Attempts to fathom, tame and ‘unstrange’ nature’s alterity have long occupied modernist minds in Western societies. Nature’s alterity – the ‘stranger’ referenced by Dickinson – has no place in disenchanted imaginaries of progress, comprehension and control. This book traces this modernist representation of ‘nature’ in environmental and human rights laws. It aims to retrieve how particular understandings of how humans (ought to) relate to ‘nature’ informed, determined and underpinned environmental laws, and gradually led to an articulation of environmental concerns in a register of human rights protection. This shift in representation enacted a move from an overarching narrative of protecting ‘nature’ from ‘humans’ – thereby arousing an antagonistic sentiment of ‘humans’ versus ‘nature’ – to protecting ‘nature’ for ‘humans’ – thereby producing a harmonious ideal where environmental protection would benefit human interests. Yet, the story this book tells does not reaffirm this ideal of ‘humans living in harmony with nature’. Instead, I aim to linger in the ‘haunted house’ that Dickinson invokes – to inverse the gaze of those who subsumed environmental protection into liberal human rights concerns, and thereby ‘simplified nature’s ghost’. This account engages with the interpretation of environmental concerns by regional human rights courts and attempts to reintroduce dissonance in hegemonic narratives of synergy between environmental
protection and human rights. This focus on dissonance – on tensions and on trade-offs – enables two important interventions. First, it shows how an ever-greater need to protect the environment can collide with human entitlements framed as ‘rights’. Second, a study of conflicts between environmental and human rights laws reveals how their adjudication by regional human rights courts advances a particular agenda that prioritises specific modes of relating to the ‘environment’ by including certain concerns at the expense and the exclusion of others.

Conflicts between environmental protection and human rights present delicate trade-offs at times when concerns for social and ecological justice are ever more intertwined in environmental and human rights discourses. This book retraces how the legal ordering of environmental protection evolved over time and progressively merged with human rights concerns, thereby leading to a synergistic account of their relation. It explores the argumentative tropes and adjudicative strategies used in the environmental case-law of regional human rights courts to understand how these overlooked conflicts are judicially mediated in practice. The inquiry unveils how environmental and human rights concerns are perceived in relation to one another in legislative, adjudicative and doctrinal accounts. It does so by looking into the arguments and materials put forward by parties to the cases – legislations, argumentative strategies, expert interventions, pictures, videos and indicators serving to either strengthen certain claims or disqualify others. The analysis of the legislative instruments on environmental and human rights protection, the doctrinal debates surrounding their interpretations, and the case-law relating to their application, is driven by a desire to understand which representations of the environment are enshrined and enacted in human rights adjudicative settings. In this sense, this is a book about the representational politics of regional human rights courts in relation to environmental concerns. While considerations for environmental protection have become part and parcel of a human rights law agenda, concerns for human rights protection when implementing environmental policies have received less attention in legal scholarship. Distinct views on how humans ought to relate to the environment underpin these two approaches. On the one hand, the need to reinforce environmental protection standards to guarantee specific human rights translates an ideal that views environmental and human rights protection as mutually reinforcing objectives. This view furthers a harmonious interpretation of the relationship between environmental protection and human rights. Yet, on the other hand, the infringement of human rights through the implementation of environmental
policies translates an apprehension that stringent environmental laws might hamper the protection of certain rights. This reveals a conflicting relationship between environmental protection and human rights, which received little attention in scholarship to date.

Against this backdrop, the analysis traces how tensions between environmental protection and human rights are legally framed, performed and resolved, and unearths the legal discourses, political narratives and ecological imaginaries that shape this process. It is occupied with both the synergies and the conflicts that characterise the relationship between environmental and human rights laws, at times when both objectives have become part of a shared political agenda of socio-ecological justice. While it questions, contextualises and problematises how and why this dominant framing was construed, it also reveals how the conflicts that underpin this relationship – and the victims these conflicts affect – have mainly remained unseen.

The book provides the first sustained study on the conflicts that emerge between environmental protection and human rights. Merging case-law analysis with environmental history, political ecology and ethnographic insights, the book develops a theoretical typology of the areas of tension between these spheres of law. Since the analysis focuses on alleged infringements of human rights by environmental protection policies, the cases that it dissects are the ones that most directly and explicitly apply to such considerations, namely cases decided by regional human rights – instead of interstate – judicial settlement bodies. The book is occupied, in other words, with situations where individuals or groups of individuals claim that their rights have been violated by environmental protection measures adopted and implemented by states, and looks at how regional human rights courts deal with such conflicts. The allegedly infringed human rights provisions are here interpreted in the light of domestic and international environmental laws. As such, this book is less interested in questions of fragmentation of public international law into separated and functionally delineated specialised regimes, and how this affects the

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1 See, e.g., Stacia Ryder et al. (eds), Environmental Justice in the Anthropocene: From (Un)Just Presents to Just Futures (Routledge, 2021).
2 By excluding interstate treaty conflicts decided by international courts and tribunals, the analysis looks beyond the rules of conflict resolution and conflict avoidance as established under the Vienna Convention on the Law of Treaties (VCLT), 1155 UNTS 331 (1969). As such, the analysis contributes to the scholarship that seeks to offer new insights on the practices, processes and dynamics of conflict adjudication and normative interpretations beyond formal rule-based approaches.
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The objective, rather, is to explore what adjudicative strategies regional human rights courts have developed in settling conflicts between concerns that today tend to be considered as synergistic and mutually reinforcing normative goals. The central interrogation of the book can be formulated simply: How do regional human rights courts balance individual or collective human rights against the interest in environmental protection, in cases where environmental laws collide with human rights or fundamental freedoms? Several sub-questions unfold from this main interrogation. How do regional human rights courts address, conceive of and frame conflicts with environmental laws, many of which include considerations that are part and parcel of existing human rights? Which conflict-management techniques and argumentative strategies do they use to settle such trade-offs? And what does this tell us about how the environment is represented, and how its protection is legally justified in relation to human rights concerns? Given the ever-closer normative intertwining between environmental protection and human rights, a critical exploration of the narrow synergistic framing of their relation is both timely and necessary. An ideal of synergy facilitated legal interconnections between environmental laws and human rights, which some commentators view today as having merged into an overarching body of ‘environmental

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human rights law’, thereby verging towards a state of normative superposition. This, the book argues, is not a neutral stance, but a framing invested with political meaning on how ‘humans’ ought to relate to ‘nature’. The book unpacks the world-making effects this framing performs, and the role played by legislators, scholars and adjudicators in (re)producing it.

The book consists of two main parts. The first part of the book, covering Chapters 1 to 4, explores the origins of the relationship between environmentalism and human rights and traces the evolution of this encounter through a historical lens. It reveals the progressive meeting between both projects and uncovers their ever-closer normative interconnectedness. More precisely, I analyse how concerns for environmental protection and human rights emerged as distinct aspirations that progressively evolved towards a mutual integration into each other’s normative architecture, legal registers and institutional practices. The aim of this first part of the book is thus to offer insights into the construction and framing of the human–environment legal interface. In doing so, I pay particular attention to how the perceptions of the relations between ‘humans’ and ‘nature’ changed over time, and how these changes were articulated in international legal instruments, judicial decisions and doctrinal accounts. The analysis sheds light on a paradigm shift that occurred in the late 1960s, when environmental protection began to be framed as intertwined with human rights concerns. This shift corresponds to the first explicit references to human rights considerations in international environmental instruments. The first part of the book demonstrates how this turn in environmentalism was accommodated at three complementary levels.

First, at the legislative level, Chapter 1 shows how the imaginary and framing of ‘environmental protection’ changed in the passage from early to modern international environmental law, and how this shift impacted the conceptualisation and reconfiguration of human rights law. While closer connections were established between these bodies of law, the inquiry also evidences how specifically modernist, anthropocentric and synergistic understandings of the relations between ‘humans’ and ‘nature’ underpin these reconfigurations. Second, at the judicial level, Chapter 2

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shows how regional and international courts played a pivotal role in recognising, reproducing and mainstreaming this particular frame. It evidences how mutually beneficial interpretations of environmental and human rights protection were judicially articulated. In doing so, courts consolidated a specific understanding of the human–environment nexus according to which both environmental and human rights laws interact harmoniously. Third, at the doctrinal level, Chapter 3 demonstrates how scholars privileged this framing and understanding by focusing their attention almost exclusively on existing synergies. While many critiqued the anthropocentrism that underpins a human rights law-based approach to environmental protection, only a minority of scholars in the field questioned and critically scrutinised the overarching synergistic understanding of this approach. As a result, the tensions inherent to the relationship between environmental protection and human rights have largely been disregarded. Against this backdrop, Chapter 4 sets the stage for a critical analysis of such tensions by reintegrating conflicts of norms into the equation of environmental and human rights protection. An overview of conflicts between environmental and human rights concerns is discussed to instantiate the nature and the extent of the conflicting dimension that underpins this relationship.

Overall, the first part of the book introduces the origins, rationale, dynamics and interests at stake behind the dominant modernist, anthropocentric and synergistic understandings of a human rights-based approach to environmental protection. This paradigm is then contrasted with the main doctrinal critiques developed in interdisciplinary fields that understand ‘humans’ relation to ‘nature’ from an embodied, material and relational perspective, informed by intersecting strands of feminist post-humanist, new materialist, and decolonial scholarship. The book therefore situates itself within scholarly strands that critically engage with dominant modernist understandings of the human–environment interface and seek to offer new avenues of legal inquiry and critique. It does so by unpacking the tensions and trade-offs between two fields of public international law which have largely been framed as frictionless companions.

The ‘fiction’ of synergies between environmental protection and human rights is indeed so deeply embedded in the scholarly field of public international law that my research topic was regularly misunderstood or frowned upon when introduced in academic circles, where the notion of ‘conflicts’ in relation to ‘environmental protection’ and ‘human rights’ was cognitively translated as denoting the alarming human rights violations caused by rampant environmental degradations. I cannot recount all the times
I had to clarify the focus of my research when in discussions about my project, my interlocutors pointed to the human rights impacts of environmental pollution. While sharing the daunting distress regarding the socio-ecological deteriorations in sight, I had to specify countless times that my project was not looking into the human rights violations caused by environmental harms, but rather unpacking the harms that environmental protection laws can also bear on human rights. My research, it was clear, was going against the grain of accentuating harmony between environmental and human rights concerns. Fundamentally, however, my intervention was never aimed to delegitimise the ambitions of human rights and environmental activists, practitioners and scholars mobilised against socio-ecological injustices. Quite the contrary, it is with the intention of clarifying the stakes, dynamics, and challenges of contemporary socio-ecological struggles that I wish to bring the normative tensions and trade-offs that underpin the environment–human rights interface to the foreground. As stake is the need to reassess the nexus between environmental protection and human rights in public international law, which has been distorted by an ideal of harmony grounded in a distinctively modernist ontology and epistemology (or mode of inhabiting and of knowing the world). The cognitive dimension of this distortion is important to emphasise here, as it seems that in many ways the relation between environmental protection and human rights is unconsciously and unintentionally misconstrued. By way of illustration, in a book chapter written by John Knox, as former UN Special Rapporteur on Human Rights and the Environment, a section is devoted to the question of ‘Human Rights Law and Environmental Protection’.\(^5\) One could expect that the relationship between human rights law and environmental protection is addressed, as the title indicates. Yet, the chapter only touches upon the interactions between human rights law and environmental pollution, or, in other words, ‘environmental harm that interferes with the enjoyment of human rights’.\(^6\) With this framing widely spread across legal scholarship, it has generally become taken for granted that a measure aimed at protecting the environment inherently and necessarily benefits human rights, thereby, in turn, legitimising the expansion of human right law-based approaches to environmental protection.


\(^6\) Ibid., at 221.
protection. Against this backdrop, this book sheds light on the conflicting dimension of this relationship that a majority of scholars have discarded as non-existent. The first part of the book therefore evidences how conflicts of norms between environmental protection and human rights occur and reflects on what these tensions and their omissions mean and imply. This sets the stage for a dual mode of critique: I will not only show how environmental protection measures can negatively impact the enjoyment of human rights of particular individuals and collectives, but also explore how the vernacular and adjudicative processes of human rights protection provide a potent and often problematic framing of environmental issues. It is precisely this process of mutual re-description of environmental and human rights protection as synergistic that this book seeks to trace and problematise. In doing so, the book is guided by the ambition of enabling a different legal language and practice of care for more-than-human worlds – an imaginary unmoored from modernist anthropocentric groundings.7

The second part of the book, covering Chapters 5 and 6, delves into concrete conflicts between environmental laws and human rights mediated by regional human rights courts. It inquires into the environmental case-law of the African Court and Commission on Human and Peoples’ Rights, the Inter-American Court and Commission of Human Rights, the European Court of Human Rights and the Court of Justice of the European Union (CJEU) to explore conflicts between nature conservation and ‘Indigenous peoples’ rights, landscape preservation and ‘cultural minorities’ rights,8 animal welfare concerns and religious freedoms.

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8 I bracket the concept of ‘Indigenous peoples’ and ‘cultural minorities’ to acknowledge how these concepts were legally constructed by international law(yers) and stress their questionable descriptive value and substantive content in light of their theoretical and practical ambiguities. On how collectives mobilised these concepts and came to recognise and represent themselves as such, see Emma Nyhan, ‘International Law in Transit: The Concept of “Indigenous Peoples” and its Transitions in International, National and Local Realms – the Example of the Bedouin in the Negev’, in August Reinisch, Mary E. Footer and Christina Binder (eds), International Law and … Select Proceedings of the European Society of International Law (Hart, 2016), 289–308. While in this book, Indigenous peoples’ rights are qualified as ‘human rights’, I acknowledge the differences that exist between Western liberal understandings of such ‘rights’ and Indigenous cosmovisions in relation to their interests and duties. On these disparities, see Julia Suárez-Krabbe, Race, Rights and Rebels: Alternatives to Human Rights and Development from the Global South (Rowman and
and environmental protection concerns and private or communal property rights. The analysis of parties’ argumentation informs us about the normative tensions that underlie these conflicts of norms. The inquiry assesses the legal reasoning of judges when settling conflicts and pays due attention to the performative effects that such analytical configurations enact. The assessment is more occupied with the argumentative and justificatory framework that judges construct to legitimise the outcomes of the cases, than with a normative interpretation of the decisions reached in those instances. It is, in other words, the process of reaching these decisions rather than the decisions as such that I am interested in. How do judges frame the competing interests between environmental protection and human rights, and through which hermeneutics do they address such conflicts to mediate the trade-offs? What chain of legal reasons are articulated and justified to resolve the disputes? And what are the politics of balancing and proportionality in this specific normative context? A close reading of the cases sheds light on particular ‘tactics’ and ‘strategies’ developed by judges to justify their outcomes through an idiom of universality.

The analysis is inspired by and draws upon methods that contextualise and critique the co-production, framing and performative effects that courts’ interpretations entail and enact when settling conflicts. The case-law analysis reveals two recurrent ‘universalising techniques’ employed by courts to settle conflicts between environmental laws and human rights.

First, Chapter 5 demonstrates how the protection of the environment tends to be framed as a ‘general interest’ capable of limiting relative fundamental rights and freedoms, when environmental laws stand in apparent conflict with human rights. This framing of environmental protection as a general interest can seem intuitive when considering the vast environmental jurisprudence of regional human rights courts dealing with


‘Tactics’ are understood here as referring to ‘an essentially pragmatic intervention focused on winning the debate in the short term’, while ‘strategies’ refer to ‘one’s longer term, structural objectives’. See Robert Knox, ‘Strategy and Tactics’ (2010) 21 Finnish Yearbook of International Law 194.

environmental pollution leading to gross violations of human rights across the globe. In light of the alarming count down of a handful number of years left to temper climate catastrophes, the obligation to protect the environment can hardly be better defined than being in the ‘general interest’, the protection of which would help ensuring the threatened survival of human and nonhuman beings in more-than-human worlds. Yet, the discursive construction of a presumably integrated, common and shared ‘general interest’ is loaded with political agency. In dictating specific outcomes as being in the general interest, this adjudicative practice projects particular ideals into the realm of universality. Inevitably, in this process, certain ‘general’ interests are heightened at the costs of other ‘general’ interests. The book thereby provides an inquiry into the origins and meaning of the general interest, its attribution to environmental protection and, most importantly, its invocation and contestation within regional human rights courts when solving conflicts between environmental and human rights concerns. The ability of judges to reframe the particular in universal terms through the heuristic of the general interest is specifically assessed in light of Koskenniemi’s theory on the discursive hegemony of international legal argumentation. When courts frame particular substantive,


12 On 1 April 2022, the Intergovernmental Panel on Climate Change (IPCC) released its latest report, warning that little time is left to radically curb greenhouse gas emissions to avoid a rise in temperature of 2.4 to 3.5 degree Celsius by the end of the century. See ‘Climate Change 2022: Mitigation of Climate Change’, Contribution of Working Group III to the Sixth Assessment Report of the IPCC, at <www.ipcc.ch/report/ar6/wg3/> accessed 27 April 2022.

13 More-than-human worlds are opposed to anthropocentric modernist worldviews in which agency tends to be limited to humans. This formulation asserts the need to transcend the traditional human-centric approach to environmental protection and human rights and to account, instead, for a relational, embodied and embedded approach to posthumanist ecologies. See, e.g., Andrés Jaque, Marina Otero Verzier and Lucía Pietroiusti (eds), More-Than-Human (Het Nieuwe Instituut, 2020); Rosi Braidotti, ‘A Theoretical Framework for the Critical Posthumanities’ (2018) 36:6 Theory, Culture & Society 31–61; Michelle Bastian et al. (eds), Participatory Research in More-than-Human Worlds (Routledge, 2017).