Thinking through anthropocentrism in international law: queer theory, posthuman feminism and the postcolonial

A conversation between Emily Jones (University of Essex)
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In this conversation, we briefly outline the long-standing feminist critiques of liberal humanism in international law, as a starting point for our discussion about what a feminist approach to valuing and defending nature might be from a posthuman feminist or feminist new materialist perspective. We then consider how a posthuman feminist approach relates to the idea of granting legal personality to nature – or at least some aspects of nature - and the promises and risks of such projects. In conclusion we note the limits of the law for feminists and others seeking to centre or protect nature while also challenging the hierarchies liberal humanism and the anthropocene create, and suggest some alternative ways of thinking about the relationship between nature and international law from a feminist perspective.

Emily: Di, feminists have long been critical of the figure of the 'human' that is privileged by liberalism and reflected in international law. Could you start us off by summarising these critiques?

Di: While these critiques will be familiar to many, it is important to give them a central place in our conversation because, in thinking about threats to nature, we are not

suggesting the abandonment of feminist projects already underway in international law – in fact, they are fundamentally interrelated.

To date, feminists have exposed the particularity of the characteristics of the supposedly universal human being as constituted by international human rights law and the exclusionary effects that follow from this juridical creation. We have exposed the gendered, raced, imperial, heteronormative, privileged, autonomous and ableist assumptions implicit in this 'universal' subject – the human who is able to fully enjoy human rights and fundamental freedoms.

As a result, liberal/humanist international law relies upon and normalises a multitude of intra-human hierarchies – which work together to advantage the autonomous, white, able-bodied, middle class, heterosexual Man and marginalise all those who do not fit within this privileged category – rendering them not fully human – or 'exiled' within the law, as I have described it on an earlier occasion.[1] Further, feminists have shown how these human hierarchies work analytically to underpin and shape international law's structures, commitments and rationalities more generally – including its conceptions of the 'normal' nation state, of sovereignty and self-determination, of the international neo-liberal economic system and, linked with all this, laws relating to armed conflict – and 'peace'. Problematically, for all of us, promoting and engaging in armed conflict is in many respects understood as the supreme expression of robust masculinity – as a sign of strength; and advocating for 'peace' is understood as its feminine converse - a sign of weakness. In a similar way, 'nature' has been feminised and treated as the object of Man's rationality and scientific knowledges.

But Emily, posthuman feminists mount a much more extensive critique of liberal humanism – would you outline their perspective(s)?

Emily: Posthuman feminism is made up of many different branches. The form of posthuman feminism I am interested in lies at the convergence between post-humanism and post-anthropocentrism.[2] Post-humanism critiques the concept of

humanity, noting how “humanity” has never included all humans, being based upon the supposedly universal Man (like most strands of feminism). Post-anthropocentrism, however, critiques the idea that the Man is *the* central figure who is justified in dominating nature. Posthuman feminism brings these two critiques together, highlighting the ways in which a particular human subject has come to be centred in western thinking. This includes centring the white, male, heterosexual, able-bodied, middle class Man of liberal thought - described above by Di and the object of sustained feminist critique - as well as privileging the human over other subjects including nature and nonhuman animals.

Feminist new materialism is part of this feminist posthuman convergence, working to dismantle the hierarchy of the human over nature. Feminist new materialists question the subject/object binary as found within Descartes’s separation and hierarchisation of mind over body/matter, arguing instead that matter matters.[3] Feminist new materialism thus centres matter, including nature, as an actor. Nature, like all matter, is not fixed but changes, and is alive and adapts. Nature is self-organising and not shaped by human intervention alone but rather, humans and nature-matter change and respond to one another.

Di: Do you think posthuman feminism has the potential to address the concerns raised by older feminist critiques, or does it push them aside with the idea of the Anthropocene, which, as you say, rests on another deeply problematic hierarchical duality whereby humans, as a universal block or force, are privileged over the non-human?

Emily: I see feminist posthumanism and its engagement with international law not as something entirely new but, rather, as a continuation of earlier feminist work. As we have noted, feminist legal theory has long worked to dismantle the hierarchies of liberal humanism and feminist posthumanism seeks to continue that project while also applying that project to the anthropocene (broadly defined as the present geological era in which human activity has become the dominant influence on the environment). In addition, however, I think bringing feminist theory to the debates on climate change and the anthropocene is key to ensuring that the hierarchies which

exist between humans are not lost when seeking to break down the human-nature hierarchy. The different ways in which differently situated people are and will be impacted by climate change cannot be forgotten, in terms of gender and class as well as race.[4] Similarly, human beings have differentiated responsibilities for climate change and unequal power to take action to mitigate or halt it. Anthropocentrism, colonialism and capitalism have always been deeply entwined, including in international law, creating and reproducing global inequalities that enable privileged people to exploit less privileged people, their environments and their natural resources, and produce the fossil and mineral economy and its uneven distribution of wealth.

Di: So, climate change might be understood as 'a crisis of human hierarchy' as Anna Grear suggests,[5] which directly links earlier feminist concerns with addressing climate change and other human-caused threats to nature. One way a posthuman feminist might seek to de-centre the human in international law, and disrupt the associated hierarchies, may be to grant nature international legal personality so that it, or its various components, become legal 'persons' - and thereby have the power to make legal claims to protection, to restitution, to equality and non-discrimination, like humans. Can you explain what this might look like?

Emily: There have been various recent moves globally to grant domestic legal personality to nature, the most recent example being the proposed Right of Nature Bill in the Philippines.[6] Many of these moves have focused on bodies of water, with Ohio in the US recently giving legal personhood to Lake Erie[7], and the Indian Supreme Court in 2017 affirming a judgement by the High Court of Uttarakhand[8] which gave legal personality to the Ganges and Yamuna Rivers.

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One of the most widely publicised examples, however, was the granting of legal personality to the Whanganui River in New Zealand under the Whanganui River Claims Settlement Act of 2017.[9] The agreement followed a long struggle by local Māori activists, the Whanganui iwi, who contested the legal model of ownership and management that had been applied to the river prior to the Act. They argued that they are situated in connection with the environment they live in and thus that the river is alive, an ancestor. The river, now, is one and part of the tribe at law, meaning that harming the river is, by law, harming the tribe, while respecting the connection between the health and wellbeing of the river and the health and wellbeing of the people means ascribing the river with the rights and duties of a legal person.

This statutory recognition of the river seems like one way in which nature's agency and need for protection could be recognised, while also working to promote Māori rights and thus also challenge the hierarchy between indigenous and non-indigenous New Zealander forms of knowledge and law.

Di: Would granting legal personality to nature necessarily be a progressive move? There are a couple of ways that it could go terribly awry. First, isn't granting rights to nature double-edged - like the granting of marriage rights to same-sex couples which recognises same-sex intimate partnerships (gives them legal personality and grants rights) but only so long as they comply with mainstream heterosexual norms and practises? So, the *quid pro quo* for granting nature certain rights may well be that the exercise of those rights is only possible when consistent with the liberal-capitalist-

humanist status quo when, for example, it does not cost jobs or suspend or extinguish private property rights.

A second possibility is that nature could acquire a juridical personality like that of a corporation – which, especially in its transnational form, has been described as the 'apotheosis' – or perfected form - of the disembodied, rational, autonomous, white, male, property-owning *anthropos* constituted by the law.[10] The transnational corporation enjoys legal personality and unparalleled associated rights that limit its accountability/liability and protect elite (shareholder) interests above all other considerations. It is conceivable that the juridical reconstitution of nature as agential would similarly be in the image of the privileged human.

Either way, isn't the strategy of granting rights to nature risking its incorporation into the hierarchical humanism of the existing system of international law?

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Emily: I completely agree: neo/liberal legalism is the limit of the legal personality for nature model. The problem with the neo/liberal legal frame which underpins much of the dominant global lawscape is its ability to mould everything, including projects of potential resistance, into its frame of the law. Same-sex marriage is a core example of this – how queer radicality[11] ends up creating liberal legal recognition only for some. For example, one of the things I found promising about the Whanganui River Claims Settlement Act was its potential to disrupt dominant frames of property. Property and the conceptualisation of nature as property or as an object has played a key role in environmental domination and exploitation in the name of profit. Seeing the river as a subject, however, challenges the subject/object binary which underpins this system of

domination. However, while under the Act the people and the river are declared to be one, the Act explicitly states that it does not derogate from existing private rights in the Whanganui River. The Act, therefore, while being key for Māori rights, is carefully constructed to ensure that it is framed so as not to disrupt the neo/liberal legal order too much: allowing for recognition within the frames of neo/liberal law alone and thus allowing the liberal legal project to claim its progressive credentials while ensuring that the model itself is never fundamentally challenged.

But all of this is part of a wider problem for feminists and other critical thinkers of being caught between resistance and compliance[12]: using the law for change while also knowing that there is a need to think beyond the law as the law holds limited promise for radical change. This is a core tension that Ratna Kapur also grapples with in her latest book.[13] Kapur argues for the need to stop holding on to human rights as an emancipatory project, highlighting how human rights law is used to uphold patriarchy, colonialism and capitalism. Thus, while rights can be a useful tool for the recognition of some, it is also a governance project which includes some and excludes others (as in same-sex marriage). The same argument can be applied to the granting of rights to nature – that recognition comes at a cost.

Kapur searches for alternative understandings of freedom beyond dominant liberal accounts, primarily focusing on epistemologies from the Global South. However, while Kapur notes the inherent problems of the law and the law as a violent governance structure, she also highlights that the law can still be useful, calling not for abandonment of the human rights law but that it be understood for what it is; a mechanism of governance as opposed to a freedom project. Following this way of thinking, while the granting of legal personality to nature clearly has its limits, such a move could be understood as an incremental step towards greater change. Of course, there remains a core tension here in that using the law will only ever provide limited change and that using the law itself works to legitimate the law: balancing between resistance and compliance requires a nuanced understanding of all the issues and there is no one clear strategy for those seeking more radical change.

At same time, the Whanganui River Settlement Act provides some further recognition of Māori rights and it is important to note that this Act was negotiated and signed by the Whanganui iwi. I guess the question left by all of this is where do we, as critical feminists in international law, look for hope?

Di: Like the New Zealand legislature, others are turning to indigenous laws for guidance, which offer alternative ways of thinking about the relationship between nature and law. Here's how Christine Black describes Aboriginal law in *The Land is the Source of the Law*:

> [In Australia] law that is posited in the 'rights' of the Land has been moved to law that is posited in the 'rights' of humans… [Aboriginal law] is a system of relationship … to each other, to species, to land … when we are in relationship … everyone gives and receives in a structured relationship which comes from the land … Indigenous law must be given equal standing with Australian common law .. [this will] not only address the problem of pollution [and climate change] but will go to the core of the racial divide in Australia.[14]

I read this to suggest exactly what we have been talking about – that challenging the human/nature hierarchy also challenges the hierarchies that systematically structure human (dis)advantage, such as racism.

What then does this suggest about posthuman feminist strategies in international law?

My first impulse is to look for existing norms in international law that could lend weight to a much more fundamental feminist rethinking of international law than granting rights to nature. Three principles emerge for me suggested by Black's work.

First, she describes a law that values relationships and collectivism over individual enrichment and competitiveness. This is perhaps reached for by article 28 of the Universal Declaration of Human Rights (UDHR) 1948: "Everyone is entitled to a social

and economic order in which the rights and freedoms set forth in this Declaration can be fully realised."

Currently, our human inter-relationships are primarily regulated by states. To also recognise nature's agency and its entanglements with humans we need to rethink our understanding of the nation-state, in order to include the natural environment in its definition (as distinct from 'territory') and the responsibilities that flow from its inclusion on a par with the state's 'permanent population' (Montevideo Convention).

Further, connected to the idea of a planetary order in which everyone is equally able to exercise their human rights and fundamental freedoms are state's obligations to engage in 'international cooperation and assistance' (UN Charter and ICESCR), the principle of the common heritage of humankind, and the commitment to sustainable development, amongst others. These doctrines provide footholds for the kind of inclusive, respectful and redistributive politics that could produce an international law that dismantles the hierarchies amongst humans and between human and non-human ways of knowing and being.

Second, Black describes a law which places at least as much emphasis (probably more) on responsibilities as on individual or even group rights. In international law, responsibilities have received much less emphasis than rights – they are seen as arising from rights rather than as important on their own terms – their purpose is to secure rights rather than connect us in a structured way. The UDHR does make reference to responsibilities in article 29, although in deeply humanist terms:

> (1) Everyone has duties to the community in which alone the free and full development of his [sic] personality is possible.
> (2) In the exercise of his [sic] rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

There is clearly lots of work to do to broaden the interpretation of existing international law to include responsibilities that arise from our interactions with the natural/non-human world. A start, perhaps, has been made with more expansive interpretations of the right to life and the right to an adequate standard of living, but this remains limited by the hierarchical humanist framework embedded in the law.

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A third commitment, implicit in Black's work, is that we need law that is not founded upon violence and does not rely on violence for its enforcement. At a minimum, this places demilitarisation and general disarmament, as well as human equality, at the centre of our responsibilities to nature, as well as to each other, commitments that have always been central to feminist agendas.

Therefore, an already crucial question for feminists in international law now assumes even more urgency: how can we promote an international law, including an international law of peace, that is not founded on hierarchy and violence – violence directed against both humans and non-humans, including nature? Posthuman feminism opens some new possibilities for us to pursue.

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