For those troubled by environmental harm on a global scale and its deeply unequal effects, this book explains how international law structures ecological degradation and environmental injustice while claiming to protect the environment. It identifies how central legal concepts such as sovereignty, jurisdiction, territory, development, environment, labour and human rights make inaccurate and unsustainable assumptions about the natural world and systematically reproduce environmental degradation and injustice. To avert socioecological crises, we must not only unpack but radically rework our understandings of nature and its relationship with law. We propose more sustainable and equitable ways to remake law’s relationship with nature by drawing on diverse disciplines and sociocultural traditions that have been marginalised within international law. Influenced by Third World Approaches to International Law (TWAIL), postcolonialism and decoloniality, and inspired by Indigenous knowledges, cosmology, mythology and storytelling, this book lays the groundwork for an epistemological shift in the way humans conceptualise the relationship between law and nature.

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FOREWORD

Deconstructing the Legal Architecture of the Anthropocene

CARMEN G. GONZALEZ

Scientists believe that we have entered a new geological epoch known as the Anthropocene in which the unbridled economic activity of the planet’s most affluent populations threatens irreversible ecological harm. The environmental crises of the Anthropocene are deeply connected to the laws, policies, and institutions that enable a small fraction of humanity to pillage nature with impunity while imposing the economic and ecological consequences on the planet’s most marginalized populations.

In the name of growth and development, the affluent states of the Global North plundered and continue to plunder the resources of Africa, Asia, the Caribbean, Latin America and the Pacific – sometimes through brute force but most commonly through the ordinary operation of international trade law, international investment law, commercial contracts, and the lending practices of international financial institutions. These laws and institutions have enabled transnational corporations headquartered in the Global North to acquire land, water, energy, minerals, food, and, most recently, carbon offsets, and to emit prodigious quantities of pollution at the expense of poor, Indigenous, and other marginalized populations. And this uncontrolled extraction and consumption of the planet’s natural wealth has disrupted the climate, ravaged forests, contaminated air and water, produced unprecedented species extinction, and created sacrifice zones of intense toxic pollution that are unfit for human habitation.

International environmental law has generally failed to halt or reverse the rapid deterioration of the planet’s life support systems. Despite the proliferation of multilateral, regional, and bilateral environmental treaties, the rate of environmental degradation continues to accelerate.

What explains environmental law’s failure? Environmental law scholars have decried the discipline’s fragmentation, its incrementalism, its anthropocentric utilitarianism, and its embrace of market mechanisms and technological fixes. Several have pointed to the North–South tensions that permeate every area of international environmental law,
brining environmental treaty negotiations to a standstill. Some have argued that international economic law generally prevails over environmental law due to the latter’s lack of economic sanctions for non-compliance. Others have observed that international environmental law’s technocratic discourse makes it inaccessible to those who are not environmental law experts, rendering it an exotic and siloed sub-specialty of international law dominated by an elite (and disproportionately white and male) priesthood that often resists justice-oriented critique. Finally, some scholars contend that international environmental law, by accident or by design, has merely tinkered on the margins of an inequitable and unsustainable economic order, ameliorating some of its harshest impacts without challenging its core assumptions — including infinite economic growth on a finite planet.

While all these explanations have some validity, they fail to capture a deeper malaise that goes far beyond international environmental law.

This path-breaking volume offers a breathtakingly fresh and insightful diagnosis of the problem: Ecological destruction is structurally embedded in the core doctrines of international law. The environment is the foundation of human life, and assumptions about the natural environment pervade every area of international law, either explicitly or implicitly. To understand international law’s complicity with global environmental degradation, it is necessary to deconstruct the discipline, identify fallacious and destructive assumptions, and remake the discipline by drawing upon the diverse legal traditions and values that have been subjugated by dominant practices, institutions, and ideologies.

Influenced by Enlightenment philosophers who reinforced the human/nature divide inherited from Christianity, international law governs nature through competing interventions that facilitate domination and extraction or, alternatively, promote conservation and stewardship. In both cases, human mastery over nature is produced and reproduced through a variety of processes, including mapping, monitoring, and managing, that construct nature as humanity’s inferior ‘other’ and authorize the regulation and control of nature in the service of the planet’s transnational elites.

The contributors to this volume identify the anthropocentric assumptions that permeate key concepts of international law, including sovereignty, property, development, and human rights. The notion of the environment as external to humanity is based on a view of the world that is alien to many human beings, but was imposed through colonization and through post-colonial ‘modernization’ and ‘development’
For many cultures, nature is mother, sister, brother, or simply the foundation of existence—not a commodity to be owned and traded to generate profit. Regrettably, those who deviate from the supposedly universal Western anthropocentric view of nature are frequently constructed as ‘primitive’ and ‘uncivilized’, and subjected to devastating interventions designed to transform and dispossess them.

While anthropologists, historians, literary critics, geographers, and philosophers, among others, have explored widely differing interpretations of nature throughout history and across cultures, this volume breaks new ground by interrogating assumptions about nature that are engrained in the foundational concepts of international law. But this volume provides more than critique. It also challenges the myths of the Anthropocene by offering counter-narratives that illustrate the ways that humans and natural systems are inextricably interconnected.

This trail-blazing volume represents a Copernican revolution that dislodges humans from the metaphorical center of the solar system and calls for a paradigm shift in international law grounded in ecological interdependence. It sets an agenda for future research on areas of law examined in this volume and on topics that are not covered, including contract law, investment law, trade law, intellectual property law, the law of armed conflict, criminal law, and migration law. It also calls for research on legal systems, contemporary and historic, that reject the human/nature divide.

Finally, the editors of this volume have created an opportunity for legal scholars who are not environmental law experts to engage in the urgent task of analyzing and reconceptualizing international law’s foundational assumptions in order to devise solutions to contemporary socio-ecological crises. This important volume opens the conversation about the environment to non-specialists and begins to tear down the walls that have confined international environmental law to a silo. It invites scholars with diverse perspectives and expertise to question and contest the laws and policies that enrich the few, impoverish the many, and pose an existential threat to human and non-human life.
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The seeds of the *Locating Nature* project emerged a decade ago in the Arabian desert. My husband and I awoke early one Saturday morning in Riyadh, expecting to fly home to Cairo for the fall teaching term. But the flight was cancelled because Cairo airport had closed with the onset of the Tahrir Revolution. Accompanied by the pink desert sunrise and the prospects for change sweeping across this long-troubled region, we spent that morning pondering, what will happen after the revolution? How will things improve?

As international lawyers working on environmental issues, we talked mostly about oil, water and land. To what extent were these resources implicated in the problems around us, and in incentivising international intervention into this region? How could local revolutions do anything about such transnational and global problems? That conversation first connected in my mind the natural world and modes of governance: the state of nature and the nature of the state. Through characteristic meandering and digression, we contemplated how the environment shaped ideology, religion and politics from ancient civilisations to modern states, and debated how the climate, oil, land and water formed national and international law and governance. For this and countless other inspiring early-morning conversations, and for his wisdom and unwavering support, Kishan has my perpetual gratitude.

The first time Kishan and I met Julia, she was presenting at a conference in Cairo on international mechanisms to mitigate deforestation. We knew we had met a kindred spirit when she veered off on a tangent to make a Robin Hood analogy, which ended up deftly supporting her original point. Since this serendipitous meeting, this edited collection has brought together like-minded folks from Amman to Antwerp, Melbourne to Miami, Sherbrooke to Sydney, Tallahassee to Toronto, Lima to Paris, Adelaide to Vancouver, and I am grateful for the unique, thoughtful, generous and productive insights each of these authors has brought to this collection. It took four years for this volume to come to...
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Usha

One of the genuine joys of academic life is meeting intellectual fellow-travellers and co-conspirators. I still recall my excitement after first meeting Usha and the camaraderie forged through late-night conversations about the violence of settler-colonialism and *terra nullius*, epistemologies of mastery, the vitality of anti-extractivist movements and critical scholarly praxis. I am grateful she trusted me to collaborate with her in guiding this project to publication and for her support along the way. Many thanks are also due to all the contributors to this volume for their insights and probing questions as well as their ethical commitment to politically engaged scholarship and ecological justice.

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Julia

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Usha and Julia