Introduction

Reconsidering REDD+

A INTRODUCTION

The question of how we respond to the climate crisis – or even how such a 'we' is configured – is perhaps the most critical legal, political and moral question of our time. The globalisation of a fossil fuel-dependent capitalism has taken the world to the brink of ecological disaster. The climate crisis makes transformation of the status quo both urgent and unavoidable. Yet, the *form* this transformation will take is not inevitable: different visions of the future remain heavily contested, and the processes of transition and their elements and speed remain the subject of high-stake debate and struggle.

The realisation that humans have so fundamentally changed our environment that we have become a 'geological force' raises uncomfortable questions about responsibility, culpability and what it means to live well in the 'Anthropocene'.[1] On a theoretical level, the contemporary epoch has sparked exciting investigations about how core assumptions of many disciplines, including the doctrines, principles and processes of international law, will need to be rethought, in a context where a once presumed environmental stability no longer exists.[2] Similarly, the ecological crisis has led to a revitalisation of scholarship critically interrogating how international law has contributed to the production of Anthropocene conditions by perpetuating an extractivist relationship to nature. Such scholarship seeks to excavate the problematic assumptions about nature that lie at the heart of international

[1] P. J. Crutzen, 'Geology of mankind' *Nature* (2002) 415 Nature 23; a number of other terms have been proposed, such as the 'Capitalocene' in J. W. Moore (ed.), *Anthropocene or Capitalocene?: Nature, History, and the Crisis of Capitalism* (PM Press, 2016); and the 'Chthulucene' in D. J. Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Duke University Press, 2016).

[2] D. Vidas, J. Zalasiewicz, and M. Williams, 'What is the Anthropocene – and why is it relevant for international law?' (2014) 25 *Yearbook of International Environmental Law* 3–23 at 23.

https://doi.org/10.1017/9781108529341.001 Published online by Cambridge University Press

law, and to remake international law's relationship with the natural world.[3] There is a growing chorus of scholarly voices calling for a different 'conception of law which acknowledges, and in fact emerges from, the entangled nature of existence'.[4]

Because the Anthropocene has given rise to such rich 'new' ways of thinking, some have suggested it marks a 'rupture' with the past.[5] However, the prosaic, day-to-day developments in the field of international legal practice are arguably marked more by *continuities* than by dramatic breaks from the norm. It is these questions of how existing structural power relations and sedimented historical conditions continue to influence responses to the climate crisis that are addressed by this book. This book is concerned with how the dominant international legal responses to climate change, particularly the marketised vision of a 'green economy', replicate – and indeed further intensify – already existing legal relations of domination, exploitation and marginalisation. While climate change arguably should have been the ultimate challenge to development and growth logic, in many ways it appears to have fuelled, rather than interrupted the expansion of these rationalities.

This book directs its attention to examining a specific response to the climate crisis – the Reducing Emissions from Deforestation and Forest Degradation scheme, commonly known by its acronym, REDD+.[6] REDD+ represents a particular way of framing and responding to the urgent challenge of addressing climate change that is not neutral in its effects, but has potential wide-ranging implications for how forests are governed and valued, both for biodiversity and for the estimated 1.6 billion people who live in and around forests and depend upon them to some degree for their livelihoods.[7] At stake in debates over REDD+ are struggles over the shape and contours of the necessary transition towards a low-carbon future, and

[3] U. Natarajan and J. Dehm (eds.), *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, forthcoming); U. Natarajan and K. Khody, 'Locating nature: Making and unmaking international law' (2014) 27 *Leiden Journal of International Law* 573–93.

[4] M. Davies, *Asking the Law Question*, Fourth edition (Thomson Reuters, 2017) p. 497.

[5] See C. Hamilton, 'The Anthropocene as rupture' (2016) 3(3) *Anthropocene Review* 93–106.

[6] I use the term 'REDD+' throughout this book (unless directly quoting someone using a different term). When first proposed in 2005, this scheme was initially referred to as 'RED' (Reducing Emissions from Deforestation). It was subsequently known as 'REDD' (Reducing Emissions from Deforestation in Developing Countries or Reducing Emissions from Deforestation and Forest Degradation). The '+' on the end of the 'REDD+' refers to the additional components, beyond reducing emissions from deforestation and reducing emissions from forest degradation, namely conservation of forest carbon stocks, sustainable management of forests and enhancement of forest carbon stocks endorsed in the Cancun Agreements (Decision 1/CP16, 'The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention' FCCC/CP/2010/7/Add.1 (15 March 2011) para 70). Pursuant to this agreement these activities should receive as much emphasis as reducing emissions from deforestation and reducing emissions from forest degradation.

[7] J. Eliasch, *Climate Change: Financing Global Forests. The Eliasch Review* (Earthscan, 2008) p. 9. See discussion in Chapter 1 for more details.

particularly with regards to how the burdens and benefits of any transition are distributed. REDD+ raises difficult questions about how global authority over resources, such as forests, located in the Global South should be distributed, as well as fraught questions about the present obligations arising from historical responsibility for greenhouse gas (GHG).[8] REDD+ therefore reflects broader debates about policy responses to climate change and underlying conflicts between the increased marketisation of climate policy and imperatives of global climate justice. Implicit in these debates are moral and justice arguments about whether questions of equity and (re)distribution should be central to climate change responses, or whether considerations of aggregate efficiency should be prioritised. Moreover, these contestations foreground how the present conjuncture is one that enlivens very different imaginaries of the future: an envisioned 'green capitalism' in which nature is scripted and valued in economic terms, commodified and financialised,[9] or alternative trajectories towards more decentralised decolonial frameworks of localised resource sovereignty.[10]

REDD+ is a scheme to address the contribution of GHG emissions from deforestation and forest degradation, which thereby brings together questions about the sustainable management of forests and climate mitigation. It therefore represents one part of a broader suite of 'nature-based' or 'natural' climate solutions that seek to preserve the integrity of ecosystems, improve sustainable management of ecosystems and restore degraded ecosystems.[11] The stated aim of REDD+ is to 'make forests more valuable standing than they would be cut down' by providing economic incentives to address tropical deforestation and forest degradation in the Global

[8] K. Mickelson, 'Seeing the forest, the trees and the people: Coming to terms with developing country perspectives on the proposed global forests convention' in Canadian Council of International Law (ed.), *Global Forests and International Environmental Law* (Kluwer Law, 1996) pp. 239–64; K. Mickelson, 'Beyond a politics of the possible? South–North relations and climate justice' (2009) 10(2) *Melbourne Journal of International Law* 411–23. I use the term 'Global North' and 'Global South' throughout this book, although this does not reflect the terminology in the climate regime. The 1992 United Nations Framework Convention on Climate Change established two lists: Annex I, which includes the 1992 members of the Organization of Economic Co-operation and Development (OECD) as well as some economies in transition, indicated by an asterisk; and Annex II, which includes only OECD countries. The 2015 Paris Agreement refers to 'developed country Parties' and 'developing country Parties', and also makes reference to 'least developed countries' and 'small island developing States'. Although my discussion necessarily has to adopt the language of the climate regime, where possible I choose to use the term 'Global North' and 'Global South' to avoid the implicit hierarchical ordering and developmental *telos* the concept of development implies.

[9] On this see *The Economics of Ecosystems and Biodiversity: Mainstreaming the Economics of Nature: A Synthesis of the Approach, Conclusions and Recommendations of the TEEB* (TEEB, 2010).

[10] On different trajectories arising out of the present conjuncture see also J. Wainwright and G. Mann, 'Climate leviathan' (2013) 45(1) *Antipode* 1–22; J. Wainwright and G. Mann, *Climate Leviathan: A Political Theory of Our Planetary Future* (Verso Books, 2018).

[11] See *Nature–Based Solutions to Address Climate Change* (International Union for the Conservation of Nature, 2016).

https://doi.org/10.1017/9781108529341.001 Published online by Cambridge University Press

South.[12] What has been particularly controversial is the proposal that REDD+ could operate as a carbon 'offset' scheme whereby countries in the Global North provide financial resources to promote the reduction of deforestation and forest degradation in the Global South, and in return can count the 'saved' carbon dioxide towards their own international mitigation commitments. Although at the time of writing no formal decision has been made about whether or how REDD+ would be included in international carbon markets under the United Nations Framework Convention on Climate Change (UNFCCC) or the Paris Agreement,[13] from its history and trajectory it is evident that REDD+ has been envisioned and planned as a market-orientated flexibility mechanism. Such proposals to incorporate deforestation and forest degradation into international carbon markets have been criticised as a 'false solution' by social movements and non-governmental organisations (NGOs) working towards climate justice, who question both the environmental integrity and social justice of carbon offsetting.[14]

This book argues that REDD+ needs to be analysed not just as a problematic 'false solution' to climate change but also as an ambitious project that is reorganising how forested land in the Global South becomes an object for international and transnational regulation. The analysis in this book is therefore not focused on the various limitations of REDD+, but rather draws attention to the productive effects of this type of international climate policy. It shows how REDD+ operates to reorganise social relations and to establish new forms of global authority over forests in the Global South in ways that benefit the interests of some actors while further marginalising others. It demonstrates how, through the creation of new legal relations, including new property rights and contractual obligations, new forms of transnational authority over forested areas in the Global South are being constituted. In doing so, it traces shifts in the location of authority to make decisions over forest resources; how this authority is actualised, enacted and materialised; and according

[12] UN-REDD Programme, *Frequently Asked Questions and Answers – REDD+ and the UN-REDD Programme* (June 2010).

[13] *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) ('UNFCCC'); *Paris Agreement*, opened for signature on 22 April 2016, UNTS XXVII.7.d (entered into force 4 November 2016) ('Paris Agreement').

[14] See for example L. Lohmann, *Carbon Trading: A Critical Conversation on Climate Change, Privatisation and Power* (Dag Hammarskjöld Foundation, 2006); S. Böhm and S. Dabhi (eds.), *Upsetting the Offset: The Political Economy of Carbon Markets* (MayFly Books, 2009); S.-J. Clifton, *A Dangerous Obsession: The Evidence against Carbon Trading and for Real Solutions to Avoid a Climate Crunch* (Friends of the Earth England, Wales and Northern Ireland, 2009); R. Hall, *REDD Myths: A Critical Review of Proposed Mechanisms to Reduce Emissions from Deforestation and Degradation in Developing Countries* (Friends of the Earth International, 2008); R. Pearse and J. Dehm, in *REDD: Australia's Carbon Offset Project in Central Kalimantan* (Friends of the Earth International, 2011); A. Dawson, 'Climate justice: The emerging movement against green capitalism' (2010) 109(2) *South Atlantic Quarterly* 313–38; N. Klein, *This Changes Everything: Capitalism vs. the Climate* (Simon & Schuster, 2014).

to what modalities of power it is deployed. In tracking these reconfigurations, this book focuses on how the legal arrangements constituting REDD+ not only operate to establish new forms of authority but also to rationalise and justify them.

Moreover, this book situates REDD+ as central to broader debates about the contours of and transition to a 'green economy'. REDD+ has been presented as a key part of a 'green economy transition',[15] with its proponents optimistic that it can contribute to a 'virtuous cycle' of investment that provides the catalyst for 'green development'.[16] More specifically, REDD+ proponents understand the scheme as central to post-2015 development objectives to ensure the socioeconomic benefits to be derived from forests are better 'valued',[17] while also holding 'transformative potential'[18] to facilitate a much wider valuation, commodification and financialisation of nature. REDD+ therefore should be seen as 'only a small and insignificant piece' of a broader trajectory of 'natural capital valuation' that frames conservation as a 'distinct "asset class" within conventional financial markets'.[19] Such expansive visions are reflected in comments made in 2011 by Christiana Figueres, the former Executive Secretary of the UNFCCC, when she described REDD+ as the 'spiritual core' of a 'global business plan for the planet'.[20] Similarly, the United Nations Environment Programme (UNEP) has 'placed REDD+ at the heart of its climate strategy' because of the opportunities REDD+ presents to 'catalyse further investments in other ecosystem services from forests, thus adding further "layers" of revenue streams from standing forests'.[21]

Contestations over REDD+ are therefore both important in their own right and also emblematic of broader struggles over differing modalities of environmental governance and how the relationship between the economy, society and the natural world should be configured. Grassroots Indigenous and climate justice activists have critiqued REDD+ as a 'land-grabbing false solution to climate change' that has 'privatized the air we breathe'; 'uses forests, agriculture, and water ecosystems in the Global South as sponges for industrialised countries' pollution'; and seeks to

[15] S. Sullivan, 'Banking nature?' (2013) 45(1) *Antipode* 198–217 at 200.

[16] P. Sukhdev, R. Prabhu, P. Kumar, A. Bassi, W. Patwa-Shah, T. Enters, G. Labbate, and J. Greenwalt, *REDD+ and the Green Economy: Opportunities for a Mutually Supportive Relationship* (UN-REDD Programme, 2012).

[17] 'State of the World's Forests: Enhancing the socioeconomic benefits from forests' (Food and Agricultural Organisation of the United Nations, 2014), www.fao.org/3/a-i3710e.pdf.

[18] I. Thiaw, 'Forward' in Xianli Zhu et al., *Pathways for implementing REDD+: Experiences from carbon markets and communities* (UNEP Riso Centre, 2010) p. 8.

[19] R. Fletcher, W. Dressler, B. Büscher, and Z. R. Anderson, 'Debating REDD+ and its implications: Reply to Angelsen et al.' (2017) 31(3) *Conservation Biology* 721–23 at 722.

[20] Transcribed by author from Center for International Forestry Research (CIFOR), 'Closing Remarks – Forest Day 5, 2011', blog.cifor.org/5782/countries-draft-%E2%80%9Cglobal-business-plan%E2%80%9D-for-planet-at-climate-summit-figueres-says/.

[21] I. Thiaw, 'Forward', p. 8.

https://doi.org/10.1017/9781108529341.001 Published online by Cambridge University Press

'bring trees, soil, and nature into a commodity trading system'.[22] They have condemned REDD+ as a mechanism that 'steals your future, lets polluters off the hook and is a new form of colonialism'.[23] The Indigenous Environment Network has described REDD+ as a new form of neo-colonialism or 'CO_2lonialism'.[24] Indonesian villages affected by a REDD+ project have described it as the 'new face of capitalism in the shape of ecological imperialism' that is 'turning our homes into a carbon toilet'.[25] These groups and others have thus articulated their strong opposition to REDD+ and called for the 'defense of indigenous territories and forest dependent communities, their autonomy and control over their territories and the protection of Mother Earth'.[26] For some commentators, the REDD+ scheme represents a form of 'green grabbing', 'the appropriation of land and resources for environmental ends', which has been recognised as 'an emerging process of deep and growing significance'.[27]

Taking inspiration from these criticisms, this book provides a critical reading of the logics and effects of the REDD+ scheme. It engages with, and builds upon, numerous critiques of REDD+ that have highlighted its clear limitations as a climate mitigation strategy, but the primary contribution of the book is to examine the productive effects of this type of international climate policy and to interrogate the sort of world that REDD+ assumes and looks forward to. It understands REDD+ both as a vision of market-orientated environmental governance and as a series of practices and processes directed towards actualising and implementing this ideal. This book maps how REDD+ reconfigures global authority over forested land and forest resources in the Global South, paying attention to the processes of agreement-making under the UNFCCC and the development of legal and governance frameworks for REDD+ at the national level, but also to transnational practices of agreement-making and 'capacity building'. In doing so, this book intervenes in a number of key legal debates. First, it provides a critical account of the work of international climate law and some of the implications of the turn towards

[22] 'Media release: UN promoting potentially genocidal policy at World Climate Summit' (8 December 2015, Indigenous Environment Network), www.ienearth.org/un-promoting-potentially-genocidal-policy-at-world-climate-summit/

[23] Ibid.

[24] *REDD: Reaping Profits from Evictions, Land Grabs, Deforestation and Destruction of Biodiversity* (Indigenous Environment Network, 2009); *No to CO_2lonialism! Indigenous Peoples' Guide: False Solutions to Climate Change* (Indigenous Environment Network, 2009).

[25] Petak Danum Kalimantan Tengah, *Our Land Is Not a Carbon Toilet for Dirty Industries of Developed Countries* (2012), copy on file with author.

[26] *Call to Action: To Reject REDD+ and Extractive Industries; to Confront Capitalism and Defend Life and Territories* (December 2014), wrm.org.uy/wp-content/uploads/2014/11/Call-COP-Lima_NoREDD.pdf.

[27] See J. Fairhead, M. Leach, and I. Scoones, 'Green grabbing: A new appropriation of nature?' (2012) 39(2) *The Journal of Peasant Studies* 237–61 at 238.

market-orientated modes of governance.[28] In addition, it highlights the limitations of viewing international environmental law (IEL) as concerned with developing tools to bridge the North–South divide,[29] and shows instead how IEL is implicated in the reproduction of difference between the Global North and the Global South and the continuation of neo-colonial relations. It also reveals the ways in which international and transnational law is complicit in forms of appropriation of land and resources, thereby contributing to the literature about 'land grabbing'.[30] Further, the analysis speaks to the shifting ways in which global authority is articulated and actualised in the contemporary capitalist economy through the concurrent operations and mutual co-constitution of both public and private laws. It thus highlights the need for the standard public–private divide to be disrupted in the analysis of contemporary as well as historical relations of global domination and imperialism.[31] Finally, given that REDD+ implementation poses distinctive challenges for coordination between the global, national and local scales, this book interrogates how the operations of global governance distributes rights, power and obligations between scales, and illuminates processes by which authority is globalised while responsibility is localised.

B ASSEMBLING REDD+

1 *REDD+ As a Relation*

This section provides a background to REDD+ as an assemblage of international, national and transnational laws that make it possible to include forests in international markets and shows how this assemblage holds different practices and modes by which nature is governed in different parts of the world, in relation with each other. Throughout this book, REDD+ is understood simultaneously as a legal framework, a vision of market-orientated environmental governance and a project of materialising or actualising this vision through various programs and preparatory and experimental processes which is dependent upon a particular way of seeing forests and forest resources and particular forms of representation and legibility and modes of standardisation, comparison and calculation. This book develops a

[28] In doing so, it builds on my earlier analysis in J. Dehm, 'Carbon colonialism or climate justice: Interrogating the international climate regime from a TWAIL perspective' (2016) 33 *Windsor Yearbook of Access to Justice* 129–61; J. Dehm, 'Reflections on Paris: Thoughts towards a critical approach to climate law' (2018) *Revue Québécoise de Droit International* 61–91.

[29] S. Alam, S. Atapattu, C. G. Gonzalez, and J. Razzaque (eds.), *International Environmental Law and the Global South* (Cambridge University Press, 2015).

[30] For a discussion of the relationship between international law and land grabbing see 'Symposium on land grabbing' (2019) 32(2) *Leiden Journal of International Law*.

[31] M. Koskenniemi, 'Expanding histories of international law' (2016) 56(1) *American Journal of Legal History* 104–12; M. Koskenniemi, 'Empire and international law: The real Spanish contribution' (2011) 61 *University of Toronto Law Journal* 1–36.

framework that brings these various conceptions together in order to understand REDD+ as a configuration of multiple legal frameworks; the vision they seek to actualise; the practices of implementation and materialisation pursuant to this objective; and the knowledge practices, forms of legibility and modes of calculation necessary for materializing REDD+. In doing so, it elucidates the complex nature of transnational norm creation at multiple sites and on multiple scales and identifies how REDD+ enables the actualisation of new forms of global authority as well as the reconfiguration of relations of power.

REDD+ and the capacity of forests to operate as 'carbon stocks' and to sequestrator carbon were affirmed as key parts of international climate mitigation efforts in the Paris Agreement.[32] The Paris Agreement sets ambitious objectives to hold the global average temperature increases below 2 °C and to 'pursue efforts' to limit temperature increases to 1.5 °C.[33] To achieve these goals countries aim to 'reach global peaking of emissions as soon as possible' and to undertake rapid emission reductions in order to 'achieve a balance between anthropocentric emissions by sources and removals by sinks',[34] affirming that international climate strategies are fundamentally concerned with both the reduction of GHG emissions and the intensification of carbon sequestration, through forests and other carbon sinks. The Paris Agreement specifically calls on Parties to 'take action to conserve and enhance ... sinks and reservoirs of greenhouse gases ... including forests'[35] and to implement and support the existing framework for REDD+. This 'potentially historic breakthrough'[36] has confirmed the centrality of REDD+ as a policy objective, a legal framework, a set of economic incentives and a series of practices aimed at protecting forests and promoting carbon sequestration as a climate change 'solution'.

One of the major – and still legally unresolved – controversies within the REDD+ negotiations relates to whether or not REDD+ will operate as an 'offset' scheme that allows parties to purchase carbon credits arising from sequestration activities in the Global South to meet their international mitigation commitments.[37] REDD+ is envisioned as a financial mechanism that relies upon valuing forests and the ecosystem services they provide, in economic terms, to provide incentives to address tropical deforestation by 'mak[ing] forests more valuable standing than they would

[32] *Paris Agreement*, Article 5.
[33] *Paris Agreement*, Article 2.1(a).
[34] *Paris Agreement*, Article 4.1.
[35] *Paris Agreement*, Article 5.1.
[36] 'Inclusion of REDD+ in Paris climate agreement heralded as a major step forward on deforestation' *Mongabay* 14 December 2015, news.mongabay.com/2015/12/inclusion-of-redd-in-paris-climate-agreement-heralded-as-major-step-forward-on-deforestation.
[37] For a discussion of country submissions and proposals see: UNFCCC Secretariat, *Financing Options for the Full Implementation of Results-Based Actions Relating to the Activities Referred to in Decision 1/CP.16, paragraph 70, Including Related Modalities and Procedures: Technical Paper*, FCCC/TP/2012/3 (26 July 2012).

be cut down'.[38] However, whether REDD+ finance will come primarily from carbon markets or other public and private sources remains unclear. At the time of writing no formal decision has been made that 'result-based' actions arising from REDD+ can be sold as 'carbon credits' and counted towards the compliance obligations of the purchasing country; nor has it been decided[39] whether REDD+ will be part of the 'new era of international carbon trading'[40] enabled by the Paris Agreement framework that could facilitate a 'much deeper world of cooperation'[41] and the development of carbon markets, which together with carbon taxes could potentially be worth US$100 billion annually.[42]

REDD+ was initially conceived of as a market-based system,[43] and it was anticipated that the majority of funding would come from carbon markets.[44] However, other commentators have suggested that this 'historic vision' of REDD+ as a market-based instrument no longer reflects current realities,[45] and that REDD+ is now more akin to conditional or result-based aid programs than it is to a carbon market mechanism.[46] At present, almost all international REDD+ funding comes from bilateral and multilateral development aid budgets, rather than carbon

[38] UN-REDD Programme, *Frequently Asked Questions and Answers – The UN-REDD Programme and REDD+*, November 2010, www.unep.org/forests/Portals/142/docs/UN-REDD%20FAQs%20%5B11.10%5D.pdf.

[39] Note at COP24 in Katowice, Brazil opposed linking Article 6 of the *Paris Agreement* to REDD+ (see 'Summary of the Katowice Climate Change Conference: 2–15 December 2018' 12(747) *Earth Negotiations Bulletin* 18 December 2018, 17, although there are a number of suggestions of how such linkage could occur: P. Graham, *Cooperative Approaches for Supporting REDD+: Linking Articles 5 and 6 of the Paris Agreement* (Climate Advisors, 2017); C. Streck, A. Howard, and R. Rajão, *Options for Enhancing REDD+ Collaboration in the Context of Article 6 of the Paris Agreement* (Meridian Institute, 2017).

[40] Mike Szabo, 'Paris Agreement rings in new era of international carbon trading' *Carbon Pulse* 12 December 2015, carbon-pulse.com/13339/.

[41] 'After Paris, UN's new "light touch" role on markets to help spawn carbon clubs' *Carbon Pulse* 15 December 2015, carbon-pulse.com/13415/.

[42] *Carbon Pricing Watch 2016: An Advanced Brief from the State and Trends of Carbon Pricing 2016 Report, to be released in 2016* (The World Bank Group and ECOFYS, 2015) p. 3.

[43] C. Streck, 'In the market: Forest carbon rights: Shedding light on a muddy concept' (2015) 4 *Carbon & Climate Law Review* 342.

[44] M.-C. Cordonier Segger, M. Gehring, and A. Wardell, 'REDD+ instruments, international investment rules and sustainable landscapes' in C. Voigt (ed.), *Research Handbook on REDD-Plus and International Law* (Edward Elgar Publishing, 2016) p. 348.

[45] A. Angelsen, M. Brockhaus, A. E. Duchelle, A. M. Larson, C. Martius, W. D. Sunderlin, L. V. Verchot, G. Wong, and S. Wunder, 'Learning from REDD+: A Response to Fletcher et al.' (2017) 31(3) *Conservation Biology* 718–20.

[46] A. Angelsen, 'REDD+ as result-based aid: General lessons and bilateral agreements of Norway' (2017) 21(2) *Review of Development Economics* 237–64; result-based aid is part of the 'second generation' approach to conditionality in aid development policy that is increasingly promoted as a 'promising approach for implementing post-2050 development goals', that 'seeks to identify quantifiable and measurable results that can be attributed as directly as possible to the effects of development cooperation'; see S. Klingebiel and H. Janus, 'Results-based aid: Potential and limits of an innovative modality in development cooperation' (2014) 5(2) *International Development Policy|Revue Internationale de Politique de Développement*.

markets. However, the 'financial architecture' underpinning REDD+ has increasingly been understood as consisting of three phases, where the first two phases are funded by public and private domestic and international investments, and the third phase is based on public and private result-based payments.[47] Going forward, 'result-based' payments for REDD+ could flow through both fund-based and market-based models;[48] however, there is strong evidence that suggests the latter is the more likely trajectory. Currently, REDD+ frameworks allow for market-linking,[49] and the legal framework and accounting rules in place for REDD+ could enable REDD+ credits to be used as offsets by purchasing countries.[50] Considerable regulatory and technical work has gone into making it possible for forest carbon to become a 'fungible, compliance-grade asset' that could be treated as equivalent to other forms of carbon.[51] This market-based approach has been advocated for in key policy documents such as the 2008 *Eliasch Review*, which called for 'well-designed mechanisms for linking forest abatement to carbon markets' in order to access private and public finance.[52] Moreover, the explicit objective of key players working on REDD+ implementation, such as the World Bank's Forest Carbon Partnership Facility (FCPF), is to 'jump-start a forest carbon market', where provision of international finance for what has been called REDD+-readiness is a key enabling condition for the gradual construction of forest carbon markets.[53] Indeed, some analysts have suggested that REDD+ needs to be linked to carbon markets to be financially viable, given that a significant increase in overseas development aid would be necessary for non-market models of REDD+ to be financially viable.[54] Some analysis indicates that unless there is a strong demand for REDD+ credits such programmes 'may fail to be developed or not continue',[55] or even that it would not be possible to meet future emissions reduction commitments without tradeable REDD+ credits.[56]

[47] See for example, Green Climate Fund, *Green Climate Fund Support for the Early Phases of REDD+*, GCF/B.17/16 (2 July 2017) p. 2.

[48] J. Isenberg and C. Potvin, 'Financing REDD in developing countries: a supply and demand analysis' (2010) 10(2) *Climate Policy* 216–31.

[49] Streck, 'In the market: Forest carbon rights: Shedding light on a muddy concept', 342.

[50] K. Dooley and A. Gupta, 'Governing by expertise: The contested politics of (accounting for) land-based mitigation in a new climate agreement' (2017) 17(4) *International Environmental Agreements: Politics, Law and Economics* 483–500 at 488–9.

[51] W. Boyd, 'Ways of seeing in environmental law: How deforestation became an object of climate governance' (2010) 37 *Ecology Law Quarterly* 843–916 at 879.

[52] J. Eliasch, *Climate Change: Financing Global Forests. The Eliasch Review* (Earthscan, 2008) p. 165.

[53] 'Media Release: Forest Carbon Facility Takes Aim at Deforestation' (World Bank, 11 December 2007), web.worldbank.org/archive/website01290/WEB/0__-1493.HTM.

[54] *Emerging Compliance Markets for REDD+: An Assessment of Supply and Demand* (United States Agency for International Development, 2013).

[55] N. Linacre, R. O'Sullivan, D. Ross and L. Durschinger *REDD+ Supply and Demand 2015–2025: Forest Carbon, Markets and Communities Program* (United Stated Agency for International Development Forest Carbon, Markets and Communities Program, 2015) p. x.

[56] *Emerging Compliance Markets for REDD+: An Assessment of Supply and Demand*.

It is anticipated that a key source of demand for REDD+ credits will come from the Carbon Offset and Reduction Scheme for International Aviation (CORSIA) that was adopted by International Civil Aviation Organization (ICAO) in October 2016. CORSIA aims to implement ICAO's goal to have carbon neutral growth from 2020 and the scheme is projected to offset 2.5 billion tonnes of emissions from aviation over 15 years.[57]

REDD+'s potential confirmation as a carbon offset mechanism has been particularly controversial because of the impossibility of verifying that carbon 'saved' through sequestration is equivalent to carbon emissions released elsewhere, and because of how carbon markets operate to spatially displace the site of emission reductions from the Global North to the Global South. Indeed, 'offsets' have been decried by critics as a 'dangerous distraction' that legitimates the ongoing extraction of fossil fuels and avoids the deeper structural transformations necessary to move to a low-carbon society.[58] However, even if REDD+ is not eventually incorporated into international carbon markets as an 'offset' but rather uses other financial means to incentivise additional sequestration of carbon in forested lands, it is still indicative of a logic – reflected in the Paris Agreement – of seeking a 'balance' between 'emission sources' and 'removals by sinks' in order to meet aggregate global targets.[59] After 'long and intense' negotiations, the terminology of 'net-zero emissions', 'near zero' or carbon or climate neutrality was not included in the Paris Agreement due to fears that including it could provide political licence to offset industrial emissions with land-based sinks;[60] however, the final wording of 'balance' is generally seen as similar in effect and a 'concept akin to net zero GHG emissions'.[61] The language of the Paris Agreement thus leaves open the possibility of continued industrial and terrestrial emissions, provided they are (ostensibly) offset or 'balanced' by the 'enhancement of sinks'.[62] Given the urgency of both reducing

[57] D. Bodansky, J. Brunnée, and L. Rajamani, *International Climate Change Law* (Oxford University Press, 2017) pp. 270–3.

[58] S. Bullock, M. Childs, and T. Picken, *A Dangerous Distraction: Why Offsetting Is Failing the Climate and People: The Evidence* (Friends of the Earth England, Wales and Northern Ireland, 2009); for an overview of critiques of carbon trading see R. Pearse and S. Böhm, 'Ten reasons why carbon markets will not bring about radical emissions reduction' (2014) 5(4) *Carbon Management* 325–37.

[59] *Paris Agreement*, Article 4.1

[60] Dooley and Gupta, 'Governing by expertise: The contested politics of (accounting for) land-based mitigation in a new climate agreement', 494; for a critique of the term 'net zero' see T. Anderson and K. Stone, *Caught in the Net: How 'Net-Zero Emissions' Will Delay Real Climate Action and Drive Land Grabs* (ActionAid International, 2015).

[61] H. Winkler, 'Mitigation (Article 4)' in D. Klein, M. P. Carazo, M. Doelle, J. Bulmer, and A. Higham (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press, 2017) pp. 141–165, 144.

[62] Dooley and Gupta, 'Governing by expertise: The contested politics of (accounting for) land-based mitigation in a new climate agreement', 494; they also note that the authoritative modelling in the IPCC Fifth Assessment Report on long-term mitigation pathways that informs policy is based on assumptions about the availability of 'negative emissions', see P. Smith,

GHG emissions *and* promoting enhanced carbon sequestration in forests, reducing emissions from fossil fuel sources and enhancing sequestration or 'draw down' should not be treated as substitutable and separate targets.[63]

Thus, although analysis of REDD+ is often focused on forested spaces and jurisdictions, this scheme needs to be understood within a broader frame that makes visible how it brings practices to reduce emissions from deforestation and forest degradation *into relation* with other practices producing emissions elsewhere. Offsets are often problematically conceptualised as a 'thing' when instead they should be conceived of as 'relational'.[64] Understanding offsets as instigating a relationship between carbon emitters in the North and carbon reducers in the South highlights their 'environmental-development' implications.[65] The logic of the 'offset', or of achieving a 'balance' between sinks and emission sources, is based on a *claim-of-equivalence* between GHG emissions produced from the combustion of fossil fuel in one place and emissions 'saved' in another. This claim of equivalence, although highly contested, is *performative* in that it has real effects, namely, it establishes a strategic relation between various activities in different parts of the world. The offset relation thus also holds together two very different modes of governing nature: one geared towards extractive ends and another geared towards enhancing and intensifying nature's capacity to sequester carbon. By establishing relations between different practices and different modes of governing nature, the offset relation establishes a new regime of global governance of nature and resources that is directed towards maximising the aggregate value to be derived from different types of resource use; however, where such value is defined in economically reductive ways.

2 *REDD+: Between Vision and Actualisation*

REDD+ has gained prominence in international climate debates because it promises a seductively simple response to the urgent, undeniable imperatives of addressing the crisis of deforestation and promoting climate mitigation and adaptation. Additionally, it also aims to address associated problems, including biodiversity protection, watershed quality and protection of the rights of forest communities. There is 'unequivocal' evidence of warming of the climate and its anthropocentric

'Chapter 11: Agriculture, forestry and other land use (AFOLU)' in O. Edenhofer (ed.), *Climate Change 2014: Mitigation of Climate Change* (Cambridge University Press, 2015).

[63] D. P. McLaren, D. P. Tyfield, R. Willis, B. Szerszynski, and N. O. Markusson, 'Beyond "Net-Zero": A case for separate targets for emissions reduction and negative emissions' (2019) 1 *Frontiers in Climate* 4.

[64] A. G. Bumpus and D. M. Liverman, 'Carbon colonialism? Offsets, greenhouse gas reductions, and sustainable development' in R. Peet, P. Robbins, and M. J. Watts (eds.), *Global Political Ecology* (Routledge, 2011) pp. 203–24, 212.

[65] Ibid.

causes, with approximately 24 percent of global emission coming from agriculture, forestry and other land use (AFOLU).[66] From 2007 to 2016, between 2.6 and 7.8 $GtCO_2$ per year were produced from land-use change caused mostly by deforestation.[67] Reducing deforestation and forest degradation has an estimated technical mitigation potential of 0.4–5.8 $GtCO_2$ per year.[68] All of the pathways modelled to limit warming to 1.5 °C or well below 2 °C require land-based mitigation and land-use change involving different combinations of reforestation, afforestation, reduced deforestation and bioenergy.[69] In this context, 'natural climate solutions' such as conservation, restoration and improved land management of forests as well as wetlands, grassland and agricultural lands have been promoted as necessary to achieve the Paris objectives, together accounting for one of the most cost-effective forms of mitigation.[70] The 2015 *Global Forest Resources Assessment* by the UN Food and Agriculture Organization (FAO) found that, although rates of deforestation had declined in the previous decade, rates were still alarmingly high: between 2010 and 2015 there was an annual decrease in forest area of 3.3 million hectares per year.[71] Additionally, there is an urgent imperative to address high rates of deforestation, not just for climate reasons but also to protect biological diversity, water and other environmental objectives.

When REDD+ was first proposed, it was celebrated as a 'significant, cheap, quick and win-win way to reduce greenhouse gas',[72] widely seen as having the potential to deliver significant low-cost and quick emission reductions.[73] Since it was first suggested in 2005, REDD+ has been one of the most prominent ideas in international climate negotiations and has helped to give 'unprecedented visibility' to deforestation and global forest protection.[74] Yet, despite over a decade of discussion, debate and demonstration programmes, REDD+ has not had a major impact on

[66] 'IPCC, 2013: Summary for policymakers' in T.F. Stocker et al. (eds.), *Climate Change 2013: The Physical Science Basis: Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambrdige University Press, 2013) pp. 4–5.

[67] *IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems: Summary for Policymakers (Approved Draft)* (2019) p. 7.

[68] Ibid., p. 24.

[69] Ibid., p. 26.

[70] B. W. Griscom, J. Adams, P. W. Ellis, R. A. Houghton, G. Lomax, D. A. Miteva, W. H. Schlesinger, D. Shoch, J. V. Siikamäki, and P. Smith, 'Natural climate solutions' (2017) 114(44) *Proceedings of the National Academy of Sciences* 11645–50.

[71] *Global Forest Resources Assessment 2015: How Are the World's Forests Changing?* 2nd edition (Food and Agricultural Organisation of the United Nations, 2016) p. 3.

[72] A. Angelsen and S. Atmadja, 'What is this book about?' in A. Angelsen (ed.), *Moving Ahead with REDD: Issues, Options and Implications* (CIFOR, 2008) pp. 1–9, 1.

[73] A. Angelsen (ed.), *Moving Ahead with REDD: Issues, Options and Implications* (CIFOR, 2008) p. viii.

[74] A. Angelsen, 'REDD+: What should come next?' in S. Barrett, C. Carraro and J. de Melo (eds.), *Towards a Workable and Effective Climate Regime* (CEPR Press, 2016) pp. 405–21, 406.

reducing forest loss.[75] The concept still has not been applied at scale, with proponents questioning whether it is ever likely to be realised on the scale at which it was envisioned.[76] The initial optimism that greeted REDD+ has now largely dissipated, and even key REDD+ proponents acknowledge that a 'thorough reality check is needed', given that the 'envisioned results in terms of reduced emissions have – by and large – not been delivered'.[77] Some commentators have therefore suggested that the hopes invested in REDD+ are unlikely to be satisfied,[78] and that REDD+ may simply be the latest conservation 'fad' that is 'embraced enthusiastically and then abandoned'.[79] While some suggest that 'REDD+ is dead; it's time to cut our losses and move on',[80] others maintain that REDD+, 'though troubled, is not dead'.[81]

Despite clear challenges in implementation, REDD+ remains a key part of international climate policy discussions. Almost 100 countries mentioned plans to reduce emissions from deforestation or to increase forest cover as part of their Paris Agreement commitments.[82] Over 70 countries have engaged in at least the early phases of REDD+ implementation, including through REDD+ initiatives such as the World Bank's Forest Carbon Partnership Facility and the UN-REDD Programme.[83] The Ecosystems Markets Map documents a total of 391 projects related to forest carbon, of which 43 are specifically REDD+ projects.[84] Between 2006 and 2014, more than US$8.7 billion was pledged for REDD+ from public and private sources (with the majority of funds coming from Norway, the United States [US], Germany, Japan and the United Kingdom [UK]) and directed to over 80 recipient countries, although 40 percent of funds went to Indonesia and Brazil.[85] The majority of these funds have gone to REDD+-readiness activities, and by mid-2017 only US$218 million of the US$2.9billion pledged to pay for actual REDD+ emission reductions had been disbursed.[86]

[75] Angelsen et al., 'Learning from REDD+: A response to Fletcher et al.', 718.
[76] Angelsen, 'REDD+: What should come next?', pp. 406–7.
[77] Ibid., p. 417.
[78] A. Wiersema, 'Climate change, forests and international law: REDD's decent into irrelevance' (2014) 47(1) *Vanderbilt Journal of Transnational Law* 1–66.
[79] K. H. Redford, C. Padoch, and T. Sunderland, 'Fads, funding, and forgetting in three decades of conservation' (2013) 27(3) *Conservation Biology* 437–8 at 437.
[80] R. Fletcher, W. Dressler, B. Büscher, and Z. R. Anderson, 'Questioning REDD+ and the future of market-based conservation' (2016) 30(3) *Conservation Biology* 673–5 at 673.
[81] A. Angelsen et al., 'Learning from REDD+: A response to Fletcher et al.', 718.
[82] K. Hamrick and M. Gallant, *Fertile Ground: State of Forest Carbon Finance 2017* (Ecosystem Marketplace, 2017) p. 1.
[83] Green Climate Fund, 'Green Climate Fund Support for the Early Phases of REDD+', 2.
[84] See 'Project list', www.forest-trends.org/project-list/#s (accessed on 15 February 2019). There is a wide geographical spread of projects, with 47 in Africa, 36 in Asia, 19 in Europe, 94 in Latin America, 47 in North America and 19 in Oceania.
[85] M. Norman and S. Nakhooda, *The State of REDD+ Finance* (Centre for Global Development Climate and Forest Paper Series, Working Paper 378, September 2014).
[86] K. Hamrick and M. Gallant, *Fertile Ground: State of Forest Carbon Finance 2017*, p. 38.

Although the 'idea' of REDD+ still commands considerable support, the challenges of implementation and actualisation have raised important questions about the difficulties in realising this vision.[87] Many organisations and commentators remain heavily invested in the idea of REDD+, seeing it as the 'best' or even 'last' chance to save the world's forests,[88] and maintain that it remains a 'valid idea'[89] and continue to hope that 'momentum might eventually lead to results on the ground'.[90] Recurring difficulties in implementing REDD+ have led to calls to maintain faith in this vision, with proponents arguing that there is 'still time to right the ship' and 'still hope for REDD+ to be redeemed'.[91] However, there has also been a broader realisation regarding what an 'enormously ambitious and challenging endeavor'[92] REDD+ is and of the multiple complex challenges involved in operationalising the scheme.[93] These challenges have also promoted rethinking about the objectives of REDD+, which is increasingly viewed less as a unitary mechanism than as a 'broad set of policy instruments at different scales'.[94] This expansionary dynamic shows how the contours of REDD+ have been formed by a constant oscillation between an expanding ideal and the (as yet unrealised) materialisation of it in practice.

In this process REDD+ has been transformed from a project with one key objective – to minimise deforestation and forest degradation – into a project with multiple objectives,[95] including addressing livelihood reform, poverty reduction, biodiversity, adaptation and Indigenous rights and promoting good governance.[96] This book thus argues for the need to understand REDD+ as a continually expanding and proliferating project, whose scope and thus potential sphere of intervention has grown over time, often in response to criticisms directed against it. In response to criticisms that discrete REDD+ conservation projects would lead to 'leakage' or the displacement of deforestation to elsewhere, REDD+ is increasingly conceptualised at the national or sub-national scale. Responding to criticisms that REDD+ visualises forests reductively as 'carbon stocks', attempts have been made to

[87] Fletcher et al., 'Questioning REDD+ and the future of market-based conservation', 674.
[88] Former World Bank President Robert Zoellick cited in J. Conant, 'Do Trees Grow on Money?' (2011); see also W. Boyd, 'Climate change, fragmentation, and the challenges of global environmental law: Elements of a post-Copenhagen assemblage' (2010) 32 *University of Pennsylvania Journal of International Law* 457–550 at 471.
[89] A. Angelsen (ed.), *Transforming REDD+: Lessons and New Directions* (Center for International Forestry Research, 2018) p. xx.
[90] Angelsen, 'REDD+: What should come next?', p. 417.
[91] M. L. Brown, *Redeeming REDD+: Policies, Incentives, and Social Feasibility for Avoided Deforestation* (Routledge and Earthscan, 2013) pp. 274–5.
[92] Boyd, 'Climate change, fragmentation, and the challenges of global environmental law', 457–550 at 471.
[93] Angelsen and Atmadja, 'What is this book about?', p. 2.
[94] Angelsen, 'REDD+: What should come next?', p. 407.
[95] Ibid., pp. 407–8.
[96] Angelsen, 'REDD+ as result-based aid: General lessons and bilateral agreements of Norway', 238.

promote biodiversity protection as a co-benefit of REDD+. Most tellingly, in response to criticisms that REDD+ might have adverse social consequences and pose risks for peoples living in and around forested areas, increased focus has been placed on the rights of such peoples and on the realisation of co-benefits such as alleviating poverty, improving local livelihoods and tenure reform.[97] These have then authorised further interventions in local livelihoods, property rights and governance arrangements from international actors. Although such critiques have led to an expansion of REDD+'s objectives and sphere of intervention, in general they have not promoted a fundamental rethink of the current trajectory of the global conservation movement.[98] Thus understanding REDD+ as a proliferating project, constituted in part by critiques directed against it, draws attention to how REDD+ as a concept has managed to be quite malleable, while also 'retain[ing] enough immutable content to still be recognizable'.[99] This malleability has allowed REDD+ to remain 'plastic, open to interpretation by different actors and valuable to each for different reasons',[100] and explains the investments that different actors have in a specific idea of what REDD+ could be, and the commitment they have to helping realise that vision.

This understanding of REDD+ as a dynamic and expanding project also suggests the limitations of some of the rather diverse terminology used to describe REDD+, including: 'scheme', 'programme', 'policy approaches', 'mitigation actions', 'activities' and 'guidance'.[101] Increasingly, REDD+ is described as a 'regime', often in order to facilitate analysis of how it interacts with other legal regimes within an increasingly fragmented legal space.[102] However, unlike traditional definitions of regimes, REDD+ is not characterised by a coalescing of norms, decision-making procedures and organisations around a functional issue area,[103] because it does not establish overarching, unitary institutional arrangements. Instead it extends beyond a specific 'issue-area' to bring together and strategically link a number of different

[97] S. Howell, '"No RIGHTS–No REDD": Some implications of a turn towards co-benefits' (2014) 41(2) *Forum for Development Studies* 253–72.

[98] Fletcher et al., 'Debating REDD+ and its implications: Reply to Angelsen et al.', 722.

[99] C. L. McDermott, L. Coad, A. Helfgott, and H. Schroeder, 'Operationalizing social safeguards in REDD+: Actors, interests and ideas' (2012) 21 *Environmental Science and Policy* 63–72 at 64.

[100] Ibid.

[101] M. F. Tehan, L. C. Godden, M. A. Young, and K. A. Gover, *The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD+* (Cambridge University Press, 2017) p. 13.

[102] Ibid., Chapter 2; see also M. A. Young, 'REDD+ and interacting legal regimes' in C. Voigt (ed.), *Research Handbook on REDD-Plus and International Law* (Edward Elgar Publishing, 2016) Chapter 4.

[103] Margaret Young defines 'regimes' as 'norms, decisionmaking procedures and organisations coalescing around functional issue-areas and dominated by particular modes of behaviour, assumptions and biases'. M. A. Young, 'Introduction: The productive friction between regimes' in M. A. Young (ed.), *Regime Interaction in International Law: Facing Fragmentation* (Cambridge University Press, 2012) pp. 1–19, 9.

issues and associated legal regimes including climate,[104] forests,[105] biodiversity,[106] Indigenous rights,[107] poverty reduction and sustainable development.[108] The 'kaleidoscopic world' of REDD+ is made up of interaction between many varied international and national legal instruments.[109] REDD+ is thus better characterised as an 'emerging global assemblage' that holds together 'people, practices, organisations, law, technologies, and territories', and it is 'taking shape at multiple sites around the world'.[110] Understanding REDD+ as a 'transnational legal assemblage' productively directs attention to questions of 'materiality, distributed agency and heterogeneity' in the constitution, transmission and containment of norms.[111] Moreover, such a characterisation highlights both how REDD+ is more contingently assembled than legal formalist accounts might suggest, as well as showing the 'continuous work' that goes into 'pulling disparate elements together' in order to forge (provisional) alignment between the disparate (and at times contradictory) objectives of differentially situated actors.[112] REDD+ as an assemblage also highlights how the alignment between the differing (and expanding) objectives of REDD+ is not automatic, nor is the alignment between the interests and objectives of different actors on different scales, but rather it shows that any such alignment is both fraught and fragile. This account thus speaks to the difficulty and challenges of instantiating a global project on different scales and of effecting global objectives in the situated contingent settings of national and sub-national institutions or of finding

[104] For a detailed discussion of the UNFCCC Warsaw Framework for REDD+ and associated UNFCCC COP decisions, see Chapter 1.

[105] UNFF was established by the Economic and Social Council (Economic and Social Council Resolution 2000/35, *Report on the Fourth Session of the Intergovernmental Forum on Forests*, 46th plen mtg, E/RES/2000/35 (18 October 2000)). A key outcome of the UNFF process has been the *Non-legally Binding Instrument on All Types of Forests*, General Assembly Resolution 62/98, *Non-Legally Binding Instrument on All Types of Forests*, UN GAOR 62nd sess, 74th plen mtg, Agenda Item 54, A/RES/62/98 (31 January 2008).

[106] *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

[107] International Labour Organisation (ILO), *Convention (No 169) Concerning Indigenous and Tribal Peoples in Independent Countries*, opened for signature 27 June 1989, 1650 UNTS 383 (entered into force 5 September 1991)('ILO 169') General Assembly Resolution 61/295, *United Nations Declaration on the Rights of Indigenous Peoples*, UN GAOR 61st sess, 107th plen mtg, Supp No 49, UN Doc A/61/67 (13 September 2007).

[108] General Assembly Resolution 66/288, *The Future We Want*, UN GAOR 66th sess, 123rd plen mtg, Agenda Item 19, Supp No 49, A/RES/66/288 (11 September 2012) General Assembly Resolution 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, UNGAOR 70th sess, 4th plen mtg, UN Doc A/RES/70/1 (21 October 2015).

[109] C. Voigt, 'Introduction: The kaleidoscopic world of REDD+' in C. Voigt (ed.), *Research Handbook on REDD-Plus and International Law* (Edward Elgar Publishing, 2016) p. 1.

[110] Boyd, 'Climate change, fragmentation, and the Challenges of global environmental law: Elements of a post-Copenhagen assemblage', 523.

[111] G. Sullivan, 'Transnational legal assemblages and global security law: Topologies and temporalities of the list' (2014) 5(1) *Transnational Legal Theory* 81–127 at 82.

[112] See T. M. Li, 'Practices of assemblage and community forest management' (2007) 36(2) *Economy and Society* 263–93 at 264–5.

synergies between the imperatives 'from above' and demands 'from below'.[113] Finally, by highlighting how alignment between different objectives, practices and processes is not automatic, the analytical framework of assemblage speaks to how specific elements might need to be rearranged to enable coherence – for example, governance arrangements within nation-states might need to be 'reassembled' in specific ways in response to transnational processes in order for REDD+ to cohere.[114]

C CRITIQUING REDD+

What holds REDD+ together is the cultivation of a specific 'logic of problem amelioration' based upon a specific understanding of the 'problem' of carbon emissions from forest loss; a growing consensus around appropriate responses – namely, financial incentives; and a clear elaboration of the desired outcomes that has given rise to a 'shared community and norm generation'.[115] However, this 'logic of problem amelioration' depends on a framing the issues of deforestation and climate change mitigation in narrow and technical ways that risk obscuring many structural conditions that drive unsustainable deforestation and GHG emissions; and foreclosing more radical engagements that challenge unequal ecological exchange. As such, the 'solution' provided by REDD+ does not only fail to address these underlying global drivers; by focusing only on tropical deforestation sites in countries of the Global South, and not the global dynamics driving deforestation, it also operates to authorise further international interventions within these countries. REDD+ needs to be understood not just as a specific response to a particular way of articulating the problem of the climate crisis but also one that is itself productive of new configurations of authority and power over forested land and modes of governance of the peoples who live in and around forested areas and depend on them for their livelihoods. It is therefore insufficient for analyses of REDD+ to address whether and how it achieves its stated objectives; rather, it is necessary to interrogate the broader (potentially unintended) 'instrument-effects' it gives rise to.[116] Wendy Brown highlights that 'it is in the nature of every significant political project to ripple beyond the project's avowed target and action' and that '[n]o effective project

[113] Boyd, 'Climate change, fragmentation, and the Challenges of global environmental law: Elements of a post-Copenhagen assemblage', 468.

[114] Sullivan, 'Transnational legal assemblages and global security law', 92; see also S. Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton University Press, 2006).

[115] C. L. McDermott, K. Levin, and B. Cashore, 'Building the forest-climate bandwagon: REDD+ and the logic of problem amelioration' (2011) 11(3) *Global Environmental Politics* 85–103.

[116] M. Foucault, *Discipline and Punish: The Birth of the Prison* (Knopf Doubleday Publishing Group, 1977); cited in B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press, 2003) p. 76.

produces only the consequences it aims to produce'.[117] In this vein, this book departs from more pragmatically orientated scholarship focused on how to make REDD+ work – or how to 'redeem' its potential flaws – instead drawing attention to *the work that REDD+ does in the world*, how it operates to reorganise social relations and establish new forms of authority and new mechanisms of power.

While the literature on REDD+ is relatively new, it is already voluminous and substantial, consisting of both a diverse range of primary materials as well as extensive interdisciplinary secondary scholarships. The scholarship on REDD+ can be characterised as consisting of three main strands, each having different normative, scholarly and political orientations: the first directed towards making REDD+ work, or work better; the second focused on critiquing REDD+; and the third on understanding the conditions in and through which REDD+ becomes possible and its broader effects. The first strand, both functionalist and pragmatic, is primarily focused on analysing and explaining new developments in the legal frameworks of REDD+, being directed towards clarifying how REDD+ can be made to work and resolving potential legal and other challenges arising from its implementation. Specifically, legal scholars have examined the legal complexities involved in implementing REDD+ and proposed ways to better tailor and develop institutional and regulatory frameworks to promote a more effective and efficient realisation of REDD+ and a more equitable sharing of benefits.[118] Closely related to this work, are the scholarship or reports critically analysing aspects of REDD+ frameworks and implementation, in order to address specific failings in implementation and to propose responses that promote a better realisation of REDD+ goals and what has been termed the '3Es of REDD+'[119]: effectiveness, efficiency and equity. This body of scholarship includes mapping REDD+ development[120] and

[117] W. Brown, '"The most we can hope for. . .": Human rights and the politics of fatalism' (2004) 103(2/3) *The South Atlantic Quarterly* 451–63 at 452–53.

[118] See for example Tehan et al., *The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD+*; see also C. Voigt, *Research Handbook on REDD-Plus and International Law* (Edward Elgar Publishing, 2016) focused on addressing the 'complexity of issues and interest to be taken into account' in achieving the goals of REDD+; S. Jodoin, *Forest Preservation in a Changing Climate: REDD+ and Indigenous and Community Rights in Indonesia and Tanzania* (Cambridge University Press, 2017).

[119] A. Angelsen (ed.), *Moving Ahead with REDD: Issues, Options and Implications* (CIFOR, 2008) p. viii.

[120] S. Engel and C. Palmer, '"Painting the forest REDD?" Prospects for mitigating climate change through reducing emissions from deforestation and degradation' (Institute for Environmental Decisions, 2008); Ian Fry, 'Reducing emissions from deforestation and forest degredation: Opportunities and pitfalls in developing a new legal regime' (2008) 17(2) *Review of European Community and International Environmental Law* 166; B. M. Campbell, 'Beyond Copenhagen: REDD+, agriculture, adaptation strategies and poverty' (2009) 19 *Global Environmental Change* 397; M. E. Recio, 'The Warsaw Framework and the future of REDD+' (2014) 24(1) *Yearbook of International Environmental Law* 37.

case study analysis of REDD+ projects.[121] There has also been considerable work on designing legal and governance frameworks for REDD+[122] that address the 'possibilities and limitations, promises and consequences' of the 'interplay and interaction between REDD+ and a wider spectrum of international legal instruments'.[123] A key focus in this work has been on identifying mechanisms to promote the environmental integrity of REDD+ and verifying that purported carbon 'savings' through REDD+ are 'real'. This includes the clarification of definitions of 'forests',[124] the construction of baselines, processes for preventing leakage, ensuring additionality[125] and promoting the permanence of carbon sequestration and associated processes for monitoring, reporting and verification.[126]

[121] See for example E. O. Sills (ed.), *REDD+ on the Ground: A Case Book of Subnational Initiatives across the Globe* (CIFOR, 2014); R. A. Clarke, 'Moving the REDD debate from theory to practice: Lessons learned from the Ulu Masen project' (2010) 6(1) *Law, Environment and Development Journal* 36; S. Wertz-Kanounnikoff and M. Kongphan-apirak, 'Emerging REDD+: A preliminary survey of demonstration and readiness activities' (CIFOR, 2009).

[122] J. Costenbader, *Legal Frameworks for REDD. Design and Implementation at the National Level* (International Union for the Conservation of Nature, 2009); R. Lyster, C. MacKenzie, and C. McDermott (eds.), *Law, Tropical Forests and Carbon: The Case of REDD+* (Cambridge University Press, 2013); S. Butt, R. Lyster, and T. Stephens, *Climate Change and Forest Governance: Lessons from Indonesia* (Routledge, 2015); R. Maguire, 'Deforestation, REDD and international law' in S. Alam, M. J. H. Bhuiyan, T. M. R. Chowdhury, and E. J. Techera (eds.), *Routledge Handbook of International Environmental Law* (Routledge, 2013) pp. 697–716.

[123] Voigt, 'Introduction: The kaleidoscopic world of REDD+', pp. 5 and 7; Young, 'REDD+ and interacting legal regimes', pp. 89–125; M. A. Young, 'Interacting regimes and experimentation' in*The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD+* (Cambridge University Press, 2017) pp. 329–45.

[124] The current definition of 'forest' as a minimum land area of 0.05–1.0 hectare with tree cover of more than 10–30 per cent, with trees with the potential to reach a minimum height of 2–5 metres at maturity in situ is in the Annex of Decision 16/CMP.1 'Land use, land-use change and forestry'. FCCC/KP/2005/8/Add.3 (30 March 2006), for critiques see N. Sasaki and F. E. Putz, 'Critical need for a new definition of "forest" and "forest degradation" in a global climate change agreement' (2009) 20 *Conservation Letters* 1–20; A. Long, 'Taking adaptation value seriously: Designing REDD to protect biodiversity' (2009) 3 *Carbon & Climate Law Review* 314–23; for the need for forests to be understood as 'a socio-natural landscape shaped by past and present resource management practices' see B. A. Beymer-Farris and T. J. Bassett, 'The REDD menace: Resurgent protectionism in Tanzania's mangrove forests' (2012) 22(2) *Global Environmental Change* 332–41.

[125] C. F. Mason and A. J. Plantinga, 'The additionality problem with offsets: Optimal contracts for carbon sequestration in forests' (2013) 66(1) *Journal of Environmental Economics and Management* 1–14; on additionality, generally see M. Cames, R. O. Harthan, J. Füssler, M. Lazarus, C. M. Lee, P. Erickson, and R. Spalding-Fecher, 'How additional is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives' (Institut für angewandte Ökologie, 2016); L. Schneider, 'Assessing the additionality of CDM projects: Practical experiences and lessons learned' (2009) 9(3) *Climate Policy* 242–54; M. Dutschke and A. Michaelowa, 'Development assistance and the CDM – How to interpret "financial additionality"' (2006) 11(2) *Environment and Development Economics* 235–46.

[126] See for example Angelsen, *Moving Ahead with REDD: Issues, Options and Implications*; A. Angelsen, *Realising REDD+: National Strategy and Policy Options* (CIFOR, 2009);

Another key focus has been on addressing risks and 'managing trade-offs' in order to protect the rights, interests and livelihoods of people living in and around forested areas;[127] and to address concerns that REDD+ might recentralise forest management[128] and that communities will be ill-informed about REDD+ and potentially dispossessed through conservation projects.[129] There has also been considerable attention given to the implementation of safeguards[130] and making REDD+ compatible with human rights norms,[131] as well as processes of clarifying and securing tenure rights[132] and

A. Angelsen, M. Brockhaus, W. D. Sunderlin, and L. V. Verchot (eds.), *Analysing REDD+: Challenges and Choices* (CIFOR, 2012); Angelsen, *Transforming REDD+: Lessons and New Directions*.

[127] F. Seymour, 'Forests, climate change and human rights: Managing risks and trade-offs' in S. Humphreys (ed.), *Climate Change and Human Rights* (Cambridge University Press, 2010) pp. 207–37.

[128] J. Phelps, E. L. Webb, and A. Agrawal, 'Does REDD+ threaten to recentralize forest governance?' (2010) 328(5976) *Science* 312–13.

[129] T. Griffiths, *Seeing 'REDD'? Forests, Climate Change Mitigation and the Rights of Indigenous Peoples*, updated version (Forest Peoples Programme, 2009).

[130] D. J. Kelly, 'The case for social safeguards in a post–2012 agreement on REDD' (2010) 6(1) *Law, Environment and Development Journal* 61–81; F. Daviet and G. Larsen, *Safeguarding Forests and People: A Framework for Designing a National System to Implement REDD+ Safeguards* (World Resources Institute, 2012); McDermott et al., 'Operationalizing social safeguards in REDD+: Actors, interests and ideas'; B. Dickson, M. Bertzky, T. Christophersen, C. Epple, V. Kapos, L. Miles, U. Narloch, and K. Trumper, *REDD+ Beyond Carbon: Supporting Decisions on Safeguards and Multiple Benefits* (UN-REDD Programme, Policy Brief: Issue No. 2, 2012); P. K. Sena, M. Cunningham, and B. Xavier, *Indigenous People's Rights and Safeguards in Projects Related to Reducing Emissions from Deforestation and Forest Degradation: Note by the Secretariat*, UN ESCOR, Permanent Forum on Indigenous Issues, 12th sess, Agenda Item 5, UN Doc E/C.19/2013/7 (5 February 2013); D. Ray, J. Roberts, S. Korwin, L. Rivera, and U. Ribet, *A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards* (Client Earth, 2013); B. Bodin, E. Vaananen, and H. van Asselt, 'Putting REDD+ environmental safeguards into practice: Recommendations for effective and country-specific implementation' (2015) *Carbon & Climate Law Review* 168.

[131] A. Savaresi, 'The human rights dimension of REDD' (2012) 21(2) *Review of European Community & International Environmental Law* 102–13; A. Savaresi, 'REDD+ and human rights: Addressing synergies between international regimes' (2013) 18(3) *Ecology and Society* 5–13.

[132] L. Cotula and J. Mayers, *Tenure in REDD – Start-Point or Afterthought?* (International Institute for Environment and Development, 2009); R. Lyster, 'REDD+, transparency, participation and resource rights: The role of law' (2011) 14 *Environmental Science and Policy* 118–26; R. Fisher and R. Lyster, 'Land and resource tenure: The rights of indigenous people and forest dwellers' in R. Lyster, C. MacKenzie, and C. McDermott (eds.), *Law, Tropical Forests and Carbon: The Case of REDD+* (Cambridge University Press, 2013) pp. 187–206; A. M. Larson, 'Forest tenure reform in the age of climate change: Lessons for REDD+' (2011) 21 *Global Environmental Change* 540–9; A. M. Larson, M. Brockhaus, W. D. Sunderlin, A. Duchelle, A. Babon, T. Dokken, T. T. Pham, I. A. P. Resosudarmo, G. Selaya, and A. A.-B. Huynh, 'Land tenure and REDD+: The good, the bad and the ugly' (2013) 23(3) *Global Environmental Change* 678–89; A. E. Duchelle, M. Cromberg, M. F. Gebara, R. Guerra, T. Melo, A. Larson, P. Cronkleton, J. Börner, E. Sills, and S. Wunder, 'Linking forest tenure reform, environmental compliance, and incentives: lessons from REDD+ initiatives in the Brazilian Amazon' (2014) 55 *World Development* 53–67.

participation, consultation and consent processes,[133] with the aim of ensuring that benefits flow to local communities.[134]

Although this scholarship is diverse in its focus and methodologies, it exhibits a number of shared assumptions and a shared orientation. In these approaches, environmental law is generally invoked as a problem-solving or managerial tool.[135] In these accounts REDD+ research is presented as both neutral and progressive, and serving a clear pragmatic purpose; it is rare to see a more self-reflexive engagement with the role that knowledge production and specific forms of expertise play in developing, constituting and legitimising REDD+. Given that processes of knowledge production and expertise play a key role in shaping contemporary political economy and modes of governance,[136] greater interrogation of the effects of such scholarship is warranted, in terms of constituting a 'field of truth'[137] or establishing the 'sociotechnical imaginaries'[138] upon which REDD+ depends. Indeed, scholarship plays a significant role in the 'unconscious co-production of the global carbon imaginary',[139] allowing forest carbon to be treated as a standardised, fungible 'object' equivalent to other forms of carbon.[140] Moreover, the legitimacy of the claim that emissions emitted and emissions 'saved' through sequestration are equivalent ultimately relies on an 'implicit pact' with the public,[141] one dependent upon public trust in such expertise. This first strand of scholarship provides crucial insights into the novel problems that operationalising REDD+ presents, and it has proposed highly

[133] *Honest Engagement: Transparency and Civil Society Participation in REDD* (Global Witness, 2008); P. Anderson, *Free, Prior, and Informed Consent in REDD+: Principles and Approaches for Policy and Project Development* (RECOFTC [The Centre for People and Forests] and GIZ, 2011).

[134] D. Brown, F. Seymour, and L. Peskett, 'How do we achieve REDD co-benefits and avoid doing harm?' in A. Angelsen (ed.), *Moving Ahead with REDD: Issues, Options and Implications* (CIFOR, 2008) pp. 107–18; L. Godden, 'Benefit Sharing in REDD+: Linking Rights and Equitable Outcomes' in *The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD+* (Cambridge University Press, 2017) pp. 172–200.

[135] See Andreas Philippopoulos-Mihalopoulos, 'Towards a critical environmental law' in A. Philippopoulos-Mihalopoulos (ed.), *Law and Ecology: New Environmental Foundations* (Routledge, 2011) for a critique of such managerial approaches.

[136] See in general D. Kennedy, *A world of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press, 2016).

[137] M. Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977–1978* (Palgrave Macmillan, 2007) p. 118.

[138] S. Jasanoff, 'Future imperfect: Science, technology, and the imaginations of modernity' in S. Jasanoff and S.-H. Kim (eds.), *Dreamscapes of Modernity: Sociotechnical Imaginaries and the Fabrication of Power* (University of Chicago Press, 2015) pp. 1–33.

[139] I. P. Gray, *Climate finance, tropical forests and the state: Governing international climate risk in the Democratic Republic of Congo* (Master's thesis, Massachusetts Institute of Technology, 2012) p. 27.

[140] J. Dehm, 'One tonne of carbon dioxide equivalent (1tCO2e)' in J. Hohmann and D. Joyce (eds.), *International Law's Objects* (Oxford University Press, 2018) pp. 305–18.

[141] L. Lohmann, *Chronicle of a Disaster Foretold; REDD-with-Carbon-Trading* (The Corner House 2008).

innovative approaches to address these problems. However, the desirability of the overall REDD+ project is rarely called into question in this literature.

In contrast to this body of work focused on operationalising REDD+ and proposing reforms to address the concerns, failings or problems around implementation, a second strand of scholarship on REDD+ has engaged on a more critical register to highlight the ways REDD+ has not and cannot meet its stated objectives. Influenced by climate justice concerns and broader critiques of carbon markets and offsetting,[142] this more radical literature critiques the idea that terrestrial sequestration can offset fossil fuel emissions. In particular, such scholarship highlights the inherently problematic nature of the assumed equivalence of green carbon sequestered through REDD+ and brown carbon released from the burning of fossil fuels to the inherent indeterminacy of the regulatory and accounting concepts that purport to ensure 'additionality'.[143] In particular, there are concerns that as an offset scheme REDD+ cannot deliver permanent emission reductions, given the very distinct roles played in the carbon cycle by 'undisturbed fossil fuels . . . locked away underground for millennia' and 'carbon being stored in trees, other plants and soils, for relatively short periods of time'.[144] Further, it voices concerns that even if REDD+ offset projects do not successfully reduce emissions, the offset relation can nonetheless be 'used to condone continued emissions elsewhere', therefore risking net increases.[145] Such analysis builds on broader arguments that carbon markets are flawed and unreformable, due to their empirical failings, their promotion of unjust development and 'green grabbing', their provision of loopholes for polluters, how they have operated as fossil fuel subsidies and the regressive nature of this form of taxation.[146] Rebecca Pearse and Steffen Böhm highlight how carbon is an 'unregulatable commodity',[147] and the problems with demonstrating 'additionality' and assuming commensurability, or 'like for like', referring to essentially different metabolic interactions. They also critique how carbon markets are political constructs

[142] Pearse and Böhm, 'Ten reasons why carbon markets will not bring about radical emissions reduction'; see also Lohmann, *Carbon Trading*; Böhm and Dabhi, *Upsetting the Offset: The Political Economy of Carbon Markets*; Clifton, A *Dangerous Obsession*.

[143] R. Hall, *REDD Myths: A Critical Review of Proposed Mechanisms to Reduce Emissions from Deforestation and Degradation in Developing Countries* (Friends of the Earth International, 2008); R. Hall, *REDD: The Realities in Black and White* (Friends of the Earth International, 2010); R. Hall, *The Great REDD Gamble. Time to Ditch Risky REDD for Community-Based Approaches that Are Effective, Ethical and Equitable* (Friends of the Earth International, 2014); Pearse and Dehm, *In the REDD: Australia's Carbon Offset Project in Central Kalimantan*.

[144] Hall, *The great REDD gamble. Time to ditch risky REDD for community-based approaches that are effective, ethical and equitable*, p. 8.

[145] Ibid., p. 8.

[146] Pearse and Böhm, 'Ten reasons why carbon markets will not bring about radical emissions reduction'.

[147] See also L. Lohmann, 'Regulation as corruption in the carbon offset markets' in Böhm and Dabhi (eds.), *Upsetting the Offset: The Political Economy of Carbon Markets*, pp. 175–91.

that display a 'utopian faith in pricing', promote systems of technocratic rule managed by experts and are an obstacle to alternative policies promoting decarbonisation.[148] Thus critics in this camp see carbon markets – and especially the process of offsetting – as a 'dangerous distraction'[149] from the urgent and necessary structural changes in energy production use and distribution, an idea that risks facilitating 'carbon lock-in'.[150]

Further, critics of carbon markets have presented damning case study evidence of some of the economic, social and cultural consequences of offset projects and other payments for environmental services programmes for local communities upon whose lands they have been implemented.[151] In doing so, such critiques foreground broader justice and moral considerations about how the burdens of mitigating climate change have been displaced onto those who have done the least to cause the dangerous cumulation of GHG emissions in the atmosphere underlying the climate crisis.[152] These justice-based critiques have also been articulated in a series of statements released by grassroots social movements for climate justice that convey political opposition to market mechanisms such as REDD+ and promote alternatives. Such statements have been released by 'Climate Justice Now!' coalition at the UNFCCC Conference of the Parties (COP), in Bali (2007)[153] and Poznan (2008);[154] and also include 'System Change Not Climate Change – A People's Declaration from Klimaforum09' (2009);[155] 'Peoples Agreement', from the World People's Conference on Climate Change in Cochabamba (2010);[156] 'Scrap ETS: No

[148] Pearse and Böhm, 'Ten reasons why carbon markets will not bring about radical emissions reduction', 332–3.

[149] S. Bullock, M. Childs, and T. Picken, A *Dangerous Distraction: Why Offsetting Is Failing the Climate and People: The Evidence* (Friends of the Earth England, Wales and Northern Ireland, 2009).

[150] See for example G. C. Unruh, 'Understanding Carbon Lock-In' (2000) 28 *Energy Policy* 817–30.

[151] See for example Pearse and Dehm, *In the REDD: Australia's Carbon Offset Project in Central Kalimantan*; S. Lovera, 'REDD Realities' in U. Brand, E. Lander, N. Bullard, and T. Mueller (eds.), *Contours of Climate Justice: Ideas for Shaping New Climate and Energy Policies* (Dag Hammarskjöld Foundation, 2009) pp. 45–53; R. Hall, *REDD: The Realities in Black and White* (Friends of the Earth International, 2010); Böhm and Dabhi, *Upsetting the Offset: The Political Economy of Carbon Markets*.

[152] A. Dawson, 'Climate justice: The emerging movement against green capitalism'; N. Klein, *This Changes Everything: Capitalism vs. the Climate*.

[153] *Climate Justice Now! Statement*, www.carbontradewatch.org/take-action-archive/climate-justice-now-statement-4.html.

[154] *Radical New Agenda Needed to Achieve Climate Justice': Poznan Statement from the Climate Justice Now! Alliance*, www.carbontradewatch.org/archive/poznan-statement-from-the-climate-justice-now-alliance-2.html.

[155] *System Change Not Climate Change – A People's Declaration from Klimaforum09*, klimaforum.org.

[156] World People's Conference on Climate Change and the Rights of Mother Earth, *People's Agreement of Cochabamba* (2010), pwccc.wordpress.com/2010/04/24/peoples-agreement.

EU Emissions Trading Scheme' statement (2012)[157] and 'Margarita Declaration on Climate Change', from the Social PreCOP meeting (2014);[158] and the subsequent 'Call to Action to Reject REDD+ and Extractive Industries to Confront Capitalism and Defend Life and Territories', to which over 100 civil society groups are signatories.[159]

This book draws on these critiques of the marketisation of climate governance and particularly seeks to foreground the perspective of the often-marginalised communities who have been most impacted by these mechanisms and whose voices are amplified in such statements and reports. However, although there is a clear difference between critiques that are more narrowly focused on the problems with the implementation of REDD+ or other mechanisms and accounts that point to the inherent issues surrounding the marketisation of climate policy, both have tended to be taken up in ways that facilitate, rather than curtail, the expansion of carbon markets. The literature on REDD+ often displays an underlying imperative to 'redeem' REDD+ by proposing reforms, with the hope that actual implementation of REDD+ may better accord with the idealised vision of REDD+.[160] However, to date, highlighting the 'gap between vision and execution' or 'rhetoric and reality' has done little to deter proposals to 'scale up' markets.[161] Rather, criticisms of REDD+'s failures have often proven to be generative, leading to an expansion of the project in question.[162] Moreover, this gap between vision and realisation is 'seldom attributed to the fundamental nature of the market mechanisms themselves'[163] and instead the recognition of such failings takes the form of a 'simultaneous admission and denial' that promotes reform rather than an examination of any 'essential contradictions' in the performance of such mechanisms.[164] More generally, as Peter Newell and Matthew Paterson have observed, 'carbon markets are being shaped precisely by

[157] *Scrap the ETS* (2012), scrap-the-euets.makenoise.org/KV.

[158] Social PreCOP, *Margarita Declaration on Climate Change* (2014), https://redd-monitor.org/2014/08/08/the-margarita-declaration-on-climate-change-we-reject-the-implementation-of-false-solutions-to-climate-change-such-as-carbon-markets-and-other-forms-of-privatization-and-commodification-of-life/.

[159] *Call to Action to Reject REDD+ and Extractive Industries; To Confront Capitalism and Defend Life and Territories* (December 2014), wrm.org.uy/wp-content/uploads/2014/11/Call-COP-Lima_NoREDD.pdf.

[160] See for example M. L. Brown, *Redeeming REDD+: Policies, Incentives, and Social Feasibility for Avoided Deforestation* (Routledge and Earthscan, 2013).

[161] O. Reyes, 'Carbon markets after Durban' (2012) 12(1/2) *Ephemera: Theory and Politics in Organisation* 19–32.

[162] On the generative nature of failure and its conversion into institutions proliferation and expansion, see also (on prisons) Foucault, *Discipline and Punish: The Birth of the Prison*; and (on development) J. Ferguson, *The Anti-Politics Machine: 'Development,' Depolitization, and Bureaucratic Power in Lesotho* (Cambridge University Press, 1990).

[163] R. Fletcher, 'How I learned to stop worrying and love the market: virtualism, disavowal, and public secrecy in neoliberal environmental conservation' (2013) 31(5) *Environment and Planning D: Society and Space* 796–812.

[164] Ibid.

the protests against them'.[165] The character of such markets, 'their operational rules, informal norms and changing dynamics', are thus a product of mediation between the proponents of markets and those who oppose carbon markets as a climate 'solution'.[166] As such, the way in which critiques have been taken up in generative ways suggests a danger that critiques of market mechanisms – both in the name of their (*not-yet* and *not-quite*) perfect ideal but also those based on a more structural analysis – can operate to (re)legitimate, (re)produce and (re)construct their object of concern.

A third strand of scholarship relevant to REDD+ has focused on understanding the techniques and processes that have enabled and facilitated the transformation of the human–nature relationship through economic valuation, commodification and marketisation, and on interrogating the broader effects of these techniques and processes. Drawing on science and technology studies, scholars have described the performative nature of the accountancy techniques that enable the construction of carbon markets[167] and the organisation and compression of 'space–time' they depend upon.[168] Scholars in the field of human geography have also demonstrated how such 'practices of calculation' that produce forest carbon offsets engage in the co-production of different forms of social ordering,[169] for example, by transforming understandings of space, territory and the practices of ordering that occur within them.[170] There has been considerable scholarship critically evaluating the effects of the marketisation of environmental services and the valuation of nature in increasingly economic terms,[171] often understanding these processes through the lens of

[165] P. Newell and M. Paterson, *Climate Capitalism: Global Warming and the Transformation of the Global Economy* (Cambridge University Press, 2010) p. 33.

[166] M. Paterson, 'Resistance makes carbon markets' in Böhm and Dabhi (eds.), *Upsetting the Offset Upsetting the Offset: The Political Economy of Carbon Markets*, pp. 244–55, 250.

[167] See for example H. Lovell and D. MacKenzie, 'Accounting for carbon: The role of accounting professional organisations in governing climate change' (2011) 43(3) *Antipode* 704–30; E. Lövbrand and J. Stripple, 'Making climate change governable: Accounting for carbon as sinks, credits and personal budgets' (2011) 5(2) *Critical Policy Studies* 187–200; M. Callon, 'Civilizing markets: Carbon trading between in vitro and in vivo experiments' (2009) 34(3–4) *Accounting, Organizations and Society* 535–48; on the performativity of economics see D. A. MacKenzie, F. Muniesa, and L. Siu, *Do Economists Make Markets?: On the Performativity of Economics* (Princeton University Press, 2007).

[168] J. Knox-Hayes, 'Constructing carbon market spacetime: Climate change and the onset of neo-modernity' (2010) 100(4) *Annals of the Association of American Geographers* 953–62; J. Knox-Hayes, 'The spatial and temporal dynamics of value in financialization: Analysis of the infrastructure of carbon markets' (2013) 50 *Geoforum* 117–28.

[169] On the concept of co-production, see S. Jasanoff, *States of Knowledge: The Co-production of Science and the Social Order* (Routledge, 2004).

[170] D. M. Lansing, 'Carbon's calculatory spaces: The emergence of carbon offsets in Costa Rica' (2010) 28(4) *Environment and Planning D: Society and Space* 710–25.

[171] For an overview of some of these debates, see for example B. Büscher, 'Nature on the move I: The value and circulation of liquid nature and the emergence of fictitious conservation' (2013) 6(1–2) *New Proposals: Journal of Marxism and Interdisciplinary Inquiry* 20–36; J. Igoe, 'Nature on the move II: Contemplation becomes speculation' (2013) 6(1–2) *New Proposals: Journal*

'neoliberalisation', 'commodification', 'marketisation', 'financialisation' and enclosure.[172] Drawing on Foucauldian frameworks of governmentality, some scholars have situated these developments as part of the configuration of a new 'power/knowledge' regime of green neoliberalism[173] or as part of a new 'eco-' or 'green governmentality'.[174] Finally, there has been considerable analysis of how these mechanisms reflect but also reproduce and (re)perpetuate unequal power relations. In this vein, carbon markets have been analysed as new forms of 'accumulation by decarbonisation' that extend supranational governance over the atmosphere.[175] Scholars have interrogated these mechanisms as a new form of 'privatisation of the atmosphere' that promotes unequal and inequitable appropriation of atmospheric space[176] and facilitates 'carbon colonialism'.[177] REDD+ specifically has been understood as part of a broader appropriation of land and resources for environmental ends – dubbed 'green grabbing' – linked to dynamics of accumulation and dispossession.[178] The questions such scholarship poses, pertaining to how such mechanisms are constituted and the effects they have in the world, are taken up this book. In this way, it departs from analysis of how REDD+ can be made to 'work', to instead interrogate the productive effects of REDD+, or what work REDD+ does in the world. However, while previous accounts have focused on the expansion of the economic sphere through processes of commodification, economisation and financialisation or the expansion of forms of power, appropriation and control, this book's focus is jurisprudential. Its primary focus is tracing the consolidation, reorganisation

of Marxism and Interdisciplinary Inquiry 37–49; S. Sullivan, 'Nature on the move III: (Re)countenancing an animate nature' (2013) 6(1–2) *New Proposals: Journal of Marxism and Interdisciplinary Inquiry* 50–71; N. Castree and G. Henderson, 'The capitalist mode of conservation, neoliberalism and the ecology of value' (2014) 7(1) *New Proposals: Journal of Marxism and Interdisciplinary Inquiry* 16–37.

[172] See for example N. Smith, 'Nature as accumulation strategy' (2007) 43 *Socialist Register* 16; Sullivan, 'Banking nature?', 198–217.

[173] M. Goldman, *Imperial Nature: The World Bank and Struggles for Social Justice in an Age of Globalization* (Yale University, 2006).

[174] S. Adelman, 'Tropical forests and climate change: A critique of green governmentality' (2015) 11(2) *International Journal of Law in Context* 195–212; S. Rutherford, 'Green governmentality: Insights and opportunities in the study of nature's rule' (2007) 31(3) *Progress in Human Geography* 291–307; K. Bäckstand and E. Lövbrand, 'Planting trees to mitigate climate change: Contested discourses of ecological modernisation, green governmentality and civic environmentalism' (2006) 6(1) *Global Environmental Politics* 50–75; see generally, A. Agrawal, *Environmentality: Technologies of Government and the Making of Subjects* (Duke University Press, 2005).

[175] A. Bumpus and D. Liverman, 'Accumulation by decarbonization and the governance of carbon offsets' (2008) 84(2) *Economic Geography* 127–55.

[176] P. Bond, *Politics of Climate Justice: Paralysis Above, Movement Below* (University of KwaZulu-Natal Press, 2012); M. Childs, 'Privatising the atmosphere: A solution or dangerous con?' (2012) 12(1/2) *Ephemera: Theory and Politics in Organisation* 12–18.

[177] H. Bachram, 'Climate fraud and carbon colonisation: The new trade in greenhouse gases' (2004) 15(4) *Capitalism, Nature, Socialism* 5–20.

[178] J. Fairhead, M. Leach, and I. Scoones, 'Green grabbing: A new appropriation of nature?' (2012) 39(2) *The Journal of Peasant Studies* 237–61.

and rearticulation of new forms of global authority through REDD+. Considerations of authority, which arguably '[fall] somewhere between the reason and persuasion of equals and the forceful subordination of inferiors', connect questions regarding the force of law with questions about what it is that gives law legal force. That is, a focus on authority draws attention both to the fact of authority and how it is enacted and exercised, as well as to the modes by which authority is authorised, or the ways that authority is created, represented and justified.[179] Attention to questions of authority therefore allows for an examination of the effects of law, but it also brings into view that which conceptually precedes the articulation or enunciation of law, namely, the modes of authorisation that produce the authority or legitimacy to 'speak in the name of the law'.[180]

This focus on authority takes seriously how REDD+ exhibits the same dynamic of 'resistance and renewal', identified by scholars in international law more broadly, that tends to convert critiques of purported failures into 'institutional proliferation and practice'.[181] Therefore, as Balakrishnan Rajagopal has shown, it is important to pay attention to how critiques often produce their own 'instrument-effects', which, although unintended, have proven to be as important as intended effects.[182] This dynamic of 'resistance and renewal' has been particularly evident in discussions on the potential social risks from REDD+ projects to the 1.6 billion people who live in forests and depend on them to some degree for their livelihoods. These discussions have coalesced around the need to put certain safeguards in place, particularly those related to benefit sharing, tenure reform and processes for obtaining consent, in order to mitigate the risks to people who live in and around forest areas and allow them to realise the benefits arising from REDD+. The promotion of social safeguards has been underpinned by genuine concerns about protecting the rights of forest peoples, has mitigated potential abuses in REDD+ implementation and has provided important tools that can be deployed by communities to protect their interests *within* REDD+ projects. However, these mechanisms offer only limited possibilities for resisting REDD+ or the articulation of new forms of global authority produced through REDD+. Understanding these mechanisms not simply as potentially inadequate ameliorative measures, but as productive of new governance relations, allows for an examination of how they may, in fact, operate to create the forms of legibility, subjectivities and social relations that may further consolidate the reorganisation of authority that REDD+ represents.

[179] S. Dorsett and S. McVeigh, *Jurisdiction* (Routledge, 2012) pp. 32–4.
[180] P. Rush, 'An altered jurisdiction: Corporeal traces of law' (1997) 6 *Griffith Law Review* 144–68 at 150.
[181] Rajagopal, *International Law from Below*, p. 76; see also M. Sornarajah, *Resistance and Change in the International Law on Foreign Investment* (Cambridge University Press, 2015).
[182] Rajagopal, *International Law from Below*, p. 83.

D UNDERSTANDING REDD+

This book develops a unique conceptual apparatus to understand how REDD+ establishes and actualises new forms of authority over forested land and the peoples who live in and around forested areas. In particular, it presents a framework for understanding REDD+ that is attentive to the standpoint of those who are likely to be most affected by REDD+ – namely, the peoples living in and around forested areas – and is orientated towards the concerns and perspectives of the Global South. There is no unified or coherent 'Southern' perspective on either climate change or REDD+: the recognition by many states of the Global South – especially small island states – that climate change is an existential threat has also had to contend with the many forms of anti-colonial nationalism that have a commitment to and 'desire for energy-intensive, mostly fossil-fuel driven modernisation'.[183] Similarly, there is no unanimity within the countries of the Global South on carbon markets.[184] International endorsement of REDD+ was initiated and driven by countries of the Global South, particularly Papua New Guinea and Costa Rica and others in the Coalition for Rainforest Nations, and 'developing country representatives have been leaders in the movement to expand carbon markets to new jurisdictions',[185] even as these developments have been opposed by other countries, such as Bolivia.[186] Yet there are clear limitations to focusing exclusively on the positions of national governments, whose representatives tend to be part of a 'transnational ruling elite' who may act against the interests of their own peoples;[187] and thus legal scholarship orientated to the Global South must pay attention to the 'actualized experience of these peoples and not merely [to] that of the states which represent them'.[188]

This book therefore adopts a configuration of four concepts – organised as two pairs of two – through which to understand REDD+. The first pair of concepts – climate justice and the green economy – provides a means of situating and conceptualising REDD+. Below a formulation of the different registers of climate

[183] D. Chakrabarty, 'Planetary crises and the difficulty of being modern' (2018) 46(3) *Millennium: Journal of International Studies* 259–82 at 274–5.

[184] Pearse and Böhm, 'Ten reasons', 328.

[185] Ibid.

[186] See in particular the UNFCCC, *Submission by the Plurinational State of Bolivia to the Ad-Hoc Working Group on Long-Term Cooperative Action* (2010), unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/bolivia_awglca10.pdf.

[187] A. Anghie and B. S. Chimni, 'Third World approaches to international law and individual responsibility in internal conflicts' (2003) 2(1) *Chinese Journal of International Law* 77–103; Chimni, 'Third World approaches to international law: A manifesto' (2006) 8 *International Community Law Review* 3–27; see also S. Randeria, 'Cunning states and unaccountable international Institutions: Legal plurality, social movements and rights of local communities to common property resources' (2003) 44(1) *European Journal of Sociology* 27–60.

[188] Anghie and Chimni, 'Third world approaches to international law and individual responsibility in internal conflicts', 78.

https://doi.org/10.1017/9781108529341.001 Published online by Cambridge University Press

justice – procedural, distributive, corrective and structural – is provided, in order to set out a basis for analysing how REDD+ fails to meet climate justice demands, and instead actively forecloses distributive and corrective justice responses. The concept of the 'green economy' speaks to the wider transformations that REDD+ is inherently intertwined with, and therefore allows the analysis of REDD+ to be situated in this broader frame. The 'green economy' that is being co-produced alongside and through REDD+ is facilitating the re-legitimation of (green) growth and the greater economisation, marketisation and financialisation of nature. Together these two concepts – climate justice and the 'green economy' – therefore provide a conceptual apparatus to set out, understand, analyse and hold together both REDD+'s failures and productive effects.

The second pair of concepts – power and authority – speaks to the amalgamation and consolidation of global authority over forested areas, but also simultaneously the diffuse means by which authority is exercised in REDD+ through the devolution, decentralisation and pluralisation of governance. In order to understand the multiplicity of ways in which power manifests through REDD+, including by constituting objects and subjects, guiding their conduct and structuring the possible field of action, this book adopts Foucauldian-inspired concepts of 'environmentality' and 'green governmentality'. The language of authority directs attention both to the fact of authority, including how it is enacted and given institutional shape, and to the processes by which forms of legal authority are authorised, including through practices of representation. It thus provides a productive idiom for highlighting that what is at stake in REDD+ is the (as yet unrealised) aspiration to supplement a plurality of jurisdictions and ways of valuing forests with a singular frame for understanding, valuing, managing and governing forests, in accordance with internationally determined objectives. Yet, as an orientation or method, such a focus on authority also compels self-reflexivity to ensure that the way in which the consolidation of global authority is described in scholarly work does not also operate to further make invisible still existing rival forms of authority.

1 *Climate Justice*

Rather than understanding climate change within a primarily scientific frame, or an economic frame, the discourse of 'climate justice' names the profound questions of injustice that climate change raises. There is already an extensive literature on the concept of 'climate justice' that draws on political ecology and on frameworks of global justice and environmental justice.[189] It is widely recognised in scholarly,

[189] See for example, H. Shue, 'Subsistence emissions and luxury emissions' (1993) 15(1) *Law & Policy* 39–60; H. Shue, 'Global environment and international inequality' (1999) 75(3) *International affairs* 531–45; H. Shue, 'Historical Responsibility: Accountability for the Results of Actions Taken' (SBSTA Technical Briefing 2009); H. Shue, *Climate Justice: Vulnerability and Protection* (Oxford University Press, 2014); R. Kanbur and H. Shue,

policy and activist contexts that climate change 'raises profoundly important questions about social justice, equity and human rights across countries and generations'.[190] The cruel reality of climate change is that, in general, an 'enormous global inequality' is evident when each country's contributions to global emissions are mapped against its vulnerability to the effects of climate change.[191] The impact and effect of climate change 'intensifies and exacerbates existing patterns of injustice',[192] and there is therefore a need for justice frameworks to inform climate mitigation and adaptation responses, in order to ensure equitable sharing of global resources and responsibilities for the global atmosphere among countries.[193] The term 'climate justice' speaks to multiple, different dimensions of justice: procedural, distributive, corrective and structural. The discussion below outlines these different conceptualisations of justice and identifies some of their potential limitations, in order to show why an expansive understanding of climate justice that encompasses all these registers is necessary.

Climate Justice: Integrating Economics and Philosophy (Oxford University Press, 2018); S. Caney, 'Cosmopolitan justice, responsibility, and global climate change' (2005) 18(4) *Leiden journal of International Law* 747–75; D. Miller, *Global Justice and Climate Change: How Should Responsibilities Be Distributed?* (The Tanner Lectures on Human Values, 2008); K. Mickelson, 'Beyond a politics of the possible? South–North relations and climate justice' (2009) 10(2) *Melbourne Journal of International Law* 411–23; J. Baskin, 'The impossible necessity of climate justice?' (2009) 10(2) *Melbourne Journal of International Law* 424–38, and other articles in that Special Issue; A. Grear, 'Towards "climate justice"? A critical reflection on legal subjectivity and climate injustice: Warning signals, patterned hierarchies, directions for future law and policy' (2014) 5 *Journal of Human Rights and the Environment* 103–33; S. Humphreys, 'Climate justice: The claim of the past' (2014) 5 *Journal of Human Rights and the Environment* 134–48, and other articles in that Special Issue; drawing political economy J. T. Roberts and B. C. Parks, 'Ecologically unequal exchange, ecological debt, and climate justice: The history and implications of three related ideas for a new social movement' (2009) 50(3–4) *International Journal of Comparative Sociology* 385–409; B. C. Parks and J. T. Roberts, 'Climate change, social theory and justice' (2010) 27(2–3) *Theory, Culture and Society* 134–66; informing policy approaches, B. Adams and G. Luchsinger, *Climate Justice for a Changing Planet: A Primer for Policy Makers and NGOs* (United Nations and UN Non-Governmental Liaison Service, 2009); S. Klinsky and H. Dowlatabadi, 'Conceptualisations of justice in climate policy' (2009) 9(1) *Climate Policy* 88–108; from a social movement perspective; Bond, *Politics of Climate Justice*; U. Brand, N. Bullard, E. Lander, and T. Mueller (eds.), *Contours of Climate Justice: Ideas for Shaping New Climate and Energy Policies* (Dag Hammarskjöld Foundation 2009); B. Russell and A. Pusey, 'Movements and moments for climate justice: From Copenhagen to Cancun via Cochabamba' (2011) 11(3) *ACME: An International E-Journal for Critical Geographies* 15–32; Dawson, 'Climate justice: The emerging movement against green capitalism'.

[190] *Human Development Report 2007/2008: Fighting Climate Change – Human Solidarity in a Divided World* (United Nations Development Programme, 2007).

[191] G. P. Peters, R. M. Andrew, S. Solomon, and P. Friedlingstein, 'Measuring a fair and ambitious climate agreement using cumulative emissions' (2015) 10 *Environmental Research Letters* 105004.

[192] Humphreys, 'Climate justice: The claim of the past', 138.

[193] J. Gupta, *The Climate Change Convention and Developing Countries: From Conflict to Consensus?* (Kluwer Academic Publishers, 1997) p. 84.

The focus on procedural justice, including questions of participation, voice and representation, is closely aligned with a human rights approach to climate change that emphasises how climate change impacts on the right to a safe, clean and healthy environment and other human rights.[194] It is now widely recognised that climate change threatens and could undermine the enjoyment of almost all protected human rights, including rights to life, health, water, food, housing, development and self-determination.[195] The human rights frame has been taken up in legal advocacy,[196] and the close connection between climate change and human rights has been articulated in different Human Rights Council resolutions[197] and explored by the Office of the High Commissioner for Human Rights (OHCHR)[198] and different mandate holders,[199] and UN treaty bodies.[200] Arguably such responses primarily remain 'patently inadequate and premised on forms of incremental managerialism and proceduralism which are entirely disproportionate to the urgency and magnitude of the threat'.[201] Moreover, human rights approaches have tended to focus on adaptation to climate change and the specific impacts of climate change on particularly vulnerable groups, having had much less to say about mitigation or 'confronting the core causes of climate change itself'.[202] Rights arguments have been usefully deployed to argue that failures to address

[194] On the relationship between climate change and human rights, see S. Humphreys (ed.), *Human Rights and Climate Change* (Cambridge University Press, 2009); S. Atapattu, *Human Rights approaches to Climate Change: Challenges and Opportunities* (Routledge, 2015).

[195] Atapattu, *Human Rights approaches to Climate Change: Challenges and Opportunities* p. 6.

[196] D. Esrin, and H. Kennedy, *Achieving Justice and Human Rights in an Era of Climate Disruption* (International Bar Association, 2014) p. 2.

[197] HRC resolution 7/23 (2008); 10/4 (2009); 18/22 (2011); 26/27 (2014); 29/15 (2015); 32/33 (2016); 35/20 (2017); 38/4 (2018).

[198] See A/HRC/10/61 (2009); A/HCR/32/23 (2016); A/HCR/35/13 (2017); A/HRC/37/35 (2017); A/HRC/38/21 (2018); A/HRC/41/26 (2019).

[199] See R. Rolnik, *The Right to Adequate Housing*, A/64/255 (6 August 2009); W. Kälin, *Protection of and Assistance to Internally Displaced Persons*, A/65/282 (11 August 2010); C. Beyani, *Protection of and Assistance to Internally Displaced Persons*, A/66/285 (9 August 2011); F. Crépeau, *Human Rights of migrants*, A/67/299 (13 August 2012); H. Elver, *Interim Report of the Special Rapporteur on the Right to Food*, A/70/287 (5 August 2015); J. Knox, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/31/52 (1 February 2016); V. Tauli Corpuz, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, A/HRC/36/46 (1 November 2017); P. Alston, *Climate Change and Poverty – Report of the Special Rapporteur on Extreme Poverty and Human Rights*, A/HRC/41/39 (25 June 2019).

[200] See in particular, Committee on Economic, Social and Cultural Rights, *Statement on Climate Change and the Covenant* (2018) Human Rights Committee, *General Comment No. 36 – Article 6: Right to Life*, CCPR/C/GC/36 (3 September 2019): 'Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.'

[201] P. Alston, *Climate Change and Poverty: Report of the Special Rapporteur on Extreme Poverty and Human Rights*, A/HRC/41/39 (25 June 2019), para 87.

[202] Ibid., para 23.

climate change violate rights;[203] however, these frameworks provide little scope for engagement with the disproportionate contribution of some countries and companies to the underlying causes of climate change, or how responsibility for such mitigation action should be distributed.[204] Thus, while the human rights frame has given important impetus to discussions on climate change, opening up new forums for debate and potential for litigation, there remain clear limitations in using human rights as a means of challenging environmental injustice, both within nations and between the Global North and South.[205]

A key concern within the human rights scholarship has been centred around ensuring that states and companies meet their obligations to respect and/or protect human rights when taking mitigation and adaptation action.[206] The preamble to the Paris Agreement affirmed that 'Parties should, when taking action on climate change, respect, promote and consider their respective obligations on human rights';[207] however, the 'rulebook' subsequently developed to implement the Paris Agreement does not include any reference to human rights.[208] Such concerns about the violation of both procedural and substantive rights have arisen particularly in relation to carbon offset projects, both under the Kyoto Protocol's Clean Development Mechanism (CDM) and in relation to REDD+.[209] While a human rights framework provides a powerful language with which to identify and call for accountability for such harm at the project level, there are a number of challenges in deploying human rights in the service of developing a structural critique of carbon markets, given the 'fundamentally dissimilar' nature of these regimes.[210] In particular, human rights frameworks can highlight some of the adverse impacts of

[203] See J. Peel and H. M. Osofsky, 'A rights turn in climate change litigation?' (2018) 7(1) *Transnational Environmental Law* 37–67.

[204] In Knox, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, the Special Rapporteur acknowledges the relevance differentiated obligations in relation to climate change (para 46), however, he implies that the basis for this differentiation is 'capacity' rather than 'responsibility' (para 48).

[205] C. G. Gonzalez, 'Environmental justice, human rights, and the Global South' (2015) 13 *Santa Clara Journal of International Law* 151–95.

[206] Knox, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, para 55.

[207] *Paris Agreement*, preambular recital, 11.

[208] 'Katowice COP24 outcome incompatible with Paris Agreement' 15 December 2018, www.ciel.org/news/katowice-cop24-outcome-incompatible-with-paris-agreement; S. Duyck, 'Delivering on the Paris promises? Review of the Paris Agreement's implementing guidelines from a human rights perspective' (2019) 9(3) *Climate Law* 202–23.

[209] *Human Rights Implications of Climate Change Mitigation Actions* (CIDSE, Nature Code and Carbon Market Watch, 2015).

[210] S. Humphreys, 'Conceiving justice: Articulating common causes in distinct regimes' in S. Humphreys (ed.), *Climate Change and Human Rights* (Cambridge University Press, 2010) pp. 299–319, 316.

the marketisation of climate policy, yet they are arguably less capable of critiquing this process of marketisation or its distributional effects more broadly.[211] As a general rule, rights frameworks are better adapted to protecting minimum standards than contesting the constitution or distributional impacts of neoliberal markets.[212] Moreover, in a context where rights paradigms have become increasingly 'trade-related, market-friendly'[213] there is a risk that human rights can be 'manipulated to further and legitimise neo-liberal goals'.[214] Therefore, some scholars have warned against human rights becoming the main or exclusive language of Third World resistance.[215] Thus, while a focus on procedural and substantive rights provides a critical means of naming harms and calling for accountability for the impacts of carbon offsets at the project level, it has a number of limitations for critiquing the constitution of carbon markets and their distributional effects.

Considerable attention has also been given to the distributive justice dimensions of climate change and highlighting inequalities in relation to the responsibility for climate change, the vulnerability to its effects and the distribution of mitigation and adaptation burdens. The stark reality is that, '[p]erversely, the richest, who have the greatest capacity to adapt and are responsible for and have benefitted from the vast majority of greenhouse gas emissions, will be the best placed to cope with climate change, while the poorest, who have contributed the least to emissions and have the least capacity to react, will be the most harmed.'[216] While analysis of distributive inequalities has predominantly focused on the inequalities between countries, the 'extreme carbon inequality' and differentiated responsibility for GHG emissions is even more acute when mapped at the level of individuals.[217] To redress these inequalities, various frameworks of mitigation action have been proposed, including that emission rights should be based on an equal per capita allocation.[218]

[211] Similar arguments have been made about human rights in the context of globalisation, structural adjustment policy and neoliberalism. A. Lang, *World Trade Law after Neoliberalism: Reimagining the Global Economic Order* (Oxford University Press, 2011); S. Marks, 'Human rights and root causes' (2011) 74(1) *The Modern Law Review* 57–78; S. Moyn, 'A powerless companion: Human rights in the age of neoliberalism' (2014) 77(4) *Law and Contemporary Problems* 147–69.

[212] S. Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018).

[213] U. Baxi, *The Future of Human Rights*, 2nd edition (Oxford University Press, 2002) p. 234.

[214] Chimni, 'Third world approaches to international law', 3.

[215] B. Rajagopal, *International Law from Below*.

[216] P. Alston, *Climate Change and Poverty: Report of the Special Rapporteur on Extreme Poverty and Human Rights*, A/HRC/41/39 (25 June 2019), para 14; see also G. Althor, J. E. Watson, and R. A. Fuller, 'Global mismatch between greenhouse gas emissions and the burden of climate change' (2016) 6 *Scientific Reports* 20281.

[217] T. Piketty and L. Chancel, *Carbon and inequality: From Kyoto to Paris: Trends in the Global Inequality of Carbon Emissions (1998–2013) and Prospects for an Equitable Adaptation Fund* (Paris School of Economics, 2015); *Extreme carbon inequality* (Oxfam Media Briefing, 2015).

[218] R. W. Salzman, 'Distributing emission rights in the global order: The case for equal per capita allocation' (2010) 13(1) *Yale Human Rights and Development Journal* 281–306.

Relatedly, the 'greenhouse development rights' model proposes a calculation of national obligations based on a country's current capacity or wealth and contribution to climate change, while protecting the 'right to development' by excepting from consideration emissions or income under a certain 'development threshold'.[219] The main institutional response to such concerns over distribution and North–South inequalities has been the inclusion of the principle of 'common but differentiated responsibilities and respective capacities' (CBDR-RC) and differentiation between 'developed' and 'developing countries' within the UNFCCC regime.[220] However, the potential of this principle to promote 'redistributive multilateralism'[221] has been undermined by moves towards a more nuanced model of self-differentiation within the regime. Such moves have been driven in part by concerns held by countries of the Global North about the growing emissions and economic power of the so-called BRICS countries (Brazil, Russia, India, China and South Africa), even though there has been no significant structural change in the comparative position of most countries in the Global South.[222] More recently, various methods have been proposed to assess whether parties are contributing their own 'fair share', variously based on cumulative or current emissions and capacity to take action.[223] These frameworks have provided critically important tools to critique the inequitable impacts of climate change; the inadequate climate mitigation measures taken by many countries, especially those of the Global North;[224] as well as how carbon markets could operate to spatially displace responsibility for mitigation actions.

However, on a conceptual level these frameworks exhibit a number of limitations. First, there is a realistic fear, based on the trajectory of developments within UN institutions and global conventions, that efforts towards distributive justice could be

[219] P. Baer, G. Fieldman, T. Athanasiou, and S. Kartha, 'Greenhouse development rights: Towards an equitable framework for global climate policy' (2008) 21(4) *Cambridge Review of International Affairs* 649–69.

[220] UNFCCC, Article 3.1; for a discussion of CBDR-RC within the climate regime see Chapter 4. See also Dehm, 'Reflections on Paris'.

[221] J. McGee and J. Steffek, 'The Copenhagen turn in global climate governance and the contentious history of differentiation in international law' (2016) 28(1) *Journal of Environmental Law* 37–63.

[222] P. Cullet, 'Differential treatment in environmental law: Addressing critiques and conceptualizing the next steps' (2016) 5(2) *Transnational Environmental Law* 305–28.

[223] *Fair Shares: A Civil Society Equity Review of INDCS. Report* (CSO Equity Review Coalition, 2015); Peters et al., 'Measuring a fair and ambitious climate agreement using cumulative emissions'; J. D. McBee, 'Distributive justice in the Paris Climate Agreement: Response to Peters et al.' (2017) 9(1) *Contemporary Readings in Law and Social Justice* 120–31.

[224] The CSO Equity Review Coalition found that 'all major developed countries fell well short of their fair shares', with Japan only contributing one-tenth of its fair share, the United States approximately one-fifth and the European Union contributing just over one-fifth of its fair share, ibid.

co-opted and repurposed in order to serve neoliberal ends.[225] When neoliberal economic and political conceptions monopolise policy and practice within environmental regimes, distributive justice concerns risk being reduced to: '(1) the insurance of a state's right to its property, (2) the free ability to trade this property globally and (3) the continual deregulation of this market in order to ensure everyone's equal and competitive position within commerce'.[226] This is evident in how distributive justice frameworks have been used to promote better equality of opportunity within carbon markets, including more equitable participation within mechanisms such as the CDM,[227] without fundamentally challenging the existence or structure of such markets or measures. Second, underpinning the demands for differentiation, especially by countries of the Global South, has been a concern that the necessity of taking climate mitigation action could undermine a country's 'right to development',[228] to reach an imagined future of fossil-fuel–driven industrialisation. Such demands can cynically be dismissed as a 'strategy for bargaining, in effect, for a longer life for a developmental regime . . . for nations like India and China';[229] but what is more problematic is how such calls are based upon a specific imaginary of development as the only horizon and how they remain trapped in an 'inability to imagine development alternatives'.[230] Third, although valuable, such frameworks of distributive climate justice rely on the precepts of liberal egalitarianism, which assume the capacity to rearrange a current unjust distribution of quantifiable matter to make it conform to a universally valid conception of a just distribution of entitlements. Such conceptions of global justice, as Andrew Robinson and Simon Tormey have shown, thus dictate both the 'universality of equivalence' and the existence of some global 'state-form' that does this distributing.[231] These conceptions therefore require the establishment of an 'equivalential signifier' – such as one tonne of carbon dioxide equivalent ($1tCO_2e$) – that risks consolidating rather than contesting the premise that emissions arising from diverse social actions can be made legible in

[225] J. Mousie, 'Global environmental justice and postcolonial critique' (2012) 9(2) *Environmental Philosophy* 21–46; C. Okereke, *Global Justice and Neoliberal Environmental Governance: Ethics, Sustainable Development and International Co-operation* (Routledge, 2007).

[226] Mousie, 'Global environmental justice and postcolonial critique', 43.

[227] T. A. Eni-Ibukun, *International Environmental Law and Distributive Justice* (Routledge, 2014).

[228] General Assembly Resolution 41/128, *Declaration on the Right to Development*, 97th plen mtg, A/RES/41/128 (4 December 1986); the preamble to the UNFCCC recalls this Declaration (preambular recital 10) and – with a carefully placed comma – ambiguously affirms that 'Parties have a right to, and should, promote sustainable development' (Article 3(4)); see S. Biniaz, 'Comma but differentiated responsibilities: Punctuation and 30 other ways negotiators have resolved issues in the international climate change regime' (2016) 6 *Michigan Journal of Environmental & Administrative Law* 37–63.

[229] Chakrabarty, 'Planetary crises and the difficulty of being modern', 267.

[230] U. Natarajan, 'Human rights – help or hindrance to combatting climate change?' *OpenDemocracy*, 9 January 2015, www.opendemocracy.net/en/openglobalrights-openpage-blog/human-rights-help-or-hindrance-to-combatting-climate-change/It.

[231] A. Robinson and S. Tormey, 'Resisting "global justice": Disrupting the colonial "emancipatory" logic of the West' (2009) 30(8) *Third World Quarterly* 1395–409 at 1397.

standardisable and comparable terms.[232] Finally, such frameworks of distributive justice generally remain presentist, involving limited engagement with how climate justice is also a claim about the past.[233] The limitations outlined above speak to why distributive frameworks of climate justice, although highly pertinent and necessary, need to be supplemented by compensative and structural conceptions of justice.

Climate justice compels a compensative or reparative dimension because 'historical injustice saturates the problem of climate change'.[234] As Stephen Humphreys writes, a 'carbon footprint haunts every step of the history of industrial and colonial expansion of the last centuries',[235] and it is this cumulation of impacts that now constrains present and future possibilities. Reparative politics calls for reckoning with such acts that '*remain unrepaired* in the present, whose wrongs continue to disfigure generations, and which, in consequence, *call out* now for a just response'.[236] While it is not possible for all historical wrongs to be repaired, such calls for reparation 'confront us with pasts that are not past but remain unresolved or unreconciled such that they weigh upon the psyche like a blighted and hobbled and afflicted revenant' and thus highlight the unfinished – and perhaps unfinishable – project of justice.[237] Persistent claims have been raised (and strongly resisted) that the countries and peoples of the Global North owe a 'climate debt' to the countries and peoples of the Global South, as 'acknowledgment that the privileged position of the developed countries represents the culmination, and in many cases the perpetuation, of a history of unequal access'.[238] Thus this dimension of compensative justice provides a necessary supplement to other registers of climate justice, by foregrounding the 'uneven and persistent patterns of eco-imperialism and "ecological debt" as a result of the historical legacies of uneven use of fossil fuels and exploitation of raw materials'.[239]

Finally, frameworks of reparative or compensative justice should be supplemented with a deeper focus not on historical injustices alone but on critically interrogating the processes through which such injustices have been produced.

[232] See Dehm, 'One tonne of carbon dioxide equivalent (1tCO2e)'.
[233] Humphreys, 'Climate justice: The claim of the past', 134.
[234] Ibid.
[235] Ibid., 147.
[236] D. Scott, 'Preface: Evil beyond repair' (2018) 22(1) *Small Axe: A Caribbean Journal of Criticism* vii–x at viii (emphasis in original).
[237] Ibid., viii.
[238] K. Mickelson, 'Leading towards a level playing field, repaying ecological debt, or making environmental space: Three Stories about international environmental cooperation' (2005) 43 *Osgoode Hall Law Journal* 137–70 at 154; on climate debt see also A. Simms, A. Meyer, and N. Robbins, *Who Owes Who : Climate Change, Debt, Equity and Survival* (Christian Aid, 1999); T. Jones and S. Edwards, *The Climate Debt Crisis: Why Paying Our Dues if Essential for Tackling Climate Change* (Jubilee Debt Campaign and World Development Movement, 2009); *Climate Debt: A Primer* (Third World Network, 2009).
[239] P. Chatterton, D. Featherstone, and P. Routledge, 'Articulating climate justice in Copenhagen: Antagonism, the commons, and solidarity' (2013) 45(3) *Antipode* 602–20 at 606.

Joshua Mousie suggests that accounts of environmental justice need to be attentive to how contemporary political relationships have been shaped by 'current and historical political-material relationships of domination, exploitation, and consumption'.[240] He argues that 'Eurocentric projects of modernity, development, and globalization rarely (if ever) produce environmental relationships that promote equality' and proposes that a reformulation of environmental justice calls for a more general questioning of these projects.[241] It is consequently unsurprising that social movements have promoted a conceptualisation of 'climate justice' that focuses on the 'interrelationships between, and addresses the root causes of, the social injustice, ecological destruction and economic domination perpetuated by the underlying logics of pro-growth capitalism'.[242] Social movement declarations have highlighted that '[c]olonialism continues to operate', that it structures the historical context in which climate change occurs, that the 'structural causes' of climate change are linked to the 'current capitalist hegemonic system' and that there is a need for 'structural changes' to mainstream production, distribution and consumption models.[243] This reality compels critical reflection of the extent to which these projects of colonialism and hegemonic capitalist development models have been the foundation for the development of international legal doctrines and principles, and how they continue to provide 'transcendent grounds' to international law[244] and operate to '[secure] the putative objectivity of the categories of international law'.[245] Finally, social movements orientated towards climate justice have critiqued, as an underlying source of the climate crisis, the 'political and economic systems commercialising and reifying nature and life'.[246] Again, taking up these concerns within legal scholarship calls for an interrogation of how 'harmful understandings of nature were central to shaping the discipline', and of how a reconstructive 'remaking' of

[240] Mousie, 'Global environmental justice and postcolonial critique', 40.
[241] Ibid., 40–1.
[242] Chatterton, Featherstone, and Routledge, 'Articulating climate justice in Copenhagen: Antagonism, the commons, and solidarity', 606.
[243] Social PreCOP, *Margarita Declaration on Climate Change* (2014), redd-monitor.org/2014/08/08/the-margarita-declaration-on-climate-change-we-reject-the-implementation-of-false-solutions-to-climate-change-such-as-carbon-markets-and-other-forms-of-privatization-and-commodification-of-life/.
[244] S. Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011), pp. 37–40; see generally A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2007).
[245] S. Pahuja, 'Laws of encounter: A jurisdictional account of international law' (2013) 1(1) *London Review of International Law* 63–98 at 66.
[246] Social PreCOP, *Margarita Declaration on Climate Change* (2014), redd-monitor.org/2014/08/08/the-margarita-declaration-on-climate-change-we-reject-the-implementation-of-false-solutions-to-climate-change-such-as-carbon-markets-and-other-forms-of-privatization-and-commodification-of-life.

international law requires both deconstructing these understandings and a radical reconceptualisation of the relationship between law and the natural world.[247]

Climate justice movements have foregrounded the need for transformative change to build a fair, egalitarian development model, one 'based on the principles of living in harmony with nature, guided by absolute and ecological sustainability limits'.[248] Key to realising such a transformative vision of change is the sharing of 'experiences from all over the world to understand and construct true solutions'; 'expressing solidarity' to those in other parts of the world and understanding their context, struggle and identity; and 'intercultural thinking'.[249] Within these alternative visions of climate justice there is thus a scepticism towards any attempts to 'impose a single social ordering, or even a general transcendental morality', and the focus is instead on allowing for a 'multiplicity of perspectives' as well as 'a range of different ways of relating to land, labour, nature, [and] territories'.[250] The challenge of 'trying to imagine ways in which diverse perspectives and lifeworlds can coexist in non-dominatory ways'[251] thus entails both a shared 'no' to the exploitative relationship over peoples and nature and an embrace of the potentialities of working towards many different visions of just, ecological justice. In doing so, such visions radicalise frameworks of 'climate justice' by authorising plural conceptions of 'climate *justices*'.

2 *The Green Economy*

REDD+ is one aspect of a much broader reconfiguration of relationships between humans and the natural world that is reflected in the changing ways in which the non-human world is 'conceived, valued, managed and governed globally'.[252] Analysis of REDD+ therefore needs to be situated against this background, in order to appreciate how the law is central to these transformations, through which an 'entire philosophy of nature [is] co-produced with a new "green" economy'.[253] The concept of the 'green economy' has become a new discursive frame for environmental politics, which gained traction in the lead-up to the 2012 UN Conference on

[247] Natarajan and Khody, 'Locating nature, 573–93; U. Natarajan and J. Dehm, 'Where is the environment? Locating nature in international law' *Third World Approaches to International Law Review (TWAILR)*, 30 August 2019, twailr.com/where-is-the-environment-locating-nature-in-international-law; Natarajan and Dehm, *Locating Nature: Making and Unmaking International Law*.

[248] Social PreCOP, *Margarita Declaration on Climate Change* (2014), https://redd-monitor.org/2014/08/08/the-margarita-declaration-on-climate-change-we-reject-the-implementation-of-false-solutions-to-climate-change-such-as-carbon-markets-and-other-forms-of-privatization-and-commodification-of-life/.

[249] Ibid.

[250] Robinson and Tormey, 'Resisting "global justice"', 1406.

[251] Ibid., 1407.

[252] S. Sullivan, 'Green capitalism, and the cultural poverty of constructing nature as service-provider' (2009) 3 *Radical anthropology* 18–27 at 19.

[253] Fairhead, Leach, and Scoones, 'Green grabbing: A new appropriation of nature?', 245.

https://doi.org/10.1017/9781108529341.001 Published online by Cambridge University Press

Sustainable Development (Rio +20), even though, due to civil society pressure,[254] the concept only received cautious endorsement in the summit outcome document.[255] UNEP has promoted the 'green economy' as a response to the intertwined global food, energy and financial crises, and to catalyse renewed policy attention and international cooperation around sustainable development;[256] while the World Bank has foregrounded the concept of 'green growth',[257] which has been taken up in the strategies of the Organisation for Economic Co-operation and Development (OECD).[258] This discursive frame implies the possibility of reconciling ecological limits with capitalist imperatives of economic growth, through the rapid material decoupling of GDP growth from material throughput and carbon emissions. Jason Hickel and Giorgos Kallis have empirically examined such claims and found that such decoupling, although 'technically possible', is 'unlikely to be achieved even under highly optimistic conditions'.[259]

The 'green growth' or 'green economy' frame seeks to sustain the legitimacy of continual economic growth,[260] and, thereby facilitates the further expansion of economic logics and markets into previously uncommodified domains of life through the commodification, marketisation and financialisation of nature.[261] In particular, the frame of the green economy has helped to reconceptualise the 'natural commons' as 'natural capital',[262] and facilitated efforts to value nature and ecosystem services in economic terms,[263] on the premise that the abstraction and pricing of nature, and its transformation into assets, goods and services, will mean 'environmental risk and degradation can be measured, exchanged, offset and generally minimized'.[264] In doing so, this idea promotes a highly reductionist way of making nature visible and legible in substitutable and fungible terms, one that

[254] See N. Bullard and T. Müller, 'Beyond the "Green Economy": System change, not climate change?' (2012) 55(1) *Development* 54–62; D. Brockington, 'A radically conservative vision? The challenge of UNEP's towards a green economy' (2012) 43(1) *Development and Change* 409–22.

[255] General Assembly resolution 66/288, *The Future We Want*, A/RES/66/288 (11 September 2011), para 56.

[256] *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication* (United Nations Environment Programme, 2011).

[257] *Inclusive Green Growth: The Pathway to Sustainable Development* (World Bank, 2012).

[258] *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication*.

[259] J. Hickel and G. Kallis, 'Is green growth possible?' (2020) 25(4) *New Political Economy* 469–86 at 483.

[260] W. Sachs, 'Sustainable development and the crisis of nature: On the political anatomy of an oxymoron' in M. Hajer and F. Fischer (eds.), *Living with Nature: Environmental Politics As Cultural Discourse* (Oxford University Press, 1999).

[261] Smith, 'Nature as accumulation strategy'.

[262] J. Boehnert, 'The green economy: Reconceptualising the natural commons as natural capital' (2015) 10(4) *Environmental Communication* 395–417.

[263] See in particular, *The Economics of Ecosystems and Biodiversity: Mainstreaming the Economics of Nature: A Synthesis of the Approach, Conclusions and Recommendations of the TEEB* (TEEB, 2010).

[264] Sullivan, 'Green capitalism, and the cultural poverty of constructing nature as service-provider', 18.

ignores complex social and ecological entanglements and dismisses other logics of evaluation, instead 'rationalising human and nonhuman natures to conform to an economic system that privileges price over other values, and profit-oriented market exchanges over the distributive and sustainable logics of other economic systems'.[265]

The frame of 'green growth' or the 'green economy' rejects claims of inherent ecological limits,[266] and instead embodies a specifically capitalist relationship with limits, with 'contradictory tendencies … to both overtake and posit limits'.[267] For capital, every limit appears as a barrier to be overcome in a drive towards a constantly expanding sphere of production that simply displaces contradictions elsewhere.[268] However, there is a simultaneous drive to re-establish limits, as the 'internal condition of value's realization as private wealth', and in order to 'capture the "new" within the property form'.[269] As such, even as the positing of aggregate limits or a 'cap' enables the constitution of carbon markets and generates the value of a new immaterial carbon commodity, the expansion of forest carbon offsets requires the delineation of new property rights in order to clarify ownership and entitlements in the forest carbon economy.

REDD+ has been widely described as key to enabling a broader transition to a 'green economy': proponents have suggested that integrating REDD+ in a 'green economy' transition can 'maximise synergies' and help create a 'virtuous circle' of investment in natural capital.[270] However, a more critical analysis suggests what is at stake is a process of capital expansion that takes both an *extensive* and an *intensive* form,[271] consisting of both the reorganisation of forest 'hinterland' spaces to more deeply accord with market logics as well as the further subsumption of nature within capitalist markets and the subjection of nature's productivity to marketised modes of

[265] Sullivan, 'Banking nature?', 200.

[266] See for example D. H. Meadows, D. L. Meadows, W. W. Behrens III, and J. Randers, *The Limits to Growth* (Universe Books, 1972); T. Jackson, *Prosperity without Growth: Economics for a Finite Planet* (Earthscan, 2009).

[267] A. Mitropoulos, *Contract and Contagion: From Biopolitics to Oikonomia* (Minor Compositions, 2012) p. 156.

[268] K. Marx, *Grundrisse: Foundations of the Critique of Political Economy* (Penguin Books, 1939) pp. 334, 410.

[269] M. Cooper, *Family Values: Between Neoliberalism and the New Social Conservatism* (MIT Press, 2017) p. 16; M. E. Cooper, *Life As Surplus: Biotechnology and Capitalism in the Neoliberal Era* (University of Washington Press, 2008) p. 25.

[270] Sukhdev et al., *REDD+ and the Green Economy: Opportunities for a Mutually Supportive Relationship*; C. Watson, E. Brickell, W. McFarland and J. McNeely, *Integrating REDD+ into a Green Economy Transition* (Overseas Development Institute, 2013).

[271] For a discussion of the expansion of capital through processes of so-called 'primitive accumulation' see K. Marx, *Capital: A Critique of Political Economy* (Lawrence and Wishart, 1887) vol. i Chapters 26–8; see also D. Harvey, *The New Imperialism* (Oxford University Press, 2005); J. Read, *The Micro-Politics of Capital: Marx and the Prehistory of the Present* (SUNY Press, 2003); M. D. Angelis, *The Beginning of History: Value Struggles and Global Capital* (Pluto Press, 2007); O. U. Ince, 'Primitive accumulation, new enclosures, and global land grabs: A theoretical intervention' (2013) 79(1) *Rural Sociology* 104–31.

production.[272] In contrast to counter-hegemonic imaginaries of ecological futures that create openings for the 'transformation of the current production model' and challenge policies that 'prioritize the reproduction of capital over the reproduction of life',[273] in this paradigm of the 'green economy' the 'environmental crisis has itself become a major new frontier of value creation and capitalist accumulation'.[274]

3 *Power*

REDD+ engages a complex form of transnational multi-sited, multi-layered and multi-actor governance – often described as 'polycentric'[275] – that extends beyond the formal climate regimes, transgresses the public/private divide and allows states, markets, laws and other institutions to cohere within a nested organisation of local, national and global scales.[276] The forms of power enacted through REDD+ are diffuse, plural and productive, directed towards constituting and fabricating their objects of governance and acting on and systematically modifying the variables of the background regulatory environment.[277] This book deploys a Foucauldian understanding of power as a 'way of acting on an acting subject', consisting of 'guiding the possibility of conduct and putting in order the possible outcome'.[278] For Foucault, to govern is therefore to 'structure the possible field of actions of others':[279] a process

[272] Smith, 'Nature as accumulation strategy'; Sullivan, 'Banking nature?'; N. Castree and G. Henderson, 'The capitalist mode of conservation, neoliberalism and the ecology of value' (2014) 7(1) *New Proposals: Journal of Marxism and Interdisciplinary Inquiry* 16–37.

[273] *Call to Action to Reject REDD+ and Extractive Industries; To Confront Capitalism and Defend Life and Territories* (December 2014), wrm.org.uy/wp-content/uploads/2014/11/Call-COP-Lima_NoREDD.pdf.

[274] Sullivan, 'Green capitalism, and the cultural poverty of constructing nature as service-provider', 18.

[275] A. Jordan, D. Huitema, H. Van Asselt, and J. Forster (eds.), *Governing Climate Change: Polycentricity in Action?* (Cambridge University Press, 2018).

[276] Boyd, 'Climate change, fragmentation, and the challenges of global environmental law: Elements of a post-Copenhagen assemblage', 471; On transnational climate governance see generally J. Peel, L. Godden, and R. J. Keenan, 'Climate Change Law in an Era of Multi-Level Governance' (2012) 1(2) *Transnational Environmental Law* 245–80; C. Okereke, H. Bulkeley, and H. Schroeder, 'Conceptualising climate governance beyond the international regime' (2009) 9(1) *Global Environmental Politics* 58–78; P. Pattberg and J. Stripple, 'Beyond the public and private divide: Remapping transnational climate governance in the 21st century' (2008) 8 *International Environmental Agreements* 367–88; L. B. Andonova, M. M. Betsill, and H. Bulkeley, 'Transnational climate governance' (2009) 9(2) *Global Environmental Politics* 52–73; H. Bulkeley, L. B. Andonova, M. M. Betsill, D. Compagnon, T. Hale, M. J. Hoffman, P. Newell, M. Peterson, C. Roger, and S. D. Vandveer, *Transnational Climate Change Governance* (Cambridge University Press, 2014).

[277] In M. Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978–1979* (2008), Foucault theorises a type of 'governmentality which will act on the environment and systematically modify its variables' (p. 271).

[278] M. Foucault, 'The subject and power' (1982) 8(4) *Critical Inquiry* 777–95.

[279] Ibid., 790.

of 'conducting the conduct'[280] of individuals so as to optimise relations in a specific milieu.[281] Governing through conduct, as Tania Murray Li has theorised, is thus 'a matter of "getting the incentives right" so that some conduct is encouraged and enabled, while other conduct becomes more difficult'.[282] These theoretical frameworks therefore help make visible that behind REDD+'s stated objectives to provide economic incentives to address tropical deforestation lies the work of organising the background regulatory environment to enable such incentives to become legible. Moreover, these theoretical frameworks illuminate that a necessary concurrent project is constructing the types of subject that modify their behaviours in line with such incentives.

Environmental scholars have taken up and adapted the 'ugly word'[283] 'governmentality' coined by Foucault to describe the ensemble of institutions, procedures, analyses, reflections, calculations and tactics that allow for a specific and complex form of power that operates at the level of populations, relies on knowledge of political economy and seeks to secure a complex balance between the interests of the collective and those of the individual.[284] The frameworks of 'environmentality', 'eco-governmentality' and 'green governmentality' provide conceptual tools for analysing the interconnections between power/knowledge, institutions and the production of subjectivities in contemporary environmental politics.[285] Specifically, Sam Adelman has identified how REDD+ constitutes a 'neoliberal green governmentality regime' that through the 'deployment of rationalities, techniques and legal regimes' has made tropical forests subject to market forces, and 'enabled them to be surveilled, monitored and measured, and their inhabitants rendered vulnerable to the discipline of markets'.[286] Central to this form of governmentality is the

[280] Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977–1978* (Palgrave Macmillan, 2007), p. 193; see also T. M. Li, 'Fixing non-market subjects: Governing land and population in the Global South' (2014) 18 *Foucault Studies* 34–48.

[281] For an elaboration of governance as an attempt to direct conduct see Li, 'Fixing non-market subjects: Governing land and population in the Global South'; T. M. Li, 'Practices of assemblage and community forest management'; T. M. Li, *The Will to Improve: Governmentality, Development, and the Practice of Politics* (Duke University Press, 2007).

[282] Li, 'Fixing non-market subjects: Governing land and population in the Global South', 37.

[283] Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977–1978*, p. 115.

[284] Ibid., pp. 108–9.

[285] Agrawal, *Environmentality*; A. Agrawal, 'Environmentality: Community, intimate government, and the making of environmental subjects in Kumaon, India' (2005) 46(2) *Current Anthropology* 161–90; Rutherford, 'Green governmentality: Insights and opportunities in the study of nature's rule'; T. W. Luke, 'On environmentality: Geo-power and eco-knowledge in the discourses of contemporary environmentalism' (1995) 31 *Cultural Critique* 57–81; T. W. Luke, 'Environmentality as green governmentality' in E. Darier (ed.), *Discourse of the Environment* (Blackwell Publishers, 1999) pp. 121–51; Luke, 'Environmentality' in Dryzek et al. (eds.), *The Oxford Handbook of Climate Change and Society* pp. 96–109; R. Fletcher, 'Environmentality unbound: Multiple governmentalities in environmental politics' (2017) 85 *Geoforum* 311–15.

[286] Adelman, 'Tropical forests and climate change: A critique of green governmentality', 196.

constituting of 'nature' and human–nature relations such that the 'mechanisms of competition' are given 'freer play as regulatory principles'.[287] Such dynamics of competition are shaped and underpinned by legal relations – especially those of property and contract – and structured by a whole juridical, institutional ensemble. The close co-constitution of law and markets makes REDD+ an ideal site for examining 'the interplay between the ways the state creates "the market" and the ways market power feeds back into the politics'[288] as well as the non-egalitarian, asymmetrical, disciplinary micro-powers that support and constitute 'the other, dark side' of a formally egalitarian juridical framework.[289]

This conceptual apparatus also enables a more politicised understanding of how power is enacted through forms of 'polycentric' climate governance. The concept of 'polycentricity' has been taken up in climate law literature in descriptive and explanatory ways to analyse climate governance and has also been proposed as a normative prescription of how to better govern responses to the climate crisis.[290] The term was arguably popularised in the field through the publication of a background paper that Elinor Ostrom wrote for the World Bank's 2010 World Development Report, *Development and Climate Change*.[291] The term refers to governance arrangements that are multi-level, multi-tiered, multi-perspectival, functional, overlapping and made up of competing jurisdictions or spheres of authority,[292] and it has been taken up within the literature as 'hold[ing] significant potential for addressing some of the major challenges outlined for REDD'.[293] Conducting a quick genealogy of the term shows how it was first coined by Michael Polanyi, and then adopted in the work of the Indiana Workshop in Political Theory (directed by Vincent and Elinor Ostrom) as a means of rethinking questions of public choice economics.[294] For Michael Polanyi, the concept of

[287] Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978–1979*, p. 147; Luke, 'Environmentality', p. 99.

[288] D. S. Grewal, A. Kapczynski, and J. Purdy, 'Law and political economy: Toward a manifesto' *Law and Political Economy Blog*, November 2017 lpeblog.org/2017/11/06/law-and-political-economy-toward-a-manifesto.

[289] Foucault, *Discipline and Punish: The Birth of the Prison*, p. 222.

[290] Jordan et al. (eds.), *Governing Climate Change: Polycentricity in Action?*

[291] E. Ostrom, *A Polycentric Approach for Coping with Climate Change: Background Paper to the 2010 World Development Report* (2009); see also E. Ostrom, 'Polycentric systems for coping with collective action and global environmental change' (2010) 20(4) *Global Environmental Change* 550–7.

[292] G. Marks and L. Hooghe, 'Contrasting visions of multilateral governance' in I. Bache and M. V. Flinders (eds.), *Multi-level Governance* (Oxford University Press, 2004) p. 15.

[293] H. Nagendra and E. Ostrom, 'Polycentric governance of multifunctional forested landscapes' (2012) 6(2) *International Journal of the Commons* 104–33.

[294] V. Ostrom, 'Polycentricity (Part 1)' in M. D. McGinnis (ed.), *Polycentricity and Local Public Economics: Readings from the Workshop in Political Theory and Policy Analysis* (University of Michigan Press, 1999) pp. 52–74; B. E. Wright, M. D. McGinnis, and E. Ostrom, 'Reflections on Vincent Ostrom, public administration, and polycentricity' (2011) 71(1) *Public Administration Review* 15–25; P. D. Aligica and P. Boettke, 'The social philosophy of

polycentricity initially provided a way of theorising the process of epistemic innovation within a tradition, but in later work he used the term to refer to ordering by and through a pricing mechanism as a form of 'spontaneous arbitration'.[295] His theorisation of polycentricity – and polycentric tasks and orders – was thus intimately connected with his conceptualisation of the market as a system of 'spontaneous order'.[296] The term 'spontaneous order' was later popularised by the writing of fellow Mont Pèlerin Society member, Friedrich Hayek,[297] and the related language of self-organisation – especially in Hayek's usage – is 'tethered to a deeply conservative opposition to politics'.[298] The concept of the 'spontaneous order' assumes that the self-interested actions of individuals will converge and thereby promote the collective good, without the need for human or governmental coordination.[299] The theory not only holds that governmental intervention is unnecessary but also that it is impossible, because there is no standpoint from which the totality of economic relations is visible, and this lack of a totalising vantage point and ability to comprehend the order as a whole disqualifies the sovereign from intervening to moderate market relations. However, although direct interventions are disqualified, Polanyi (and Hayek) stress the fundamental importance of the background legal norms that '[frame] the economy', such that 'if the economy is a game', then legal institutions represent the 'rules of the game'.[300] Specifically in his discussion of the spontaneous order, Michael Polanyi notes that '[n]o marketing system can function without a legal framework that guarantees adequate proprietary powers and enforces contracts'.[301] It is this element of polycentric governance that is often obscured in the literature: namely, that polycentric governance is a system of spontaneous private

Ostrom's institutionalism' (2010) 10–19 Working Paper, Mercatus Centre, George Mason University; P. D. Aligica and P. J. Boettke, *Challenging Institutional Analysis and Development: The Bloomington School* (Routledge, 2009); P. D. Aligica and V. Tarko, 'Polycentricity: From Polanyi to Ostrom, and beyond' (2012) 25 *Governance: An International Journal of Policy, Administration, and Institutions* 237–62; P. D. Aligica, *Institutional Diversity and Political Economy: The Ostroms and Beyond* (Oxford University Press, 2014).

[295] M. Polanyi, 'Profits and private enterprise' in R. T. Allen (ed.), *Society, Economics and Philosophy: Selected Papers Michael Polanyi* (Transaction Publishers, 1948) and the essay 'Collectivist planning' in that edited collection; see also the chapter 'The span of central direction" in M. Polanyi, *The Logic of Liberty: Reflections and Rejoinders* (University of Chicago Press, 1981) pp. 136–69.

[296] See especially M. Polanyi, 'The manageability of social tasks' in *The Logic of Liberty: Reflections and Rejoinders*.

[297] S. Jacobs, 'Tradition in a free society: The fideism of Michael Polanyi and the rationalism of Karl Popper' (2010) 36(2) *Tradition & Discovery: The Polanyi Society Periodical* 8–25; On the Mont Pèlerin Society see P. Mirowski and D. Plehwe (eds.), *The Road from Mont Pèlerin. The Making of the Neoliberal Thought Collective* (Harvard University Press, 2009).

[298] J. Whyte, 'The invisible hand of Friedrich Hayek: Submission and spontaneous order' (2019) 47(2) *Political Theory* 156–84 at 160.

[299] Ibid., 161.

[300] Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978–1979*, p. 173.

[301] Polanyi, 'The manageability of social tasks', p. 185; this is cited in M. Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978–1979* (2008) p. 183 (fn 34).

ordering and mutual adjustment that occurs *within* a context that is already bounded and constituted by a system of predefined rules.[302] The analysis in this book therefore highlights the need to consider the 'background' conditions that constitute ostensible 'spontaneous ordering', especially the ways in which the definition and allocation of proprietary rights and the specificities of contractual terms structure the terrain in ways that compel competitive market interactions that further generate inequalities.

Finally, this analysis adds important nuances to descriptions of polycentric governance as systems in which 'authority is dispersed'.[303] Although polycentric governance is constituted by a multiplicity of actors, levels, institutions, decision-making nodes and potentially even legal pluralism, attention to the 'background' conditions of polycentric governance suggests a more singular basis of authorisation. This conceptual apparatus instead highlights the *simultaneous* consolidation of forms of global authority *alongside* the devolution, decentralisation and pluralisation of governance, as the means by which such authority is exercised. Therefore, even as the authority to shape and determine REDD+ objectives is amalgamated 'upwards' to the 'global' level, responsibility for REDD+'s enactment and implementation is increasingly devolved 'downwards' to the 'local' level. Nonetheless, the global objectives of REDD+ are made manifest in how international norms and institutional activities 'shape people's everyday lives and their local geographies'[304] to construct local spaces and subjects that are 'attuned with global expectations',[305] and increasingly 'responsibilised' to be accountable for the realisation of global imperatives.[306] Devolution therefore represents not a dismantling of global authority but a reconfiguration of its forms of exercise and implementation, whereby the 'local' can be strategically deployed as the level through which global visions come into being.

[302] See Vincent Ostrom's definition of a 'polycentric system' as one 'where many elements are capable of making mutual adjustments for ordering their relationships with one another within a general system of rules where each element acts with independence of other elements' 'Polycentricity (Part 1)'; this is a slight variation from the definition he had previously proposed in V. Ostrom, C. M. Tiebout, and R. Warren, 'The organisation of government in metropolitan areas: A theoretical inquiry' (1961) 55(4) *The American Political Science Review* 831–42.

[303] See for example A. Jordan, D. Huitema, J. Schoenefeld, and J. Forster, 'Governing climate change polycentrically: Setting the scene' in Jordan et al. (eds.), *Governing Climate Change: Polycentricity in Action?* (Cambridge University Press, 2018) pp. 3–26, 11.

[304] L. Eslava, 'Istanbul vignettes: Observing the everyday operation of international law' (2014) 2(1) *London Review of International Law* 3–47 at 6.

[305] L. Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge University Press, 2015) p. 10.

[306] For a discussion of 'responsibilisation' as a 'regime in which the singular human capacity for responsibility is deployed to constitute and govern subjects and through which their conduct is organised and measured, remaking and reorientating them for a neoliberal order', see W. Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Zone Books, 2015) pp. 131–4; this is discussed further in Chapter 5.

4 *Authority*

Implementing REDD+ involves not just a 'protracted process in which power is being reorganised', but also the rationalisation of these processes, and the way in which such an 'expansive set of governmental practices' are underpinned by 'a coherent theoretical account of international authority'.[307] While the above discussion of power focused on the means by which authority is exercised, the concept of authority directs attention to the processes by which forms of legal authority are established: that is, the modes of authorisation of law.[308] Thinking with authority brings into view both the fact of legal authority and the institutional means by which it is enacted; but it also shows, given that 'authority always has to be authorized', the means by which international legal authority is given shape, including through practices of creation and representation.[309] In this sense, questions of authority draw attention to that which precedes law, namely, the ability to 'speak in the name of the law'.[310] The idiom of authority thus enlivens possibilities for acknowledging plural forms and sources of authority, including both state and non-state forms of authority, and therefore also conflicts over 'the authority to have authority',[311] and how the instantiation of new forms of political and legal authority can operate to displace 'rival forms of authority'.[312] Moreover, while political theory is often concerned with justifying authority or considering what constitutes legitimate authority, this book's focus on the way in which new forms of global authority are authorised allows for greater agonism about the normative basis of authority, and directs its consideration primarily to questions of *how* new forms of global authority come to be instituted, whether through practices of representation or other technical means.[313]

While authority has tended to be associated with public law and questions of sovereignty, in the context of a globalised world increased attention needs to be paid to how private mechanisms of governance and private arrangements gain standing as (de facto) forms of public authority.[314] In a globalised world, the expansion of markets beyond state borders is organising its own forms of authority.[315] It is therefore critical to interrogate how forms of climate governance that are 'an amalgam of

[307] A. Orford, 'On international legal method' (2013) 1(1) *London Review of International Law* 166–97 at 183.
[308] Dorsett and McVeigh, *Jurisdiction*, pp. 32–3.
[309] Ibid., p. 34.
[310] Rush, 'An altered jurisdiction: Corporeal traces of law', 150.
[311] S. Pasternak, *Grounded Authority: The Algonquins of Barriere Lake against the State* (University of Minnesota Press, 2017) p. 2.
[312] Dorsett and McVeigh, *Jurisdiction*, p. 4.
[313] See also Pahuja, 'Laws of encounter: A jurisdictional account of international law', 70.
[314] E. Hartmann and P. F. Kjaer, 'The status of authority in the globalizing economy: Beyond the public/private distinction' (2018) 25(1) *Indiana Journal of Global Legal Studies* 3–11 at 4.
[315] H. M. Watt, 'Private international law's shadow contribution to the question of informal transnational authority' (2018) 25(1) *Indiana Journal of Global Legal Studies* 37–60.

private and public initiatives at multiple scales', of which carbon markets are now globally the most dominant feature, give rise to new forms of global or transnational authority.[316] Scholars have shown how climate governance is increasingly conducted 'by, through, and for the market',[317] and that law and regulations play a key role in co-constituting the carbon economy.[318] Examining this interplay between law and markets, and the complex interactions between the public and private domains, is critical to excavating and understanding contemporary shifts in transnational authority.[319]

Central to these dynamics are the roles played by private legal relations of property and contract that operate to supplement, complement and reorganise forms of public authority. Thinking with authority thus allows for a more nuanced engagement with how appropriation takes place, not only through direct, coercive means but also through the reorganisation of authority over land and resources via the restructuring of property and other legal rules.[320] It also provides a means of interrogating how mechanisms and technologies for expanding forms of appropriation and control do not just operate through the straightforward acquisition of property but are manifested by 'turning things into property' and 'establishing the conditions for the enjoyment of private property and exchange'.[321] It thus offers a lens through which to see how the establishment of new 'fictitious commodities'[322] in carbon, and the transnational carbon markets in which they circulate, is a means of authorising greater international power and control over land and land-use practices in the Global South.

A focus on questions of authority and modes of authorisation thus directs attention to the dynamics that are often grounded in discussions on REDD+: how specific representations of forests and climate change underpin a claim that the problem of deforestation is a matter of global 'common concern', and thus that forests should

[316] S. Bernstein, M. Betsill, M. Hoffmann, and M. Paterson, 'A tale of two Copenhagens: Carbon markets and climate governance' (2010) 39(1) *Millennium: Journal of International Studies* 161–73 at 170; see also Bulkeley et al., *Transnational Climate Change Governance*.

[317] Newell and Peterson cited in I. Bailey, A. Gouldson, and P. Newell, 'Ecological modernisation and the governance of carbon: A critical analysis' (2011) 43(3) *Antipode* 682–703 at 697.

[318] See J. Dehm, 'Tricks of perception and perspective: The disappearance of law and politics in carbon markets; Reading Alexandre Kossoy and Phillippe Ambrosi, "State and trends of the carbon market 2010"' (2011) 7 *Macquarie Journal of International and Comparative Environmental Law* 1–18; E. Boyd, M. Boykoff, and P. Newell, 'The "new" carbon economy: What's new?' (2011) 43(3) *Antipode* 601–11; Bernstein et al., 'A tale of two Copenhagens: Carbon markets and climate governance'.

[319] See Watt, 'Private international law's shadow contribution to the question of informal transnational authority'.

[320] Fairhead et al., 'Green grabbing: A new appropriation of nature?'.

[321] M. Craven, 'Colonisation and domination' in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012) p. 888.

[322] I take this term from K. Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press, 2001), although Polanyi used the term 'fictitious commodities' to describe land, labour and money. See also Chapter 3.

be understood, valued, managed and governed in accordance with internationally determined objectives. By describing these processes, this analysis draws attention to what is at stake in the work REDD+ does in the world, namely, the consolidation of a 'unitary agglomeration' of authority over forested areas that previously had been, and in many ways still are, subject to a plurality of jurisdictions.[323] In many ways, forests remain critical 'frontiers of land control': they are sites of struggles involving a range of actors, where the 'authorities, sovereignties, and hegemonies of the recent past have been or are currently being challenged by new enclosures, territorializations, and property regimes'.[324] Yet these struggles are too often narrated as an inevitable transition whereby 'development' and 'progress' come to 'wilderness' or 'traditional lands and peoples'.[325] In such accounts the concept of development provides a frame that suppresses and makes invisible rival authorities and law and thus allows their displacement to appear as both necessary and inevitable.[326] Most accounts of REDD+ presuppose the disappearance of plural authorities and the consolidation of a singular global authority; they are predominantly concerned with how global authority over forests can be made 'real' or with ensuring that it is exercised in humanitarian or rights-compliant ways. However, to focus only on questions of REDD+ implementation and the means by which the rights and tenures of forest peoples should be recognised *already presupposes* the authority of the institutions that are called upon to recognise such rights, and by doing so, also actively engages in the actualisation of such authority. As Thomas Sikar and Christian Lund show, the process of recognising rights or property claims 'simultaneously works to imbue the institutions that provide such recognition with the recognition of its authority to do so': it 'works to authorize the authorizers' and in doing so it 'undermine[s] rival claims to the same resources'.[327]

Thinking with authority thus calls for considerable reflexivity in how we, as international legal scholars, describe the world, given that modes of description are not neutral but can have prescriptive future effects – especially descriptions that represent power structures and forms of authority as totalising, impermeable or stable – and obscure from view already marginalised alternatives.[328] It also suggests the need to take responsibility for how legal writing and scholarship may participate in the 'actualisation of one form of authority, and one idea of what is lawful,

[323] I take this phrase from P. Goodrich, *The laws of Love: A Brief Historical and Practical Manual* (Springer, 2006) p. 11.

[324] N. L. Peluso and C. Lund, 'New frontiers of land control: Introduction' (2011) 38(4) *The Journal of Peasant Studies* 667–81 at 668.

[325] Ibid.

[326] Pahuja, 'Laws of encounter: a jurisdictional account of international law', 66.

[327] T. Sikor and C. Lund, 'Access and property: A question of power and authority' in T. Sikor and C. Lund (eds.), *The Politics of Possession* (Wiley-Blackwell, 2010) pp. 1–22.

[328] J. Dehm, 'The misery of international law: Confrontations with injustice in the global economy' (2018) 19 *Melbourne Journal of International Law* 763–72 at 767; A. Orford, 'In praise of description' (2012) 25(3) *Leiden Journal of International Law* 609–25.

over another form of authority, and a different idea of what is lawful'.[329] Thus, throughout this book, the concept of authority is used as a means to describe the consolidation of forms of global authority over forests, the modes of representation by which these new forms of global authority are authorised, and the means by which it is actualised and enacted. However, an orientation towards questions of authority also demands methodological reflexivity in how these transformations are described, in order to hold on to other rival forms of authority and alternative ways in which authority could be authorised, actualised and enacted.

E BEYOND REDD+

The conceptual apparatus used to understand REDD+ in this book also provides tools that can enable a more critical interrogation of the field of international environmental law (IEL) to highlight the ways in which this field is both structured by unequal power relations and complicit in their reproduction. Despite the urgency of environmental concerns – in a context where the number of 'planetary boundaries' within which humanity can safely operate have been transgressed, risking potentially catastrophic, non-linear abrupt environmental change[330] – IEL and international environmental lawyers seem unable to produce viable solutions to increasing inequality and environmental destruction.[331] Climate change has been probably the most high-profile environmental issue of the past three decades, and immense work, political commitment and technical skill have gone into reaching political agreements, building institutional capacity and developing regulatory frameworks in response at the international level. Nonetheless, *half of all greenhouse gas emissions currently in the atmosphere were emitted during this period in which climate change has been a key concern of international law*.[332] The most frequent explanations provided for this failure to curb emissions pertain to the lack of political will as well as the challenges around bridging the North–South divide; however, as Usha Natarajan and Kishan Khody have shown, there is a need for structural explanations of why IEL has 'failed to deliver on its promise to stem ecological harm, often serving as a barrier to, rather than a driver of, change'.[333] This requires complicating accounts that treat IEL as a neutral technical problem-solving tool to be applied by experts in instrumental ways. Instead, a critical interrogation of why

[329] Pahuja, 'Laws of encounter: A jurisdictional account of international law', 67.

[330] J. Rockström, W. L. Steffen, K. Noone, Å. Persson, F. S. Chapin III, E. Lambin, T. M. Lenton, M. Scheffer, C. Folke, and H. J. Schellnhuber, 'Planetary boundaries: Exploring the safe operating space for humanity' (2009) 14(2) *Ecology and Society* 32; W. Steffen, K. Richardson, J. Rockström, S. E. Cornell, I. Fetzer, E. M. Bennett, R. Biggs, S. R. Carpenter, W. De Vries, and C. A. De Wit, 'Planetary boundaries: Guiding human development on a changing planet' (2015) 347(6223) *Science* 1259855.

[331] Natarajan and Dehm, 'Where is the environment? Locating nature in international law'.

[332] D. Wallace-Wells, *The Uninhabitable Earth: Life after Warming* (Tim Duggan Books, 2019).

[333] Natarajan and Khody, 'Locating nature', 575.

IEL has been unable to deter the 'general thrust of international law … towards economic expansion at the expense of ecological decline', is needed, as well as of how it operates to 'obfuscate [international law's] disciplinary correlation with environmental harm'.[334] Although IEL continues to be – and presents itself as – relatively powerless within the discipline of international law, such a posture of marginality risks giving international environmental lawyers a pass on their responsibility for the effects of IEL and the work it does in the world,[335] which is especially important at a time when sustainability has arguably become a 'universal ideology, an international standard of legitimacy for sovereign power, [and] a common vernacular for justice'.[336] Therefore, greater interrogation is needed of how IEL has internalised and reflects – as well as occasionally resists – assumptions and ideologies that may be detrimental to its stated objectives of environmental protection, including the hegemony of 'liberal environmentalism',[337] the imperatives of development and economic growth[338] and neoliberal precepts.[339] As IEL increasingly takes on more market-oriented forms, where the imperatives of environmental protection are deployed to justify the greater privatisation and propertisation of nature, it becomes ever more urgent to pose questions about whether and how IEL might indeed be 'part of the problem' – not just because of its failures and limitations, but also more broadly because of its effects in the world, which may perpetuate inequalities.[340]

In particular, this examination of REDD+ offers tools for strengthening scholarship on IEL that is orientated towards the Global South and is inspired by and aligned with the political commitments and sensibility of Third World Approaches to International Law (TWAIL).[341] TWAIL scholarship has developed an important

[334] Ibid., 592.

[335] I expand on this argument in Dehm, 'Reflections on Paris', 72.

[336] I take this quote from D. Kennedy, 'The international human rights regime: Still part of the problem?' in R. Dickinson, E. Katselli, C. Murray, and O. W. Pedersen (eds.), *Examining Critical Perspectives on Human Rights* (Cambridge University Press, 2012) pp. 19–34, although, of course, Kennedy was discussing human rights not sustainability.

[337] S. Bernstein, *The Compromise of Liberal Environmentalism* (Columbia University Press, 2001).

[338] For a discussion of how these concepts underpin and structure international law see Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality*.

[339] D. Ciplet, J. T. Roberts, and M. R. Khan, *Power in a Warming World: The New Global Politics of Climate Change and the Remaking of Environmental Inequality* (MIT Press, 2015).

[340] I take this phrase from D. Kennedy, 'The international human rights movement: Part of the problem?' (2002) 15 *Harvard Human Rights Journal* 101–25.

[341] On TWAIL see M. Mutua, 'What is TWAIL?' (2000) *Proceedings of the Annual Meeting (American Society of International Law)* 31–8; A. Anghie and B. S. Chimni, 'Third World approaches to international law and individual responsibility in internal conflicts' (2003) 2(1) *Chinese Journal of International Law* 77–103; Chimni, 'Third World approaches to international law: A manifesto' 3–27; K. Mickelson, 'Taking stock of TWAIL histories' (2008) 10(4) *International Community Law Review* 355–62; J. T. Gathii, 'TWAIL: A Brief history of it origins, its decentralised network, and a tentative bibliography' (2011) 3(1) *Trade, Law and Development* 26–64; L. Eslava, 'TWAIL Coordinates' *Critical Legal Thinking* 2 April 2019, criticallegalthinking.com/2019/04/02/twail-coordinates.

https://doi.org/10.1017/9781108529341.001 Published online by Cambridge University Press

conceptual apparatus to interrogate the way in which 'liberal' international law remains structured and organised by a colonial 'dynamic of difference' that persists, despite formal decolonisation, and is reinscribed even as the discipline of international law purports to renew itself.[342] While modern international law seeks to represent itself as having broken with and transcended its imperial origins, Antony Anghie has shown how the imperial origins of international law have 'create[d] a set of structures that continually repeat themselves at various stages in the history of international law'.[343] TWAIL interventions seek to 'unpack and deconstruct the colonial legacies of international law, and to engage in efforts to support the decolonisation of the lived realities of the peoples of the Global South and the rupture or radical transformation of the international order which governs their lives'.[344] Environmental problems, and proposed responses to them, are deeply enmeshed in relations of power. As Karin Mickelson writes, 'environmental degradation does not arise in a vacuum' but rather 'has certain benefits associated with it, and it obviously has certain costs' that are unequally distributed such that 'some derive the benefits while others bear the costs'.[345] The exploitation and the desire to control such exploitation of natural resources were central to the colonial encounter.[346] It was also in the context of colonial administration that environmental discourses and management practices emerged.[347] In the aftermath of formal decolonisation, and particularly within debates about a New International Economic Order (NIEO),[348] questions pertaining to natural resources became a key concern for Third World lawyers and scholars.[349] When IEL started consolidating as a field,

[342] A. Anghie, *Imperialism, Sovereignty and the Making of International Law*.

[343] Ibid., p. 3.

[344] 'Founding Statement' *Third World Approaches to International Law Reviews (TWAILR)* August 2019, twailr.com/about/founding-statement.

[345] K. Mickelson, 'South, North, international environmental law, international environmental lawyers' (2000) 11 *Yearbook of International Environmental Law* 52–81 at 59.

[346] Ibid., 56.

[347] See R. Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600–1860* (Cambridge University Press, 1996); S. Humphreys and Y. Otomo, 'Theorizing international environmental law' in A. Orford, F. Hoffmann, and M. Clark (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) pp. 797–819.

[348] See General Assembly Resolution 3202(S-VI), *Programme of Action on the Establishment of a New International Economic Order*, A/RES/S-6/3203 (1 May 1974); General Assembly Resolution 3281(XXIX), *Charter of Economic Rights and Duties of States*, 29th session, Agenda item 48, A/RES/29/3281 (12 December 1974) and for a discussion M. Bedjaoui, *Towards a New International Economic Order* (United Nations Educational, Scientific and Cultural Organization, 1979); N. Gilman, 'The new international economic order: a reintroduction' (2015) 6(1) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 1–16.

[349] See U. Natarajan, 'Third World Approaches to International Law (TWAIL) and the environment' in A. Philippopoulos-Mihalopoulos and V. Brookes (eds.), *Research Methods in Environmental Law: A Handbook* (Edward Elgar Publishing, 2017) p. 207; for an overview of

there was fear among some countries of the Global South that 'the inequitable economic order [would] be replaced and/or complemented by an inequitable environmental order'.[350] However, with the notable exception of Karin Mickelson's ground-breaking work, which highlighted how North–South tensions and the different perspectives of the Global North and the Global South on environmental issues raise fundamental, conceptual problems for the discipline,[351] there has been limited engagement with environmental issues in TWAIL scholarship from the 1990s until relatively recently.[352] In part, this was arguably because the field of IEL was, since the 1972 UN Conference on the Human Environment, acutely aware of North–South tensions and had focused on adopting international environmental law principles to mediate these tensions.[353] This included the recognition within the field of IEL that development and environmental concerns are inherently intertwined, reflected in the principle of 'sustainable development'[354] as well as operationalising differentiated treatment, pursuant to the principle of 'common but differentiated responsibilities and respective capabilities' that reflects both the greater responsibility of countries of the Global North for environmental degradation and the greater barriers that the countries of the Global South face in implementing environmental measures.[355] Nonetheless, IEL has historically been, and continues to be, 'a site of intense contestation over environmental priorities, over the allocation of responsibility for current and historic environmental harms, and over the relationship between economic development and environmental degradation'.[356] Scholars attentive to the

debates on permanent sovereignty over natural resources see N. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press, 1997).

[350] Gupta, *The Climate Change Convention and Developing Countries: From Conflict to Consensus?* p. 84.

[351] In particular Mickelson, 'South, North, international environmental law, international environmental lawyers'; see also K. Mickelson, 'Seeing the forest, the trees and the people: Coming to terms with developing country perspectives on the proposed global forests convention' in Canadian Council of International Law (ed.), *Global Forests and International Environmental Law* (Kluwer Law, 1996) pp. 239–64; Mickelson, 'Leading towards a level playing field, repaying ecological debt, or making environmental space'; K. Mickelson, 'Beyond a politics of the possible? South–North relations and climate justice'.

[352] See Natarajan, 'Third World Approaches to International Law (TWAIL) and the environment'.

[353] K. Mickelson, 'The Stockholm Conference and the creation of the South–North divide in international environmental law and policy' in S. Alam, S. Atapattu, C. G. Gonzalez, and J. Razzaque (eds.), *International Environmental Law and the Global South* (Cambridge University Press, 2015) pp. 109–29.

[354] Brundtland Commission Report, *Our Common Future World Commission on Environment and Development* (Cambridge University Press, 1987); N. Schrijver, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status* (Martinus Nijhoff Publishers, 2008).

[355] L. Rajamani, *Differential Treatment in International Environmental Law* (Oxford University Press, 2006); P. Cullet, *Differential Treatment in International Environmental Law* (Ashgate, 2003).

[356] S. Atapattu and C. G. Gonzalez, 'The North–South Divide in international environmental law: Framing the issues' in S. Alam, S. Atapattu, C. G. Gonzalez, and J. Razzaque (eds.),

concerns of countries and peoples of the Global South have highlighted the ongoing need for IEL to bridge this persistent North–South divide and to 'address historical inequities and inadequacies in the international environmental law regime' in order to ensure the effectiveness of IEL.[357] However, even though IEL principles might have initially reflected an agenda of 'redistributive multilateralism', over the past decade in particular this has been strongly resisted by the US and other countries of the Global North, with the effect that IEL and the global climate regime in particular have become a 'new area of distributive conflict between developed and developing countries'.[358]

In this regard, there is a need to understand not only the ways in which (neo)-colonial relations are reflected in IEL but also how IEL might be reproducing patterns whereby 'international law continuously disempowers the non-European world, even while sanctioning intervention within in'.[359] The discussion of REDD+ presented in this book suggests three key interlinked ways through which IEL operates to reproduce (neo)colonial dynamics. First, echoing the many mechanisms that international law has developed to prevent claims for colonial reparations,[360] IEL and climate law has adopted a forward-looking posture that operates to suppress and exclude the articulation of claims relating to historical environmental harms. This dynamic has arguably been the most overt within the climate regime, where responsibility for historical or cumulative emissions has persistently been foreclosed even though 'historical injustice saturates the problem of climate change'.[361] Second, IEL tends to frame environmental problems as a global 'common concern'. This focus on 'commonality' ignores the way in which both the causes and the effects of environmental harms reflect and are entangled in deeply stratified differentials of power, wealth and access to resources, along North–South lines as well as those of class, race and gender. Moreover, this frame also operates to authorise new forms of international authority to act in the name of this 'common concern', which however, in practice, impacts on countries and peoples of the Global North and Global South differently. Finally, environmental concern is mobilised to justify the further privatisation, propertisation and financialisation of nature, thus making nature – no longer just reductively characterised as a 'resource' but now also configured as the provider of 'ecosystem services'[362] – further enmeshed within, and increasingly subject to, globalised capitalist markets.

International Environmental Law and the Global South (Cambridge University Press, 2015) pp. 1–20, 2.

[357] Ibid., pp. 2, 5.

[358] McGee and Steffek, 'The Copenhagen turn in global climate governance', 51.

[359] Anghie, *Imperialism, Sovereignty and the Making of International Law* p. 312.

[360] Ibid., p. 2; see also A. Anghie, '"The heart of my home": Colonialism, environmental damage, and the Nauru case' (1993) 34(2) *Harvard International Law Journal* 445–506.

[361] Humphreys, 'Climate justice: The claim of the past', 134.

[362] Sullivan, 'Green capitalism, and the cultural poverty of constructing nature as service-provider'; V. Shiva, 'Resources' in W. Sachs (ed.), *The Development Dictionary: A Guide to Knowledge as Power* (Zed Books, 2010) pp. 228–42.

This book also gestures towards, but does not posit, a rival vision of lawful ecological interrelations that are premised on a commitment to plurality and the coexistence of plural worlds and laws. Responses to the climate crisis have tended to privilege the scale of the global, or the planetary, and the adoption of an external epistemic vantage point that is at once totalising and withdrawn.[363] However, a rich body of literature drawing on political ecology has criticised both the necessity and the desirability of such globalist thinking in relation to ecological problems; it has warned how an imaginary of 'one world' globalism risks inflicting violence when imposed upon a world that is deeply stratified in relation to power and access to resources, along lines of class, race and gender, and where the problem of climate change – including its causes and effects – is deeply entangled in these differentials.[364] Such scholars have highlighted the multiple worlds that we 'share, co-constitute, create, destroy and inhabit with countless other life forms and beings'[365] and proposed working towards a 'pluriverse' or a 'world of many worlds'.[366] Although it can be seductive to posit that global environmental challenges are a 'common concern', especially in a context where everyone, albeit differentially and unequally, will be affected by environmental change, such pronouncements evade important political questions about the types of commonality that are envisioned, the ways in which commonality is patterned, the modes of being in common that are enacted, what modes of conduct are authorised and what responsibilities are compelled by this.[367] Moreover, to posit as fact that such a 'common concern' exists repeats the danger of globalist thinking, that is of 'unifying too quickly what first needs to be composed'.[368] It is this difficult work of composition, the unstable and difficult labour of building commonalities through grounded material practices of solidarity, that now demands our attention. Questions about how to create such a 'common

[363] Chakrabarty, 'Planetary crises and the difficulty of being modern', 265.

[364] W. Sachs, 'One World' in W. Sachs (ed.), *The Development Dictionary: A Guide to Knowledge As Power* (Zed Books, 2010) pp. 111–26; W. Sachs (ed.), *Global Ecology: A New Arena of Political Conflict* (Zed Books Ltd., 1993); The Ecologist, *Whose Common Future? Reclaiming the Commons* (Earthscan, 1993); S. B. Banerjee, 'Who sustains whose development? Sustainable development and the reinvention of nature' (2003) 24(1) *Organisation Studies* 143–80; A. Escobar, 'Beyond the third world: Imperial globality, global coloniality and anti-globalisation social movements' (2004) 25(1) *Third World Quarterly* 207–30; V. Argyrou, *The Logic of Environmentalism: Anthropology, Ecology and Postcoloniality* (Berghahn Books, 2005).

[365] A. Burke, S. Fishel, A. Mitchell, S. Dalby, and D. J. Levine, 'Planet politics: A manifesto from the end of IR' (2016) 44(3) *Millennium: Journal of International Studies* 499–523 at 518.

[366] F. Demaria and A. Kothari, 'The post-development dictionary agenda: Paths to the pluriverse' (2017) 38(12) *Third World Quarterly* 2588–99; M. de la Cadena and M. Blaser, *A World of Many Worlds* (Duke University Press, 2018).

[367] I develop this argument further in Dehm, 'Carbon colonialism or climate justice: Interrogating the international climate regime from a TWAIL perspective'.

[368] B. Latour, 'Fourth lecture: The Anthropocene and the destruction of (the image of) the globe' in *Facing Gaia: Eight Lectures on the New Climatic Regime* (John Wiley & Sons, 2017) p. 138.

concern' from the ground up challenge us to grapple with what it means to live together well in the Anthropocene, and how we can encounter each other, ethically and lawfully, across differences, in order to build liveable worlds.

F OUTLINE OF THE BOOK

The first substantive chapter, Chapter 1, entitled 'Background to REDD+', examines the background and history of REDD+ on several registers. The chapter explores REDD+ as a *legal agreement*, providing an account of the gradual and progressive development of norms under the institutional umbrella of the UNFCCC; as a *concept or idea* that forest protection can be 'incentivised' through the increased financial valuation of nature and through payment for environmental services (PES) schemes; as a *series of practices*, both experimental and preparatory, designed to actualise REDD+ projects in material ways, including via 'demonstration projects' and REDD+-readiness programmes; and finally as a project of *social transformation* of the lives of people living in and around forested areas. This chapter argues that REDD+ is both a *vision* of market-orientated environmental governance and the *processes and practices* involved in creating and materialising this vision in the world.

Chapter 2 takes up the question of authority and is concerned with how a claim to global authority over land and resources in the Global South has been invoked and the shape or form this authority has been given. It shows how the designation of both climate change and biodiversity loss as matters of 'common concern' has operated to authorise a form of global jurisdiction over activities and processes that contribute to these very problems within nation-states. The chapter examines how this claim to global authority is based on both a specific representation of the problems of climate change and global deforestation and how these practices of representation have given a distinctive shape to the forms of global authority they authorise. The chapter pays attention to how climate change has come to be understood as an 'object' or 'problem' for law, and the specificity of this framing and its effects. Turning to the problem of deforestation, it shows how a focus on the functions of forests, especially their function as a carbon sink, makes it possible for deforestation to be understood as a matter of global, rather than local or national, concern.

The question of how this claim to global authority is actualised and enlivened in practice is taken up by Chapter 3. It examines how the legal forms of property and contract are central to the actualisation of new forms of global authority through REDD+. This chapter examines REDD+ through a consideration of the forms of transnational contracting used to secure future-orientated promises to ensure additional carbon sequestration in forested land in the Global South, paying attention to the power dynamics involved in the drafting of such contracts and the construction of their terms. Subsequently, it examines REDD+ through the idiom of property, interrogating the carbon commodity as a strange quasi-property right in 'emission

reductions', defined in international and domestic laws. The discussion in this chapter analyses the complex interactions between public and private international law that give shape to REDD+: the public international environmental law framework that defines and regulates carbon rights and the private transnational contracting that regulates specific projects. In doing so, it also highlights the key bridging or mediating role played by the World Bank's carbon funds that straddle the domains of the 'public' and 'private' by developing template emission reduction purchase agreements and experimenting with establishing the private law arrangements that enable the marketisation of climate governance.

Chapter 4 provides a critical examination of a key effect of REDD+: namely, the resignification of how questions of responsibility in the international climate regime are understood, alongside the foregrounding of the 'differentiated capacity' of developing countries to take climate mitigation action. This chapter explores the history of the controversial principle CBDR-RC within the climate regime and the contested and ambiguous rationale for differentiation. It shows how the transnational legal process of REDD+ norm production and implementation has consolidated a divergent understanding and application of CBDR-RC, one that further precludes (already marginalised) claims arising from the historical responsibilities of developed countries for the causes of climate change; and it shows how there has been a pronounced shift away from a vision that emphasises the relationality and respective share of global emissions from the Global North and the Global South and the distributive justice questions this raises. Finally, the chapter reveals how the foregrounding of 'differentiated capacity' has authorised 'capacity-building' within countries of the Global South, which has enabled further regulatory interventions to promote the regulatory infrastructure on which carbon markets depend.

Chapter 5 considers the question of scale and interrogates the multi-layered system of governance that REDD+ envisions. This chapter is focused on the property law dimension of vertical coordination across scales, describing and analysing how the disaggregation of property rights also operates as a key legal technology for globalising authority over forested land and transferring authority to international actors and away from local communities. It describes the definition and clarification of carbon right rights, but situates these technical debates about carbon rights in REDD+ alongside broader trends regarding property rights in natural resource governance, common property regimes (CPRs) and community resource management, to critically interrogate power relations within the emerging frameworks for the allocation of layered or nested rights in the forest carbon economy.

The final substantive chapter, Chapter 6, turns to examine REDD+ implementation 'on the ground' and the governance of REDD+ at the local level. It interrogates three of the strategies that have been central to debates on social safeguards: benefit sharing; tenure reform; and rights to consultation and free, prior and informed consent (FPIC). It shows that all these strategies are caught between imperatives of rights realisation 'from below' and greater responsibilisation 'from above'. It thus

suggests that the impacts of such measures might not necessarily be emancipatory for forest people, but rather that such strategies may operate to facilitate the greater disciplinary inclusion of forest peoples in the so-called 'green economy'.

The conclusion of the book, Chapter 7, entitled 'Climate Justice and Planetary Co-habitation', returns to the underlying concerns animating this book – namely, the responsibilities and obligations that are entailed within a just co-habitation of a shared planet. It reiterates the ways in which REDD+ forecloses possibilities for climate justice, both by abrogating questions of historical responsibility and by legitimating ongoing fossil fuel extraction. In concluding, it suggests that there are other ways that the problem of climate change and deforestation could be approached and draws on statements by people living in or around forested areas who are resisting REDD+ to demonstrate some of these possible alternatives.