a radically under-theorized relationship with emergent forms of posthuman subjectivity (Baxi 2009). It is not, therefore, an exaggeration to claim that the relationship between human rights and “humanity” is assailed by especially intense contemporary doubts and anxieties—*notwithstanding* the fact that the search for the meaning of the “human” is scarcely new.<sup>1</sup>

Many of the most potent critiques of human rights seem to circle around the fundamental “anthropocentricity” of human rights—and its selectivity. This selectivity is reflected, first, in the claim that human rights have generally been accompanied by a concomitant disregard for the wellbeing of the non-human “other”—non-human animals, “ecosystems” or—indeed—“the environment” as a whole (Gearty 2010). Secondly, though, this selectivity—as is intimated by the critiques of human rights

---

\*

<sup>1</sup> The question of the “human” and of the human subject has been a key preoccupation of modernity. Doubts concerning the abstract subject in particular have centrally preoccupied critical theoretical engagements since the great crisis of “humanity” in European postwar thought, and are thoroughly reflected by the range of critical positions (and others) mentioned in the introduction to this article.

mentioned above—concerns anthropocentrism’s savagely attenuated relationship with “humanity” itself. In a betrayal of the universal aspirations of its own justificatory logic, “the human” of human rights has all too often excluded/marginalized non-dominant human beings and has produced marginalized human rights subjects (Otto 2005): stripping back the surface of human rights universalism exposes a subject, an all too particular subject, which is most emphatically *not its others*. Indeed, the entire history of human rights reveals that human rights, upon concretization, struggle to escape the particularity of the historically dominant human being (Douzinas 2000 p. 96). Throughout the history of human rights institutionalization, the system-critical energies of human rights are invariably captured (Stammers 1999) by dynamics that re-inscribe into the juridical order the relentless priority of white, European, property owning men (Ishay 2008)—the self-same class of historically dominant men in whose mythologized image the liberal legal order creates its central juridical subject (Nedelsky 1990; Davies and Naffine 2001).

The identity of the dominant archetypal subject folded into law’s cognitive structures presents challenges of pivotal importance—none more important perhaps than its attendant subject-object relations.

Human rights law is located within a wider juridical field whose subject stands on one side of an intransigently dualistic ontology. Indeed, in line with the dominant Cartesian and Kantian suppositions upon which it rests (Halewood 1996), liberal law constructs a series of interrelated, virtually sacred binaries: man/nature; person/property; public/private; rational/irrational; reasonable/unreasonable—and we could add: man/animal; man/woman; culture/nature; white/non-white; property-owning/nomadic and so on. At one side of these binaries there is always a privileged referent: the central-case juridical human being and/or its assumed properties/characteristics.

Yet, as Code rightly argues, the masterful privileged subject and “the center” that it assumes “can no longer hold” (Code 2006 p. 29). The assumptions shoring up law’s binary constructions and assumed separations between humans and “the rest” are no longer tenable. For a start, juridical anthropocentrism is increasingly challenged by those concerned to extend law’s circle of concern to non-human claimants. The case has been made, for example, for the legal standing of trees (Stone 2010), the legal rights of animals (Cavalieri 2001; Cohen and Regan 2001; Sunstein and Nussbaum 2004), and the legal rights of posthuman entities such as robots, AIs and intelligent software agents (Solum 1992; Teubner 2006). Much of this debate circles around the category of personhood and around rights-based thinking—including, of course, the language and concept of human rights—which has become an increasingly crowded semantic category.

And at the same time as rights-based arguments press in on human rights in favor of non-human beneficiaries, the anthropocentrism of “human” at the heart of human rights law continues to attract critique of *attenuated* nature in terms of its tendency towards *intra-species* exclusions and marginalizations. Let us examine this a little more closely.

### **Attenuated Anthropocentrism in Human Rights**

Pointing directly to the exclusory form of subjectivity operationalized by human rights, Kapur explains that “the liberal project could reconcile promises of universality with exclusions in practice through a clear and persuasive logic. Rights and benefits were linked to the capacity to reason, and the capacity to reason was tied to notions of biological determinism, racial and religious superiority, and civilizational maturity” (Kapur 2007 p. 541). Kapur’s critique drives at the fact that “Reason” has functioned as the central structural legitimation for the constructed “inferiority” of the non-male, the

non-white, the non-European and all other human beings considered to be less than fully rational.

Significantly, the rationalism at the heart of anthropocentrism simultaneously co-situates marginalized humans with non-human animals and with the living order itself in a set of “entangled oppressions” particularly visible since the advent of industrial corporate capitalism (Nibert 2002). Indeed, such trajectories are now fully visible in patterns of exploitation and objectification causing ecological and environmental breakdown—bringing to full expression the convergence between Cartesian dualism and the Baconian scientific method that inaugurated “the death of nature” (Merchant 1980; see also Ibrahim 2007).

Key to these destructive trajectories is a philosophy (and a politics) of *disembodiment* intrinsically connected to “Reason” and its privileged subject. Descartes argued that “if we ... examine what we are, we see very clearly that neither extension nor shape nor local motion, nor anything of this kind which is attributable to a body, belongs to our nature, but that thought alone belongs to it” (Descartes 1984, Part 1, section 8, p. 195). The “I think”—or *cogito*—of Descartes functions as an “epistemological Panopticon”—a “canonical institution... which is by necessity disembodied, monological/narcissistic and oclularcentric” (Jung 2007 p. 239). The subject (also, in a historically central sense, the *fully human*) is thus defined by its ontologically independent and ultimately self-referential rationalism, while “everything else” (including the human body) becomes inert “matter” to be viewed, examined, probed, and ultimately controlled and exploited: mere “dead” *res extensa*.

These dualistic assumptions saturate the anthropocentrism of human rights and, significantly, of human rights *as law*. Despite differences between the positions of Descartes and Kant, Kantian philosophy—from which much mainstream human rights jurisprudence draws life—likewise asserts a universalism established *a priori* through the operation of a fundamentally disembodied reason. Kant’s moral agent is defined by the possession of abstract characteristics that transcend embodiment and the particularities accompanying it. Body and emotions are conceptualized as being external, “forms of determination and a lack of freedom ... taking us away from the path of pure reason” (Richardson 2000 p. 128). The Kantian “person” is thus the rational transcendent self who “lies outside space and time”<sup>2</sup>—and it is *this* Kantian self who is “the subject as the subject of rights” (Assiter 2009 p. 16). It is not difficult to see how the politics of disembodiment at work in “Reason” implicates the intra-species hierarchies intimated by Kapur’s comment above. Rationalistic universalism, lying at the heart of human rights anthropocentrism, still ensures the relentless priority of the highly particular construct of the “human” at the heart of human rights and of the wider juridical order.

Perhaps, then, it is unsurprising that legal theory suppresses the “mundane fact that in order for the law to function at all it must first and foremost have a hold over bodies” (Sclater 2002 p. 1) even as law, meanwhile, *constructs* bodies (Hyde 1997) (*necessarily*). Law’s dominant human body is, as Naffine argues, “the bounded heterosexual male body,” “immutable”: “a means of denying bodily integrity to women (and to men who refuse to behave like “true” men and who are deemed to lack clear boundary definition)” (Naffine 1997 p.84). Importantly (and in direct contrast to the alternative juridical ontology to be explored below) this body is never fluid or porous, multiple or open. It is always a clearly delineated, individuated “*one*”—the container for the rational mind and will. Law’s body is also a fundamentally masculinist, racially specific construct. Accordingly, we seem to have come back to where we started—face

---

<sup>2</sup> This is not to say that Kant did not grapple with the nature of embodiment: The Kantian transcendental self, as opposed to the Kantian “person” (the transcendent self), exists in relation to bodies and is necessary for knowledge in the phenomenal world: See Assiter (2009) p. 15.

to face with law's mythic construct of a highly specific privileged "human": the subject at and *as* the "center" that can no longer hold.

This construct is the site of the operationalization of law's paradoxical body politics—a body politics predicated upon disembodiments and abstractionisms that operatively presuppose bodies (*and* their affectability) while suppressing the full implications of that embodiment—all the while, covertly privileging one body over "the rest."

In the light of postmodern developments infinitely complicating the boundary of "the human" (including new technologies and the emergence of "the Anthropocene"), the questions facing human rights are increasingly urgent: how might human rights be placed upon alternative ontological foundations adequate to the complexity of the conjuncture in which they now stand? Can the "human" of human rights be re-imagined in a way *also* newly responsive to the suffering of millions of marginalized human beings at risk of deepening vulnerability in posthumanist techno-capitalist futures (Gear 2011)—including rights futures?

### **Towards New Ontological Foundations: Step One—the Significance of Human Embodiment**

One important response to the pervasive structural influence of disembodiment and the subject-object relations presupposed by the disembodied rational subject is to focus upon the implications of human embodiment itself. Accordingly, we begin by drawing upon the work of Merleau-Ponty (Merleau-Ponty 2002 (1962)), who, more than any other philosopher, is credited with dismantling the Cartesian mind-body split while keeping within phenomenological boundaries.

Merleau-Ponty offers a thoroughly embodied "perceiving subject." For Merleau-Ponty, "[t]he perceiving subject is not this absolute thinker; rather it functions according to a natal pact between our body and the world, between ourselves and our body" (Merleau-Ponty 1964 p. 6). The Cartesian mind/body split is rendered untenable by the radical discovery "in the experience of the perceived world a new type of relation between the mind and truth" (p. 4). Merleau-Ponty thus refutes the ontological separation of body and mind by sustained study of the nature of perception as *embodied* perception.<sup>3</sup> Perception<sup>4</sup> is *always* and *inescapably* embodied so that the "[t]he theory of the body is already a theory of perception"—"[o]ur own body is in the world as the heart is in the organism: it keeps the visible spectacle constantly alive, it breaths life into it and sustains it inwardly, and with it forms a system" (p. 235). "We have relearned to feel our body; we have found underneath the objective and detached knowledge of the body that other knowledge which we have of it in virtue of its always being with us and of the fact that we are our body... we are in the world through our body... we perceive the world with our body" (p. 239).

This embodied theory of perception has important consequences. One of these is the emphasis it requires us to place on the fact that embodied perception is always *situated*. The objective, dislocated viewpoint—the view from "nowhere"—central to disembodied Western abstractionism—is rejected—and along with it, the epistemic mastery of "the center" itself.

---

<sup>3</sup> See, for a fuller defense of his view, for example, the argument presented in M. Merleau Ponty, "Sense Experience" in M. Merleau Ponty, *Phenomenology of Perception*, above n 40 at 240-282.

<sup>4</sup> Perception, Merleau-Ponty points out, has been the unquestioned basis of science and philosophy, and "opens a window onto things... [and is] ...directed, quasi-teleologically, towards a truth in itself in which the reason underlying all appearances is to be found" (Merleau-Ponty 1964, p. 62).

Humans are *folded into* the world: everyday perceiving is an intimate bodily continuity—profoundly sensory and involved. Adams argues that Merleau-Ponty’s lived body is naturally “‘ethesiological’—sensing, feeling, libidinal, erotic, desiring, empathic. Spontaneously, [t]he body asks for something other than... its relations with itself ... [and] [w]ith these insights, Merleau-Ponty emphasizes the interrelational structure of our embodied existence.” This interrelationality is *always intercorporeal*: “all being is interbeing, intertwining—and such interrelating is intrinsic to the very structure of subjectivity and lived reality” (Adams 2007 p. 40).

Towards the end of his life, Merleau-Ponty argued that the perceived world is also ontologically primary. This is explored in *The Visible and the Invisible* (Merleau-Ponty 1968), particularly in “The Intertwining—the Chiasm”—a chapter introducing concepts through which to “explore the production of visibility and ‘the metaphysical structure of our flesh’” (translator’s preface p xi). Merleau-Ponty describes a “shared world of *intermundane* space which crosses over and intertwines with that of similarly embodied human beings” (Williams and Bendelow 1998 p. 53). This account imbricates the visible in the tangible/the tangible in the visible: vision is always “palpation with the look” (Merleau-Ponty 1968 p 134), such that the “observer” is always interwoven with that “observed”—always part of the same chiasmic, radically non-dual reversible interpermeation of self and world. Subjectivity thus becomes *intersubjectivity*. Yet, as opposed to Husserlian intersubjectivity, Merleau-Ponty’s understanding is always “carnal through and through, forged as it is by the intercorporeal relations of sentient body-subjects and their primordial bonds with a common reversible world” (Williams and Bendelow 1998 p. 53, emphasis removed).

Such a view has profound implications. The “*instituted social imaginary* of mastery and domination” (Code 2006 p. 133 (emphasis original)) is radically undone: there is no stable subject-object split. There is no Kantian “radically autonomous person.” It becomes impossible to represent “knowers as infinitely replicable, rational, self-reliant, dislocated individuals face to face with inert and indifferent objects of knowledge to which their attitude, too, is and should be one of indifference” (ibid). The very foundations of juridical anthropocentrism and the notion of human rights based on the old dualistic order of human exceptionalism and its accompanying methodological individualism are undone.

How, then, might we re-imagine the human of human rights? We will extend the insights of Merleau-Ponty to resituate human rights in an age of eco-crisis, complexity, scientific discoveries and new technologies that literally “undo” law’s dominant ways of ordering the world by turning to new materialist philosophy.

## **Step Two: Towards New Eco-Human Subjectivities and Rights “In the Midst of” Posthuman Liveliness**

Coole and Frost rightly point out that what is at stake in the new scientific insights and technological developments inspiring new materialism is “nothing less than a challenge to some of the most basic assumptions that have underpinned the modern world, including its normative sense of the human and its beliefs about human agency, [and] ... its material practices such as the ways we labor on, exploit and interact with nature” (Coole and Frost 2010 Kin.Loc 137). Clearly—in this light—it is implausible at best to continue to embrace the fundamental assumptions shoring up the human exceptionalism and methodological individualism of human rights. The collapse of their supposed grounding necessitates a radical questioning of their entire *taken for granted*, let alone the human subject at their core.

Indeed, the distinctively 21<sup>st</sup> century convergence of complexities in which

human rights stand—climate change, population movements, biotechnologies (GMOs, bio-engineering, new medical technologies, genetic recombination, shared genetic materiality, etc.), instantaneous algorithm-driven global capital flows, rapidly evolving artificial and robotic intelligence and the saturation of contemporary life in digitalization and virtual technologies etc.—reveals that not only is “materialization a complex, pluralistic, relatively open process [but] . . . that humans . . . [are] thoroughly immersed within materiality’s productive contingencies’ (Kin.Loc 199). The dislocated human of disembodiment must be relocated—immersed—in matter’s own lively agencies: “its own modes of self-transformation, self-organization and directedness”—characteristics that necessarily thoroughly “disturb the conventional sense that agents are exclusively humans who possess cognitive abilities, intentionality and freedom to make autonomous decisions and the corollary presumption that humans have the right or ability to master nature” (Kin.Loc 250).

It is clear that the stable, pre-existent subject-object split presupposed by human rights—and its corollary implications for the meaning and ethical force of anthropocentrism itself—collapses under the weight of such realities and that the pre-existent, fully formed subject that human rights law and philosophy assume stands increasingly revealed as the chimera it always was.

How then, might we re-imagine the “human” of human rights? How might we re-imagine *human rights*? Can human rights address the injustices of attenuated anthropocentrism and simultaneously respond to the dissolution of fixed ontological boundaries?

Perhaps the first step is to acknowledge the disappearance of “the center”: to appreciate that humans are—as Philippopoulos-Mihalopoulos has put it—“thrown” into “the middle” (or perhaps—better—into the *midst of*) a radically open ontology. There is simply *no center* to occupy. There is a chiasmic (to recall Merleau-Ponty) ontological plane where the mutabilities, flows and forces of lively materialities *co-world* a vulnerable (affectable, open) entanglement of multiple bodies at multiple scales—from the macro-to the micro—bodies both human and non-human. The “world” unfolds as a “spatial and temporal web of interspecies dependencies” (Haraway 2008 p. 11).

Secondly, and as a result, the privileged autonomous subject of human rights cannot hold. Subjects always emerge co-formed. Indeed, as Haraway puts it, “species of all kinds, living and not, are consequent on a subject- and object-shaping dance of encounters” (p 4). Given the generative pluralities of sites and nodes of lively materiality, it makes infinitely more sense, as Barad has argued, to eschew a stable subject-object division—but—importantly—without abandoning the meaning-making function of boundary-drawing. There are no “natural, pure and innocent separations [but this is not to reach] for the rapid dissolution of boundaries” (Barad 2007 Kin.Loc 187). Subject and object *emerge* through intra-actions in an entangled ontology—but this does not rule out *divergence*. We can still meaningfully speak of the “human” of human rights, even as we acknowledge its fractures, frays and contingencies. We simply speak for purposes, in contexts, not about the interaction of separate entities but about “*differential* patterns of *mattering* (‘diffraction patterns’)” (Kin.Loc 2810). New materialist accounts allow us to understand that the divergences that emerge within phenomena (what Barad calls “*agential separability*”) simply cannot produce (or suppose) any absolute separation.<sup>5</sup>

Humans are re-situated by such accounts—thrown into intelligent and sensitive (sensing) engagements of “world-making entanglements” and “material-semiotic nodes or knots in which diverse bodies and meanings co-shape one another” (Haraway 2008 p. 4). The “human” of human rights—to respond to such new foundations—needs to

---

<sup>5</sup> See Kin.Loc 1863-1902 for a diagrammatic representation of Barad’s onto-epistemological positions.

respond to the *facticity* of “our” ontological co-constitution with multiple collaborators—including microscopic collaborators—in the co-production of “the world.” The facticity of co-constitution—the sense in which materiality is folded in multiple dynamic, porous flows and intensities—makes the long assumed separation between nature and culture “difficult to pinpoint (phenomena as diverse as gardens, epigenetics and climate change all underline a slippery overlap and co-constituency between the two)” (Neimanis 2014 p. 15). Human beings—in all their inescapably natural-cultural endeavors—are repositioned as partners in *world-making entanglements* between multiple, contingently identified partners of *all kinds*—including—increasingly, the machinic. Thus, the “human” of human rights remains meaningful to speak of, but becomes both contingent and productive: the “human” becomes a question of continuously emergent, evolutive subjectivity/ies for which the meaning of the human itself, in any context is a collaborative materio-semiotic endeavor: “we humans” are always an “I”/“we” “in-the-making.”

And it remains fundamentally important, drawing again on Merleau-Ponty, to emphasize that the “human-in-the-making” of human rights is always radically intercorporeal—implying all the vulnerability of embodied existence of human beings thrown in “the midst of” numerous nodes of *mattering*.

Furthermore, it is imperative, in the light of the *patterns* of attenuated anthropocentrism and its historical and contemporary fallouts, to insist that this human must be seen as unevenly situated, notwithstanding commonalities. The human “critter” (to speak with Haraway) remains potentially oppressed by practices of identity and identification, by selective intensifications of ontic vulnerability and by differential positioning both chosen *and imposed*. Critique therefore remains essential—and especially vital in an age characterized by necropolitical distributions of power—as a “diffractive methodology” (Barad 2007; Kin.Loc 1876) committed to the understanding that there is a profound responsibility “for the fact that our practices *matter*” (Kin.Loc 1891, emphasis added). To complicate the human/non-human boundary and resituate the human in the light of new technological breakthroughs and insights is *not* to abandon the possibility of ethical engagement. New materialism does not necessitate the abandonment of distinctions drawn meaningfully between modes and patterns of *mattering*. Far from it—new materialism calls, if anything, for far closer attention to lively materialities in their distinctiveness.<sup>6</sup>

In the light of new materialist onto-epistemology, human rights themselves become resituated as a site for the generation of response-ability: for the responsabilization of ways and modes of co-situated yet/and differentially situated living. No longer the entitlements of abstractly dignified, rationalistic and exceptionalist “human” subjects, human rights become a mode of particular political and juridical attentiveness to materializing patterns of privilege and marginalization endured by human “critters.” (Human “critters” understood as ineluctably entangled with multiple non-human “critters” of all kinds.)

In short, the task facing human rights theory in the light of new materialist insights and of posthuman technological developments is to reimagine the “situation of the human in a more-than-human world” (Neimanis 2014 p. 14).

This reimagination necessarily needs to embrace the radical de-centering of human privilege, the unraveling of human epistemic mastery and the denial of human ontological priority. Human rights thus become one mode for the expression of a deeply ethical impulse mandating freshly sensitive engagements with the patterns and dynamics

---

<sup>6</sup> This, of course, raises a host of further questions concerning the power relations folded into meaning-making and the drawing of distinctions—even contingent ones. Nonetheless, the centrality of contingency in the place of fixed ontological categories/divisions marks a step forward into the kind of reflexive critical vigilance required for what we might call new materialist imaginaries of justice.



through which bodies (human, institutional or otherwise) can be called “to account for the ways in which they affect other bodies of all kinds” (ibid). And given that it remains meaningful, despite the impossibility of any absolute human-non-human boundary, to speak of “human critters” and to appreciate *human divergence* in the midst of an open ontology, human rights can be theorized as forms of *special juridical attentiveness* to the rights of such re-imagined human beings.

In a theorization of human rights addressing the situation of the human in the more than human world, it is still possible, vital even, to defend the idea that human rights should not be over-extended to include all potential vulnerable beings/entities/systems requiring the juridical shelter of rights discourse. Legal theorists and others sometimes defend, as noted above, the extension of the language of rights to a range of putative claimants including animals, plants and perhaps even inanimate objects. While such an argumentative strategy “can be interpreted as claim that the kind of protection afforded by human rights should be extended to non-human entities,” or as a “kind of shorthand reference to a normative argument” (Gear 2006 p. 175), extending “*human rights*” to other-than-human “critters” presents certain dilemmas. First, we should note the irony: extending *legal* rights to animals, the environment, AI’s, robots, software agents and other technological “critters” rightly pushes against the anthropocentrism of law and human rights, but extending *human* rights to non-human “critters” produces a hyper-inflated anthropocentrism by—in effect—subsuming all such entities and systems in “the human”: all rights subjectivity thus becomes a form of juridical *human* subjectivity. Secondly, this presents the danger that the divergence of all such “critters” and lively agencies could be muted—an outcome carrying the very real risk of generating inadequate respect and protection for the diverse ontic qualities, the particular sensitivities, the dynamic, changing needs, agencies and vulnerabilities of the rights claimant/s in question. Thirdly, if the implicit meaning of “humanity” expands through human rights to the point where the distinctiveness of “critters” is muted, there is also a directly related diminution in the power of human rights to protect the human being *qua* “human critter.” This is a danger starkly illustrated by the transnational corporations trading on a conflation between legal subjectivity and “humanity” to claim human rights—with consequently distortive effects on the entire international human rights paradigm (Baxi, 2008).

While it thus remains important to speak of the “human” and of *human* rights, a new materialist focus on questions of how bodies of all kinds affect each other points to new complexities in ethical deliberation and suggests the continuing power of critique itself. Dense orders of power, differing levels of access to decisional agency, and multiple sites of exclusion and marginalization gain new material significance. Questions seem to multiply. Who, for example, is the “we” at stake when new biotechnological developments produce technology *as regulation* inscribed into the very physical structure of plants (Pottage 2011)?<sup>7</sup> Who is the “we” of the “humanity” produced by new medical, genetic and cybernetic advances? How do capital flows and globalized market predation interact with new technological facility for organ transplantation and for the diffusion of “bodies” into genetic information? And so on.

The central critical question is this: if traditional juridical “humanity” operates as a source of exclusion, marginalization, distortion and selective invisibility, *how*—in a techno-capitalist order still in important ways radically continuous with those foundations—can law safeguard those human beings and communities, animals and other living “critters” positioned as *predictable outsiders*? How can human rights law

---

<sup>7</sup> A Pottage, “Biotechnology as environmental regulation” in A Philippopoulos-Mihalopoulos (ed.) *Law and Ecology: New Environmental Foundations* (Oxford: Routledge/Glasshouse, 2011) 105-125.

respond to rapidly mutating corporate industrial and industrial-military power exploiting new technologies yet still enacting and protecting the dynamics of the attenuated anthropocentrism linked so thoroughly to oppressive dualisms? And—as importantly—what role might human rights yet play in offering renewed attentiveness to the divergence of vulnerable human “critters” in a way that addresses the marginalizations and exclusions *still marking human rights?*

New materialism throws “us” “into the midst of” a porous, chiasmic world, opening up intercorporeal entanglements rich in political and ethical implication. But this world—and intercorporeality itself—remains characterized by complex plays of forces in which patterned and predictable injustices are constantly re-iterated. Familiar questions of injustice, in short, do not diminish in the face of posthuman/new materialist complexities: what, for example, to make of the implications of new technologies placing some humans in a position to quite literally change the structure of the living world? Who, precisely, is putting “Mother Nature on the Run in the 21<sup>st</sup> Century” (Lee 2012)—for whose benefit and at whose cost? And who is the “human agent” of the Anthropocene crisis? The need for suspicion remains as important as ever—it is just that the frame of attention can now expand to interrogate the actions of bodies—including our own—on affectable bodies of *all kinds*.

For those concerned to operationalize human rights as a mode of special juridical attentiveness to the differential imposition of vulnerability on human “critters,” the answers are very far from straightforward. At a practical level, such injustice sensitive human rights praxis will require a conscious sense of epistemic humility. After all, the onto-epistemological “center” is gone—despite the fact that its structural patterns remain intransigently installed in the global juridical order.

Appreciating the unsustainability of “the center” and embracing the energies of the in-the-midst-of requires new modes of hearing and engagement responsive to open-ended thought categories, percept ambiguity, situatedness and, yes, to the “politics of epistemic location” (Code, 2006). A new materialist human rights praxis will require the solemn realization that the forces at play in an open ontology still include those historical and contemporary energies productive of the patterned and predictable injustices arising from disembodied rationalism—and that these forces include the legitimated forms of predation marking the neoliberal global order and the uneven distribution of precarity in the face of the climate crisis.

The 21<sup>st</sup> century world remains an emphatically uneven one. The intransigent injustices of attenuated anthropocentrism in the traditional foundations of human rights still mark the material order of newly visible relationalities revealed by new materialist insights. It is possible though, it seems, to re-imagine the “human” and “human rights” alike—and new materialist insights point towards a worldview shift that 21<sup>st</sup> century complexities necessitate—and render increasingly urgent.

## References

- Adams, W.W. 2007. “The Primacy of Interrelating: Practicing Ecological Psychology with Buber, Levinas and Merleau-Ponty.” *Journal of Phenomenological Psychology* 38: 24-61.
- Barad, K. 2007. *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning*. Durham NC: Duke University Press. Kindle DX Version, retrieved from Amazon.co.uk.
- Baxi, U. 2008. *The Future of Human Rights*. Oxford: OUP.
- Baxi, U. 2009. *Human Rights in a Posthuman World: Critical Essays*. Oxford: OUP.
- Cavalieri, P. 2001. *The Animal Question: Why Nonhuman Animals Deserve Human Rights*. Oxford: OUP.
- Code, L. 2006. *Ecological Thinking: The Politics of Epistemic Location*. Oxford: OUP.
- Cohen, C. and Regan, T. 2001. *The Animal Rights Debate*. London: Rowman and Littlefield.

- Coole, D. and S. Frost. 2010. *New Materialisms: Ontology, Agency and Politics*. Durham NC: Duke University Press. Kindle DX Version, retrieved from Amazon.co.uk.
- Davies, M.J. and Naffine N. 2001. *Are Persons Property? Legal Debates about Property and Personality*. Aldershot: Ashgate.
- Descartes, R. "Principles of Philosophy" in Cottingham, J, R Stoothoff and D Murdoch (trans.). 1984. *The Philosophical Writings of Descartes Volume 1*. Cambridge: CUP.
- Douzinas, C. 2000. *The End of Human Rights*. Oxford: Hart.
- Evans, T. and Ayers, A.J. 2006. "In the Service of Power: The Global Political Economy of Citizenship and Human Rights." *Citizenship Studies* 10: 239–308.
- Gearty, C. 2010. "Do human rights help or hinder environmental protection?" *Journal of Human Rights and the Environment* 1/1: 7-22.
- Grear, A. 2006. "Human Rights – Human Bodies? Some Reflections on Corporate Human Rights Distortion, the Legal Subject, Embodiment and Human Rights Theory." *Law and Critique* 17: 171.
- Grear, A. 2011. "'Mind the Gap': One Dilemma Concerning the Expansion of Legal Subjectivity in the Age of Globalisation." *Law, Crime and History* 1/1: 1-8
- Halewood, P. 1996. "Law's Bodies: Disembodiment and the Structure of Liberal Property Rights." (1996) *Iowa Law Review* 1: 1331-1393.
- Haraway, D. 2008. *When Species Meet*. Minnesota: University of Minnesota Press.
- Hyde, A. 1997. *Bodies of Law*. Princeton: Princeton University Press.
- Ibrahim, D.M. 2007. "A Return to Descartes: Property, Profit, and the Corporate Ownership of Animals" *Law and Contemporary Problems* 70: 89–115;
- Ishay, M. 2008. *The History of Human Rights: From Ancient Times to the Globalization Era*. Berkeley, CA: University of California Press.
- Jung, H.Y. 2007. "Merleau-Ponty's Transversal Geophilosophy and Sinic Aesthetics of Nature" in Cataldi, S.L. and W.S. Hamrick. 2007. *Merleau-Ponty and Environmental Philosophy: Dwelling on the Landscapes of Thought*. New York: State University of New York Press: 235–257.
- Kapur, R. 2006. "Human Rights in the 21<sup>st</sup> Century: Take a Walk on the Dark Side." *Sydney Law Review* 28: 665-687.
- Kapur, R. 2007. "The Citizen and the Migrant: Postcolonial Anxieties, Law, and the Politics of Exclusion/Inclusion." *Theoretical Inquiries L.* 8: 537-570.
- Lee, R.G. 2012. "Look at Mother Nature on the Run in the Twenty-First Century: Responsibility, Research and Innovation" *Transnational Environmental Law* 1(1): 105-117.
- Matua, M. 2001. "Savages, Victims and Saviours: The Metaphor of Human Rights." (2001) *Harvard International Law Journal* 42 (1): 201-46.
- Merchant, C. 1980. *The Death of Nature: Women, Ecology and the Scientific Revolution*. New York: Harper Collins.
- Merleau-Ponty, M. 1964. "An Unpublished Text by Maurice Merleau-Ponty: A Prospectus of His Work" in M Merleau-Ponty (JM Edie (ed.)), *The Primacy of Perception* (Evanston, Illinois: Northwestern University Press.
- Merleau-Ponty, M. 2002. *The Phenomenology of Perception* (C. Smith (trans.)) London: Routledge Classics. (First published by Routledge and Kegan Paul, 1962).
- Merleau-Ponty, M. 1968. *The Visible and the Invisible* (JM Edie (ed.)) Evanston: Northwestern University Press.
- Naffine, N. 1997. "The Body Bag," in Naffine, N. and R. Owens (eds.). 1997. *Sexing the Subject of Law* (Sydney: Sweet and Maxwell: 79-93.
- Nedelsky, J. 1990. "Law, Boundaries and the Bounded Self." *Representations* 30: 162-89.
- Neimanis, A. 2014. "Alongside the right to water: a posthumanist feminist imaginary." *Journal of Human Rights and the Environment* 5/1: 5-24.
- Nibert, D. 2002. *Animal Rights, Human Rights: Entanglements of Oppression and Liberation*. Oxford: Rowman and Littlefield.
- Otto, D. 2005. "Disconcerting 'Masculinities': Reinventing the Gendered Subject(s) of International Human Rights Law." In D Buss and A Manji (eds.), *International Law: Modern Feminist Approaches*. Oxford: Hart Publishing: 105–29.
- Philippopoulos-Mihalopoulos, A. 2011. "'... the sound of a breaking string': critical environmental law and ontological vulnerability." *Journal of Human Rights and the Environment* 2/1: 5-22.
- Pottage, A. 2011. "Biotechnology as environmental regulation" in A. Philippopoulos-Mihalopoulos (ed.) *Law and Ecology: New Environmental Foundations*. Oxford: Routledge/Glasshouse: 105-125.
- Richardson, J. 2000. "A Refrain: Feminist Metaphysics and Law" in Richardson, J. and R. Sandland (eds). 2000. *Feminist Perspectives on Law and Theory*. Cavendish, London: 119–134.
- Slater, S.D. 2002. "Introduction" in Bainham, A., S.D. Slater, and M. Richards. 2002. *Body Lore and Laws* Oxford: Hart.
- Solum, L.B. 1992. "Legal Personhood for Artificial Intelligences." *North Carolina Law Review* 70: 1231-1287.
- Stammers, N. 1999. "Social Movements and the Social Construction of Human Rights." *Human Rights*

*Quarterly* 21: 980-1008.

Stone, C.D. 2010. *Should Trees Have Standing? Law, Morality and the Environment*. Oxford: OUP.

Sunstein, C.R. and Nussbaum, M.C. (eds.). 2004. *Animal Rights: Current Debates and New Directions*. Oxford: OUP.

Teubner, G. 2006. "Rights of Non-Humans? Electronic Agents and Animals as New Actors in Politics and Law." *Journal of Law and Society* 33: 497-521.

Williams S.J and G Bendelow. 1998. *The Lived Body: Sociological Themes, Embodied Issues*. London: Routledge.

Woods, E.M. 2005. *Empire of Capital*. London: Verso.