

Environmental Law and Justice in the Anthropocene Era

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Angela Harris, [Vulnerability and Power in the Age of the Anthropocene](#), 6 **Wash. & Lee J. Energy Climate & Env't** 96 (2014).

The future is the Anthropocene Epoch - or at least some geologists argue that human activities now dominate global systems like the oceans and climate in qualitatively different way in the past, justifying the identification of a new geological era. Certainly human impacts on climate change provide a strong example to support this claim. Legal scholars are only just now coming to terms with what (if any) significant implications the Anthropocene might have for our legal system.

One thing I particularly like about Angela Harris' piece (*Vulnerability and Power in the Age of the Anthropocene*) is that it takes on the big question of whether and how the Anthropocene matters. Harris argues that the Anthropocene matters because in an era in which humans are changing global systems, there will be ongoing and major impacts on all humans, but especially the most vulnerable - in other words, changes in our global environment will have a particular salience for populations that have less political or economic power. After all, it is no accident that among the countries most vulnerable to the sea-level rise that is a product of climate change is Bangladesh, a poor and politically weak country where tens of millions of people may be displaced. As Harris notes, understanding how climate change affects those without political or economic political power is a key part of beginning a conversation about the relationship between the Anthropocene and critical legal theory.

A related major point that Harris makes is that human dominance of the global environment in the Anthropocene makes clear the interconnectedness of social and environmental decisionmaking. How we manage the global environment necessarily requires us to consider how we structure our societies and economies. Reciprocally, we cannot understand how our societies and economies function without understanding the role that the global environment plays in sustaining or impacting them.

Harris argues that accordingly we should identify two key principles of governance: One, that environmental protection and human rights are equal, joint, and indivisible components of just governance in the Anthropocene (*the indivisibility principle*); and two, that in making decisions about how to effectuate environmental protection and human rights, we should obey an *anti-subordination principle* that rejects oppression of any groups of humans, with a particular focus on historically oppressed populations such as racial, religious, and ethnic minorities.

I am excited about Harris's connection of the future of environmental protection - as encapsulated in the concept of the Anthropocene - with issues of justice writ large. One problem for environmental protection in the twentieth century was the all-too-long delay between the initial development of the modern environmental movement, and engagement of historically oppressed groups that have born disproportionate environmental burdens. I hope that Harris's piece is the beginning of ensuring that the difficult and important conversations we have about the environment in the next 100 years are more inclusive and more comprehensive.

As with any excellent piece, it raises questions about the next steps – questions that will be hard to answer. Here, I want to focus on one important follow-on question: Harris (rightly) places a strong emphasis on maintaining a critical, watchful eye to ensure that anti-subordination principles are not evaded in practice. Similar problems arise in the context of environmental decisionmaking – where human nature to focus on the short-term, the immediate, and the proximate leads us to downplay the long-term and large-scale implications of decisions, the implications that lead to environmental degradation. How can we ensure that environmental protection is not (effectively) made secondary to short-term economic pressures, particularly when economic growth can be framed as essential to meet the urgent need to raise billions out of poverty?

The importance of the question is highlighted by disputes in two countries that Harris identifies as leaders in trying to respond to the challenges of the Anthropocene: Ecuador and Bolivia. As Harris notes, both countries have enshrined in their laws and constitutions protection of the environment, broadly defined, and human rights, including indigenous populations. Yet both countries have also wrestled with [contentious disputes](#) about government-sponsored projects to extract fossil fuels from biologically significant forestlands, over the objections of many of the indigenous inhabitants of those lands. The legal frameworks these countries have developed are perhaps not (yet) adequate to satisfactorily resolve these disputes.

Harris's indivisibility principle attempts to reduce the risk that environmental protection will come second to economic development. But I wonder if we can do more. Much of modern American environmental law can be understood as an effort to reduce the risks of backsliding, of restraining ourselves from actions that would help us in the short-term but harm us in the long-term. Tools such as citizen suits, prohibitions on cost-benefit analysis, mandatory decisionmaking timeframes, and limitations on political influence for decisions all can help advance this goal.

How might such a tool to restrict backsliding on both environmental and human rights grounds work? One example might be a cap on the cumulative health risks from environmental exposures that any one individual should have to bear. It is the cumulative impacts of individual decisions that sometimes weigh so heavily on poor and minority communities – and a cap would ensure that no one individual or community bears a disproportionate burden from society's decisions. While implementation of such a cap raises a range of scientific and legal challenges, it is a project worth exploring. The State of California has already begun [cutting-edge work in this vein](#).

This one brief example makes clear the importance of the conversation that Harris begins with her article. I look forward to hearing more from her on the topic.

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