Editorial – Constitutionalising in the Anthropocene

The contributions to this symposium on 'Constitutionalising in the Anthropocene' (CitA) arise out of a workshop hosted at Tilburg Law School in December 2020 aimed at addressing the challenges that the 'Anthropocene' poses to both the conceptual foundations and practical applications of constitutional theory, and out of a subsequent series of discussions and exchanges organised by the research community at Tilburg with the same moniker.[1] The community was established in 2019 with the aspiration of drawing together research in legal theory, environmental and constitutional law, international and European law, and regulatory theory to discuss how the rising interdisciplinary accounts of the 'Anthropocene' draw into question the very foundations of constitutionalism, legal institutions and the governance of what is now often referred to as 'more-than-human collectives'. In other words, we sought to initiate a series of discussions about the radical transformations that law ought to undergo given both its complicity in bringing about the Anthropocene and its insufficiency for responding to it.

In hosting the workshop that led to the following articles, we invited scholars from legal scholarship as well as from the environmental humanities (Neyrat) and international relations (Chandler). Cross-disciplinary discussions of Anthropocene, governance, law and politics are challenging, with divergent conceptualisations of what the 'Anthropocene' means and implies, when and how it emerged, and the (in)capacity of law to deal with its constitutive and disruptive conditions. This complexity leads to diverging accounts of the utility of (re)configuring constitutional transformations, rather than to jettisoning the urge to constitutionalise altogether. It took much effort to translate these different positions across the registers, terminologies and onto-epistemological assumptions of our various disciplines in order to converse at all. In retrospect, the exercise of convening these discussions draws into question the usefulness of disciplinarily-bounded knowledges and modes of analysis in the turn towards Anthropocene-related research. We are thus thankful to the editorial team of the *Journal of Human Rights and the Environment* for their patient and constructive editorial feedback as the pieces in this symposium evolved and came into conversation with each other. What follows is an eclectic yet sustained exchange on the questions which are redefining how we approach legal and governance research amid climate disorder, biodiversity collapse, oceans of waste, and centuries of ongoing environmental injustice. Notwithstanding the evident need to act urgently, the contributions in this edition emphasise the importance of reflecting patiently on the deep implications that the Anthropocene poses for our fields of research and practice.

The opening article of this special issue, titled 'Constitutionalising in the Anthropocene', takes up the task of mapping out three broad sets of questions which the Anthropocene provokes in legal theory and practice: on concepts and foundations, on regulatory modalities, and on institutional architectures and complexity. Conceptually, the move beyond human/nonhuman and subject/object distinctions, following increasing awareness from the environmental humanities about the shared agency and vulnerabilities of more-than-human collectives, demands a reconceptualisation of the foundations of legal relations for the Anthropocene. Technologically, the Anthropocene presents emergent developments in biogenetic editing, geoengineering and artificial intelligence which redefine how we think of agency and regulation. These technologies simultaneously raise sets of questions on two fronts. First, how ought they to be regulated, by whom and according to whose interests, given their

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transboundary and planetary impacts? Second, how can and should they be used — if at all — as regulatory technologies to engineer particular climates or edit out harmful biologic agents? Finally, the authors grapple with issues of temporality and transformation in legal institutions, invoking the Anthropocene to articulate the paradoxical position of law and its principles — such as sovereignty and personhood — as being both complicit in the extractive logics which define the Anthropocene era, and yet also powerful resources for radical transformative governance. Rather than offering definitive answers to identified questions, this mapping exercise seeks to acquaint readers with the primary challenges associated with the conditions of (in)habitability of and in the Anthropocene, and the extent to which they can be 'constitutionalised' through legal means and purposes.

In the second article, titled 'Towards a Planetary Coalition (A Preamble)', philosopher Frédéric Neyrat views the Anthropocene condition as a demand for a rethinking of forms of planetary coalition with distinct constituent powers and responsibilities that can account for temporal, spatial and subjective expansions of attention and action. In essence, Neyrat calls for nothing less than new forms of terapolitics for the 'Teracene'. Any future 'Preamble for a new Constitution' that could foster a planetary coalition by giving voice and effect to those Neyrat calls the 'People concerned with Time', would necessarily first demand a de-constitutionalising of the Teracene. This can be done by acknowledging the existence of those who suffered from past exploitation and colonisation and of those who wither from a future that is being erased in advance. What emerges is an exploration of constitutionalism not centred on the present, but around the multiple and overlapping temporalities of that which never existed enough and that which threatens to fall out of existence — what Neyrat calls 'ecopolitics without guarantees'.

Such temporal, spatial and subjective disruptions of modern understandings of constitutionalism are subjected to further unpacking by David Chandler in an article titled 'The Black Anthropocene: And the End(s) of the Constitutionalising Project'. As Chandler poignantly observes, any attempt to preserve the authority and legitimacy of constitutionalising exercises risks reaffirming the anti-Black ontology of the modernist categories of the 'human' and the 'world' that underpin and organise living conditions in the Anthropocene. A 'Black Anthropocene' is therefore suggested as both a para-ontological understanding and an ethico-political response to the Anthropocene that foregrounds the role of reparation, critique and futurity as a process. This framing opens up an 'anti-ontological' condition that runs counter to any constitutionalising project, inevitably leading to an existential questioning of the CitA project and the suggested transformations it explores. Overall, Neyrat's and Chandler's contributions profoundly interrogate the exercise of constitutionalism.

These contributions serve as avenues for further enquiry into the legitimacy of various Anthropocenic regulatory modalities. In her article on 'Reintroduction of Large Carnivores in Europe: a Case Study on Frictions Between Rules of Law and Rules of Nature', Floor Fleurke, for her part, provides an in-depth case study that illustrates the struggles of EU law to engage with the possible reintroduction of species, taking stock of the working and re-working of legal imagination that was required in order to resolve the regulatory disconnection and lacunae that initially obstructed it. She interrogates what happens when the static depictions of 'nature' in EU law are replaced by new temporal, spatial and ontological insights, with species on the move to new habitats as a result of changing climates, reintroduced to locales where they have been extinct for generations, or genetically hybridised with domesticated relatives. Her analysis illustrates the antiquated assumptions of the living environment that characterise EU conservation law, a field that has yet to truly reconcile with the conditions of life in the Anthropocene.

Finally, turning to the role of legal institutions in the Anthropocene, Johan Horst's contribution on 'Entanglements: The Ambivalent Role of Law in the Anthropocene', identifies two irreconcilable accounts of law's relationship with the Anthropocene: an affirmative and a critical one. Horst lays out the assumptions of these two accounts concerning how law

normatively relates with natural processes, law's position with respect to the economic exploitation of the environment, and law's role in shaping democratic institutions that account for the interests of 'nature' or other nonhuman considerations. Clearly convinced by the latter account of law's deep entanglement in bringing about and facilitating the Anthropocene, Horst urges critical legal analysis to engage with the plurality of legal forms that exist outside of the frameworks and imaginaries of capitalist modernity.

Taken together, the articles that make up this special issue introduce readers to the vast range of concerns, exercises, challenges, implications and dangers that come with *constitutionalising living in the Anthropocene*. They not only inform and challenge the outer conceptual and inner parameters of the CitA project, but they are also demonstrative of the sizeable dimensions of any intellectual project seeking to make sense of law's interaction with — and role or purpose within — the Anthropocene. Far from providing any concrete responses or solutions to the problems identified, in this editorial introduction, our more realistic objective is merely to highlight the many reckonings, potential (for) transformations, and interrogations that animate the CitA project. In so doing, this special issue is offered as an open-ended invitation for others to join and expand the conversation and to participate in its unfolding.

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