

# TEACHING PRIVATE LAW IN A CLIMATE CRISIS

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*First Nations analyses, climate science, social science and legal research indicate the significant role of private law in facilitating the conditions of climate change. Private law is a contingent feature of planetary health because its key concepts and institutions concentrate the legal rights to capital — the goods of life — in the private sphere. Private entitlements can act as shields against collective interests. Reforming law to address the climate crisis involves greater regulation of private interests to pursue the global goal of sustaining organised human societies, and thus addressing conflict between individual freedoms and collective exigencies. Reform depends on a differently educated generation of legal thinkers and practitioners.*

## I INTRODUCTION

The abstract conceptual fundamentals of the logic of private law — the autonomous individual, legal personality, a legal right, a security, a boundary, alienability, exclusion, fault, agreement, limited liability, etc — are theoretically unaffected by materiality. But, the physical manifestation of climate change challenges the logic and the operation of private law in numerous ways. The way that private law is practised will necessarily change as disputes escalate over resource insecurity; the meaning of damage and harm; where land, and riparian and littoral boundaries, have migrated; and what this means for title and risk, foreseeability, reasonableness and vulnerability. On one view, climate change and the challenges it presents destabilise private law, and on another view they provide opportunities for reform. Either way, ‘the significance of crises is the indication they provide that an occasion for retooling has arrived’.<sup>1</sup> Effective law reform depends on a differently educated generation of legal thinkers and practitioners. Legal education is, therefore, central to overcoming the institutional ‘barriers to climate change adaptation’.<sup>2</sup>

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<sup>1</sup> Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago University Press, 3<sup>rd</sup> ed, 1996) 76.

<sup>2</sup> Jan McDonald, ‘Mapping the Legal Landscape of Climate Change Adaptation’ in Tim Bonyhady, Andrew Macintosh and Jan McDonald (eds), *Adaptation to Climate Change: Law and Policy* (Federation Press, 2010) 8.

In addition to changing the way we ‘do’ private law — innovating its practice and operation — we also need to reformulate the discursive constructs of legal subjectivity and entitlement and the viability of the private–public taxonomy. First Nations analyses, climate science, social science and legal research indicate the central role of private law in facilitating the conditions of climate change. Private law is a contingent feature of planetary health because its key institutions, the corporation and private property, concentrate the legal rights to capital — the goods of life — in the private sphere. Private entitlements can act as shields against collective interests. Legal education plays an important role in facilitating or redressing climate change by reproducing or questioning the knowledge and skills used by generations of legal professionals and policy-makers to legitimate and prohibit economic and social relations and practices. By moving beyond a ‘business-as-usual’ approach to teaching private law, we could enable law graduates to contribute to a just transition to an environmentally viable future.

There are innumerable consequences of climate change. This article assumes that most of us are familiar with them, either generally or in detail, with corresponding degrees of pessimism.<sup>3</sup> Unfortunately, this pessimism might, in turn, manifest in various ‘discourses of climate delay’.<sup>4</sup> The trouble with “‘climate delay” discourses’ is that they ‘often lead to ... a sense that there are intractable obstacles to taking action’.<sup>5</sup> The task of legal educators is first to work against any tendency to resignation and inaction in ourselves and then to encourage and enable law students to take on the challenge of rethinking and reframing the legal architecture and operation of climate change inducing law. Changing the way we teach private law might not be easy; change rarely is. There might be resistance from a range of stakeholders including teachers, students and the profession. But, in the third decade of the 21<sup>st</sup> century, law students are part of a generation of climate-striking children and young adults who are adopting a range of strategies, including litigation, to campaign against a range of unsustainable institutional forms and activities including the investment of superannuation funds in non-sustainable resources, the issuing of forestry licences and, more generally, the failure of governments to act in the best interests of future generations.<sup>6</sup> Teaching private law in a climate crisis is

<sup>3</sup> SR Morton, ‘On Pessimism in Australian Ecology’ (2017) 42(2) *Austral Ecology* 122, 122.

<sup>4</sup> William F Lamb et al, ‘Discourses of Climate Delay’ (2020) 3 *Global Sustainability* 1.

<sup>5</sup> Ibid.

<sup>6</sup> See, eg, *Minors Oposa v Secretary of the Department of Environment and Natural Resources (DENR)* (1994) 33 ILM 173; *Mathur v Ontario* [2020] ONSC 6918; *Waratah Coal Pty Ltd v Youth Verdict Ltd* [2020] QLC 33; *O'Donnell v Commonwealth* [2021] FCA 1223; *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (Commonwealth)* (2021) 391 ALR 1; *Juliana v United States*, 217 F Supp 3d 1224 (D Or, 2016), revd 947 F 3d 1159 (9<sup>th</sup> Cir, 2020). For commentary, see Rachel Johnston, ‘Lacking Rights and Justice in a Burning World: The Case for Granting Standing to Future Generations in Climate Change Litigation’ (2016) 21(1) *Tilburg Law*

challenging and important because of the role private law plays in the facilitation of climate change, and also because some law students are already mindful, and often motivated, to be agents of positive change. Teaching private law in a climate crisis can assist legal and policy professionals-to-be ‘to understand trade-offs, to make choices and to invent solutions that can help us integrate choices that are environmentally sustainable within a larger framework of how we live’.<sup>7</sup> There are two parts to the argument in this article. The first set outs the significant relationship between climate change and private law. The second considers how legal education might disrupt and reformulate that relationship through the strategic adoption of alternative pedagogies towards supporting students in thinking about and eventually practising private law differently.

## II CLIMATE CHANGE AND PRIVATE LAW

Climate change is part of the Earth’s history. Presently, the Earth’s climate is changing rapidly and significantly. The year 2020 was the warmest on record (tied with 2016),<sup>8</sup> with a global mean temperature of 1.2 degrees Celsius above pre-industrial levels. According to Petteri Taalas, the Secretary-General of the the World Meteorological Organisation, these ‘are more than just statistics. Increasing temperatures mean more melting ice, higher sea levels, more heatwaves and other extreme weather, and greater impacts on food security, health, the environment and sustainable development.’<sup>9</sup> Higher global temperatures are driven by a range of factors, including greenhouse gas concentrations in the atmosphere. There is 45% more carbon dioxide in the atmosphere today than at the time of the Industrial Revolution, with the current level the highest it has been for at least 800,000 years.<sup>10</sup> Despite the COVID-19 pandemic, these concentrations rose in 2020. At current levels of emissions, ‘the world remains on course to exceed the agreed temperature thresholds of ... 2°C above pre-industrial

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Review 31; Joel A Mintz, ‘They Threw up Their Hands: Observations on the US Ninth Circuit Court of Appeals’ Unsatisfying Opinion in *Juliana v United States*’ (2020) 38(2) *Journal of Energy & Natural Resources Law* 201.

<sup>7</sup> Fernando M Reimers, ‘The Role of Universities Building an Ecosystem of Climate Change Education’ in Fernando M Reimers (ed), *Education and Climate Change: The Role of Universities* (Springer International Publishing, 2021) 1, 8.

<sup>8</sup> NASA, ‘Global Temperature,’ *Global Climate Change: Vital Signs of the Planet* (Web Page, 28 September 2021) <<https://climate.nasa.gov/vital-signs/global-temperature/>>.

<sup>9</sup> Secretary-General Professor Petteri Taalas quoted in World Meteorological Organisation, ‘New Climate Predictions Increase Likelihood of Temporarily Reaching 1.5 °C in Next 5 Years’ (Press Release 27052021, 27 May 2021) <<https://public.wmo.int/en/media/press-release/new-climate-predictions-increase-likelihood-of-temporarily-reaching-15-%C2%B0C-next-5>>. See also World Meteorological Organisation, *State of the Global Climate 2020: Provisional Report* (Report, 2020) 2 <[https://library.wmo.int/doc\\_num.php?explnum\\_id=10444](https://library.wmo.int/doc_num.php?explnum_id=10444)>.

<sup>10</sup> Climate Council, ‘What Is Climate Change and What Can We Do About It?’ , *Resources* (Web Page, 16 October 2019) <<https://www.climatecouncil.org.au/resources/what-is-climate-change-what-can-we-do/>>.

levels'.<sup>11</sup> Worse still is the very real risk that such an increase could be locked in without immediate decarbonisation because 'it takes centuries to millenia for carbon dioxide already present in the atmosphere to be removed by natural processes'.<sup>12</sup> 'Carbon lock-in generally constrains technological, economic, political, and social efforts to reduce carbon emissions.'<sup>13</sup>

The seriousness of climate change data has transformed the discourse of scientists, who have conventionally been known for their cool detachment and objectivity. Scientists are changing their audience, their position in the world, and also their communication, translating complex, technical data (gathered over several decades by tens of thousands of scientists across a wide range of fields) into accessible information with a clear and unequivocal narrative of crisis. Frustrated by political inertia, scientists are now sounding alarm bells and publishing 'warnings' for public information. In November 2019, over 11,000 scientists from 153 countries declared 'clearly and unequivocally that planet Earth is facing a climate emergency'.<sup>14</sup> According to current data, 'we need bold and drastic transformations'<sup>15</sup> of the status quo to 'avoid untold suffering due to the climate crisis'.<sup>16</sup> The discursive shift from objective detachment to dire warnings corresponds with the unprecedented scale and impact of harms that the data records and predicts.

Climate change is not attributed to 'the human species as an undifferentiated whole' but rather to 'the operation of a specific economic system promoted by a global minority'.<sup>17</sup> Indeed, 'paramount to understanding the underlying causes and consequences of climate change'<sup>18</sup> is the identification of a highly particular and relatively recent economic model and attendant legal regime, rather than an inherently human condition. The critical analysis and synthesis of trade, GDP and emissions data point to the correspondence of 'Northern' affluence through 'appropriation (of labour and land)' and its corollary 'displacement (of work and

<sup>11</sup> World Meteorological Organization, *WMO Provisional Statement on the State of the Global Climate in 2019* (Provisional Statement, 2019) 24 <[https://library.wmo.int/doc\\_num.php?explnum\\_id=10108](https://library.wmo.int/doc_num.php?explnum_id=10108)>.

<sup>12</sup> Valérie Masson-Delmotte et al (eds), *Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (IPCC, 2018) 9.

<sup>13</sup> Karen C Seto et al, 'Carbon Lock-In: Types, Causes, and Policy Implications' (2016) 41(1) *Annual Review of Environment and Resources* 425, 427.

<sup>14</sup> William J Ripple et al, 'World Scientists' Warning of a Climate Emergency' (2020) 70(1) *BioScience* 8, 8.

<sup>15</sup> Ibid 10.

<sup>16</sup> Ibid 8.

<sup>17</sup> Alf Hornborg, 'Colonialism in the Anthropocene: The Political Ecology of the Money-Energy-Technology Complex' (2019) 10(1) *Journal of Human Rights and the Environment* 7, 8. See also Donna Haraway, 'Anthropocene, Capitalocene, Plantationocene, Chthulucene: Making Kin' (2015) 6(1) *Environmental Humanities* 159; Bruno Latour, 'Agency at the Time of the Anthropocene' (2014) 45(1) *New Literary History* 1.

<sup>18</sup> Eduardo S Brondizio et al, 'Re-Conceptualizing the Anthropocene: A Call for Collaboration' (2016) 39 *Global Environmental Change* 318, 322.

environmental loads)' with climate change.<sup>19</sup> Hornborg concludes that 'even those of us who are most intent on saving the planet count among its heaviest burdens'.<sup>20</sup> This is increasingly recognised by climate scientists: '[t]he most affluent countries are mainly responsible for the historical GHG emissions and generally have the greatest per capita emissions'.<sup>21</sup>

Critical analysis of climate change data reveals that there are no solutions available to us by reproducing the economic models and legal doctrines 'born in colonial Britain'.<sup>22</sup> We need to think and learn about the world differently. In particular, there is an urgency for the world's affluent population living in 'nice places'<sup>23</sup> 'to open their eyes wide and to see and know law beyond the colonialist foundation'.<sup>24</sup> That foundation framed 'the natural world as property ... [that] is divided up for sale, profit and exploitation'.<sup>25</sup> 'Questions of *episteme* (understanding)[,] *techné* (practice) and *phronesis* (values and power) arise simultaneously'.<sup>26</sup> Consequently, 'climate change calls on academics to rise above their disciplinary prejudices, for it is a crisis of many dimensions'<sup>27</sup> requiring a "joined-up" analysis of the highest order, both within and between the environmental and social sciences'.<sup>28</sup> Social sciences and humanities researchers have already started to read and respond to scientific research data 'as an input'<sup>29</sup> and worked to connect it to relevant analyses of economies, laws, financial systems, political systems, social systems, histories and cultures. This work leads to more accurate and focused understandings of the precise locus of the problem so that effective solutions might become possible. The questions for law as a discipline, and for its practitioners, teachers, and students, are these: What is law's role in producing climate change? How could law work differently?

Legal scholars have researched the relationship of law to climate change both as a contributing factor (input) as a major socio-economic institution, and as an effect of climate change through direct regulatory responses to changing

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<sup>19</sup> Hornborg (n 17) 15, 18.

<sup>20</sup> Ibid 21.

<sup>21</sup> Ripple et al (n 14) 8.

<sup>22</sup> Hornborg (n 17) 16.

<sup>23</sup> Val Plumwood, 'Shadow Places and the Politics of Dwelling' (2008) 44 (March) *Australian Humanities Review* 139.

<sup>24</sup> Irene Watson, 'Aboriginal Relationships to the Natural World: Colonial "Protection" of Human Rights and the Environment' (2018) 9(2) *Journal of Human Rights and the Environment* 119, 138 ('Aboriginal Relationships to the Natural World').

<sup>25</sup> Ibid 126.

<sup>26</sup> Noel Castree, 'The Anthropocene and Geography I: The Back Story' (2014) 8(7) *Geography Compass* 436, 444 (emphasis in original).

<sup>27</sup> Dipesh Chakrabarty, 'The Climate of History: Four Theses' (2009) 35(2) *Critical Inquiry* 197, 215.

<sup>28</sup> Castree (n 26) 444.

<sup>29</sup> Peter G Brown and Jon D Erickson, 'How Higher Education Imperils the Future: An Urgent Call for Action' (2016) 2 *Balance* 42, 43.

circumstances.<sup>30</sup> They have observed that there is a direct relationship between particular regulatory frameworks, legal practices and patterns of adverse environmental change. English legal scholar Anna Grear argues that ‘patterned and predictable global and globalizing distributions of intra-species and inter-species injustice’ are so ‘foundational’ that ‘the current ecological crisis cannot really be understood without them’.<sup>31</sup> Legal research clearly suggests that the institutionalised and legally protected entitlement to, and the accumulation and disposal of, ‘Cheap Nature’<sup>32</sup> at ‘the scale of the global’, established by European and British imperial powers in their colonisation of other places and peoples in the world,<sup>33</sup> is a leading agent of climate change.

First Nations scholarship also records the adverse impact of European and British colonisation and legal institutions on the landscapes and countries from which diverse Indigenous legal regimes derive.<sup>34</sup> The holistic ontologies of First

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<sup>30</sup> Bram Akkermans, ‘Sustainable Property Law: Towards a Revaluation of Our System of Property Law’ in Bram Akkermans and Gijs van Dijck (eds), *Sustainability and Private Law* (Eleven International Publishing, 2020) 37; Rosemary Rayfuse, ‘The Anthropocene, Autopoiesis and the Disingenuousness of the Genuine Link: Addressing Enforcement Gaps in the Legal Regime for Areas beyond National Jurisdiction’ in Erik J Molenaar and Alex G Oude Elferink (eds), *The International Legal Regime of Areas beyond National Jurisdiction: Current and Future Developments* (Martinus Nijhoff Publishers, 2010) 165; William Boyd, ‘Climate Change, Fragmentation, and the Challenges of Global Environmental Law: Elements of a Post-Copenhagen Assemblage’ (2010) 32(2) *University of Pennsylvania Journal of International Law* 457; Louis J Kotzé, ‘Rethinking Global Environmental Law and Governance in the Anthropocene’ (2014) 32(2) *Journal of Energy and Natural Resources Law* 121; Shalanda Helen Baker, ‘Adaptive Law in the Anthropocene’ (2015) 90(2) *Chicago-Kent Law Review* 563; Eric Biber, ‘Law in the Anthropocene Epoch’ (2017) 106(1) *Georgetown Law Journal* 1; Sally Wheeler, ‘The Corporation and the Anthropocene’ in Louis J Kotzé (ed), *Environmental Law and Governance for the Anthropocene* (Hart Publishing, 2017) 289; John G Sprankling, ‘Property Law for the Anthropocene Era’ (2017) 59(3) *Arizona Law Review* 737; Tim Stephens, ‘Governing Antarctica in the Anthropocene’ in Elizabeth Leane and Jeffrey McGee (eds), *Anthropocene Antarctica: Perspectives from the Humanities, Law and Social Sciences* (Routledge, 2019) 17; Anna Grear, ‘Deconstructing Anthropos: A Critical Legal Reflection on “Anthropocentric” Law and Anthropocene “Humanity”’ (2015) 26(3) *Law and Critique* 225; Anna Grear, ‘“Anthropocene, Capitalocene, Chthulucene”: Re-encountering Environmental Law and its “Subject” with Haraway and New Materialism’ in Louis J Kotzé (ed), *Environmental Law and Governance for the Anthropocene* (Bloomsbury, 2017) 77; Andreas Philippopoulos-Mihalopoulos, ‘Critical Environmental Law in the Anthropocene’ in Louis J Kotzé (ed), *Environmental Law and Governance for the Anthropocene* (Hart Publishing, 2017) 117; Alain Pottage, ‘Holocene Jurisprudence’ (2019) 10(2) *Journal of Human Rights and the Environment* 153.

<sup>31</sup> Grear (n 30) 85.

<sup>32</sup> Jason W Moore, ‘The End of Cheap Nature’ in Christian Suter and Christian Chase-Dun (eds), *Structures of the World Political Economy and the Future of Global Conflict and Cooperation* (LIT Verlag, 2014) 285.

<sup>33</sup> Grear (n 30) 83.

<sup>34</sup> Nicole Redvers et al, ‘Indigenous Natural and First Law in Planetary Health’ (2020) 11(29) *Challenges* 1. See also Clinton L Beckford et al, ‘Aboriginal Environmental Wisdom, Stewardship and Sustainability: Lessons from the Walpole Island First Nations, Ontario, Canada’ (2010) 41(4) *Journal of Environmental Education* 239; John Borrows, ‘Earth-Bound: Indigenous Laws and Environmental Reconciliation’ in Michael Asch, John Borrows and James Tully (eds), *Resurgence and Reconciliation: Indigenous–Settler Relations and Earth Teachings* (University of Toronto Press,

Nations laws highlight and confound the anthropocentric logic of Cheap Nature through which Western laws construct regimes of dispossession<sup>35</sup> and entitlement:

North American environmental and democratic systems are straining to sustain their current level of economic activity and material consumption ... [and] [t]he viability of our settlements requires that our ideologies and decision-making structures take account of the fact that we are embedded in nature.<sup>36</sup>

First Nations laws are largely place-based — that is, particular to specific and dynamic geographical conditions and limits — rather than universal and abstract. Although there is no pan-Indigenous legal regime, many place-based Indigenous laws foreground the authority, contingency and presence of non-human life, the interdependence of all life, and the situation of life in the dynamism of time.<sup>37</sup> Place-based laws are at odds with legal regimes that facilitate economic models of infinite growth and global development.<sup>38</sup>

Many private law concepts and doctrines were developed to protect and defend the socio-economic institutions that facilitated climate change: ‘a growth-based economy with its attendant political and economic philosophies of liberalism and capitalism’.<sup>39</sup> The taxonomic dichotomy of public law and private law is regarded as ‘a keystone of the semantic architecture of Western law’<sup>40</sup> and is ordered hierarchically. Although the significance of the categories and the differences between them vary across jurisdictions and legal cultures, it is generally understood (if not accepted) that the distinction between private law and public law hinges on whether ‘there is a legitimate basis for the law to regulate that conduct, or, to the contrary, it is a domain of unregulated individual choice in which the law does not belong’.<sup>41</sup> The research of legal historian Dan Priel suggests that the origins of the taxonomic separation of public law and

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2018) 49; Kim TallBear, ‘Caretaking Relations, Not American Dreaming’ (2019) 6(1) *Kalfou* 24; Watson (n 25); Marcia Langton, ‘The “Wild”, the Market and the Native: Indigenous People Face New Forms of Global Colonization’ in William Adams and Martin Mulligan (eds), *Decolonizing Nature: Strategies for Conservation in a Post-Colonial Era* (Earthscan Publications, 2003) 79.

<sup>35</sup> Michael Levien, ‘Regimes of Dispossession: From Steel Towns to Special Economic Zones’ (2013) 44(2) *Development and Change* 381.

<sup>36</sup> John Borrows, ‘Living between Water and Rocks: First Nations, Environmental Planning and Democracy’ (1997) 47(4) *University of Toronto Law Journal* 417, 421–2.

<sup>37</sup> Gay’Wu Group of Women, *Song Spirals: Sharing Women’s Wisdom of Country through Songlines* (Allen & Unwin, 2019).

<sup>38</sup> Sundhya Pahuja, ‘Beheading the Hydra: Legal Positivism and Development’ (2007) 1 *Law, Social Justice & Global Development Journal* 1.

<sup>39</sup> Nicole Graham, ‘This is Not a Thing: Land, Sustainability and Legal Education’ (2014) 26(3) *Journal of Environmental Law* 395, 410 (‘This is Not a Thing’).

<sup>40</sup> Alain Pottage and Martha Mundy, *Law, Anthropology and the Constitution of the Social: Making Persons and Things* (Cambridge University Press, 2004) 3.

<sup>41</sup> Hanoch Dagan and Benjamin C Zipursky, ‘Introduction: The Distinction between Private Law and Public Law’ in Hanoch Dagan and Benjamin C Zipursky (eds), *Research Handbook on Private Law Theory* (Edward Elgar, 2020) 4. See also Thomas W Merrill, ‘Private and Public Law’ in Andrew S Gold et al (eds), *The Oxford Handbook of the New Private Law* (Oxford University Press, 2020) 575.

private law in the development of English law was ‘manufactured’ to ‘shield’ private interests from the ‘pursuit of “collective goals”’ in liberal democracies.<sup>42</sup> Legal scholars confirm that this shield-like function of private law persists well into the 21<sup>st</sup> century, ‘especially in terms of the facilitation of markets and the granting of autonomy to private parties to organise themselves and reach their own solutions’.<sup>43</sup>

The view that the private–public law dichotomy is sacrosanct tends to be held by those who also consider that it is ‘only within the mission of the latter, not the former, to make things better ... for the community’.<sup>44</sup> Against this view, anti-formalist scholars regard it as ‘untenable to pretend that social and political goals did or even could remain outside of the process of fashioning and applying legal doctrine in private law’.<sup>45</sup> Accounts of the historical development and contemporary function of the law’s taxonomic separation of public and private laws are consistent with analyses of the current overarching regulatory framework of ‘regulatory capitalism’ through which markets themselves have now become ‘important national, regional and global regulators’,<sup>46</sup> protecting private interests from public interests such as taxation and industrial relations. Indeed, the largest economies in the world today are no longer those of nation states but of private corporations. The private sphere is thus the locus of most of the goods of life, and the legal rights to those goods are concentrated in the hands of private rights holders, largely through the key institutions of private law. As Akkermans observes, private law ‘plays an instrumental role’ in climate change through its regulation of ‘the building blocks of economic development’<sup>47</sup> and by ‘promoting the maximisation of economic growth’.<sup>48</sup>

Notwithstanding variations of legal culture across jurisdictions that support capital economies, the legal forms of private property and the corporation commonly underpin their function, socio-material relations and cultural discourses of entitlement.<sup>49</sup> These dominant and ubiquitous legal forms are

<sup>42</sup> Dan Priel, ‘The Political Origins of English Private Law’ (2013) 40(4) *Journal of Law and Society* 481, 504–5.

<sup>43</sup> Gijs van Dijck and Bram Akkermans, ‘Conclusion: Private Law on Sustainability’ in Bram Akkermans and Gijs van Dijck (eds), *Sustainability and Private Law* (Eleven International Publishing, 2020) 177.

<sup>44</sup> Dagan and Zipursky (n 41) 5.

<sup>45</sup> Ibid 6.

<sup>46</sup> John Braithwaite, *Regulatory Capitalism: How It Works, Ideas for Making It Work Better* (Edward Elgar, 2008) 29.

<sup>47</sup> Akkermans (n 30) 38.

<sup>48</sup> Massimiliano Montini, ‘Designing Law for Sustainability’ in Volker Mauerhofer, Daniela Rupo and Lara Tarquinio (eds), *Sustainability and Law* (Springer International, 2020) 33, 40.

<sup>49</sup> Nicole Graham, ‘Dephysicalisation and Entitlement: Legal and Cultural Discourses of Place as Property’ in Brad Jessup and Kim Rubenstein (eds), *Environmental Discourses in Public and International Law* (Cambridge University Press, 2012) 96; Graham, ‘This is Not a Thing’ (n 39); Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* (Routledge, 2015); Wheeler (n 30).



abstract, but they facilitate global environmental harms.<sup>50</sup> As Wheeler puts it, 'there are virtually always environmental effects that exacerbate climate change involved in most corporate activity.'<sup>51</sup> One explanation for the failure of law's key institutions is precisely their abstractness:<sup>52</sup> they are not conceptualised or situated within any geographical or metabolic relations or limits.<sup>53</sup> As such, 'the structure of the corporate form in terms of its purpose and its relationships is incompatible with the world's fragile environmental ecosystem'.<sup>54</sup> It is clear from First Nations analyses, climate science, social science scholarship and legal research that there is a profound relationship between private law and climate change. And since '[t]raditional legal education ... is characterised by pedagogies which it has been proposed arose in response to the industrial revolution',<sup>55</sup> it is important to take seriously the role that legal education plays in reproducing that relationship. If 'the cradle of legal thought and practice is the law school',<sup>56</sup> then legal education can and should contribute meaningfully to addressing climate change. The following section will consider the ways in which we might, as law teachers, take up the challenge and opportunity of teaching private law in a climate crisis.

### III TEACHING PRIVATE LAW DIFFERENTLY

Students accept theories on the authority of teacher and text, not because of evidence. What alternatives have they, or what competence? The applications given in texts are not there as evidence but because learning them is part of learning the paradigm at the base of current practice.<sup>57</sup>

If private law is not understood as being directly relevant to the environment, or climate change, then that may be because this is what students of law are taught, and what they later, as practitioners of law, believe. Maureen Cain contends that

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<sup>50</sup> Joseph L Sax, 'Environmental Law Forty Years Later: Looking Back and Looking Ahead' in Michael I Jeffery, Jeremy Firestone and Karen Bubna-Litic (eds), *Biodiversity Conservation, Law and Livelihoods: Bridging the North-South Divide* (Cambridge University Press, 2008) 9; Sean Coyle and Karen Morrow, *The Philosophical Foundations of Environmental Law: Property, Rights and Nature* (Hart Publishing, 2004); Graham, 'This is Not a Thing' (n 39); Sally Wheeler, 'Climate Change, Hans Jonas and Indirect Investors' (2012) 3(1) *Journal of Human Rights and the Environment* 92.

<sup>51</sup> Wheeler (n 50) 95–6.

<sup>52</sup> Nicole Graham, *Landscape: Property, Environment, Law* (Routledge, 2011); Wheeler (n 30).

<sup>53</sup> Wheeler (n 30); Nicole Graham, 'Dephysicalised Property and Shadow Lands' in Robyn Bartel and Jennifer Carter (eds), *Handbook on Space, Place and Law* (Edward Elgar, 2020); Jill Robbie, 'Moving beyond Boundaries in the Pursuit of Sustainable Property Law' in Bram Akkermans and Gijs van Dijck (eds), *Sustainability and Private Law* (Eleven International Publishing, 2020) 59, 74 ('Moving beyond Boundaries in the Pursuit of Sustainable Property Law').

<sup>54</sup> Wheeler (n 30) 296.

<sup>55</sup> Brad Jessup and Claire Carroll, 'The Sustainability Business Clinic: Australian Clinical Legal Education for a "New Environmentalism" and New Environmental Law' (2017) 34(6) *Environmental and Planning Law Journal* 542, 552.

<sup>56</sup> Graham, 'This is Not a Thing' (n 39) 422.

<sup>57</sup> Kuhn (n 1) 88.

lawyers are ‘symbol traders’<sup>58</sup> who engage in and entrench abstract legal categories, resulting in a profession that is uncritically facilitative of modern economic relations. This is problematic, given that ‘[m]ainstream economists are convinced that their accounts of growth and technological progress have no use for thermodynamics. In their worldview, nature is irrelevant for the constitution of society’.<sup>59</sup> Legal and economic discourses might, increasingly and encouragingly, have ‘green edges’. Ultimately, though, neoclassical economic theory and the jurisprudence of liberalism continue to be championed as enduring guides to ideal futures. The disconnection between scientific data about climate change and mainstream economic policy and its attendant legal apparatus is only possible because of what decision-makers learn, and the way they learn, about the world. As Haigh explains, many ‘believe that our present educational structures are less appropriately geared to meeting the needs of the future than to reinforcing the destructive characteristics of our current age.’<sup>60</sup>

Across the world, universities continue to educate generations of economists, lawyers and scientists as disciplinary specialists without any mandatory interdisciplinary training. An important pathway towards addressing climate change effectively is to acknowledge and address the intellectual damage caused by the fragmentation of knowledge and information in modern universities. Universities facilitate the specialisation of expertise through their systems of disciplines in both research and teaching. The systems of the Earth, however, are integrated. David Orr contends that such intellectual abstraction of the world is, in part, a product of a particular kind of education system comprised of, among other features, siloed thinking:

The great ecological issues of our time have to do in one way or another with our failure to see things in their entirety. That failure occurs when minds are taught to think in boxes and not taught to transcend those boxes or to question overly much how they fit with other boxes.<sup>61</sup>

A law degree is a remarkably siloed program of study that promotes the perspective that human laws are unrelated to the Earth’s laws.<sup>62</sup> Law is principally regarded as a discipline concerned with many (human) things and thus a law degree covers a broad range of topics, necessitating a core curriculum that is larger than most other degrees. The degree is then heavily structured owing to the requirements of accreditation, leaving little room to undertake a ‘major’ and

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<sup>58</sup> Maureen Cain, ‘The Symbol Traders’ in Maureen Cain and Christine Harrington (eds), *Lawyers in a Postmodern World: Translation and Transgression* (Open University Press, 1994).

<sup>59</sup> Hornborg (n 17) 10.

<sup>60</sup> Martin Haigh, ‘Greening the University Curriculum: Appraising an International Movement’ (2009) 29(1) *Journal of Geography in Higher Education* 31, 32 (citations omitted).

<sup>61</sup> David Orr, *Earth in Mind: On Education, Environment and the Human Prospect* (Island Press, 2004) 94–5.

<sup>62</sup> See Nicole Graham, ‘Owning the Earth’ in Peter Burdon (ed), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, 2011) 259.

‘minor’ in one or another field, as students would do in less structured degree programs. But this does not in itself prohibit the recognition of ‘the continuities between law as a subject of study and other disciplines and between law as practice and other practical activities.’<sup>63</sup> There is an intellectual insularity within legal education, including a reluctance to ‘engage with other disciplines’<sup>64</sup> that will need to be overcome. ‘While many forms of “modern” knowledge tend toward specialisation, the scope of the environment seems to compel an interdisciplinary, comprehensive focus.’<sup>65</sup>

Against conventionally siloed curriculum design, pedagogy and research in higher education, Dovers argues for a greatly increased capacity for ‘[i]ntegrative thinking’.<sup>66</sup> This approach would enable law students to draw connections between law and non-law disciplinary knowledge. Climate change can be classified in academic terms as a ‘wicked problem’,<sup>67</sup> meaning a problem that cannot be solved by existing rational systems and processes because they are too complex. Subsequently, the solutions to climate change cannot be found or delivered by any single field of experts. Rather, a ‘collective response is required to tackle these challenges and researchers ... need to engage with other disciplines, in order to understand the scope and scale of the problems facing us and also to collaborate on crafting responses.’<sup>68</sup> Holder has encouraged the use of ‘law in action’ and ‘law in context’ pedagogies to consider ‘how law interacts with and impacts upon the natural world in a physical manner’.<sup>69</sup> Similarly, the Chief Judge of the Land and Environment Court of New South Wales observed (extra-curially) that environmental problems ‘are polycentric and multidisciplinary’<sup>70</sup> and that, consequently, ‘[j]udges need to be educated about and attuned to environmental issues ... [T]hey need to be environmentally literate’.<sup>71</sup> Adopting interdisciplinary as well as contextual approaches to legal education at the

<sup>63</sup> William Twining, *Blackstone’s Tower: The English Law School* (Stevens & Sons/Sweet & Maxwell, 1994) 178. Cf Richard Collier, ‘We’re All Socio-Legal Now? Legal Education, Scholarship and the “Global Knowledge Economy” — Reflections on the UK Experience’ (2004) 26(4) *Sydney Law Review* 503, 523.

<sup>64</sup> Fiona Cownie, *Legal Academics: Culture and Identities* (Hart Publishing, 2004) 66–7.

<sup>65</sup> Lee Godden and Pat Dale, ‘Interdisciplinary Teaching in Law and Environmental Science: Jurisprudence and Environment’ (2000) 11(2) *Legal Education Review* 239, 251.

<sup>66</sup> Stephen Dovers, ‘Clarifying the Imperative of Integration Research for Sustainable Environmental Management’ (2005) 1(2) *Journal of Research Practice* 1, 2.

<sup>67</sup> Horst Rittel, ‘Second Generation Design Methods’ in Nigel Cross (ed), *Developments in Design Methodology* (John Wiley & Sons, 1984) 317.

<sup>68</sup> Robbie, ‘Moving beyond Boundaries in the Pursuit of Sustainable Property Law’ (n 4) 75.

<sup>69</sup> Jane Holder, ‘Identifying Points of Contact and Engagement between Legal and Environmental Education’ (2013) 40(4) *Journal of Law and Society* 541, 546.

<sup>70</sup> Brian Preston, ‘Benefits of Judicial Specialization in Environmental Law: The Land and Environment Court of New South Wales as a Case Study’ (2012) 29(2) *Pace Environmental Law Review* 396, 396. See also his Honour’s application of the concept of polycentricity in land-use decision-making in *Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Ltd* [2013] NSWLEC 48, [31]–[43], [483].

<sup>71</sup> Preston (n 70) 425.

program level is necessarily subject to a carefully researched and performed curriculum review process. But both approaches can also be adopted at both the unit of study level and within the sub-program level of private law subject progression.

Context-free pedagogy reproduces the abstractness of law and detaches it from its physical or material conditions. This is particularly problematic for private law subjects because of their facilitation of the model of economic growth and the predisposition of private law to 'abstract away from, rather than embed' collective goals to preserve the veneer of political neutrality.<sup>72</sup> Highlighting the absence of materiality in private law increases students' understanding of the significance of place-based Indigenous laws and increases the pedagogical benefit of learning Indigenous perspectives on non-Indigenous laws.<sup>73</sup> Students of non-Indigenous legal systems have the opportunity to learn how laws can successfully regulate human relationships with the non-human world over long periods of time through studying the examples of numerous and diverse place-based Indigenous laws. It also invites authentic engagement with scientific knowledge about the laws and limits of the Earth's systems to increase environmental literacy<sup>74</sup> and integrative thinking.<sup>75</sup> Connecting diverse place-based Indigenous laws and Western scientific knowledge to foundational private-law concepts, such as the autonomous rights-holding individual, could help in overcoming institutional barriers to change. Since climate change is the product of culturally specific socio-economic histories, institutions and practices, private-law teachers could begin by foregrounding the cultural specificity of existing laws in the context of their environmental conditions and effects. This is different in significant ways from mainstream approaches to what is known as 'sustainability education', which tends to

downplay (inferiorize, marginalize, invalidate, and exclude) [the] sustainability practices and pedagogic approaches from Indigenous communities from the 'global

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<sup>72</sup> Dagan and Zipursky (n 41) 7.

<sup>73</sup> Irene Watson and Marcelle Burns, 'Indigenous Knowledges: A Strategy for Indigenous Peoples Engagement in Higher Education' in Sally Varnham, Patty Kamvounias and Joan Squelch (eds), *Higher Education and the Law* (Federation Press, 2015) 167; Nicole Graham, 'Indigenous Property Matters in Real Property Courses at Australian Universities' (2009) 19(1–2) *Legal Education Review* 289; Marcelle Burns, 'Are We There Yet? Indigenous Cultural Competency in Legal Education' (2018) 28(1) *Legal Education Review* 19, 26; Annette R Gainsford, 'Connection to Country: Place-Based Learning Initiatives Embedded in the Charles Sturt University Bachelor of Laws' (2018) 28(1) *Legal Education Review* 1; Teresa Lloro-Bidart, 'A Political Ecology of Education in/for the Anthropocene' (2015) 6(1) *Environment and Society: Advances in Research* 128; Beckford et al (n 34); Vivien Holmes, 'Climate Strikers Go to Law School' (Conference Presentation, Legal Education Research Conference, UNSW Law, 27–28 November 2019).

<sup>74</sup> Graham, 'This is Not a Thing' (n 39) 411; Godden and Dale (n 65) 251; Lloro-Bidart (n 73).

<sup>75</sup> Dovers (n 66); Graham, 'This is Not a Thing' (n 39).

south' that have existed alongside ... [the] universalized and hegemonic Western-Euro-American approaches from the 'global north'.<sup>76</sup>

Situating private law subjects within their cultural and historical contexts and socio-economic function would enable students to understand the transformative potential of private law to effect real-world change. Learning law's taxonomy, subdisciplines and doctrines through contextual, interdisciplinary and critical pedagogies would reveal that their current operation conflicts directly with the changes to the legal system that would be necessary to redress the legal conditions of climate change. In his analysis of how law would be affected by adaptation to 21<sup>st</sup> century climate conditions, American legal scholar Eric Biber identified liberalism as the source of such conflict because it constructs individual freedom as morally prior to collective interests: 'No matter which strategy we adopt and no matter which specific legal approach we use, the dramatic increase in human impairments to global systems will trigger an increase in government intrusion in individual lives and decision-making.'<sup>77</sup> Closely regulating the private sphere is a contradiction of the structure and logic of Western law and will 'test a range of legal doctrines intended to protect individual rights against government overreach'.<sup>78</sup> Teaching private law in a climate crisis facilitates students' understanding of the fundamental challenges facing their generation and prepares them for the 'sharp, sometimes bitter, legal and political contests'<sup>79</sup> that they will confront.

If 'the end of the world is more easily imaginable than the end of capitalism',<sup>80</sup> then the way we teach private law is partly to blame. Climate change obliges law teachers to familiarise students with research data and non-Western observations, such as those described above, which indicate that affluent Western society 'has reached the end-point of its progress project and does not have the solutions to the crisis it constructed'.<sup>81</sup> The most important lesson of climate change education is also therefore the greatest challenge to its beneficiaries: individual freedoms must be sacrificed to collective exigencies. As Franzen argues:

Overwhelming numbers of human beings ... need to accept high taxes and severe curtailment of their familiar lifestyles without revolting. They must accept the reality of climate change and have faith in the extreme measures taken to combat it. ... They

<sup>76</sup> Soul Shava, 'Sustainability Education from an Indigenous Knowledge Perspective' in Joan Armon, Stephen Scoffham and Chara Armon (eds), *Prioritizing Sustainability Education: A Comprehensive Approach* (Routledge, 2019) 111.

<sup>77</sup> Biber (n 30) 5.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid 65.

<sup>80</sup> F Jameson, 'Future City' (2003) 21 *New Left Review* 65, 73, quoted in David Chandler, 'The Death of Hope? Affirmation in the Anthropocene' (2019) 16(5) *Globalizations* 695, 698.

<sup>81</sup> Watson, 'Aboriginal Relationships to the Natural World' (n 24) 139.

have to make sacrifices for distant threatened nations and distant future generations.<sup>82</sup>

Climate change induced suffering is distributed unequally across the categories of nation, culture, class, race, gender and generation in part because of the developmentalist logic built into legal positivism and the rule of law.<sup>83</sup> It is also distributed irrespective of individual property, council, state and national boundaries. In this respect, '[a]ll land is connected to all other land. This has important consequences when considering the impacts of the use of one plot of land and therefore regulation of this use.'<sup>84</sup>

The transformative potential of private law to effect real-world change is only part of the message of legal educators for the 21<sup>st</sup> century; the other part is foregrounding the existing and increasing impacts of climate change on the private legal interests of those who have hitherto been regarded as autonomous individuals operating in a world of choice. Already climate change is disrupting established private law concepts and doctrines through, for example, the erosion and migration of coastal and riparian property boundaries; the decreasing availability and security of legal entitlements to water; and the identification and foreseeability of risks and harms to individuals, neighbourhoods, nations and undifferentiated non-human life. In other words, the pressure of climate change on the continued operation of private law in its current form is great and growing.<sup>85</sup> Unless law's teachers and practitioners adopt proactive mitigatory measures that attend to both the paradigm and the application of private law, the result will be regulatory dysfunction and, ultimately, irrelevance. Climate change is inevitably changing private law because it is changing the world in which contract, tort, property and the corporation operate. The idea that unregulated private individual choices can be facilitated and protected by law is fundamentally challenged by problems that are beyond the control of individuals, and that are beyond the scale of the individual. The 21<sup>st</sup> century has already seen novel litigation over harms that are not only beyond individual humans, but beyond nation states and the present generation.<sup>86</sup> The first common law negligence case for transboundary harm in Australia was handed down in early 2021.<sup>87</sup>

Climate change is bringing fundamental changes to private law concepts and their interaction and application. Such changes threaten the stability of private

<sup>82</sup> Jonathan Franzen, 'What If We Stopped Pretending?' *The New Yorker* (online, 8 September 2019) <<https://www.newyorker.com/culture/cultural-comment/what-if-we-stopped-pretending>>.

<sup>83</sup> Pahuja (n 38).

<sup>84</sup> Robbie, 'Moving beyond Boundaries in the Pursuit of Sustainable Property Law' (n 53) 74.

<sup>85</sup> John D Echeverria, 'Climate Change and Property Law' in Rosemary Lyster and Robert RM Verchick (eds), *Research Handbook on Climate Disaster Law* (Edward Elgar, 2018) 332.

<sup>86</sup> Justice Brian J Preston, 'What's Equity Got to Do with the Environment?' (2018) 92 *Australian Law Journal* 257, 265–268.

<sup>87</sup> *Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd [No 7] [2021] FCA 237*. See also above n 6 for references to youth-led climate change litigation in relation to intergenerational equity and environmental justice.

law, which is essential to the ‘efficient functioning of the market economy’.<sup>88</sup> Climate change will necessarily lead to ‘the development of new rules and institutions’<sup>89</sup> that will transform fundamentally the concepts and principles that underpin private law. This ‘new’ private law is likely to subrogate the paramountcy of the rights of autonomous individuals to the broader interests of society; undermine the availability and reliability of the notions of foreseeability and proximity; subvert the priority of binding agreements between private individuals in a context of overarching harms to others; and explode the idea of ‘the reasonableness of an owner’s investment expectations’<sup>90</sup> where they are calculated without reference to the impacts of climate change. In this context, teaching private law in the same ways that we were taught is not a responsible option.

Conventional modes of legal education are unilateral and authoritative, reproducing legal positivism’s hierarchical top-down approach, rather than facilitating bottom-up modes of interdependence. Unilateral instruction in law to students who, on graduation, will be responsible for innovating private law and transforming its key concepts and doctrines is, therefore, not appropriate. Unlearning the abstract logic of private law is a challenge for both law’s teachers and its students, necessitating collaboration across disciplines, sectors, cultures, classes, races, genders and generations. Developing law students’ collaboration skills with non-law partners is critical to their ability to challenge the dominant model of law and to their capacity to apply interdisciplinary knowledge to legal contexts. Law teachers and students could identify and invite non-law and non-academic experts to co-teach part of a topic with interdisciplinary dimensions to avoid siloed approaches to higher education, since ‘new hybrid forms of knowledge’ should be co-produced rather than led by a single discipline.<sup>91</sup> Connecting students’ knowledge of climate change producing legal doctrines to their knowledge of other disciplines and other legal regimes avoids the ‘splendid isolation’ of environmental matters from the rest of the curriculum.<sup>92</sup>

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<sup>88</sup> Echeverria (n 85) 333.

<sup>89</sup> Ibid 337.

<sup>90</sup> Ibid 342.

<sup>91</sup> John Robinson, ‘Being Undisciplined: Transgressions and Intersections in Academia and Beyond’ (2008) 40(1) *Futures* 70, 72; Reinhold Leinfelder, ‘Assuming Responsibility for the Anthropocene: Challenges and Opportunities in Education’ in Helmuth Trischler (ed), ‘Anthropocene: Envisioning the Future of the Age of Humans’ (2013) 3 *RCC Perspectives* 9; Graham, ‘This is Not a Thing’ (n 39); David Rousell, ‘Dwelling in the Anthropocene: Reimagining University Learning Environments in Response to Social and Ecological Change’ (2016) 32(2) *Australian Journal of Environmental Education* 137; Brown and Erickson (n 29); Mari J Matsuda, ‘Admit That the Waters around You Have Grown: Change and Legal Education’ (2014) 89(4) *Indiana Law Journal* 1381.

<sup>92</sup> Jason MacLean, ‘Curriculum Design for the Anthropocene: Review of Meinhard Doelle & Chris Tollefson, *Environmental Law*’ (2020) 16(1) *McGill Journal of Sustainable Development Law* 3; David Mohan Ong, ‘Prospects for Integrating an Environmental Sustainability Perspective within the University Law Curriculum in England’ (2016) 50(3) *Law Teacher* 276.

Prioritising collaboration skills builds on and activates existing student interest and agency in climate change law and policy.<sup>93</sup> By ‘co-producing new and up-to-date research and curriculum in real time and in partnership with a growing diversity of climate governance actors’,<sup>94</sup> thus facilitating contextual, interdisciplinary and collaborative learning, students are empowered to further develop their field. Collaboratively, we must connect law to geographically specific and dynamic ecological conditions and limits, research materially viable regulatory practices founded on knowledge of the Earth’s laws that is manifest in non-Western legal regimes, and figure out how to prohibit the extraction, production and disposal of the goods of life in ‘shadow places’ for the almost exclusive benefit of the ‘nice places’.<sup>95</sup> Visualising climate change through place-based learning<sup>96</sup> is another helpful pedagogy that can expose law students to ‘the abattoirs, the hidden cities, the internal ecosystems, [and] the impacts of climate change’,<sup>97</sup> to foreground questions of climate justice in material, rather than abstract, terms. There are many reasons (and resources) for law teachers to teach differently. Law teachers have detailed and deep knowledge of the topics that they teach and may already (be able to) adopt contextual and interdisciplinary pedagogies, drawing from a wealth of relevant research in environmental education, sustainability education and law reform. Law teachers could wait for ‘top-down structural changes to happen over time’,<sup>98</sup> but climate change is a time-sensitive problem and ‘the rate at which these legal changes will be developed’ won’t wait.<sup>99</sup> Whether it is confidence, competence or permission that is needed, teachers must ‘take up their potentially catalytic role in creating and sustaining social foresight’<sup>100</sup> as a matter of urgency, since ‘all education is environmental education’.<sup>101</sup>

## IV CONCLUSION

To facilitate institutional adaptation to climate change and address the existential threat of feedback processes, tipping points and lock-ins, it is necessary to confront the problem of private law. First Nations analyses, climate science,

<sup>93</sup> Amy Cutter-Mackenzie and David Rousell, ‘Education for What? Shaping the Field of Climate Change Education with Children and Young People as Co-Researchers’ (2019) 17(1) *Children’s Geographies* 90; Robinson (n 91); MacLean (n 92) 25; Holmes (n 73).

<sup>94</sup> MacLean (n 92).

<sup>95</sup> Plumwood (n 23) 140; TallBear (n 34).

<sup>96</sup> Estair Van Wagner, ‘“Seeing the Place Makes It Real”: Place-Based Teaching in the Environmental and Planning Law Classroom’ (2017) 34(6) *Environmental and Planning Law Journal* 522.

<sup>97</sup> David Schlosberg, ‘Environmental Management in the Anthropocene’ in Teena Gabrielson et al (eds), *The Oxford Handbook of Environmental Political Theory* (Oxford University Press, 2016) 193, 206.

<sup>98</sup> Rousell (n 91) 142.

<sup>99</sup> Biber (n 30) 42; Richard A Slaughter, ‘Welcome to the Anthropocene’ (2012) 44(2) *Futures* 119.

<sup>100</sup> Rousell (n 91) 142 (emphasis omitted).

<sup>101</sup> Orr (n 61).



social science and legal research indicate that the interaction of Western private law and the Earth's laws adversely impacts on the Earth's systems. Private law is a contingent feature of planetary health because its key institutions, the corporation and private property, concentrate the legal rights to capital — the goods of life — in the private sphere. Private law establishes a suite of entitlements that act as shields against collective interests. Reforming law to address the climate crisis involves greater regulation of private interests to pursue the global goal of sustaining organised human societies. Simply put, unless 'law is made sustainable, it will protect unsustainable conducts.'<sup>102</sup> But closely regulating private interests undermines the structure and logic of law's public-private taxonomy and contradicts widely accepted truths about the latter, in particular the central role of individual autonomy. Teaching private law in a climate crisis requires preparing law students for bitter conflict over the planetary imperative that individual freedoms must be sacrificed to collective exigencies. Unilateral instruction is inadequate to teach the climate-striker generation whose interests, agency and skills are better served by co-producing alternative models of regulation. Collaboratively, we must connect law to geographically specific and dynamic ecological conditions and limits, research materially viable regulatory practices founded on the Earth's laws, and learn how to prohibit the extraction, production and disposal of the goods of life for the primary benefit of the unsustainably and inequitably (over-)developed world. To 'continue current global trends of "progress and development"' is to ensure the decline of all life on earth.<sup>103</sup>

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<sup>102</sup> Staffan Westerlund, 'Theory for Sustainable Development: Towards or Against?' in Hans Christian Bugge and Christina Voigt (eds), *Sustainable Development in International and National Law* (Europa Law Publishing, 2008) 47, 54, cited in Montini (n 48) 40 (emphasis omitted).

<sup>103</sup> Watson, 'Aboriginal Relationships to the Natural World' (n 24) 125.