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Deconstructing *Anthropos*: A Critical Legal Reflection on 'Anthropocentric' Law and Anthropocene 'Humanity'

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Abstract The present reflection draws upon a tradition of energetic, world-facing critical legal scholarship to interrogate the *anthropos* assumed by the terminology of 'anthropocentrism' and of the 'Anthropocene'. The article concludes that any ethically responsible future engagement with 'anthropocentrism' and/or with the 'Anthropocene' must explicitly engage with the oppressive hierarchical structure of the *anthropos* itself—and should directly address its apotheosis in the corporate juridical subject that dominates the entire globalised order of the Anthropocene age.

Keywords Anthropocene · Anthropocentrism · *Anthropos* · Critical legal theory · Human hierarchies of being · Legal personhood · Patterns of *in*justice · Transnational corporate power

Introduction

It is increasingly argued that when it comes to law's relationship with (and mediation of) the lifeworld of the planet and its non-human denizens, it is intensely problematic that the human subject stands at the centre of the juridical order as its only true agent and beneficiary. Law, in other words, is often accused of being resolutely 'anthropocentric', of rotating, as it were, around an *anthropos* (human/man) for whom all other life systems exist as objects.[1] The same putative

[1] The most well known of such positions in relation to law is that of Earth Jurisprudence. For iconic examples, see Berry (1999) and Cullinan (2002). For an enthusiastic contemporary application, Burdon (2014). For critique of the anthropocentric-ecocentric duality invoked by the Earth Jurisprudence framework, see Philippopoulos-Mihalopoulos (2011a, b), especially his chapter, 'Towards Critical Environmental Law' (pp. 18–38).

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'human centrality' can be said to characterise the discursive trope of the 'Anthropocene'—an increasingly popular term for a 'new' geological era in which 'humanity' has emerged as a geological force shaping the lifeworld of the planet itself.

The present reflection interrogates the *anthropos* assumed by the terminology of 'anthropocentrism' and of the 'Anthropocene'. The article concludes that any ethically responsible future engagement with 'anthropocentrism' and/or with the 'Anthropocene' must explicitly engage with the oppressive hierarchical structure of the *anthropos* itself—and should directly address its apotheosis in the corporate juridical subject that dominates the globalised order of the Anthropocene age.

Anthropocene 'Humanity': Introducing Anthropocene Discourse

Such is the overwhelming centrality of 'humanity' to the lifeworld of the planetary system that 'human activity'—it is argued—has capitulated the Earth into a geological era known as the 'Anthropocene', the etymology of which is drawn from *anthropos* ('human being/man') and *kainos* ('new/current'). Indeed, since 2002, when Paul Crutzen popularised the 'Anthropocene' (Crutzen 2002, p. 415), the concept has captured an ever-widening audience and emerged as a powerful trope driving at the 'large-scale human modification of the Earth System, primarily in the form of climate change, the most salient and perilous transgression of Holocene parameters' (Malm and Hornborg 2014, p. 63).

The Anthropocene is understood to have been triggered—according to Crutzen—by the extensive industrial impacts and harms enacted upon the biosphere. Crutzen argues that

> [c]onsidering these and many other major and still growing impacts of human activities on earth and atmosphere, and at all, including global scales, it is thus more than appropriate to emphasise the central role of mankind in geology and ecology by using the term 'Anthropocene' for the current geological epoch. (Crutzen 2006, pp.13–18 at 16)

Anthropocene 'mankind' (Crutzen's term) steps forward as a Promethean planetary force inaugurating a 'new [geological] age' of the 'human' reaching far into a future whose exact temporal arc and material character remains undetermined but predictable in so far as '[t]he impact of current human activities is projected to last over very long periods' (Crutzen 2006, p. 16).

For Crutzen, the origins of the Anthropocene are traceable to the late eighteenth century—its emergence revealed by data 'retrieved from glacial ice cores' revealing a notable intensification of greenhouse gases (especially CO_2, CH_4, and N_2O). 'Such a starting date', observes Crutzen, 'coincides with James Watt's invention of the steam engine in 1782' (Crutzen 2006, p. 16). Despite the fact that it seems odd to imagine that the invention of the steam engine would coincide precisely with its later effects, it is clear that Crutzen broadly locates the genesis of the Anthropocene in the Industrial Revolution—a framing now presented as the 'standard Anthropocene narrative' (Malm and Hornborg 2014, at p. 63).

There are, of course, counter-narratives. Some scholars, notably archeologists (Balter 2013, pp. 261–262), locate Anthropocene origins in earlier periods, but notwithstanding such disputation it seems clear that the 'Anthropocene' is now broadly deployed as a powerful trope communicating a human *species*-responsibility to act in the face of a looming global climate crisis (Crutzen 2002, p. 415).

Less well canvassed, however—and largely absent from the (thus far dominant) standard natural science accounts of the Anthropocene's genesis—is the important idea that the Anthropocene (and its climate crisis) represents *a crisis of human hierarchy*. This idea, as will become apparent, is central to this present reflection. Broadly speaking, the argument to be offered here rests upon dense continuities discernible between the Anthropocene—both as an epochal manifestation of concrete socio- and bio-material conditions *and* as a trope—and the patterned imposition of hierarchies operative within the 'anthropocentrism' of law. It will be argued here that such hierarchies implicate a systemically privileged juridical 'human' subject whose persistence subtends—to a significant and continuing extent—the neoliberal global juridical order as a whole, and that these hierarchical commitments also significantly undermine the ability of the international legal order to respond to climate crisis, environmental degradation and the intensifying imposition of structural disempowerment on vast and growing numbers of human beings. In short, this reflection will co-situate legal 'anthropocentrism', the 'Anthropocene', climate crisis', the ideological foundations of the international legal order and the contemporary corporation-dominated, juridically-mediated materialities of the neoliberal global order within a shared critical legal genealogy. Such a reading raises important questions concerning the acceptability of constructing Anthropocene responsibility *as if* there is a straightforward *species*-being for such responsibility to address. A central question, therefore, haunts this text: who/what, precisely, *is the anthropos* of legal anthropocentrism and of the Anthropocene?

Geneological Patterns: 'The Anthropocene' and the International Legal Order

The mainstream reception of the Anthropocene as a concept resting upon a universal human species agent has not gone entirely unaddressed by critical thinkers. As Malm and Hornborg note, Chakrabarty has made the most notable intervention in the Anthropocene debate from a critical theory standpoint.[2] Chakrabarty is interested in the question of how the crisis of climate change appeals to our sense of human universals while challenging at the same time our capacity for historical understanding (Chakrabarty 2009, p. 201). He argues that in 'unwittingly destroying the artificial but time-honored distinction between natural and human histories, climate scientists posit that the human being has become something much larger than the simple biological agent that he or she always has been. Humans now wield a geological force' (Chakrabarty 2009, p. 206)—an observation driving the question

[2] Malm and Hornborg (2014, pp. 62–69 at 5) referring to Chakrabarty (2009, pp. 197–222).

of how the climate crisis appeals to our sense of human universals. Chakrabarty argues that climate crisis—unlike the crisis of capitalism—invites a role for the universal human species agent: 'Unlike in the crises of capitalism, there are *no lifeboats here for the rich and the privileged* (witness the drought in Australia or recent fires in the wealthy neighborhoods of California)' (Chakrabarty 2009, p. 221, emphasis added). While Chakrabarty sees value in the hermeneutics of suspicion directed at universal 'humanity' (as 'an effective critical tool in dealing with national and global formations of domination' (Chakrabarty 2009, p. 221)), he does not see it as adequate to the crisis of climate change. Because 'inchoate figures of us all and other imaginings of humanity invariably haunt our sense of the current crisis', and because the longstanding wall between natural and human history is breached by the Anthropocene, 'we appear to have become one at the level of the species' (Chakrabarty 2009, p. 221). This is a new universal born of the 'emergent, new universal history of humans that flashes up in the moment of danger that is climate change' (Chakrabarty 2009, p. 221). It is, Chakrabarty insists,

> a question of a human collectivity, an us, pointing to a figure of the universal that escapes our capacity to experience the world. It is more like a universal that arises from a shared sense of a catastrophe. It calls for a global approach to politics without the myth of a global identity, for, unlike a Hegelian universal, it cannot subsume particularities. We may provisionally call it a 'negative universal history'. (Chakrabarty 2009, p. 222)

However, to this it is important to pose the question put with characteristic acuity by Braidotti: '[I]s it not risky to accept the construction of a negative formation of humanity as a category that stretches to all human beings, *all other differences notwithstanding*?' (Braidotti 2013, p. 88, emphasis original). This is an immensely important question. It is possible that Chakrabarty's negative universalism, for all its insistence on abandoning the myth of global identity, subsumes important differences *within* the climate crisis. Malm and Hornborg address Chakrabarty's central contention—symbolically pivotal and decisively important for his thesis—that there are 'no lifeboats here for the rich and privileged'. This, Malm and Hornborg point out,

> blatantly overlooks the realities of differentiated vulnerability on all scales of human society: witness Katrina in black and white neighborhoods of New Orleans, or Sandy in Haiti and Manhattan, or sea level rise in Bangladesh and the Netherlands, or practically any other impact, direct or indirect, of climate change. For the foreseeable future—indeed, as long as there are human societies on Earth—there *will* be lifeboats for the rich and privileged. If climate change represents a form of apocalypse, it is not universal, but uneven and combined: the species is as much an abstraction at the end of the line as at the source.[3]

The patterns of differentially distributed vulnerability central to Malm and Hornborg's critique hinge upon a history (and a future history as far as it is possible

[3] Here the authors cite Malm (2013, pp. 803–832); Malm and Esmailian (2012, pp. 474–492).

to tell) of patterned impositions of hierarchy. Indeed, it is highly significant for present purposes that Malm and Hornborg's critical account of the discursive category of the 'Anthropocene' has much in common with critical accounts of the international legal order.

Echoing themes deeply resonant with Third World Approaches to International Law ('TWAIL') scholarship and other broadly post-colonial critiques of the international legal order, for example, Malm and Hornborg rightly argue that industrialisation (the foundation of the Anthropocene on the 'standard' account) was itself fundamentally exclusory:

> A scrutiny of the transition to fossil fuels in 19th-century Britain… reveals the extent to which the historical origins of anthropogenic climate change were predicated on highly inequitable global processes from the start. The rationale for investing in steam technology at this time was geared to the opportunities provided by the constellation of a largely depopulated New World, Afro-American slavery, the exploitation of British labour in factories and mines, and the global demand for inexpensive cotton cloth. Steam-engines were not adopted by some natural-born deputies of the human species: by the nature of the social order of things, they could only be installed by the owners of the means of production. A tiny minority even in Britain, this class of people comprised an infinitesimal fraction of the population of *Homo sapiens* in the early 19th century. Indeed, a clique of white British men literally pointed steam-power as a weapon—on sea and land, boats and rails—against the best part of humankind, from the Niger delta to the Yangzi delta, the Levant to Latin America. Capitalists in a small corner of the Western world invested in steam, laying the foundation stone for the fossil economy: at no moment did the species vote for it either with feet or ballots…. (Malm and Hornborg 2014, pp. 63–64).

There is a clear convergence between this broadly post-colonial critique and TWAIL exposures of the intimacy between colonialism and the foundations of international law. Anghie, for example, in *Imperialism, Sovereignty and the Making of International Law* (Anghie 2005), conducts an excoriating historical analysis in which colonial suppression of 'Third World' peoples and the ambitions of Northern states for 'natural resources' to fuel their increasingly industrialised social order were key determinants of nineteenth century Northern colonial and imperial expansionism (Anghie 2005, p. 211) and decisively shaped the foundations of the modern international legal order. Angie argues that the 'importance of raw materials to the global economy was always well understood by the more powerful States' (Anghie 2005, p. 212), and that 'imperial expansion was powerfully motivated by the desire of colonial states to exploit the resources of non-European territories' (Anghie 2005, p. 212). In this predominantly capitalist dynamic, 'Western trading and mining companies' acquired 'extraordinarily favourable' terms in the nascent system of colonial state relations through a combination of direct force and legal sleight of hand in the form of 'agreements, which possessing a legal form, were hardly comprehensible to the natives who were ostensibly signatories to them' (Anghie 2005, p. 211).

Such fundamentally predatory patterns continued into the twentieth century and beyond and directly support a juridical order systematically favouring the interests of the Global North over those of the Global South. Indeed,

> [t]he underlying purpose of international law that was developed in the context of the colonial and post-colonial eras was precisely the promotion and protection of economic interests of the North. Thus, as newly independent states emerged from colonial rule as sovereign entities and attempted to assert their sovereignty and establish control over their natural resources, Northern states responded using legal doctrines such as state succession, acquired rights, contracts and consent to protect the interests of their corporate nationals in these states and to resist the attempts by these new sovereign actors to establish a new international economic order which included their own sovereignty over their natural resources'. (Simons 2013, p. 21)

Such convergences in critical accounts of the genesis of the Anthropocene and of the foundations of the international legal order richly imply that both phenomena exhibit corresponding structural characteristics—characteristics with ongoing resonance in the global juridical order and entirely of a piece with its present and future-facing trajectories (as will become clear below).

While the actors at the heart of Anthropocene origins and the origins of the international legal order were an identifiable, highly selective, group of dominant humans, there is also something less obvious but important at play hinging on the role of law and legal subjectivity. It will be argued here that the genesis of the Anthropocene predicament and the tilted foundations of international law can be related to a shared construct of a paradigmatic 'rational human subject', and that it is precisely the complex combination of the material influence of an identifiable historical elite and of the ideological closures still enacted by this construct—including (and especially for the purposes of a critical legal reflection) the 'human' *juridical* subject—that brings the *anthropos* into full view as an important critical target. A critical legal reading thus renders the *anthropos* legible in a particularly revealing way—and broadly supports Malm and Hornborg's critique.

Exclusion and Marginalisation in the *Anthropos*

The dynamics that critical legal scholarship exposes in the convergence between the dominance of an identifiable elite and the exclusory construction of law's paradigmatic 'human' actor—law's *anthropos*—are centrally important, it is suggested, to understanding the climate crisis (and the Anthropocene itself) as being a *crisis of human hierarchy—and*—as relevantly—a crisis of *human hierarchies of being.*

Human hierarchies of being are imposed upon human beings (intra-species hierarchies) and upon non-human animals and ecosystems (inter-species hierarchies). While 'ecocentric' critiques frequently object to inter-species hierarchies by

challenging law's 'anthropocentrism',[4] *intra-species* hierarchies problematise unqualified references to 'humanity' as a species category and complicate totalising references to 'anthropocentrism', perhaps *especially* when seeking to attribute responsibility for histories of eco-violation—for such histories are directly interwoven with well-practiced, patterned and predictable distributions of egregious *intra*-species injustice (see, for example, Collard and Contrucci 1988; Nibert 2002, 2013). Similarly, mainstream Anthropocene narratives are also problematic when they overlook, as Malm and Hornborg put it, the 'intra-species inequalities' (better, the intra-species *hierarchies*) that 'are part and parcel of the current ecological crisis and cannot be ignored in attempts to understand it'.[5]

A key element of the present reflection accordingly concerns the idea that human hierarchies of being (both inter- and intra-species) are foundational to understanding the exclusions enacted by 'anthropocentric' law and constructions of juridical (and/or Anthropocene) 'human' subjectivity. Such hierarchies are moreover potentially *re-enacted* by uncritical references to terms presupposing the *anthropos*—raising questions concerning patterned in/justice in the distribution of Anthropocene responsibility—whether past, present or future.

In order to explore *anthropos*, this reflection now turns to a critical legal reading of its genealogy.

If history is where ideology breaks cover (Horwitz 1981, pp. 1057–1059), then it is replete with material and discursive exclusions and marginalisations. The signs are legion: the late arrival of female suffrage after a long struggle against classist and masculinist domination of the 'public sphere' (see, for example, Pateman 1989); the late arrival of equality and anti-discrimination laws (inadequately) addressing the oppression of 'outsider' subjectivities based on gender, race, age, sexuality—and so forth. Indeed, the very existence of equality and anti-discrimination provisions are, in a sense, law's own legislative acknowledgement of law's failures of inclusion—a formal (and revealingly flawed) addressal of law's 'otherings'. Moreover, law's othering patterns are profoundly persistent. The arrival of intersectional analysis—an important attempt to expose the mutually reinforcing vectors of oppression[6] implicated in the sheer *patterned multiplicity* of 'the others of law' reveals an important clue to the crux of the problem: the existence of a particularistic 'human subject' as the 'centre' around which its 'others' struggle for full legal recognition.

It is no coincidence that this 'subject' reflects precisely the rationalistic, hierarchical scales of value decisive to the expansion of European capitalist ambition across the globe (Huggan and Tiffin 2007, pp. 1–11) in the form of appropriative industrial expansionism. The *anthropos* at the heart of such territorialising impulses was, as a wide range of scholarship reveals, a thoroughly gendered, raced construction. 'His' marginalised, colonialised 'others' were

[4] See above, n. 1.

[5] This is a central concern for Malm and Hornborg (2014, p. 63). See also Bookchin, who argues that intra-species practices of domination were causally decisive for practices of ecological destruction: Bookchin (2005).

[6] For a useful discussion, see Grabham, Cooper, Krishnadas and Herman (2009).

rendered susceptible to acts and forms of domination legitimated by assumptions concerning (white) masculine superiority and mastery: the indigenous—in short—was complexly feminised[7]—along with nature itself (Merchant 1983; Plumwood 1993). The results were often fatal to humans and destructive to indigenous environments.

Huggan and Tiffin, for example, argue that

> the incursion of Europeans… catastrophically resulted in genocide or the dispossession and marginalization of indigenous peoples across the globe. It also caused drastic changes in extra-European temperate as well as tropical environments. (Huggan and Tiffin 2007, p. 1)

In this process, pre-existing lifeworlds were marginalised or eradicated—with profound implications:

> Whatever the extent of the change, the dispossessed frequently faced poverty and starvation, and the original accommodated relations between environment, humans and animals were fractured, sometimes beyond repair. European hegemony replaced such broken communities with hierarchical interventions, ontologies and European epistemologies imposed or imbibed through colonial institutions. (Huggan and Tiffin 2007, p. 2, original citations omitted)

An important ideological fiat of this process was the 'naturalization [of] uneven economic development' (Huggan and Tiffin 2007, p. 2, original citations omitted), a linear projection of 'civilization' operationalised through intra- and inter-species hierarchies still foundational for the global order. Such hierarchies (and, it will be argued, the rationalistic *anthropos* upon which they are predicated) are also functionally preconditional for the Anthropocene: intra-species inequalities were *necessary* for its inauguration and 'uneven distribution is a condition for *the very existence of modern, fossil-fuel technology*' itself (Malm and Hornborg 2014, p. 64, citing Hornborg 2001, 2011).

A wide range of critical legal theoretical accounts exposes the patterned and predictable nature of such hierarchies, revealing them as foundational to the granting of naturalised civilisational priority and publicly sanctioned dominance to white (rational) property-owning European males 'at home' (see, for example, the discussion in Green 1998, pp. 229–256) including over European women (Pateman 1989) and abroad, where classist, racist hierarchies expressed by Western property-territorialism were pivotal for legitimating the dispossession of indigenous peoples. Such accounts expose, in short, dense entanglements of oppression with a protracted—even inter-constitutive—history.[8]

[7] 'The feminization of the Orient is one of the enduring themes in the scholarly study of colonialism. The colonial authorities represented the natives as passive, ignorant, irrational outwardly submissive but inwardly guileful, sexually unrestrained and emotionally demanding—not inherently female characteristics, perhaps, but defined as a trope in opposition to the self-mastery and openness that the hypermasculinized colonizing Westerners ascribed to themselves': Lurhmann (1994, p. 333).

[8] See, for a richly implicative discussion, Dekha (2008, pp. 249–267).

An impressively varied range of energetic and world-facing scholarship, despite distinctions, nuances and theoretical disagreements, discloses pivotal convergences between European (and then 'Western') constructions of legal and political subjectivity, the domination of non-dominant humans and non-human animals and the plunder of eco-systems—convergences—and trajectories—that can be traced through into predatory forms of industrial corporate neo-colonialism in the age of neoliberal globalisation (Nibert 2002). Indeed, the vectors of oppression linking intra-and inter-species hierarchies are particularly pronounced in industrial corporate capitalism,[9] which has become a globally hegemonic system in which such patterns are increasingly extreme: neoliberal capitalist globalisation is a highly uneven process still exhibiting pathological[10] patterns of domination.

What then, explains the complex, incomplete but nonetheless notable homogeneity of such patterns? Various accounts point to the subject-object relations inhabiting dominant Western ontological and epistemological commitments. It is to these that we now turn.

Interrogating the *Anthropos*: Ontological and Epistemological Foundations

Rene Descartes is famously attributed with having introduced a decisive ontological fracture between 'mind' (*res cogitans*) and 'matter' (*res extensa*)—a fracture critically determining subject-object relations for the dominant, rationalist strand of Western philosophy and fundamental to the modern genesis of the *anthropos.*

Writing in his *Second Meditation*, Descartes asserts:

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

When Descartes doubted the existence of everything but that 'thinking thing', he carved an ontological rift between the rational mind and *everything else*—including the human body. 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

[9] Nibert (2002). See also Ibrahim (2007, pp. 89–115). See also, for broader links to a central Anthropocene theme, Koch (2012).

[10] See Radhakrishnan (2003). Radhakrishnan argues that capitalism is a pathology producing privilege and exclusion 'co-symptomatically' (at vii).

to it' (Descartes, 'Principles of Philosophy' 1984, p. 195). Thus Descartes fashioned rationality as *quintessentially* disembodied—as 'transcending the structures of bodily experience' ('Preface' in Johnson 1987, p. x). In this move, Descartes constructed the *cogito* as an 'epistemological Panopticon' (Jung 2007, p. 239):[11] from its disembodied position, the isolated Cartesian mind formed the knowing centre around which everything else, including the human body, lay reductively exposed to view: Jung argues that 'the canonical institution of the *cogito*…is by necessity disembodied, monological/narcissistic and ocularcentric' (Jung 2007, p. 239). The solipsistic rationalist centrism thus produced projected a deadening objectification, which in combination with the development of Bacon's scientific method brought about, in effect, the 'death of nature' (Merchant 1983). As Weber has put it, since Descartes 'the sciences, whether natural, social or economic, try to grasp the world as if it were a dead, mechanical process that could be understood through statistical or cybernetic analyses … [as a] dead *res extensa*' (Weber 2012, p. 14).

Cartesianism has had important implications for the status of the human body. Rationality, on the Cartesian (and later the Kantian) account, transcends the body—*all* embodied particularity (embodiment *in toto*) is deemed to be subservient *at best* in the construction of and accumulation of knowledge.[12] Such disembodied rationality decisively conditions law's central subject. For Kant, for example, the notion of rational agency (so fundamental to Western law) hinges upon disembodied reason that establishes universal knowledge a priori. The Kantian *person*—the 'transcendent self' 'lies outside space and time' (Assiter 2009, p. 15). This is the 'subject as the subject of rights: the legal person' (Assiter 2009, p. 16), defined precisely by its possession of universal, abstract characteristics transcending embodiment: normative and moral reasoning, for Kant, 'can have absolutely nothing to do with either human feeling or the fact that we have bodies' (Seidler 1998, p. 17, cited by Ajana 2005). And while the Kantian transcendental self (as opposed to transcendent self) exists in relation to bodies and is necessary for knowledge in the phenomenal world, the body remains, as it does for Descartes, *external* to reason, the body being 'a lack of freedom… taking us away from the path of pure reason' (Richardson 2000, p. 128).

Thus, Western rational agency—including that of law—relies upon a profound separation between rationality and nature and a universalising body transcendence. While the knowing subject thus produced relies upon a radical objectification of both body and world, such body-excising dualism is never neutral. Rationality itself—as a disembodied construct—is thoroughly loaded with hierarchical assumptions and implications. It has long been noted, for example, that the presumed subject-object relations constructed by the Cartesian mind/matter split are—and were historically—deeply gendered. Rationality is never as pure as the discourse of disembodiment suggests:

[11] The 'panopticon' was Bentham's design for the perfect prison in which the guard occupies a central observatory tower with visual access to all cells and prisoners without being visible.

[12] The body's role is limited to its perceptual mechanisms, which gather information but have a radically attenuated role in its assessment: Lakoff (1987, p. 174).

> Having divided the world into two parts—the knower (mind) and the knowable (nature)—[western] scientific ideology goes on to prescribe a very specific relation between the two … Not only are mind and nature assigned gender, but in characterising scientific and objective thought as masculine, the very activity by which the knower can acquire knowledge is also genderised. It is that between a subject and an object radically divided … (Keller 1985, p. 79, cited by Green 1996).

Rationalist disembodiment assumes a tautological intimacy between rationality and gender: rationality is disembodied, yet to be recognised as *rational* requires the identification of *maleness*. Yet, to be recognised as *male*, a human being requires a particular *morphology*. In other words, the very disembodiment of reason rests upon the *privileging* of a particular *kind* of *body*. As Ahmed has put it,

> [t]he disembodiment of the masculine perspective is itself an inscription of a body, a body which is so comfortable we needn't know it was there, a body which is simply a home for a mind, and doesn't interrupt it, confuse it, deceive it with irrationalism, or bleeding, or pregnancy. (Ahmed 1995, p. 56)

The status of archetypal possessor of rationality has always been dependent upon a male morphology. It has also depended upon the racialised nature of this morphology: the black man has not, historically, been the paradigmatic rational knower—nor has the indigenous—nor the nomad. In other words, the structure of the disembodied rational subject imports the self-same entanglements of ideological intra-species hierarchies noted above. The impossible disembodiment of rationality and its presumed subject/object relations sweep a set of intimately co-related, feminised 'others' into the spectrum of 'objects' and/or object-like entities and systems made subject to the knowing gaze of *anthropos*. Such 'feminised others' are thus necessarily to varying degrees associated with non-rational 'nature', with the animal (and with animality)—and *objectifiable* (Dekha 2008, pp. 249–267). Women and *the other 'others'* to the Cartesian *cogito* and the Kantian *person* remain entangled in the other-than-fully-rational conditions of embodiment: its affectivity, its messy intimacies with 'matter'. Meanwhile, the scopophilic disembodied mind of the rational 'knower'—masterful *anthropos*—retains its distance, separation, autonomy and agency.

Such separation between *anthropos* and its feminised 'other/s-nature' is fundamental to understanding the foundations of the Anthropocene crisis. As noted above, Descartes' work interacted with that of Bacon, who in an important sense laid the methodological foundations for the Anthropocene age in a way entirely consistent with gendered Cartesian subject-object relations. Merchant argues that Bacon—the 'celebrated "father of modern science"—transformed tendencies already extant in his own society into a total program advocating the control of nature for human benefit' (Merchant 1998, p. 280), and that this was an essentially *masculinist* project: Bacon argued that 'Nature must be "bound into service" and made a "slave", put "in constraint" and "molded" by the mechanical arts. He insisted that the "searchers and spies of nature" are to discover her plots and secrets' (Merchant 1998, p. 281). He argued that just as Eve's curiosity in the

Garden of Eden caused the Fall and Adam's loss of God-given dominion, so the 'relentless interrogation of *another female*, nature, could be used to regain it' (Merchant 1998, p. 282. Emphasis added).

Bacon writes of 'nature' in terms that fully imply a rational, knowing masculine subject installed at the ontological and epistemological centre of his methodological vision. In Merchant's analysis of Bacon's work—and fully reflected in Bacon's language—the powerful convergences between disembodied rationalism, historical gender assumptions and the subjugation of 'nature' emerge with particular clarity.

Doubtless, readers will have noticed that the convergences noted in relation to the ideological disembodiment of reason have considerable connection with the convergences between European rational superiority and 'civilisation', colonialism, industrialism, and the foundations of the international *legal* order. Since the juridical manifestation of the *anthropos* is central to the present argument, it is now time to take a brief, closer look at the legal subject.

The disembodied Cartesian *cogito* and Kantian transcendent person provide the ontological and epistemological foundations for the paradigm modern 'rational' human legal subject—the 'knowing' epistemic 'centre' of a surrounding (objectified) 'environment',[13] constructed as inert 'matter' 'out there' beneath the Panoptic surveillance of the rationalistic mind (see Jung 2002, pp. 297–306). In particular, liberal legal subjectivity centres round a disembodied juridical subject (Halewood 1996, pp. 1331–1393) whose structure simultaneously delivers a juridical objectification of the 'natural world'.[14]

The constitution of legal subjectivity has decisive implications for hierarchical intra-species relations *as mediated by law*. The suppositions underlying the *anthropos* mean that, as Halewood has argued, 'liberal theory, *as a result of its ethic of disembodiment*, *cannot* yield substantive equality' (Halewood 1996, p. 1335, emphasis added). Legal disembodiment thus presupposes *and operationalises* the shearing of all particularistic features intrinsic to doing substantive justice between differentially situated, living, corporeal beings. The subject-object relations at the heart of the European rationalist project *impede* the full *juridical recognition* of the 'others' to the paradigmatic master-subject (*anthropos*) of law: these—notwithstanding multiple attempts to address exclusions and various (contested) signs of 'progress'—still only truly feature in law as *other-to-the-central-master-subject*. These 'others' do not—and possibly never *can*[15]—figure as fully recognisable instances of the dominant subject or person of law. In short, the legal *anthropos* remains stubbornly quasi-disembodied, still possessing a covertly privileged morphology favouring (albeit more complexly than in the past) the construct of a white, property owning, acquisitive, broadly Eurocentric masculinity that acts upon a world constructed as a juridically striated, territorialised *extensa*.

[13] As Philippopoulos-Mihalopoulos has pointed out, the etymology of the term 'environment' drives at that which revolves around a central subject: Philippopoulos-Mihalopoulos (2011a, p. 22).

[14] This is one of the core insights of Earth Jurisprudence and its critique of law. With respect to environmental law, see Bosselmann (2010, pp. 2424–2448); Bosselmann (2011, pp. 45–63, especially pp. 46–51).

[15] See the arguments presented on this by Otto (2005, pp. 105–129); see, also, Otto (2006).

There is more: the *anthropos* may in the final analysis be too impossibly disembodied for *any* corporeally specific human beings fully to operationalise putative similarities with it. The same is *not* true, however, of the corporate juridical form, in which, as will be argued below, the *anthropos* reaches its contemporary apotheosis in an idiosyncratic form of dis/embodiment (see Moran 1992, pp. 371–391) perfectly fitting the structural and ideological features of a fully capitalistic legal subjectivity.

The fact that the business corporation, in particular, (though the capitalist state also has distinctive traces of *anthropos writ large*) has such intimate continuities with *anthropos* implies the need to address the hierarchical advantages accruing to the corporate legal subject if any adequate account of Anthropocene *responsibility* is to be constructed. Accordingly, the analysis now turns to reflect upon the possibility that the capitalist corporation—perhaps especially in its transnational form—is the apotheosis of *anthropos.*

Law's 'Natural Person' and the Corporation: Intimate Continuities

The analysis thus far has offered a critical reading of the *anthropos* of both legal anthropocentrism and of the Anthropocene trope by tracing their shared subject-object relations in rationalist disembodiment and its related patterns of 'othering'. Such subject-object relations are fundamental to radically uneven intra- and inter-species hierarchies and undergird Malm and Hornborg's argument that intra-species inequalities were necessary preconditions for the inauguration of the Anthropocene (Crutzen 2002; Malm and Hornborg 2014).

It is now necessary to bring intimate continuities between law's 'natural person' and the corporation into the frame of critical attention.

It should by now be clear that the *anthropos* is 'anthropocentric' only within a savagely attenuated range of focus. The so-called 'natural person' of law is *not* an embodied, corporeally 'thick', flesh and blood human being at all, but a highly selective *construct*. The disembodiment of law's 'human' is achieved, recall, precisely by the conceptual excision of 'thick', situated bodily life for a 'thin' rationalistic disembodied juridical subjectivity (Halewood 1996). Crucially, however, the disembodiment of the law's 'natural person', is *impossible*—even for its prime historical beneficiary: the white, European male property-owner. The 'natural' (human) person of law is a *cypher*. The inescapably embodied, corporeally specific, situated human being can *never* be the disembodied, abstract, rational knower of Cartesian subject-object relations—a fact underlined by the findings of second generation cognitive science[16] and by the implications of embodiment for philosophy (Lakoff and Johnson 1999) and for rationality more generally (Damasio

[16] See Johnson (1987); Lakoff and Johnson (1999). The latter argue that cognitive science reveals that '[t]he mind is inherently embodied. Thought is mostly unconscious. Abstract concepts are largely metaphorical' (p. 3) and that '[reason] arises from the nature of our brains, bodies and bodily experience. This is not just the innocuous and obvious claim that we need a body to reason; rather it is the striking claim that the very structure of reason itself comes from the details of our embodiment'. Lakoff and Johnson (1999, p. 4).

1994). *Anthropos* is a cypher, therefore, characterised by the impossibility of its own nature.

What then, more precisely, is the nature of *anthropos*?

It is important to emphasise that while the 'natural [rational] person' of law was forged in the image, and originally at the service of, an elite, propertied class of white, European males, law's 'natural person' was always a construct exhibiting internal tensions between its idealised rationalistic projection and the conflictual socio-material dynamics it sought to occlude. These repressed dynamics returned to haunt law in forms of irrationality exposing the fact that the 'logic' of law is politically and ideologically conditioned.[17] 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)

Unsurprisingly, perhaps, the implications of these ideological vectors become especially clear through critical historical readings of the nineteenth century—and take us to the heart of the modern development of the capitalist business corporation as a virtually perfect instantiation of *anthropos*.

The nineteenth century was the timeframe in which industrialising European society drove the high-tide of Western capitalist colonialism. Less often noted, however, is the fact that the period also saw the decisively important production of the business corporation as a fully-fledged juridical subject. Indeed, it is particularly revealing that the emergence of a fully capitalistic legal subject in the form of the corporation was *pivotal* to the colonial development of the international legal order and remains a core—if not *the central*—feature of the contemporary global order.

Let us turn, then, to the nineteenth century. Norrie directly relates the development of the liberal 'juridical individual' (the rationalistic 'natural person' of law) to nineteenth century criminal law reforms protecting the interests of propertied, capitalist elites in England (Norrie 2001). Relatedly, 1886 witnessed the formulation of the 'criminal' and the 'corporation' in the United States as new 'kinds of legal persons' in the service of elite, market power (Federman 2003, pp. 167–189). In a startlingly sparse statement, the US Supreme Court in *County of Santa Clara v Southern Pacific Railroad* [118 US 394 (1886)] declared that the corporation is a person for the purposes of the 14th Amendment to the US Constitution *without hearing argument on the point.*[18] The full significance of this in relation to the hierarchical nature of the *anthropos* emerges when it is recalled

[17] This is an important argument presented by Norrie (2001). See 118 US 394 (1886) and discussion at n. 18 below.

[18] *Santa Clara County v Southern Pacific Railroad Co* 118 US 394 (1886). The court prefaced its judgment with the statement that it did not 'wish to hear argument on the question' concerning whether the corporation was a person for the purposes of the 14th Amendment, stating 'we are all of the opinion [that it is]'. Finnis argues that not a 'single sentence of justification' has ever been added to what is effectively 'the ukase of 1886': Finnis (2000, p. 10). ('Ukase' is an archaic term for an edict, deriving from the Imperial Russian term for edicts issued by the Tzar).

that the 14th Amendment was designed to prevent the denial of legal personhood to released slaves.

The issuing of such an undefended edict by the court arguably fully reflects the patterned predictability of hierarchising logics and their continuity with capitalistic impulses and interests. Indeed, Federman argues, discussing the implications of *Santa Clara*, that the production of corporate and criminal persons in 1886 should be read as twinned developments (Federman 2003, pp. 167–189) by drawing on Hacking's discussion of mental illness. Hacking suggests that 'a "feature of a new mental illness is that it embeds itself in a two-headed way in a culture" producing two versions of the same thing: one healthy, the other ill', and that it is necessary to separate the idealised rationalist image of the self from the deviant image of the self 'such that both versions become understood, explainable, and classifiable' (Federman 2003, pp. 167–189, citing Hacking 1998, p. 48). *Santa Clara* was temporally contiguous with *Ex parte Royall* (117 US 241 1886), and Federman identifies the cases as the first emergence within US jurisprudence of the judicial classification and assessment of persons using 'extra-legal signs of health and illness and productivity versus inefficiency' (Federman 2003, p. 168). Corporate and criminal subjects were co-constructed by the deployment of legal personhood as a (if not *the*) key technique of law's production of subjectivity—the one a trope representing an idealised rational, productive citizen—the opposite, its dark 'other'. In this double move, the US Supreme Court, while awarding corporations the status of persons for the purposes of the 14th Amendment, excluded criminals seeking federal remedies for unlawful imprisonment by state courts on habeas corpus from the national privileges extended to corporations: 'both cases', argues Federman, '… fed off each other: the "privileged norms" of corporate personhood were "reinforced by the reaction against the transgressor"' (Federman 2003, p. 169, citing Hunt and Wickham 1994, p. 95).

And what of *anthropos*? Significantly, Federman notes that,

> [f]or the first time in American constitutional law, the legal person takes shape not simply as a bearer of traditional English liberties, with all that implies regarding personal autonomy, but as a corporate 'person', who is not dissimilar to the bearer of traditional English liberties, and yet is structurally different. (Federman 2003, p. 169)

Thus, just as the idealised rationalist template of law's 'human' person is legible as *anthropos*, so the corporate person—similar but structurally different—is legible as *anthropos.* Indeed, the business corporation represents a more complete instantiation of the rationalistic, accumulative, quasi-disembodied rights-bearer: *homo juridicus-economicus* writ large.

It is important to note the implications of the 'structural difference' mentioned by Federman. The corporation can be thought of as the ultimate instantiation of disembodied *anthropos* precisely because the human being *cannot* ultimately escape human corporeal specificity and the particular vulnerabilities accompanying it. The corporation—as the structurally different yet ideologically congruent extension of *anthropos—can.* Indeed, the transcendence of individual corporeal identity and limitation (along with enhanced conditions for capitalist accumulation) is precisely

the *point* of the corporate juridical form: the corporation is an artificial body, for which the '"corporeal interchangeability" [of its members] *divests it of the vulnerability that accompanies a corporeally specific body*… [producing a] transmogrification of that corporeally specific vulnerability into a "common Power"' (Whitney 2011, p. 557, original citations omitted, emphasis added).

Federman argues, rightly, that the corporation emerged in the nineteenth century as 'the new American man, the bodily expression of male power' (Federman 2003, p. 181), yet there is a sense in which the corporation is, centrally and importantly, also the perfect expression of an impossibly *disembodied* masculinity. The *anthropos* functions as a selectively attenuated representation of putative humanity. Its deformed 'representational' hegemony (its 'anthropocentrism') was always—and still is—a powerfully exclusionary structure serving elite interests. The emergence of the corporation as a fully capitalistic juridical subject reflects (and optimises) such exclusionary dynamics.

These exclusionary dynamics suggest that the patterned privileges enacted by law's *anthropos* come at considerable cost. The juridical *anthropos* rests, in a fundamental sense, on injustice. Indeed, there is a pernicious double-handedness at work here. Bodily 'differences' and socio-material circumstances (especially those reflecting capitalist class relations) present a material substrate separating law's *anthropos* from 'his' 'others'. ('He'—after all—is most definitely not 'black', nor a 'woman', nor a 'worker', nor a 'nomad' etc.) However, simultaneously, the full significance of embodied, socially and materially situated life for legal outcomes is ideologically suppressed and law deploys abstract individualism precisely to suppress (selectively) the stark realities of the 'intense social conflict' lying beneath law's 'neutral' abstractionism:

> It was only possible to express the law in universal terms after a long political and social process of defeating counterclaims and imposing one definition of lawful and unlawful conduct on a resisting populace. That imposition could only be achieved and managed by recognising individual justice in an abstract fashion… The particular moral and political content of the law is… masked by its [rationalistic] individualistic form. (Norrie 2001, p. 16)

There is, therefore, a direct relationship between the discourses of rationality, objectivity and neutrality deployed in the nineteenth century in the interests of a dominant elite and the co-emergence of corporate legal personhood with new forms of criminal accountability for the poor. This correlation reflects wider, related patterns of law's exclusions suggesting long-standing iterative dynamics of possession and dispossession: the extensive enclosure of the commons in the service of industrial agriculture in England (see, e.g., Wood 1999, pp. 67–94); the dispossession of indigenous peoples under European colonialism (McLean 2004, pp. 363–377; and Huggan and Tiffin 2007); the predatory corporate neo-colonialisms still imposed in the developing world;[19] the continuing global

[19] See, Kamphuis (2012, pp. 217–253); Jochnick (1999, p. 65); Joseph (1999, pp. 171, 173–174); and the reports of the Special Rapporteur to the Commission on Human Rights' reports on the dumping of toxic waste: Commission on Human Rights (20 January 1998).

industrial ravaging of the environmental commons (see, e.g., Westra 2004, pp. 107–119); asymmetrically distributed patterns of advantage (and disadvantage) even *within* the developed world.[20] All of these patterned, familiar injustices were or are still *mediated by law* and reflect—perhaps inexorably—the assumptions underlying and expressed through the construction of liberal legal subjectivity—a construction for which the grant or withholding of legal personhood has long been an operative mechanism.

It is perhaps unsurprising, then, that law—including international law—*systemically privileges* the corporation as an idiosyncratic juridical form possessing disembodied characteristics that no corporeally specific human (or animal) body ultimately can possess. Law's dominant construction of legal personhood—and law in general, including international environmental law[21]—are thus *unresponsive—at a fundamental level*—to the ethical implications of the vulnerable embodied bio-materiality of the living order.

The *masking* of the *juridical construction* of privilege, dependency and vulnerability in the construction of legal subjectivity and personhood is particularly salient for questions concerning the conception of the human subject in the Anthropocene. The disembodied master-subject of law is a strangely mutilated and 'unencumbered' entity (Douzinas 2000, p. 238), and *crucially*, *entirely unlike* the core victims of the radically uneven socio-material relations upon which the Anthropocene depended for its inauguration. The *anthropos* is emphatically *not* its 'others': women, children, the indigenous and/or other marginalised human groups—and *nor*, *emphatically*, is it a non-human animal—and nor does it possess a fully corporeal subjectivity interwoven with living ecosystems.

The discrepancies between these 'others' and the *anthropos* reinforce the sense in which the corporation is a better fit for the central trope of law's 'human' subject than is any corporeally specific human being. Despite the fact that historically identifiable white European men constructed the 'rational subject' in their own imagined image and that identifiable elites have disproportionately benefitted from its deployment, this *construct* is *not* ultimately much like the living human being (Grear 2010, chapters 3 and 4): its particular combination of relative disembodiment, hyper-rationality and its perfect match with capitalist ideology combine to suggest that the *corporation* (*not* the human being) is the apotheosis of law's *anthropos*. We can even go so far as to say that the corporation's privilege in law—including in the contemporary international legal order—stems *from its special intimacy with the dominant underlying trope of what it means to be a legal person at all*.

[20] Increasingly apparent under the pressures of recent austerity doctrine.

[21] Turner (2013, p. 32, emphasis added): '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'. Key to this, Turner argues, is the legal structure and historical evolution of business enterprises: 'even during [their] formative years, certain features were being built into their design that would eventually have huge impacts on the environment in the modern era' (2013, p. 38).

Let us now return to look at how this argument concerning corporate juridical privilege and centrality folds back into the colonial project and the foundations of the Anthropocene age.

The corporation, as just argued, is remarkably continuous with the ideologically dominant construct of 'law's person' (to adapt Naffine's terminology: Naffine 2003, pp. 346–367). The very design of the corporation as a legal form can be read as an analogue to the idealised characteristics of European (and colonial) masculinity: separate legal personality, limited liability and the separation between ownership and control—as well as the legal duty placed upon company directors to pursue profit above all else—are legible as direct analogues to the mythic white, European male (Lahey and Salter 1985, pp. 543–572). And, importantly, the way in which the corporate form de-politicises domination can be double-edged even for those human beings with privileged access (and notional similarity) to the corporate form itself:

> the business corporation is a perfection of the masculist vision of self-existence as property, separation of accountability and enjoyment, abstract rules as justice, domination as ownership. The only irony in this scenario is the fact that the corporate legal form so perfects and depoliticizes domination that even human 'managers' (the human equivalents of the business corporation) have become the instruments and agents of the corporation, rather than the title-holders of its immense powers, which they had initially set out to be. (Lahey and Salter 1985, p. 555)

While Lahey and Salter see the human 'manager' as the 'human equivalent of the business corporation', the analysis here points to the corporation as the juridical equivalent/expression of law's dominant functional construct of the rational human actor: the (male) rational actor are assumed to be the 'manager' of 'nature', women, non-dominant humans and non-human animals.[22]

The point that Lahey and Salter make about the de-politicisation of the social and environmental dominance enacted through the corporate legal form is especially important for the discussion that now follows.

Legal personhood, as we have seen, is a mechanism that 'naturalises' and/or renders 'neutral' the law's mediation of hierarchy and dominance. It is particularly significant in this regard that the Eurocentric capitalistic interests underlying both the international legal order and the industrialised genesis of the Anthropocene were operationalised—to a telling degree—precisely through the juridical privileging of the corporate form as a legal person.

In the modern colonial order,

> [l]ong before slavery was abolished, and women got recognition for the right to contest and vote at elections, corporations had appropriated rights to personhood, claiming due process rights for regimes of property denied to human beings. The unfoldment of… 'modern' human rights is the story of near-absoluteness of the right to property as a basic human right. So too is the narrative of colonisation/imperialism which began its career with the

[22] This is clear in the arguments of, for example, Merchant (1983). It is also clear in the sociological account of human/animal hierarchies offered by Nibert (2002, 2013).

> archetypal East India Company (which ruled India for a century) when corporate sovereignty was inaugurated. (Baxi 2001, p. 154)

McLean has demonstrated the historical centrality of the early transnational corporation to the formation of the international legal order, noting its decisive role in the imposition of European colonial imperialism (McLean 2004), and arguing that the more recent accelerated ascendancy of the corporation in the international legal order has brought about 'the *expansion*' not the 'demise' of the 'European family of nations' (McLean 2004, p. 377).

The analyses offered by Anghie, Baxi and McLean point unerringly towards the construction of a highly uneven global order. Eurocentric rationalist commitments and colonising 'civilisational' programmes were imbricated in the search for raw materials, territory and resources to fuel European capitalist industrial expansion and express civilisational 'supremacy': the corporation, as the perfect figuration of such impulses—as the apotheosis of *anthropos*—should be understood to be pivotal, therefore, in the genesis (*and maintenance*) of Anthropocene injustice.

The 19th century high point of capitalist colonialism was, as we have seen, accompanied by the construction of new legal persons in the service of elite capitalistic interests (Federman 2003). Significantly it was also the period in history when corporations broke away from the state in America[23]—while similar developments in England drove a 'radical rethinking of the role of the corporation… [which] was but one aspect of a newly emerging society' (Marks 1987, p. 1444). This is unsurprising. The corporation had (and has) considerable advantages for the advancement of an essentially capitalistic social order—and secures—as a result—considerable advantages *within* such an order. Crucially, the corporation suffers from no gap between itself and the disembodiment of the legal perspective. It is, as Neocleous has argued, the very personification of capital itself (Neocleous 2003, p. 165). Indeed, evolutions in the theoretical justifications offered for the form of the corporation are best explained by shifts in the imperatives of capitalism—that is to say, the changing interests of an elite capitalist class. The shift to corporate personhood—the full, inaugural emergence of the corporation as an independent, sovereign manifestation of *anthropos*—reflected the inadequacies of the fiction and group theories to account for the growing economic autonomy of the corporation itself (Horwitz 1985, pp. 173–224). Such shifts played a pivotal role in arguments concerning corporate autonomy in the US courts (Marks 1987, p. 1470) and elsewhere.

The argument that legal personhood naturalises structural unevenness can be directly related to the ideological function of the corporation as *anthropos*. The ideological *fiat* at work is indicated by the way in which the US Supreme Court has increasingly conferred Bill of Rights protections on corporations while *simultaneously ceasing to theorise about the nature of the corporation*. In fact, as the corporation has progressively accumulated greater levels of power as a sovereign legal subject, the judiciary has become less and less engaged with the normative acceptability of that trajectory: Mayer argues that the US Supreme Court—the court

[23] This process is traced in detail by Marks (1987, pp. 1441–1483).

most aggressively extending corporate rights—has no coherent or defensible theory of the corporation at all (Mayer 1990, pp. 577–663), while Baxi's important analysis of international human rights law reveals nothing short of the corporate colonisation of that most putatively 'humanity'-centred of all legal discourses (Baxi 2001).

This trajectory merely confirms and continues the trajectory of the *Santa Clara* case. Mayer records that '[b]y 1938 Justice Hugo Black observed with dismay that, of the cases in which the Court applied the fourteenth amendment during the first 50 years after *Santa Clara,* "less than one half of 1 percent invoked it in protection of the Negro race, and more than 50 percent asked that its benefits be extended to corporations"'.[24]

This trend, unabated since, seems directly related to judicial abandonment of theorising about corporate personhood. Mayer notes that the US Supreme Court abandoned such theorising after about 1960, and that, while in some ways, this 'drastic doctrinal reversal is extraordinary, especially considering the frequency with which corporate constitutional rights are now asserted', in other respects this 'modern, pragmatic, antitheoretical approach is the prosaic legitimation of the corporation's… status' (Mayer 1990, p. 621). Mayer hits the ideological nail on the head: '[t]his pragmatic approach is a less controversial guarantor of corporate rights than a theoretical methodology that raises fundamental questions about the nature of a corporation and its role in society' (Mayer 1990, p. 621).

At one point, Mayer suggests that 'the lack of a consistent basis for according corporations constitutional guarantees is all the more puzzling as the demand for corporate protection increases' (Mayer 1990, p. 662). However—when read in the light of a critical reading of *anthropos*, the Anthropocene and the international legal order itself—it is *entirely predictable*. The corporation, in a sense, is a highly technicistic cloaking device. And just as *anthropos*—the trope of the rational disembodied man—has operatively cloaked its attachment to white male bodies under a mask of objectivity, neutrality, formal equality and universalism, so the corporate form performs an increasingly dense form of juridical closure reflecting globally salient patterns of privilege and marginalisation in the international legal order. The transnational corporate form, in particular, is the ideal construct for the fundamentally unaccountable accumulation[25] of immense socio-economic and political power by a global plutocratic elite—the direct inheritors of the ideological and structural advantages accruing to *anthropos*.

The corporation as *anthropos* fully reflects the politics of disembodiment that normalise not only uneven global development but 'naturalise' and express predictable patterns of human hierarchy. Belcher has argued that

[24] Mayer (1990, p. 589), citing *Connecticut General Life Insurance Company v Johnson* 303 US 77, 90 (1938) (Black, J. Dissenting). Mayer cites Black as insisting that '[n]either the history nor the language of the fourteenth amendment justifies the belief that corporations are included within its protection' (pp. 85–86)—Mayer, footnote 61.

[25] See, among other critiques of the way in which the transnational form itself facilitates the abuse of power by powerful elites, Dine (2012, pp. 44–69). See also Wright Mills (2000).

> a cursory glance at the history of English company law reveals the maleness of the company… Although corporate legal theory has always used the seemingly gender neutral formula of the company as a separate legal person, at the birth of this concept the person was male. (Belcher 2012, p. 65)

And, as the analysis of *Santa Clara* offered above implies, the business corporation in its origins is also a thoroughly *raced* construction. Federman's research establishes the 19th-century corporation as 'the new American man, the bodily expression of male power' (Federman 2003, p. 181) and it is abundantly clear that this expression was also entirely *white*. The hijacking of the 14th Amendment offers a compelling example of the complex interplay between the corporation as abstract, disembodied juridical subject, its capitalist ideological foundations and patterned practices of privilege and oppression. These remain fully salient in the Anthropocene age—reaching a powerful expression in contemporary forms of climate injustice (see Grear 2014, pp.103–133) and environmental racism (Westra and Lawson 2001).

Reading transnational corporate power as an intrinsic aspect of predatory capitalist neocolonialism[26] implies the continuing urgency of engaging with the colonial, masculinist and rationalistic foundations and closures of the global juridical order. It also underlines the urgency of directing an unflinching critical gaze at the *entirely predictable* exclusions enacted by the *anthropos*—and the necropolitical implications of its apotheosis in the transnational corporate form.

Conclusory Observations

A critical legal examination of the *anthropos* reveals a stubbornly persistent trope reflecting dense intimacies between colonialism, industrialism, the foundations of the international legal order, the contemporary dominance of the capitalist corporate person and the genesis of the Anthropocene crisis. Indeed, this critical legal reading implies that the human being is 'infinitely more fictitious to the law' than is the corporate form (Douzinas 1996, p. 122, emphasis added) and that the *Anthropo*cene—as a reference to human *species* responsibility—reflects an intimately related universalist fiction disguising [while *replicating*] the very discursive and material hierarchisation from which the Anthropocene crisis itself emerges and from which continuing Anthropocene injustices proceed.

Accordingly, the analysis offered here suggests the urgency of seeing the pervasive juridical dominance of *anthropos* and its ultimate instantiation *as* (and *the growing power of*) the corporate juridical form as central to any future reflections upon the meaning of Anthropocene 'humanity'. *Anthropos*, understood as a pivotal mechanism for the naturalisation of industrial capitalist privilege (i.e. for the systematic privileging of some human beings over others and over other living beings and systems) also suggests the urgency of bringing Anthropocene discourse into direct engagement with world-facing critical legal scholarship: non-dominant

[26] For more on this important theme, see Nkrumah (1965) and Woods (2005).

humans, non-human animals and ecosystems will be systemically (and unevenly) disadvantaged both by law's disembodied schematic *and* by discursive invocations of an Anthropocene 'humanity' *unless and until* highly patterned impositions of hierarchy are made consciously and reflexively central to Anthropocene discourse.

There is, in short, now an urgent need for an *in*justice-sensitive set of practices faithful to delivery of inclusion, compassion and resilience in a climate-threatened world. Relatedly, there is a need to theorise and to deploy legal personhood in an altogether more critical-creative way by calling on its innate plasticity to inform a non-hegemonic, complexity- and materiality-sensitive juridical imaginary (Grear 2013, pp. 76–101) and to allow the flourishing of plural, multi-layered eco-subjectivities in an open juridical ecology (see Philippopoulos-Mihalopoulos 2011a, b). In short, there is now a vital need to confront the *anthropos* with critically-informed, reflexive, epistemically humble and renewing engagements with the fundamental question of who '*we*' are[27] in the 'Anthropocene' age.[28]

References

Ahmed, Sarah. 1995. Deconstruction and law's other: Towards a feminist theory of embodied legal rights. *Social and Legal Studies* 4: 55–73.

Ajana, Btihaj. 2005. Disembodiment and cyberspace: A phenomenological approach, *Electronic Journal of Sociology*. http://www.sociology.org/content/2005/tier1/ajana.html. Accessed 22 June 2014

Anghie, Antony. 2005. *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press.

Assiter, Alison. 2009. *Kierkegaard, metaphysics and political theory: Unfinished selves*. New York: Continuum International Publishing.

Balter, Michael. 2013. Archaeologists say the 'Anthropocene' is here - but it began long ago. *Science* 340: 261–262.

Baxi, Upendra. 2001. *The future of human rights*. Oxford: OUP.

Belcher, Alice. 2012. The 'gendered company' revisited. In *Gender, sexualities and law*, ed. J. Jones, A. Grear, R.A. Fenton, and K. Stevenson. Abingdon: Routledge.

Berry, Thomas. 1999. *The great work: Our way into the future*. New York: Bell Tower.

Bookchin, Murray. 2005. *The ecology of freedom: The emergence and dissolution of hierarchy*. Oakland: AK Press.

Bosselmann, Klaus. 2010. Losing the forest for the trees: Environmental reductionism in law. *Sustainability* 2: 2424–48, http://www.mdpi.com/2071-1050/2/8/2424/pdf.

Bosselmann, Klaus. 2011. A vulnerable environment: Contextualizing law with sustainability. *Journal of Human Rights and the Environment* 2(1): 45–63.

Braidotti, Rosi. 2013. *The posthuman*. Cambridge: Polity.

Burdon, Peter. 2014. *Earth jurisprudence: Private property and the environment*. Abingdon: Routledge/Glasshouse.

Chakrabarty, Dipesh. 2009. The climate of history: Four theses. *Critical Inquiry* 35: 197–222.

Code, Lorraine. 2012. Ecological responsibilities: Which trees? Where? Why? In *Should trees have standing? 40 years on*, ed. A. Grear. Cheltenham: Edward Elgar Publishing.

[27] A question posed in a deliberately and increasingly provocative mode by Code: 'Who do *we* think *we* are?' See, Code (2012, pp. 92–99).

[28] A question that should engage the 'open ecology' of critical environmental law (see Philippopoulos-Mihalopoulos 2011a, b) and the intra-active species entanglements of new materialisms and posthumanisms. See, for example, Haraway (2008).

Collard, Andree, and Joyce Contrucci. 1988. *The rape of the wild: man's violence against animals and the earth*. Bloomington: Indiana University Press.
Connecticut General Life Insurance Company v Johnson 303 US 77, 90 (1938) (Black, J. Dissenting).
Crutzen, Paul J. 2002. Geology of mankind. *Nature* 23: 415.
Crutzen, Paul J. 2006. The Anthropocene. In *Earth system science in the anthropocene*, ed. E. Ehlers, and T. Krafft. Berlin: Springer.
Cullinan, Cormac. 2002. *Wild law: A manifesto for earth justice*. Totnes: Green Books.
Grabham, Emily, Davina Cooper, Jane Krishnadas, and Didi Herman. 2009. *Intersectionality and beyond: Law, power and the politics of location*. Abingdon: Routledge.
Damasio, Antonio. 1994. *Descartes' error: Emotion, reason and the brain*. New York: Harper Collins.
Dekha, Maneesah. 2008. Intersectionality and post-humanist visions of equality. *Wisconsin Journal of Law, Gender and Society* 23: 249–267.
Descartes, Rene. 1984. Principles of philosophy. In *The philosophical writings of Descartes, part 1, section 8 at 195*, ed. J. Cottingham, R. Stoothoff, and D. Murdoch. Cambridge: Cambridge University Press.
Dine, Janet. 2012. Jurisdictional arbitrage by multinational companies: A national law solution? *Journal of Human Rights and the Environment* 3(1): 44–69.
Douzinas, Costas. 1996. Justice and human rights in postmodernity. In *Understanding human rights*, ed. C. Gearty, and A. Tompkins. London: Mansell.
Douzinas, Costas. 2000. *The end of human rights*. Oxford: Hart.
Federman, Cary. 2003. Constructing kinds of persons in 1886: Corporate and criminal. *Law and Critique* 14: 167–189.
Finnis, John. 2000. The priority of persons. In *Oxford essays in jurisprudence*, vol. IV, ed. Jane Horder. Oxford: Oxford University Press.
Grear, Anna. 2010. *Redirecting human rights: Facing the challenge of corporate legal humanity*. Basingstoke: Palgrave Macmillan.
Grear, Anna. 2013. Law's entities: Complexity, plasticity and justice. *Jurisprudence* 4(1): 76–101.
Grear, Anna. 2014. Towards 'climate justice'? A critical reflection on legal subjectivity and climate injustice: Warning signals, patterned hierarchies, directions for future law and policy, Special Issue: Journal of Human Rights and the Environment 5: 103–133.
Green, Kate. 1996. Being here—What a woman can say about land law. In *Feminist perspectives on the foundational subjects of law*, ed. Anne Bottomley. London: Cavendish.
Green, Kate. 1998. Citizens and squatters: Under the surfaces of land law. In *Land law: Themes and perspectives*, ed. S. Bright, and J. Dewar. Oxford: Oxford University Press.
Hacking, Ian. 1998. *Mad travellers: Reflections on the reality of transient mental illness*. Charlottesville: University Press of Virginia.
Halewood, Peter. 1996. Law's bodies: Disembodiment and the structure of liberal property rights. *Iowa Law Review* 1: 1331–1393.
Haraway, Donna. 2008. *When species meet*. Minnesota: University of Minnesota Press.
Hornborg, Alf. 2001. *The power of the machine: Global inequalities of economy, technology, and environment*. Walnut Creek: Altamira Press.
Hornborg, Alf. 2011. *Global ecology and unequal exchange: Fetishism in a zero-sum world*. London: Routledge.
Horwitz, M.J. 1981. Comment: The historical contingency of the role of history. *Yale Law Journal* 90: 1057–1059.
Horwitz, Morton. 1985. Santa Clara revisited: The development of corporate theory. *West Virginia Law Review* 88: 173–224.
Huggan, Graham, and Hellen Tiffin. 2007. Green postcolonialism in Interventions. *International Journal of Postcolonial Studies* 9(1): 1–11. Special Issue.
Hunt, Alan, and Gary Wickham. 1994. *Foucault and law: Towards a sociology of law as governance*. London: Pluto Press.
Ibrahim, Darian M. 2007. A return to Descartes: Property, profit and the corporate ownership of animals. *Law and Contemporary Problems* 70: 89–115.
Jochnick, Chris. 1999. Confronting the impunity of non-state actors: New fields for the promotion of human rights. *Human Rights Quarterly* 21: 56–79.
Johnson, Mark. 1987. Preface. In *The body in the mind: The bodily basis of meaning, imagination and reason*, ed. M. Johnson. Chicago: Chicago University Press.

Joseph, Sarah. 1999. Taming the Leviathans: Multinational enterprises and human rights. *Netherlands International Law Review* 46(171): 173–174.
Jung, Hwa Yol. 2002. Enlightenment and the question of the other: A postmodern audition. *Human Studies* 25: 297–306.
Jung, Hwa Yol. 2007. Merleau-Ponty's transversal geophilosophy and sinic aesthetics of nature. In *Merleau Ponty and environmental philosophy: Dwelling on the landscapes of thought*, ed. S.L. Cataldi, and W.S. Hamrick. New York: State University of New York Press.
Kamphuis, Charis. 2012. Foreign mining, law and the privatization of property: A case study from Peru. *Journal of Human Rights and the Environment* 3(2): 217–253.
Kapur, Ratna. 2007. The citizen and the migrant: Postcolonial anxieties, law, and the politics of exclusion/inclusion. *Theoretical Inquiries in Law* 8(2): 537–570.
Keller, Evelyn F. 1985. *Reflections on gender and science*. Yale: Yale University Press.
Koch, Max. 2012. *Capitalism and climate change: Theoretical discussion, historical development and policy responses*. London: Palgrave Macmillan.
Lahey, Kathleen, and Sarah W. Salter. 1985. Corporate law in legal theory and legal scholarship: From classicism to feminism. *Osgood Hall Law Journal* 23(4): 543–572.
Lakoff, George. 1987. *Women, fire and dangerous things: What categories reveal about the mind*. Chicago: University of Chicago Press.
Lakoff, George, and Mark Johnson. 1999. *Philosophy in the flesh: The embodied mind and its challenge to western thought*. New York: Basic Books.
Lurhmann, Tania M. 1994. The good Parsi: The post-colonial feminization of a colonial elite. *Man* 29: 333–357.
McLean, Janet. 2004. The transnational corporation in history: Lessons for today? *Indiana Law Journal* 79: 363–377.
Malm, Andreas. 2013. Sea wall politics: Uneven and combined protection of the Nile Delta coastline in the face of sea level rise. *Critical Sociology* 39: 803–832.
Malm, Andreas, and Alf Hornborg. 2014. The geology of mankind? A critique of the anthropocene narrative. *The Anthropocene Review* 1(1): 62–69.
Malm, Andreas, and Shora Esmailian. 2012. Ways in and out of vulnerability to climate change: Abandoning the Mubarak Project in the northern Nile Delta Egypt. *Antipode* 45: 474–492.
Marks, Gregory A. 1987. The personification of the business corporation in American law. *The University of Chicago Law Review* 54: 1441–1483.
Mayer, Carl J. 1990. Personalising the impersonal: Corporations and the bill of rights. *Hastings Law Journal* 41: 577–663.
Merchant, Carolyn. 1983. *The death of nature: Women, ecology and the scientific revolution*. New York: Harper Collins.
Merchant, Carolyn. 1998. The death of nature. In *Environmental philosophy: From animal rights to ecology*, ed. M.E. Zimmerman. New Jersey: Prentice Hall.
Moran, Leslie. 1992. Corporate criminal capacity: Nostalgia for representation. *Social and Legal Studies* 1: 371–391.
Naffine, Ngaire. 2003. Who are law's persons? From Cheshire cats to responsible subjects. *Modern Law Review* 66: 346–367.
Neocleous, Mark. 2003. Staging power: Marx, Hobbes and the personification of capital. *Law and Critique* 14: 147–165.
Nibert, David A. 2002. *Animal rights, human rights: Entanglements of oppression and liberation*. Oxford: Rowman and Littlefield.
Nibert, David A. 2013. *Animal oppression and human violence: Domesecration, capitalism, and global conflict*. New York: Columbia University Press.
Nkrumah, Kenneth. 1965. *Neo-colonialism: The last stage of imperialism*. London: Thomas Nelson and Sons Ltd.
Norrie, Alan. 2001. *Crime, reason and history: A Critical introduction to criminal law*. Cambridge: Cambridge University Press.
Otto, Dianne. 2005. Disconcerting 'masculinities': Reinventing the gendered subject(s) of international human rights law. In *International law: Modern feminist approaches*, ed. Doris Buss, and Ambreena Manji. Oxford: Hart Publishing.
Otto, Dianne. 2006. Lost in translation: Rescripting the sexed subjects of international human rights law. In *International law and its others*, ed. Anne Orford. Cambridge: Cambridge University Press.

Pateman, Carole. 1989. *The disorder of women: democracy, feminism and political theory*. Stanford: Stanford University Press.
Philippopoulos-Mihalopoulos, Andreas (ed.). 2011a. Towards critical environmental law. In *Law and ecology: New environmental foundations*. Routledge/Glasshouse: Abingdon.
Philippopoulos-Mihalopoulos, Andreas (ed.). 2011b. *Law and ecology: New environmental foundations*. Abingdon: Routledge.
Plumwood, Val. 1993. *Feminism and the mastery of nature*. London: Routledge.
Radhakrishnan, Rajagopalan. 2003. *Theory in an uneven world*. London: Blackwell.
Richardson, Janice. 2000. A refrain: Feminist metaphysics and law. In *Feminist perspectives on law and theory*, ed. Janice Richardson, and R. Sandland. London: Cavendish.
Santa Clara County v Southern Pacific Railroad Co 118 US 394 (1886).
Seidler, Victoria. 1998. Embodied knowledge and virtual space. In *The virtual embodied*, ed. J. Wood. London: Routledge.
Simons, Penelope. 2013. International Law's invisible hand and the future of corporate accountability for violations of human rights. *Journal of Human Rights and the Environment* 3(1): 5–43.
Special Rapporteur to the Commission on Human Rights' reports on the dumping of toxic waste: Commission on Human Rights (20 January 1998).
Turner, Stephen. 2013. *A global environmental right*. London: Routledge.
Weber, Andreas. 2012. *Enlivenment: Towards a fundamental shift in the concepts of culture and politics*. Berlin: Heinrich Boll Foundation.
Westra, Laura. 2004. Environmental rights and human rights: The final enclosure movement. In *Global governance and the quest for justice: Volume 4: Human Rights*, ed. R. Brownsword. Oxford: Hart Publishing.
Westra, Laura, and Bill E. Lawson (eds.). 2001. *Faces of environmental racism: Confronting issues of global justice*, 2nd ed. Lanham: Rowman and Littlefield Publishers.
Whitney, Shiloh Y. 2011. Dependency relations: Corporeal vulnerability and the norms of personhood, in Hobbes and Kittay. *Hyptatia* 26(3): 554–572.
Wood, Ellen M. 1999. *The origins of capitalism*. New York: The Monthly Press.
Woods, Ellen.M. 2005. *Empire of capital*. London: Verso.
Wright Mills, Charles. 2000. *The power elite*. Oxford: Oxford University Press.