

UNIVERSITY OF SOUTHAMPTON

**ARE THERE**  
**ENVIRONMENTAL**  
**HUMAN RIGHTS?**

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**ABSTRACT**

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**ARE THERE ENVIRONMENTAL HUMAN RIGHTS?**

Doctor of Philosophy

By Jan Mark Michael Hancock

The earliest, and still most influential, human rights texts were drafted at a time when environmental considerations held a low priority in world politics. It is therefore unsurprising that environmental factors were not even mentioned in the original legal definitions of human rights. Given the rise in the salience of environmental politics in recent years, this research examines which environmental conditions can be legitimately claimed as universal human rights. Two environmental human rights are subsequently identified; (i) the right to an environment free from toxic pollution and (ii) the right to natural resources.

The topic of environmental human rights has generated significant interest in the discipline of international law since the early 1990s. In focusing on how political power relates to the subject, this thesis fills a significant gap in the existing literature and contributes to the growing interdisciplinary discourse on environmental human rights. In particular, environmental degradation and human rights violations caused by the capitalist system are normalised and made invisible by the dynamics of power. Therefore, a human rights perspective based on ecological values reveals how harmful acts have been both constructed and legitimised by the power relations of capitalism.

## LIST OF CONTENTS

<b>INTRODUCTION</b>	1
<b>Key questions on the conceptual basis of the thesis</b>	1
<i>What is the efficacy of international law to implement environmental human rights?</i>	2
<i>Why extend environmental considerations beyond environmental law and to human rights?</i>	3
<i>Why a rights based approach rather than one of duties?</i>	5
<i>Would environmental arguments not stand independently of being linked to human rights?</i>	5
<i>What grounds justify the investigation of environmental human rights?</i>	6
<b>Conceptual definitions</b>	6
<i>Environment</i>	6
<i>Human Rights</i>	9
<i>Social Power</i>	12
<i>Structure</i>	14
<b>Chapter Outlines</b>	18
<b>Methodology</b>	22
<b>CHAPTER 1: RATIONALITY, EPISTEMOLOGY AND ENVIRONMENTAL HUMAN RIGHTS</b>	26
<b>Introduction</b>	26
<b>The philosophy of human rights</b>	27
<b>The multiformity of rationality</b>	29
<b>Social power and the construction of rationality</b>	35

<b>Economic rationality and environmental human rights violations</b>	40
<i>The value of nature</i>	41
<i>The value of people</i>	45
<i>Growthmania</i>	45
<i>Discounting</i>	48
<i>The practical manifestation of economic rationality in determining environmental human rights violations</i>	49
<b>The differentiation of capitalism and liberalism</b>	58
<i>Capitalist accommodation of toxic pollution</i>	59
<i>Toxic pollution as a violation of liberal political theory</i>	62
<i>The right to pollute as a component of property rights</i>	67
<i>Exposure to toxins constitutes risk and not harm</i>	68
<i>Intent</i>	70
<i>Consent</i>	70
<i>Toxic pollution is unavoidable</i>	71
<i>Multiple sources of pollution</i>	72
<i>Implications</i>	72
<b>The utilitarian defence of toxic pollution</b>	74
<b>Conclusion</b>	79

## CHAPTER 2: STRUCTURAL POWER, ENVIRONMENTAL HUMAN RIGHTS AND VALUE CHANGE IN WORLD POLITICS

<b>POLITICS</b>	82
<b>Introduction</b>	82
<b>Structure, hegemony and the mechanism of co-option</b>	83
<b>Co-option of the environmental movement</b>	87
<b>Co-option of the human rights discourse</b>	102
<b>Environmental human rights as praxis</b>	112
<b>Conclusion</b>	118

<b>CHAPTER 3: SOCIAL DEMANDS FOR ENVIRONMENTAL HUMAN RIGHTS</b>	120
<b>Introduction</b>	120
<b>Environmental human rights as a conceptual component of social and environmental campaigns</b>	122
<b>Recognition of environmental human rights by social movements</b>	128
<b>Environmental human rights as a tactical device for social and environmental campaigns</b>	134
<b>Campaigns for the structural recognition of the right to an unpolluted environment</b>	139
<b>Campaigns for the structural recognition of the right to environmental resources</b>	143
<b>Campaigns on the specific implementation of universal environmental human rights</b>	145
<b>Conclusion</b>	157
<b>CHAPTER 4: LEGAL DEVELOPMENTS- THE FORMAL RESPONSE TO ENVIRONMENTAL HUMAN RIGHTS CLAIMS</b>	160
<b>Introduction</b>	160
<b>The trend towards the constitutional recognition of environmental rights</b>	161
<b>The trend towards the international recognition of environmental rights</b>	164
<b>A critical evaluation of legal innovations</b>	166
<i>State sovereignty as a cause of environmental human rights violations</i>	167
<i>The structural limitations of law</i>	174
<i>Domestic law as a reflection of social power relations</i>	175
<i>Locus standi</i>	181
<i>Legal ineffectuality</i>	184
<b>International law as a reflection of social power relations</b>	190
<b>The interest of capital accumulation as the criterion for the efficacy of international law</b>	204
<b>Conclusion</b>	211

<b>CHAPTER 5: THE HUMAN RIGHT TO AN ENVIRONMENT</b>	
<b>FREE FROM TOXIC POLLUTION</b>	214
<b>Introduction</b>	214
<b>Environmental justice</b>	217
<b>Pollution as a violation of privacy rights</b>	218
<b>Toxic pollution constitutes harm</b>	220
<i>Dangerous driving: A case study of the car culture</i>	225
<i>Other applications of the human right to an environment free from toxic pollution</i>	234
<b>The paradox of law</b>	236
<b>Conclusion</b>	241
<b>CHAPTER 6: THE HUMAN RIGHT TO NATURAL RESOURCES</b>	243
<b>Introduction</b>	243
<b>The social construction of property rights</b>	245
<i>[i] Open Access Resources</i>	245
<i>[ii] No Access</i>	246
<i>[iii] State Control</i>	246
<i>[iv] Public Goods Systems</i>	247
<i>[v] Private Property Rights</i>	247
<i>[vi] Common Property Resources (CPR)</i>	250
<b>Social power as the deciding variable in determining the system of resource rights</b>	253
<b>Land rights as human rights</b>	255
<i>The right to cultural self-determination</i>	255
<i>The right to be free from hunger</i>	265
<b>Land rights as a function of environmental criteria</b>	271
<i>Private property land rights cause environmental degradation</i>	271
<i>CPR protection of the environment</i>	275
<i>Resource rights and global capitalism</i>	278
<b>Conclusion</b>	279

<b>CONCLUSION</b>	282
<b>Environmental human rights and capitalism</b>	282
<b>Suggestions for further research</b>	300
<b>Appendix 1: Questionnaire sent to NGOs</b>	303
<b>Appendix 2: Questionnaire sent to states</b>	304
<b>Appendix 3: Questionnaire sent to corporate interests</b>	305
<b>Appendix 4: Questionnaire sent to global institutions</b>	306
<b>Appendix 5: Responses to the questionnaire sent to NGOs</b>	307
<b>Appendix 6: Responses to the questionnaire sent to states</b>	317
<b>Appendix 7: Responses to the questionnaire sent to corporate interests</b>	319
<b>Appendix 8: Responses to the questionnaire sent to global institutions</b>	320
<b>Bibliography</b>	321

## **LIST OF TABLES**

Table 1: Questionnaire e-mail dates	24
Table 2: NGO questionnaire response summary	24
Table 3: State questionnaire response summary	25
Table 4: Corporate questionnaire response summary	25
Table 5: GEIs and UN questionnaire response summary	25
Appendix 5: Responses to the questionnaire sent to NGOs	307
Appendix 6: Responses to the questionnaire sent to states	317
Appendix 7: Responses to the questionnaire sent to corporate interests	319
Appendix 8: Responses to the questionnaire sent to global institutions	320

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## ACRONYMS

AMA	Automobile Manufacturers Association
AWA	Antarctic Wilderness Area
CAFOD	Catholic Fund for Overseas Development
CAMPFIRE	Communal Areas Management Program for Indigenous Resources
CEO	Chief Executive Officer
CHEER	Coalition for Health, Environmental and Economic Rights
CODEH	Committee for the Defense of Human Rights in Honduras
CoP	Conference of Parties
CPR	Common Property Resources
DNA	Deoxyribonucleic Acid
DSS	Dispute Settlement System
EPA	Environmental Protection Agency
EPZ	Export Processing Zone
ERT	European Roundtable of Industrialists
EUROPABIO	European Association for Bio-industries
EU	European Union
EZLN	Zapatista Army of National Liberation
FAO	Food and Agriculture Organisation
FDI	Foreign Direct Investment
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
GCIP	Global Climate Information Project
GDP	Gross Domestic Product
GEF	Global Environmental Facility
GEI	Global Economic Institutions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IPCC	Intergovernmental Panel on Climate Change

IMF	International Monetary Fund
MMT	Methylcyclopentadienyl Manganese Tricarbonyl
MNC	Multi National Corporation
MST	Movement for Landless People
NAFTA	North American Free Trade Agreement
NGO	Non-governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PCB	Poly Chlorinated Biphenyl
PM10	Particulate pollutant
RTZ	Rio Tinto Zinc
SAP	Structural Adjustment Policy
SLORC	State Law and Order Restoration Council
SPDC	Shell Petroleum Development Company
TNC	Trans National Corporation
UBBWU	United Banners Banana Workers Union
UK	United Kingdom
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCTC	United Nations Center on Trans National Corporations
UNDP	United Nations Development Program
UNFCCC	United Nations Framework Convention on Climate Change
UNICE	European Employers Confederation
US	United States
UNESCO	United Nations Economic, Social and Cultural Organisation
WBCSD	World Business Council for Sustainable Development
WHO	World Health Organisation
WTO	World Trade Organisation

To my mother, *Erika Hancock*

For first making me aware of the beauty and depths of nature on  
countless hikes. May there be many more!

Her unconquerable spirit, love of life and joy in being is an  
example to us all!

## **INTRODUCTION**

### **Key questions on the conceptual basis of the thesis**

All the major environmental problems presently confronting the world are ultimately derived from four anthropogenic sources, (i) pollution, (ii) overuse of resources, (iii) biodiversity reduction and (iv) habitat destruction.<sup>1</sup> The research presented here demonstrates that these environmental problems could all, to varying degrees, be addressed through the recognition of the following two human rights; (i) to an environment free from toxic pollution and (ii) to ownership rights of natural resources.

Demonstrating environmental benefits is, of course, insufficient grounds for claiming new human rights. Indeed, post-modernists and relativists remind us that the philosophical grounds upon which foundational claims to any human rights can be substantiated is a contestable issue, with the specified criteria typically reflecting the political predilections of the author.<sup>2</sup> Therefore, the criterion utilised in this research to investigate the existence of environmental human rights will be restricted to existing legal human rights stipulations. It will be demonstrated that the two universal environmental human rights claimed above can be imputed from the existing international law on human rights. This legalistic approach is not without either epistemological problems or political bias and it is appropriate to explain these at the outset of the enquiry.

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<sup>1</sup> Jasper Carlton in John Davis, (ed), The Earth First! Reader, Layton, UT, (Gibbs Smith, 1991), pp105-17.

<sup>2</sup> see for example Richard Ashley in Steve Smith, Ken Booth and Marysia Zalewski, (eds), International Theory: Positivism and Beyond, Cambridge, (Cambridge University Press, 1996), pp240-253; Chris Brown, International Relations Theory, London, (Harvester Wheatsheaf, 1992) and Kimberly Hutchings, International Political Theory, London, (Sage, 1999).

### What is the efficacy of international law to implement environmental human rights?

There exists widespread belief that revising and updating either domestic or international law is sufficient to realise social change in the area covered by legislation.<sup>3</sup> Altering legislation can have a noticeable impact on society. In his study of environmental rights, Hayward for example demonstrates a role for legal developments in initiating (i) an upward ratcheting effect on political expectations, (ii) the fostering of a publicly recognised environmental ethic and (iii) a more comprehensive set of social values rather than a narrow focus on private interest.<sup>4</sup>

However, law does not implement a set of rules in an impartial manner, but is instead an instrument of hegemonic power.<sup>5</sup> It is therefore important to differentiate between the values inherent to the stipulations of international human rights law and the actual implementation thereof. Whereas the stipulated wording of international human rights law expresses a focus on the social provision for the basic needs of all, law has been implemented in ways that tolerate systematic violations to accommodate the interests of the capitalist economy.<sup>6</sup> This paradox leads to an ambiguous and even contradictory role for international human rights law. On a superficial analysis international human rights law appears to be the rules based mechanism required to protect the vulnerable and marginalised from being exploited or otherwise made to suffer under the self interested politics of the powerful. Yet the actual implementation of law tends inexorably to reflect

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<sup>3</sup> Tony Evans and Jan Hancock, "Doing Something Without Doing Anything: International Human Rights Law and the Challenge of Globalisation", The International Journal of Human Rights, Vol 2, No 3, 1998, pp1-21.

<sup>4</sup> Tim Hayward, "Constitutional Environmental Rights: A Case for Political Analysis", Political Studies, Vol 48, No 3, 2000, p566 and p569.

<sup>5</sup> see chapter 4.

<sup>6</sup> see chapter 4.

existent power relations in society.<sup>7</sup> In the contemporary political economy, this service to power translates into the legalistic prioritisation of corporate interests over the social values implied in human rights stipulations.<sup>8</sup> For example it will be demonstrated in the following chapters that the actual implementation of existing international human rights law would require implementation of the two environmental human rights claimed above. That is to say, the present absence of universal environmental human rights in international law itself suggests the selective implementation of legal stipulations to accommodate economic processes. Legal stipulations to the contrary notwithstanding, environmental human rights will remain unimplemented whilst social power relations favour capitalism and processes of economic accumulation that are predicated upon the systematic violation of those rights.

#### Why extend environmental considerations beyond environmental law and to human rights?

This research will argue that the explicit inclusion of environmental factors in human rights legislation is a necessary requirement for existing legal rights to be realised. The history of environmental law has evidenced compromise between environmental and commercial considerations that has consistently prioritised the interests of the latter over the former.<sup>9</sup> In the case of toxic pollutants, for example, environmental laws invariably permit emissions at levels that can physically harm individuals.<sup>10</sup> As Hayward

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<sup>7</sup> see chapter 4.

<sup>8</sup> social values can be defined as the defense of the otherwise vulnerable, see Robert E Goodin, Protecting the Vulnerable, Chicago and London, (University of Chicago Press, 1985).

<sup>9</sup> see chapter 5.

<sup>10</sup> see chapter 5.

summarises, new human rights would therefore be more helpful than revised environmental laws in dealing with environmental problems because,

the human rights discourse embodies just the sort of non-negotiable values which seems to be required for environmental legislation; rights mark the seriousness, the 'trumping' status, of environmental concern; they articulate this concern in an institutionalised discourse with some established mechanisms of enforcement.<sup>11</sup>

Finally, linking the environmental and human rights discourses is justified since this introduces an alternative conceptualisation of both subjects that can facilitate new ways of questioning existing political terms of reference. The value of introducing alternative conceptualisations of political themes resides in understanding how academic discourse has developed not along objective or value neutral lines but rather by focusing on one particular agenda that serves particular social interests at the expense of marginalising other possibilities.<sup>12</sup> For example, a discourse of human rights that downplays questions of access to food and clean water neglects the principal concerns of those presently denied access to such resources. The agenda that monopolises intergovernmental discussions views human rights increasingly in terms of state abstention from intervention with individual autonomy, a definition that benefits powerful social elements whose interests are best served through the maintenance of a capitalist political economy.<sup>13</sup>

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<sup>11</sup> Hayward, *op cit*, p566.

<sup>12</sup> see chapter 1.

<sup>13</sup> Tony Evans, "Citizenship and Human Rights in the Age of Globalization", *Alternatives*, Vol 25, 2000, pp419-20.

### Why a rights based approach rather than one of duties?

Notions of duties or obligations are socially constructed products of the societies whose political culture they embody and whose values they express.<sup>14</sup> According to legal analysis, individuals are duty bound to respect the rights of others and not to disobey social customs codified in laws. Duties are therefore derived from, and a reflection of, rights and other laws. Rights can subsequently be identified as the primary focus for attention since they stand logically prior to duties. Rights are also more tangible than duties since they benefit from a higher degree of public visibility, understanding and support than a parallel discourse of duties.<sup>15</sup>

Of course, duties could be conceptualised in moral terms based upon arguments of political philosophy rather than legal stipulations, but such a project would be susceptible to the same criticisms that beset attempts to establish a philosophical basis for human rights. In particular, claims to duties can be expected to act as a veneer for the political inclinations of the author and are therefore of limited value for epistemological investigation, that is in relation to the claims to truth that are made through such an enquiry. For these reasons, this research is explicitly focused on the discourse of human rights rather than that of duties.

### Would environmental arguments not stand independently of being linked to human rights?

The validity or importance ascribed to environmental arguments is a function of the relative weighting of competing values and political positions by the observer. Whereas

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<sup>14</sup> see Alison Dundes Renteln, International Human Rights: Universalism v Relativism, London, (Sage, 1990).

<sup>15</sup> Joel Feinberg, Harmless Wrongdoing: The Moral Limits of the Criminal Law, Vol 4, Oxford, (Oxford University Press, 1988).

environmental arguments alone could indeed determine policy in a political culture predicated upon environmental values, this in no sense applies to a capitalist system.<sup>16</sup> In capitalist politics, environmental arguments have conspicuously failed to subordinate economic considerations to those of environmental protection.<sup>17</sup> Drawing environmental concerns into the remit of human rights offers a further mechanism for the articulation of ecological values.

#### What grounds justify the investigation of environmental human rights?

Research into environmental human rights is validated for the contribution such an approach makes to knowledge. Existing human rights presuppose a certain environmental quality and distribution of environmental resources.<sup>18</sup> Yet this assumption is rarely explicitly stated. A discourse of human rights that focuses on fundamental environmental factors is therefore highlighting an important variable that is typically overlooked in the existing literature.

#### Conceptual definitions

To clarify the research to follow, it is appropriate at this stage to define important concepts used in subsequent chapters.

#### Environment

The environment is defined as the non-human constitutive components of the biosphere of the planet Earth. Included in this definition are flora, fauna and natural

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<sup>16</sup> Herman Daly and John Cobb, For the Common Good, Boston, (Beacon Press, 1994).

<sup>17</sup> see chapter 1.

<sup>18</sup> Graham Smith, Pluralism, Deliberative Democracy and Environmental Values, PhD Thesis, University of Southampton, 1996.

resources such as the atmosphere, land, sub soil resources and water. The environmental perspective refers to the political approach that uses as its central decision making criterion the long term interests of the biosphere as a whole. This definition of environmentalism must be differentiated from the common use of the term in modern political discourse, that, as an example of an oxymoron, refers to an agenda that rarely prioritises environmental over economic values.<sup>19</sup>

Environmentalism as defined in this research is interchangeable with what others have termed deep ecology.<sup>20</sup> Ecology is the scientific study of interactions that determine the distribution and numbers of biological organisms in a given area.<sup>21</sup> The ecological perspective, deep ecology, denotes the political approach centred on concern for the well-being of biodiversity and habitat preservation.<sup>22</sup> Deep ecology is predicated upon an entirely different value system and epistemology from mainstream political and economic theory and can therefore be said to constitute a different form of rationality. Aldo Leopold asserted the fundamental criterion of ecological rationality when he claimed that, "a thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise".<sup>23</sup>

The overriding importance of ecological considerations is rejected by the second system of rationality discussed in the following chapters, that of neo-liberal economic

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<sup>19</sup> see chapter 2.

<sup>20</sup> Arne Naess, "The Shallow and the Deep, Long-Range Ecology Movement. A Summary", Inquiry, Vol 16, 1973, pp95-100.

<sup>21</sup> Gordon Marshall, Oxford Dictionary of Sociology, Oxford, (Oxford University Press, 1998), p178.

<sup>22</sup> see Naess, op cit, pp95-100.

<sup>23</sup> Aldo Leopold quoted in Dan Tarlock, "Earth and Other Ethics: The Institutional Issues", Tennessee Law Review, Vol 56, 1988, p59; see also Lynton K Caldwell, Environment: A Challenge to Modern Society, New York, (Anchor Books-Doubleday, 1971), p107 and John Dryzek, "Ecological Rationality", International Journal of Environmental Studies, Vol 21, 1983 pp5-10.

rationality which dominates the discipline of economics.<sup>24</sup> Economic rationality dominates the policy making process in capitalist states and has considerations of economic growth and the efficient allocation of resources as its central imperatives.<sup>25</sup> Environmental human rights may simultaneously appear self-evident to the environmentalist and non-sensical to the economist because of the incommensurate values and conceptualisations of rationality employed by each theorist. Epistemological claims to human rights on the basis of what is said to be 'rational' will therefore be identified as relative or contingent, rather than universal in character.<sup>26</sup>

It is useful to conceptualise these incommensurate forms of rationality in terms of distinct paradigms. A paradigm can be defined as a fundamental frame of reference,<sup>27</sup> that is a particular set of models and values that characterise and define both the methodology and epistemology of 'normal' enquiry.<sup>28</sup> Assertions of a single, objective rational paradigm are epistemologically arbitrary and intellectually repressive since this falsely universalises a contingent system of values, standards and practices (that of the dominant model) and denies the validity of truth claims made by alternative paradigms or cultures.<sup>29</sup>

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<sup>24</sup> hereafter termed economic rationality; see David Begg, Stanley Fischer and Rüdiger Dornbusch, Economics, London, (McGraw-Hill, 1987), p312.

<sup>25</sup> see chapter 1 for details.

<sup>26</sup> see chapter 1.

<sup>27</sup> Thomas Kuhn, The Structure of Scientific Revolutions, Chicago, (University of Chicago Press, 1997).

<sup>28</sup> see Alan R. Drenson, "Shifting Paradigms: From the Technocratic to the Person-Planetary", Environmental Ethics, Vol 2, No 3, Fall 1980, p224.

<sup>29</sup> John S. Dryzek, Discursive Democracy: Politics, Policy and Political Science, Cambridge, (Cambridge University Press, 1990), p7.

One environmental issue perceived in different terms by ecological and economic rationality is that of toxic pollution.<sup>30</sup> Toxic pollution can be defined as the anthropogenic introduction into the environment of substances or energy known to harm either human health or ecological systems.<sup>31</sup> Under this definition, toxic pollution is restricted to substances produced by human societies rather than harmful chemicals existing in the environment *per se*. This distinction is made since, unlike anthropogenic activities, natural occurrences cannot be addressed by human notions of justice, social organisations or legal institutions.<sup>32</sup> Pollution benefits the polluter at the expense of other individuals and at the expense of the environment and thereby constitutes what economists refer to as an externality.<sup>33</sup> An externality exists whenever the utility of an individual is diminished by choices made by others in ways that are not recorded through the market mechanism.<sup>34</sup>

### Human Rights

The meaning of human rights has been defined in a number of distinct forms by different political theorists. Most important amongst these are concepts of negative, positive and basic rights. Negative rights endow the individual with the right against any form of arbitrary interference from another party that would prejudice the interests of him or her.<sup>35</sup> Positive rights conversely require others to take positive action to benefit the

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<sup>30</sup> see chapter 1 for a discussion.

<sup>31</sup> Kevin Byrne, Environmental Science, London, (Thomas Nelson, 1997), p110.

<sup>32</sup> Tibor R Machan in Tom Regan, (ed), Earthbound, Philadelphia, (Temple University Press, 1984), p74.

<sup>33</sup> John Gowdy, Coevolutionary Economics: The Economy, Society and the Environment, Boston, (Kluwer, 1999).

<sup>34</sup> Jan Bojo, Karl-Goran Maler and Lena Unemo, Environment and Development: An Economic Approach, Dordrecht, (Kluwer Academic Publishers, 1990), p24.

<sup>35</sup> Goodin, *op cit*, p18.

rights holder.<sup>36</sup> The central point of tension between these two contending conceptualisations of rights is therefore the issue of interference. Whereas negative rights are premised upon the predominance of liberalism and individual independence, positive rights stress social values and require collective action to aid the otherwise vulnerable. The concept of basic human rights advanced by Shue rejects attempts to differentiate positive from negative rights and instead defines human rights in terms of those goods required for human survival.<sup>37</sup> In particular, physical needs have been identified by Shue as conferring basic rights to subsistence and security.<sup>38</sup>

The differing conceptual foundations of human rights have, however unsatisfactorily, been formally resolved in the inter governmental political fora through a precise listing of rights in the Universal Declaration of Human Rights.<sup>39</sup> This non-legally binding declaration has subsequently been legally codified in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>40</sup> Together, these documents form the cornerstone of international human rights law. None of the provisions contained in any of these three

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<sup>36</sup> ibid.

<sup>37</sup> Henry Shue, Basic Rights: Subsistence, Affluence and United States Foreign Policy, Princeton, (Princeton University Press, 1980); see also Charles Beitz, "Economic Rights and Distributive Justice in Developing Societies", World Politics, Vol 33, No 3, 1981, p330; Jack Donnelly, International Human Rights, Boulder, (Westview Press, 1993), p21; Peter Jones, Rights, Basingstoke (MacMillan, 1994), pp148-54; RJ Vincent, Human Rights and International Relations, Cambridge, (Cambridge University Press, 1986), pp12-3 and pp83-7 and Michael Freeden, Rights, Milton Keynes, (Open University Press, 1991), pp26-7.

<sup>38</sup> Shue, op cit, p9 and p70.

<sup>39</sup> Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948, see Council of Europe, Human Rights in International Law, Brussels, (Council of Europe Press, 1995), pp9-16.

<sup>40</sup> International Covenant on Economic Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966; entered into force 3 January 1976. International Covenant on Civil and Political Rights adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966; entered into force 23 March 1976.

documents explicitly guarantee entitlements that all people possess, either as individuals or collectively, that are principally concerned with environmental conditions.<sup>41</sup>

It will be argued in this research that to guarantee the environmental conditions required for the enjoyment of existing legally stipulated human rights, it is necessary to adopt only two environmental human rights. Based upon philosophical, rather than legal claims, other theorists have advocated an approach of formulating an entirely new generation of human rights to specify a more extensive list of environmental human rights.<sup>42</sup> Such an approach could be expected to enhance the profile and priority assigned to environmental values. However, such a project falls outside the remit of this research where the focus is instead placed upon identifying only those environmental human rights required to realise existing legal rights. Following from this explicit focus, this research examines only anthropocentric rights and does not look at rights of the environment in general or those of non-human animals. However, the absence of a discussion of such rights in this thesis in no sense implies that these non-human agents cannot possess rights.<sup>43</sup>

The relation between environmental human rights and other categories of human rights eludes simple definition. There are a number of ways in which the environmental human rights claimed above support existing human rights. It is, for instance, necessary to guarantee a minimum set of environmental conditions to implement universal human rights to life, health, self determination, freedom from hunger and individual liberty, since

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<sup>41</sup> although both the ICESCR and the ICCPR mention rights to natural resources in terms of self determination: see chapter 6 for details.

<sup>42</sup> Dinah Shelton, "Human Rights, Environmental Rights and the Right to Environment", Stanford Journal of International Law, Vol 28, No 1, 1991, p105 and Leonard J Waks, "Environmental Claims and Citizen Rights", Environmental Ethics, Vol 18, No 2, 1996, p143.

<sup>43</sup> Peter Singer, Animal Liberation, London, (Thorsons, 1990).

human survival is not possible in a severely polluted or otherwise degraded environment.<sup>44</sup>

However, it is also possible to identify a contradiction between the claimed environmental human rights and the right to economic development. The ICESCR stipulates that "the State parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself (sic) and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions".<sup>45</sup> The right to continuous improvement of living conditions can be seen as problematic from an environmental perspective when it is interpreted in such a way as to allow for unsustainable economic growth through the overuse or misuse of natural resources and widespread pollution. This is, however, the only article upon which the environmental human rights identified in this research conflicts established human rights. Conflicts between human rights are of course nothing new to the rights discourse. Basic needs offer one coherent criterion for adjudicating between mutually exclusive rights claims. Most importantly, as Hayward reminds us, "issues of balancing different people's rights (and also international obligations) should be addressed as that - as issues of balancing rights - rather than as possible reasons for not recognising the rights in the first place".<sup>46</sup>

### Social Power

This research acknowledges the importance of social power considerations for examining the politics of human rights.<sup>47</sup> Social power exists in a multiformity of

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<sup>44</sup> see chapters 5 and 6.

<sup>45</sup> article 11.

<sup>46</sup> Hayward, *op cit*, p570.

<sup>47</sup> Neil Stammers, "Human Rights and Power", *Political Studies*, Vol XLI, 1983, pp70-82.

aspects, an attribute that problematises any succinct definition and contributes to the enigmatic nature of the term as an essentially contested concept.<sup>48</sup> In general terms, power is the property exercised over others to affect social activities.<sup>49</sup> More specifically, this research draws upon a Gramscian interpretation of power. Under this conceptualisation, social classes employ power to advance their own interests and governments serve the interests of the social class powerful enough to dictate political policy.<sup>50</sup> Social power is thereby exercised in the routine operations of civil society. Civil society is also referred to in the Gramscian sense of the term.<sup>51</sup> Gramsci observed a mutually supportive relation between civil society and the state, resonating the Marxist perception that the state acts on behalf of the dominant group in the social base.<sup>52</sup> The social base is a term used by Marx and Gramsci to refer to "a real foundation, on which rises a legal and political superstructure and to which correspond definite forms of social consciousness".<sup>53</sup> The social base therefore refers to the distribution of power amongst competing groups in society that determines governmental policies and legal developments.

Using these definitions, civil society and the social base contain a vast array of divergent groups with competing social and political interests, visions and aspirations. Of

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<sup>48</sup> Steven Lukes, (ed), Power, Oxford, (Blackwell, 1986) and WB Gallie in AA Kassman, (ed), Proceedings of the Aristotelian Society, Norman, OK, (University of Oklahoma Press, 1956), pp167-98.

<sup>49</sup> Marvin E Olsen in Marvin E Olsen, (ed), Power in Societies, London, (Macmillan, 1970), p3.

<sup>50</sup> ibid, p70.

<sup>51</sup> Quintin Hoare and Geoffrey Nowell Smith, (eds), Antonio Gramsci: Selections from Prison Notebooks, London, (Lawrence and Wishart, 1971).

<sup>52</sup> see Robert W Cox, "Gramsci, Hegemony and International Relations: An Essay in Method", Millenium, Vol 12, No 2, 1983, pp162-75 and Hoare and Smith, (eds), op cit.

<sup>53</sup> Karl Marx in David McLellan, Karl Marx: Selected Writings, Oxford, (Oxford University Press, 1990), pp388-92.

these various groups, this research differentiates between systemic and anti-systemic forces. Systemic forces refer to groups advocating the capitalist model of political economy. In Gramscian political discourse, the systemic forces constitute a hegemonic bloc that represents an alliance of social interests dedicated to the preservation of capitalism in world politics.<sup>54</sup>

Anti-systemic forces are those groups rejecting the capitalist political system in favour of an alternative, that would typically be tasked with prioritising social and environmental values over the interests of capital accumulation. Anti-systemic forces therefore deny the validity of the capitalist global economy.<sup>55</sup> Anti-systemic groups that challenge the fundamental basis of the capitalist political economy constitute a counter hegemonic bloc that demands, if only in general terms, an alternative political model. Systemic and anti-systemic forces are not monolithic entities and thus usage of such terms may appear to generalise the nuance positions within each movement. Yet such categorisations are useful for the structural focus of this research on the overall political system and are common terms in World Systems Analysis.<sup>56</sup>

## Structure

This research employs a structural analysis to contextualise the possibilities and the constraints on environmental human rights by considering how power operates to produce

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<sup>54</sup> Cox, op cit, pp162-75.

<sup>55</sup> Thomas Ford Brown, "Ideological Hegemony and Global Governance", Journal of World-Systems Research, Vol 3, No 2, Spring 1997, p257.

<sup>56</sup> Christopher Chase-Dunn and Thomas D Hall, "Ecological Degradation and the Evolution of World-Systems", Journal of World-Systems Research, Vol 3, No 3, 1997, pp403-31; Warren Wagar, "Toward a Praxis of World Integration", Journal of World-Systems Research, Vol 2, No 2, 1996; <http://csf.colorado.edu/jwsr.html>.

or prevent political change.<sup>57</sup> Structures are referred to in the sense that Rosenberg employs the term. Under this approach, structures denote

a regularised relation between social positions which places individuals with respect to determinate resources... It is an abstraction posed in order to illuminate the form and properties of a definite set of relationships.<sup>58</sup>

Engaging in a structural analysis is validated by Foucault's research on the subject of power that stresses the importance of heteronomy.<sup>59</sup> Heteronomy is the propensity of individuals to internalise, that is to assume as normal, the structures typifying the society within which they have been conditioned.<sup>60</sup> Giddens also advocates the conceptual use of structures in political discourse as a necessary tool to connect action to the exercise of social power.<sup>61</sup>

The influence of structures over individuals is never absolute because social control can never completely eradicate dissent and resistance and herein lies a potential for systemic challenges and political change.<sup>62</sup> The relation between structure and individual agency is explained in chapter two in terms of constructivism. Under this approach, agency and structure interact to constitute the other, suggesting a potential for presently marginalised political interests to effect structural change.

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<sup>57</sup> chapter 2.

<sup>58</sup> Justin Rosenberg, The Empire of Civil Society: A Critique of the Realist Theory of International Relations, London, (Verso, 1994), p48.

<sup>59</sup> DC Hoy, (ed), Foucault: A Critical Reader, Oxford, (Blackwell, 1986).

<sup>60</sup> Donald E Brown, Human Universals, New York, (McGraw-Hill, 1991), p40.

<sup>61</sup> Anthony Giddens, A Contemporary Critique of Historical Materialism Vol 1: Power, Property and the State, London, (Macmillan, 1981).

<sup>62</sup> ibid, p63; see also Michael Kelly in Michael Kelly, (ed), Critique and Power: Recasting the Foucault/Habermas Debate, Cambridge, (MIT Press, 1994).

This research identifies capitalism as the dominant structure in the global political economy. Capitalism is defined here as the structuring of the political economy in such a way as to remove constraints from the freedom of the market to operate.<sup>63</sup> Globalisation can be defined as the recreation on a global scale of the capitalist political economy.<sup>64</sup> Globalisation is primarily a product of interest based capitalism rather than any form of political theory such as liberalism.<sup>65</sup> The nature of the political influence held by global economic investors constitutes a formidable bulwark that prevents the realisation of environmental human rights.

Campaigning for human rights and environmental protection over the economic focus of the capitalist system are a number of Non-governmental Organisations (NGOs). NGOs are "any non-profit-making, non-violent, organised group of people who are not seeking government office".<sup>66</sup> Social movements are composed of campaign oriented NGOs. This research is interested in movements campaigning for environmental and human rights protection. Social movements, like NGOs, can be differentiated from political parties since they reject attaining power through the electoral process and typically seek broader social change.<sup>67</sup>

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<sup>63</sup> for a detailed discussion of the nature of the capitalist political economy see Immanuel Wallerstein, The Capitalist World Economy, Cambridge, (Cambridge University Press, 1979).

<sup>64</sup> Stephen Gill, "Globalisation, Market Civilisation and Disciplinary Neoliberalism", Millennium, Vol 24, No 3, Winter 1995, p405.

<sup>65</sup> ibid; see also Noam Chomsky, Deterring Democracy, Reading (Verso, 1992).

<sup>66</sup> Peter Willets in Peter Willets, (ed), The Conscience of the World, London, (Hunt and Co, 1996), p5; see also Annie Taylor, The Significance of Non-governmental Organisations in the Development of International Environmental Policy: The Case of Trade and Environment, PhD thesis, Southampton, (Southampton University, 1998), p8.

<sup>67</sup> Robert O'Brien, "Complex Multilateralism: The Global Economic Institutions - Global Social Movements Nexus", British International Studies Association Annual Conference, 1997, p5.

Social movements are composed of a vast array of NGOs evidencing a multiformity of political strategies and ideologies.<sup>68</sup> Some analysts have therefore differentiated between distinct categories of NGOs in social movements. Willetts identifies the following categories of NGOs; (i) groups of government employees, such as the International Union of Police Federations, (ii) NGOs welcoming government funding, such as the International Planned Parenthood Federation, and (iii) NGOs not welcoming governmental funding, such as Amnesty International.<sup>69</sup> As an alternative framework, Taylor suggests differentiating between (i) mainstream, (ii) co-opted and (iii) radical NGOs. Mainstream NGOs advocate limited structural reforms to mitigate the worst manifestations of environmental degradation or human rights abuses while upholding the dominant values on which the capitalist order is based. Co-opted NGOs rhetorically question capitalism but compromise this opposition so as to be included in the decision-making process, undergoing a process of co-option that abrogates their formal position.<sup>70</sup> Radical NGOs do not compromise their opposition to capitalism in rhetoric or tactics and are subsequently marginalised in the formal political discussions.<sup>71</sup> Of these two models, the framework suggested by Taylor is adopted in this research since it benefits from using the operations of social power to differentiate between NGOs. In particular, the framework conceptualises the importance of co-option in explaining the relation between

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<sup>68</sup> there were over 20,000 NGOs active in the 1990s; see Peter Willetts in Peter Wilets, (ed), The Conscience of the World, London, (Hunt and Co, 1996), p9.

<sup>69</sup> ibid, p8.

<sup>70</sup> a process described in chapter 2.

<sup>71</sup> Annie Taylor, "The Significance of Non-governmental Organisations in the Development of International Environmental Policy: The Case of Trade and Environment", PhD thesis, Southampton, (Southampton University, September 1998), pp7-8.

NGOs, social power and why certain ideas attain dominance over others in the formal political forum.<sup>72</sup>

### **Chapter Outlines**

This research claims two universal environmental human rights; (i) to an environment free from toxic pollution,<sup>73</sup> and (ii) to natural resources.<sup>74</sup> The central theme of this research identifies the power relations of capitalism as the barrier to the realisation of the two claimed environmental human rights. The first four chapters expand on this argument through examination of the epistemological, structural, tactical and legal contexts of the claimed environmental human rights.

Deciding which human rights claims are justified on epistemological grounds is a product of the particular paradigm of rationality adopted by the analyst. Claims to environmental human rights are predicated upon ecological rather than economic values and are typically rejected by practitioners of economic rationality.<sup>75</sup> It is therefore important to understand how specific paradigms of rationality are elevated or marginalised in the policy making fora. Chapter one investigates this process and argues that the present dominance of economic rationality over other possibilities is explained by the operations of social power interests that seek to legitimise capitalism. The centrality of capitalism, rather than liberalism or any other theory of justice, to the present political economy is then established through an analysis of toxic pollution. This discussion identifies capitalism as an interest based system of politics where questions of justice,

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<sup>72</sup> ibid, p25.

<sup>73</sup> chapter 5.

<sup>74</sup> chapter 6.

<sup>75</sup> Robert V Bartlett, "Ecological Rationality: Reason and Environmental Policy", *Environmental Ethics*, Vol 8, 1986, p226 and p228.

human rights and environmental protection are marginalised since they lack any market value. The importance of this claim resides in denying the moral authority of the existing political economy and instead identifying it as an instrument of power.

Chapter two investigates possibilities for the realisation of the claimed environmental human rights given the limitations imposed by structural power relations. The concept of hegemony is used to explain the nature of the capitalist political economy as an instrument of power. Hegemony is the institutionalised presentation of the interests of the ruling class as universal interests.<sup>76</sup> Hegemony is moreover an expression of power not through the overt use of force, but by civil society and the state combining to establish and maintain approval, tacit consent or political apathy amongst the oppressed class.<sup>77</sup>

To suggest moral leadership, hegemonic systems must promote a veneer of justice and inclusiveness. In practice, states and corporations use the rhetoric of human rights and environmental protection and engage in gesture politics, tinkering at the margins of capitalism, to create this veneer.<sup>78</sup> Drawn by rhetorical statements and symbolic concessions, anti-systemic forces are encouraged to campaign within the official political forum, rather than challenge the validity of the capitalist political economy.<sup>79</sup> The key feature of hegemonic politics to be discussed in chapter two is subsequently that of co-option. Co-option will be demonstrated to act as a structural mechanism to negate anti-systemic challenges to capitalism through assimilating minor aspects of critical approaches without altering fundamental systemic conditions. This conceptual framework will be applied to an analysis of environmental and human rights politics where co-option

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<sup>76</sup> Hoare and Smith, (eds), *op cit*, p172.

<sup>77</sup> Noam Chomsky, *Powers and Prospects: Reflections on Human Nature and the Social Order*, London, (Pluto Press, 1996).

<sup>78</sup> Hoare and Smith, (eds), *op cit*, p174: see chapter 2 for a discussion.

<sup>79</sup> Taylor, *op cit*, pp9-10.

is evident in both cases. This analysis will conclude that the effectiveness of co-operating with formal political structures is limited to addressing the worst excesses of capitalism and affecting political change only at the margins.<sup>80</sup> To achieve extensive social change, realise human rights and prioritise environmental protection over commercial considerations, the efforts of anti-systemic forces must first challenge formal hegemonic politics. Only through the promotion of an alternative vision, that is a counter hegemonic bloc, can the environmental and human rights movements mount such a challenge of capitalism.<sup>81</sup>

Social demands for environmental human rights in campaigns conducted by environmental and human rights NGOs are examined in chapter three. This evaluation is based upon analysis of responses to a questionnaire circulated to NGOs.<sup>82</sup> The questionnaire results reveal three findings. Firstly, the responses indicate a consensus endorsing environmental human rights. With only three exceptions, all the NGOs who stated a preference replied that they recognised environmental human rights. Most popular amongst the environmental human rights advocated were variants of the two rights claimed in this research. Secondly, the questionnaire responses revealed that campaigns are being conducted both for the formal recognition of environmental human rights and through demanding environmental protection based on claims to human rights regardless of their legal status. Thirdly, a significant number of NGOs operationalised ecological rationality by defending their advocacy of environmental human rights on the premise of interconnectedness between all elements of the biosphere, including human societies. There were no significant differences between the responses from mainstream,

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<sup>80</sup> see chapter 2.

<sup>81</sup> Hoare and Smith, (eds), *op cit*, p175.

<sup>82</sup> for details see below.

co-opted and radical NGOs since the questionnaire focused specifically on recognition of environmental human rights, rather than on the broader questions of power on which grounds NGOs can be differentiated.<sup>83</sup>

The legal status of environmental human rights is critically evaluated in chapter four to understand how the formal political institutions of law and politics have addressed the demands for environmental human rights made by NGOs. A trend towards the legal recognition of environmental human rights will be described. However, legal recognition is argued to be only a necessary, rather than a sufficient, condition for the actual implementation of environmental human rights since many legally stipulated environmental rights are violated in actual social practice. This paradox will be explained by examining the influence of social power on legal efficacy. Refuting legalistic claims to neutrality and political independence, law will be argued to be itself a manifestation of hegemonic power, complimenting other institutions of political and economic power. This politicised function means that law tends to reflect existent power relations in society, rather than determine those relations, problematising its use as a vehicle for social change in general and for the realisation of environmental human rights in particular. The relation between social power and legal efficacy is argued to apply to international as well as to domestic law.

Chapters five and six suggest two universal environmental human rights as an alternative interpretation to contrast the formal response to environmental human rights claims. Methodologically, this examination is predicated upon analysis of existing human rights texts rather than upon philosophical grounds because of the ontologically contested nature of philosophical claims to human rights. Chapter five derives the universal environmental human right to an environment free from toxic pollution from existing

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<sup>83</sup> see appendixes 1-4.

human rights to life, security of the person and health. The universal environmental human right to environmental resources is claimed in chapter six to be a necessary requirement for existing legal human rights to cultural self determination and for the right to be free from hunger to be realised. The implementation of the claimed human right to natural resources will furthermore be recommended on a communal, rather than an individual, basis.

## **Methodology**

This research is based upon the conceptual investigation of linkages between environmental protection, resource ownership and human rights as explained in the above sections. A series of questionnaires compliment the theoretical enquiry. To ascertain the social demands made for environmental human rights and the degree of recognition of such rights, four questionnaires were devised and circulated to different organisations. The main questionnaire was targeted at NGOs to evaluate the extent to which advocacy groups in civil society were campaigning for environmental human rights, or using such rights claims to campaign for environmental protection.

Three further questionnaires were circulated to (i) departments for the environment of selected states, (ii) corporations and corporate lobbying groups, (iii) Global Economic Institutions (GEIs) and United Nations (UN) departments.

The purpose of the questionnaire survey was to gain qualitative, rather than quantitative, data, to understand how environmental human rights are perceived and utilised by the key elements in world politics identified in the theoretical analysis. Specifically, the survey sought to elicit information on (i) how environmental human rights are perceived by different groups, (ii) which environmental human rights were recognised and upon what basis, (iii) what action has been undertaken to promote or implement environmental human rights and (iv) the potential and actual role of

environmental human rights in implementing social change. The questionnaires were formulated to avoid providing any leading questions. Specifically, no environmental rights were suggested in the questionnaire. Instead, the concept had to be interpreted by the responding organisations.<sup>84</sup>

A total of 196 NGOs were selected for inclusion in the main questionnaire. These were identified through an internet search for political groups campaigning for environmental or human rights protection. Departments for the environment of 41 states were selected for inclusion in the second survey constituency. The questionnaire was sent via e-mail to the address of the department for the environment given on the selected state's official web sites. Identified states were chosen to represent a variety of cultures, geographical locations and levels of economic development.

Eleven corporations were selected for inclusion in the third questionnaire survey through the criteria of (i) prominence, (ii) market size and (iii) relevance to the subject of environmental resources, such as mining, oil and forestry sector based companies. The suitability of specific corporations under these criteria was established from an examination of corporate internet web sites. Also included in this survey were corporate lobbying groups since these specifically exist to communicate the corporate viewpoint to the wider political community.

A number of GEIs and UN departments were included in the final survey. Specific organisations were selected according to the criterion of the relevance of the topics of the environment and human rights for that organisation, whether from either an advocacy position or from an economic standpoint.

The questionnaire was delivered to each organisation via an e-mail that also explained the purpose of the questionnaire as part of a thesis to be made public

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<sup>84</sup> see appendixes 1-4.

knowledge. Organisations not responding to the first e-mail were sent two further e-mails repeating the questionnaire and its purpose. Organisations failing to answer any of the three e-mails were deemed non-respondents. NGO response rates (47 per cent) were notably higher than the response rates from states (27 per cent), corporations (36 per cent) and UN/GEIs (30 per cent).<sup>85</sup> The results of the questionnaire responses will be discussed throughout the following chapters, dependant upon the relevance of the response to the subject matter, although most of the analysis will be conducted in chapter three. Brief details of the questionnaire responses are summarised in tables one to five.<sup>86</sup>

Table 1: Questionnaire e-mail dates

E-mail no	NGOs	States	TNCs	UN/GEIs
1	8 June 1998	29 April 1999	28 April 1999	28 April 1999
2	22 October 1998	5 August 1999	5 August 1999	5 August 1999
3	26 November 1998	30 September 1999	30 September 1999	30 September 1999

Table 2: NGO questionnaire response summary

Total number of NGOs contacted	196
NGOs providing no response	103
NGOs providing a response	93
NGOs completing the questionnaire	64
NGOs not completing the questionnaire but sending subject related information	29

<sup>85</sup> these figures cover all responses, including those organisations not completing the questionnaire but replying with other information.

<sup>86</sup> see appendixes 5-8 for details of the questionnaire responses.

Table 3: State questionnaire response summary

Total number of states contacted	41
States providing no response	30
States providing a response	11
States completing the questionnaire	3
States not completing the questionnaire but sending subject related information	8

Table 4: Corporate questionnaire response summary

Total number of corporations and lobby groups contacted	11
Corporations providing no response	7
Corporations providing a response	4
Corporations completing the questionnaire	2
Corporations not completing the questionnaire but sending other relevant information	2

Table 5: GEIs and UN questionnaire response summary

Total number of GEIs and UN bodies contacted	10
Organisations providing no response	7
Organisations providing a response	3
Organisations completing the questionnaire	1
Organisations not completing the questionnaire but sending other relevant information	2

## CHAPTER 1

### **RATIONALITY, EPISTEMOLOGY AND ENVIRONMENTAL HUMAN RIGHTS**

Capitalism has been the expression of economic rationality finally set free of all restraint.<sup>1</sup>

#### **Introduction**

Different forms of rationality are analysed in this chapter since these constitute the epistemological frameworks by which claims to environmental human rights are evaluated. The singular faculty of reason is thereby differentiated from plural conceptualisations of rationality. In particular, this chapter juxtaposes ecological with economic rationality to illustrate (i) that the criterion constituting what is deemed rational is disputed rather than universal in character and (ii) how the particular epistemological assumptions of the analyst either justifies or rejects the existence of environmental human rights. Whereas ecological rationality acknowledges as axiomatic the rights to an environment free of toxic pollution and to environmental resources, the logic of economic rationality will be demonstrated to reject the same rights.

Attention then turns to examine the process by which specific forms of rationality become dominant or subjugated in a society. This is argued to be a function of power relations. Power operates in part through the normalisation, legitimisation and the institutionalisation of the interests of powerful social groups in political and economic structures.<sup>2</sup> The dominance of economic rationality in world politics will then be argued to normalise the systematic violation of environmental human rights. Corporations and the beneficiaries of global capitalism will be identified as constituting the powerful social

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<sup>1</sup> Andre Gorz, Critique of Economic Reason, London, (Verso, 1988), p122.

<sup>2</sup> Andrew Schaap, "Power and Responsibility: Should we Spare the King's Head?" Politics, Vol 20, No 3, September 2000, p133.

group whose commercial interests are served by current patterns of environmental human rights violations. This conclusion is made through a method of analysing trends in corporate production and lobbying records that advocate continued tolerance of toxic pollution. A juxtaposition of capitalism to liberal political theory demonstrates a necessary contradiction between the two positions regarding the human right to an environment free of toxic pollution. Whereas toxic pollution will be found to necessarily violate two fundamental principles of liberalism, it is tolerated by a capitalist structure that accommodates the interests of producers at the expense of harming others in society.

### **The philosophy of human rights**

The question "are environmental human rights justifiable in political philosophy?" can be answered either affirmatively or negatively, depending upon the epistemological position adopted by the analyst. For example, basic rights theorists such as Shue, Vincent and Galtung justify human rights in terms of the conditions required for biological survival.<sup>3</sup> From this basis there is a logical compulsion to recognise environmental conditions as a component of human rights. For example, Galtung explains that "there is a high need for livelihood, for which an ecologically stable environment with a high level of biodiversity is a necessary condition".<sup>4</sup>

The notion that all humans have rights to the requirements of survival has been questioned by negative rights theorists who argue, typically on the basis of liberal political theory, that human rights must instead reflect autonomy values, allowing the individual to be free of interference from others. Ingram typifies this approach with the claim that "the best scheme of rights, is one that protects the autonomy interests of

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<sup>3</sup> Henry Shue, Basic Rights: Subsistence, Affluence and United States Foreign Policy, Princeton, (Princeton University Press, 1980); RJ Vincent, Human Rights and International Relations, Cambridge, (Cambridge University Press, 1986) and Johan Galtung, Human Rights in Another Key, Cambridge, (Polity Press, 1994).

<sup>4</sup> Galtung, op cit, p96.

citizens".<sup>5</sup> This approach views the arbitrary interference with the individual by a third party as a violation of the rights of that individual since the individual is considered to be the subject, source and the object of moral considerations. All forms of social relations must therefore be consented to, or else will constitute arbitrariness and an unjust intervention of privacy and personal rights to liberty defined in terms of autonomy.<sup>6</sup>

Numerous other methods of conceptualising human rights have been suggested. Campbell defines rights in terms of contract, power and interest theories.<sup>7</sup> Other political philosophers question the existence of any human rights because rights are, for example, culturally specific and socially constructed rather than universal in character.<sup>8</sup> Marxists typically deny that human nature can be identified and abstracted into a universal or essential form since human nature is instead perceived as a structural function of historical processes and social conditioning.<sup>9</sup> As Donnelly observes, a notion of rights derived solely from the fact that people are human is problematic for Marxists since, for such theorists, "simply because they are human probably makes no sense... It certainly has no substantive moral implications".<sup>10</sup> Some utilitarian and consequentialist theorists question the ontological primacy of a focus on rights, instead suggesting aggregate good as the central criteria of justice.<sup>11</sup> Still others claim a mutual compatibility between

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<sup>5</sup> Attracta Ingram, A Political Theory of Rights, Oxford, (Clarendon Press, 1994), p16.

<sup>6</sup> HLA Hart in Jeremy Waldron, (ed), Theories of Rights, Oxford, (Oxford University Press, 1984); see also JG Merrills in Alan E Boyle and Michael R Anderson, Human Rights Approaches to Environmental Protection, Oxford, (Clarendon Press, 1996) and Maurice Cranston in Raphael, (ed), Political Theory and the Rights of Man, Basingstoke, (Macmillan, 1967).

<sup>7</sup> Tom Campbell, The Left and Rights: A Conceptual Analysis of the Idea of Socialist Rights, London, (Routledge, 1983), p83.

<sup>8</sup> Bilahari Kausikan, "Asia's Different Standard", Foreign Policy, Vol 92, No 3, 1993, pp24-41.

<sup>9</sup> David McLellan, Karl Marx: Selected Writings, Oxford, (Oxford University Press, 1977), p59.

<sup>10</sup> Jack Donnelly, International Human Rights, Boulder, (Westview Press, 1993), p22.

<sup>11</sup> Douglas Long, Bentham on Liberty, Toronto, (University of Toronto Press, 1977) and Bhikhu Parekh, (ed), Bentham's Political Thought, London, (Croom Helm, 1973).

utilitarianism and human rights, which is to say that overall social happiness is best achieved through the recognition of rights.<sup>12</sup>

Bauer argues that to validate rights it is "not necessary to agree on the foundation of human rights so long as we can agree on the norms".<sup>13</sup> Through a consequentialist focus, Kuhonta claims that human rights are justified in Asia not because of their intrinsic self evidence, but because they promote positive values such as public spiritedness.<sup>14</sup> For these two theorists the apparent absence of any philosophical basis for universal rights therefore poses no real problems for recognising human rights, since rights can be validated by criterion independent of their intrinsic self evidence.

### **The multiformity of rationality**

The philosophical argument as to the existence or otherwise of a basis for human rights has been extensively discussed, reflecting the nature of human rights as an essentially contested concept.<sup>15</sup> The purpose of this chapter is neither to advance nor refute claims to environmental human rights on grounds of political philosophy, since such an endeavour is necessarily a reflection of the particular philosophical paradigm utilised by the author. Instead, the purpose is to understand how separate forms of rationality suggest different criterion by which to evaluate rights claims.

The argument is that the criterion of rationality is not a universal constant, but rather that it can assume a multiplicity of forms, only one of which constitutes the assumptions of the epistemological paradigm finally employed by an individual to make

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<sup>12</sup> John Gray, Mill on Liberty: A Defence, London, (Routledge, 1983).

<sup>13</sup> Joanne Bauer, "International Human Rights and Asian Commitment", Human Rights Dialogue, Vol 3, December 1995; <http://www.cceia.org/dialog3.html>.

<sup>14</sup> Erik Kuhonta, "The Language of Human Rights in East Asia", Human Rights Dialogue, Vol 2, September 1995; <http://www.cceia.org/dialog2.html>.

<sup>15</sup> WB Gallie in AA Kassman, (ed), Proceedings of the Aristotelian Society, Norman, OK, (University of Oklahoma Press, 1956), pp167-98.

judgements. The discussion is therefore moved beyond the question of "can environmental human rights be philosophically justified?" onto the more fundamental level of "what criterion of different manifestations of rationality support environmental human rights and which condone violations of environmental human rights?" An epistemological analysis of competing theories of rationality is useful since these conceptualisations provide the criterion by which claims to universal human rights are understood and evaluated.

Foucault researched different forms and foundations of rationality to refute the assumption of a single universal rationality.<sup>16</sup> Bartlett similarly explains that;

the concept and phenomenon of rationality is complex and multi-dimensional. Rationality is bounded not only by an order of measurement, comparison of values, and production, but, broadly speaking, rationality is a special kind of order, that which is intelligible due to the presence of a governing principle.<sup>17</sup>

Habermas is perhaps the most influential political theorist to have differentiated between forms of rationality.<sup>18</sup> Gorz, Bartlett and Dryzek have re-interpreted the subject to identify the separate manifestations of economic and ecological rationality.<sup>19</sup> It is this differentiation that will now be adopted to demonstrate how the judgement regarding the

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<sup>16</sup> Michel Foucault in Michael Kelly, (ed), Critique and Power: Recasting the Foucault/Habermas Debate, Cambridge, (MIT Press, 1994), p119.

<sup>17</sup> Robert V Bartlett, "Ecological Rationality: Reason and Environmental Policy", Environmental Ethics, Vol 8, Fall 1986, p228.

<sup>18</sup> in particular instrumental from communicative rationality. Instrumental rationality is defined in terms of the capacity to devise and effect means to clarified ends. In contrast, communicative rationality is a product of open discourse between individuals, where dialogue moves beyond selecting means to ends and includes normative judgements: See Jürgen Habermas in Kelly, (ed), op cit; see also John S Dryzek, Discursive Democracy: Politics, Policy and Political Science, Cambridge, (Cambridge University Press, 1990), pp3-4.

<sup>19</sup> see John Barry in Interdisciplinary Research Network on the Environment and Society, (ed), Perspectives on the Environment, Brookfield, Vermont, (Avebury, 1993), p46; Bartlett, op cit; Gorz, op cit; Dryzek, op cit and John S Dryzek, "Ecology and Discursive Democracy: Beyond Liberal Capitalism and the Administrative State", Capitalism, Nature, Socialism, Vol 3, No 2, 1992, pp18-42.

justification of environmental human rights is a function of the epistemological paradigm assumed by the analyst. These two manifestations of rationality have been chosen since economic rationality constitutes the dominant form of rationality in the capitalist political economy and ecological rationality constitutes an alternative epistemological paradigm by which to make critical comparisons.

Nuanced versions of ecological rationality are given by Gorz, Bartlett and Dryzek.<sup>20</sup> Ecological rationality is used in this research to refer to a rationality based upon a central concern for all forms of life.<sup>21</sup> It is a rationality that assumes the interconnectedness of all living systems within a wider cosmology centred on respect for life as the underlying principle.<sup>22</sup> This underlying principle determines that "a thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise".<sup>23</sup>

Although there are an array of nuanced approaches within the subject of economics, economic rationality is defined here as the dominant neo-classical model that advocates the market as a method to achieve the goal of allocative efficiency.<sup>24</sup> Allocative efficiency is the allocation of resources to maximise Gross Domestic Product respecting conditions of Pareto efficiency.<sup>25</sup> An allocation is Pareto-efficient "if it is

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<sup>20</sup> Bartlett, op cit; Gorz, op cit and Dryzek, (1992), op cit.

<sup>21</sup> Bartlett, op cit, p229.

<sup>22</sup> Bartlett, op cit, p230; see also Arne Naess, "The Shallow and the Deep, Long-Range Ecology Movement: A Summary", Inquiry, Vol 16, 1973, p95.

<sup>23</sup> Aldo Leopold quoted in Dan Tarlock, "Earth and Other Ethics: The Institutional Issues", Tennessee Law Review, Vol 56, 1988, p59, see also George Sessions and Arne Naess in John Davis, (ed), The Earth First! Reader, Layton, UT, (Gibbs Smith, 1991), p157.

<sup>24</sup> see John Gowdy, Coevolutionary Economics: The Economy, Society and the Environment, Boston, (Kluwer, 1999), p5-6; see also Tom Green, "Ecology, Ethics, Power", Adbusters; <http://www.adbusters/Articles/green.html>; Andre Gorz, "Ecology, Politics", Le Sauvage, Oxford, (The Institute of Social Disengineering, 1973); Gorz, 1988, op cit; Dryzek, (1990), op cit and Dryzek, (1992), op cit, pp18-42.

<sup>25</sup> Gowdy, op cit, p6.

impossible to move to another allocation which would make some people better off and nobody worse off".<sup>26</sup> Allocative efficiency therefore articulates the interests of the opulent, since the market mechanism is endorsed as providing entitlement to resources regardless of need. The market mechanism makes no differentiation between consumption of luxury and essential goods, since allocation is decided by monetary transactions alone. That is to say, paying for a good provides sufficient grounds for entitlement to that resource.<sup>27</sup> Pareto-efficiency furthermore benefits the opulent since redistributive policies that make the rich worse off are deemed illegitimate, even though they could benefit a majority.<sup>28</sup>

Following from the centrality of the market, value is defined solely in monetary terms in the logic of economic rationality. Economic rationality relies upon a methodology of positivism, empiricism and cost-benefit analysis to commodify products (including nature) and allow the market to determine the subsequent value and allocation of goods.<sup>29</sup> In terms of the individual, a lifestyle of possessive individualism and consumerism is assumed to be an axiomatic feature of human nature.<sup>30</sup> Capitalist culture encourages the desire to consume since people tend to be accorded social status by virtue of the products that they possess.<sup>31</sup> Rational decisions are largely reduced to instrumental tasks of maximising wealth, possessions and the consumption of goods and services. This definition of economic rationality necessarily excludes marginalised approaches within

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<sup>26</sup> David Begg, Stanley Fischer and Rüdiger Dornbusch, Economics, London, (McGraw-Hill, 1987), p314.

<sup>27</sup> see chapter 6 for a detailed criticism of the market allocation of resources from a perspective on human rights.

<sup>28</sup> Begg, op cit, p314.

<sup>29</sup> Mark Blaug, Economic Theory in Retrospect, London, (Heinemann, 1968).

<sup>30</sup> Stephen Gill, American Hegemony and the Trilateral Commission, Cambridge, (Cambridge University Press, 1990), pp206-7.

<sup>31</sup> Herman Daly and John Cobb, For the Common Good, Boston, (Beacon Press, 1994), p92 and Tim Edwards, Contradictions of Consumption: Concepts, Practices and Politics in Consumer Society, Buckingham, (Open University Press, 2000).

the discipline of economics such as ecological and Marxist economists, who reject the market principle and the values of possessive individualism upon which it is predicated.<sup>32</sup>

Paradigms of rationality have associated value systems. Value systems refer to the relative importance assigned to competing and conflicting values such as ecological protection, care for the vulnerable, human rights, economic growth and materialistic desires. This value system is what is used by individuals to make judgements and calculate rational actions. The prioritisation of materialistic values over ecological integrity that typifies capitalism is incomprehensible to cultures whose value systems are instead based upon a paradigm of ecological rationality. For example the indigenous U'wa nation in Colombia, fighting corporate plans to drill oil on their traditional lands, declared that,

we are left with no alternative other than to continue fighting on the side of the sky and earth and spirits or else disappear when the irrationality of the invader violates the most sacred of our laws... Our words should be a warning that reunites us again as one family in order to ensure our future in harmony with the whole universe, or they will be one more voice that prophesises the destruction of life because of the absurd disposition of the white man.<sup>33</sup>

Here the decision to drill for oil is seen as "irrational" because the form of rationality employed by the U'wa interprets the incommensurate value system of economic rationality as an "absurd disposition" in much the same way that most neo-classical economists would dismiss the stated cosmology of the U'wa. This conflict between economic and ecological rationality was expressed by the native American leader, Rolling Thunder, who explained to non native Americans that,

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<sup>32</sup> Phyllis Deane, The Evolution of Economic Ideas, Cambridge, (Cambridge University Press, 1978), p89.

<sup>33</sup> Berito Cobaria et al, "Commuque from the U'wa People", Earth Island Journal, 10 August 1998; [http://www.earthisland.org/eijournal/fall98/wn\\_fall98uwa.html](http://www.earthisland.org/eijournal/fall98/wn_fall98uwa.html).

Too many people don't know that when they harm the earth they harm themselves, nor do they realise that when they harm themselves they harm the earth... It's not very easy for you people to understand these things because understanding is not knowing the kind of facts that your books and teachers talk about. I can tell you that understanding begins with love and respect... Such respect means that we never stop realising and never neglect to carry out our obligations to ourselves and our environment.<sup>34</sup>

This quote demonstrates notions of respect, tolerance and obligations to otherness that would be discredited as unquantifiable, normative and, for both of these reasons, as irrational from the perspective of economic rationality. Ecological rationality conflicts with economic rationality since harmony with nature is contrasted with dominance over nature; nature is imbued with intrinsic worth rather than valued in monetary terms specified by the market and basic limited material goals are contrasted with the twin aspirations of luxury consumption and unlimited economic growth.<sup>35</sup> Whereas human and non-human animals alike have, according to the paradigm of ecological rationality, axiomatic rights to an environment free of toxic pollution and to the environmental resources required to satisfy basic needs, these same rights are dismissed as irrelevant by the focus of economic rationality on allocative efficiency.

Economic rationality dominates and underpins the capitalist world order. Sagoff observes that, "pronouncements that nature is sacred or that greed is bad appear judgmental or even embarrassing... Prudential and economic arguments, moreover, have succeeded better than moral or spiritual ones in swaying public policy".<sup>36</sup> Therefore, for environmental protection policies to be implemented in a capitalist system, it is necessary

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<sup>34</sup> quoted in Alan R Drengson, "Shifting Paradigms: From the Technocratic to the Person-Planetary", Environmental Ethics, Vol 2, No 3, Fall 1980, p236.

<sup>35</sup> Arne Naess, Deep Ecology; <http://www.envirolink.org/elib/enviroethics/deepindex.html>.

<sup>36</sup> Mark Sagoff, "Do we Consume too Much?" The Atlantic Monthly, Vol 279, No 6, June 1997, pp80-96; <http://www.theatlantic.com/atlantic/issues/97jun/consume.html>.

to rationalise such projects in economic terms, for example, that greater energy efficiency reduces production costs.<sup>37</sup>

### **Social power and the construction of rationality**

Dominant forms of rationality are therefore a reflection of the culture within which they are constructed, rather than being universal in character. The discussion now proceeds to explore the processes by which the presently dominant form of economic rationality is elevated over subjugated forms of knowledge.<sup>38</sup>

Dominant epistemological paradigms are both self-legitimising and self-perpetuating. The appropriateness of academic questions and agendas are judged according to criteria specified by the dominant epistemological paradigm that have been internalised and normalised by the theorists educated and conditioned within that framework. Applying this process to economic rationality operating in a capitalist world, Opschoor points out that

Present day economic science is busy meticulously researching the way that markets work, and the situations in which they maximise individuals' satisfaction of needs, given their incomes and preferences. Economic science - at least the neo-classical mainstream - has thus developed itself into a theory which confirms the system and legitimises the market mechanism.<sup>39</sup>

By virtue of its dominant position, the assumptions of the epistemological approach of neo-classical economics constitute the criteria for the validation of its own form of rationality and the criteria by which subjugated epistemological paradigms are

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<sup>37</sup> David Pearce and R Kerry Turner, Economics of Natural Resources and the Environment, London, (Harvester Wheatsheaf, 1990).

<sup>38</sup> Foucault in Kelly, (ed), op cit, p119.

<sup>39</sup> Hans Opschoor in Wim Zweers and Jan Boersema, (eds), Ecology, Technology and Culture: Essays in Environmental Philosophy, Cambridge, (White Horse Press, 1994), p195.

discredited. Such criteria relate, for example, to the desired values of positivism, empiricism and a self legitimising definition of objectivity. The outcome of this process of agenda setting is to limit mainstream academic discourse within narrow confines specified by the logic of economic rationality. This logic "along with its associated set of values, has been elevated to the highest status, while alternatives are at best viewed as inferior forms of knowledge and, at worst, as non-knowledge".<sup>40</sup> This resonates the perception that reason itself has become the mere instrument of the all-inclusive economic apparatus.<sup>41</sup>

To account for the dominance of economic rationality and to refute its claims to objectivity or neutrality it is necessary to investigate the process by which a particular manifestation of rationality becomes established. Dominance of an epistemological paradigm is explained by post-modern political theorists in terms of social power relations, reflecting, legitimising and created by the interests of powerful groups in society.<sup>42</sup> This was already noted in 1907 by the biologist Hugo de Vries, who stated that economic interests took precedence over scientific facts in the applied sciences because of the interests and agendas of those making funding decisions.<sup>43</sup> As Berlan and Lewontin report, "he understood what Monsanto and its ally-competitors use as a guiding principle today: what is profitable affects, or even determines, what is scientifically true".<sup>44</sup>

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<sup>40</sup> Tariq Banuri and Frederique Apfel Marglin in Tariq Banuri and Frederique Apfel Marglin, (eds), Who Will Save the Forests? Knowledge, Power and Environmental Destruction, London, (Zed Books, 1993), p2.

<sup>41</sup> Max Horkheimer and Theodor W Adorno, Dialectic of Enlightenment, New York, (Herder and Herder, 1972), p30.

<sup>42</sup> John Hoffman, Sovereignty, Buckingham, (Open University Press, 1998), p75.

<sup>43</sup> Jean-Pierre Berlan and Richard C Lewontin, "Analysis Special: Genetically Modified Foods", The Guardian, 22 February 1999, p14.

<sup>44</sup> *ibid.*

More recently, Kuhn has argued that the process of knowledge construction and evolution is characterised by power relations defining what is to be considered as normal science, thereby establishing the boundaries of a paradigm that then authorise or dismiss specific knowledge claims.<sup>45</sup> Furthermore, Kuhn contends that the dominant epistemological paradigm reflects and protects the interests of specific social forces through resisting change and to be therefore self perpetuating, even when a more coherent epistemological model emerges.<sup>46</sup>

During his academic life, Foucault was prominent at the vanguard of attacks on the autonomy of forms of knowledge. He instead insisted upon a genealogical focus of explaining the emergence of knowledge from structures of power.<sup>47</sup> This position effectively re-conceptualises cause and effect in the politics of power. Rather than focusing on traditional subjects of how political philosophy can limit the rights of the powerful, the question was inverted by Foucault to examine how forms of knowledge, such as rules of justice, are devised and implemented by the relations of power.<sup>48</sup> Although the view of power promoted by Foucault has been criticised for being socially ubiquitous and thereby neglecting its more specific concentration in identifiable social groups,<sup>49</sup> his analysis of power and epistemology provide unparalleled insights into the subject matter. In particular, according to Foucault, meaningful and nonsensical claims are adjudicated by a regime of truth that is created by the dominant epistemological

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<sup>45</sup> Thomas Kuhn, The Structure of Scientific Revolutions, Chicago, (University of Chicago Press, 1997). see also Ted Benton in Michael Jacobs, (ed), Greening the Millennium? Oxford, (Blackwell, 1997), p41.

<sup>46</sup> ibid; see also James H Mittelman, "Coxian Historicism as an Alternative Perspective in International Studies", Alternatives, Vol 23, No 1, 1998, p64.

<sup>47</sup> Foucault in Kelly, (ed), op cit, p81.

<sup>48</sup> Kelly in Kelly, (ed), op cit, p378.

<sup>49</sup> see for example Andrew Schaap, op cit, pp133-4 and C Taylor in DC Hoy, (ed), Foucault: A Critical Reader, Oxford, (Blackwell, 1986), p94.

model or what Foucault refers to as the hegemonic discourse.<sup>50</sup> The hegemonic discourse marginalises and discredits subjugated forms of knowledge through insisting on a particular agenda, highlighting specific problems over others, legitimising desired solutions to the presented problems and by dismissing the alternative agendas, questions and solutions given by subjugated epistemological paradigms.<sup>51</sup>

The power to define important questions, topics, agendas and desired solutions is an inherent attribute of the hegemonic discourse since this is where all the experts reside and recreate the dominance of the paradigm in the manner described by Kuhn.<sup>52</sup> Jürgen Habermas has extensively documented the role of technical experts who monopolise epistemological claims to legitimate knowledge in the service of private profit and political power at the expense of a more socially inclusive discourse.<sup>53</sup> This observation draws attention to the mutual legitimisation evident between the experts of the hegemonic discourse and dominant social interests.<sup>54</sup>

The practical application of this argument has been comprehensively explored by Noam Chomsky.<sup>55</sup> Within totalitarian states such as Stalinist Russia, the task of the

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<sup>50</sup> Michel Foucault, Ethics: Subjectivity and the Truth, New York, (The New Press, 1994); see also Thomas Ford Brown, "Ideological Hegemony and Global Governance", Journal of World-Systems Research, Vol 3, No 2, Spring 1997, p255.

<sup>51</sup> Thomas Brown, op cit, p255; see chapter 2 for detailed discussion of the hegemonic world order.

<sup>52</sup> Kuhn, op cit.

<sup>53</sup> Habermas in Kelly, (ed), op cit; see also Dryzek, (1990), op cit, p5 and p12.

<sup>54</sup> Colin Sumner, Reading Ideologies, London, (Academic Press, 1979), p217.

<sup>55</sup> see especially Noam Chomsky, Knowledge of Language: Its Nature, Origins and Use, New York, (Praeger, 1986); Noam Chomsky, "Notes on Anarchism"; <http://www.worldmedia.com/archive/other/notes-on-anarchism.html>; Noam Chomsky, On Power and Ideology: The Managua Lectures, Boston, (South End Press, 1987); Noam Chomsky, The Culture of Terrorism, London, (Pluto Press, 1988); Noam Chomsky, Chronicles of Dissent, Edinburgh, (AK Press, 1992); Noam Chomsky, Deterring Democracy, Reading, (Verso, 1992); Noam Chomsky, "The Clinton Vision", Z Magazine, December 1993; <http://www.worldmedia.com/archives/articles/z9312-clinton-vision.html>; Noam Chomsky, Rethinking Camelot, London, (Verso, 1993); Noam Chomsky, What Uncle Sam Really Wants, 1993; <http://www.worldmedia.com/archive/sam/sam-3-5.html>; Noam Chomsky, Year 501: The Conquest Continues, London, (Verso, 1993); Noam Chomsky, Keeping the Rabble in Line, Edinburgh, (AK Press, 1994); Noam Chomsky, "Letter from Noam Chomsky", Covert Action Quarterly, No 54, Fall 1995; <http://caq.com/CAQ54chmky.html>; Noam Chomsky, Powers and Prospects: Reflections on Human Nature

intellectual to serve dominant power interests is relatively obvious, since dissenting voices are systematically eliminated by the forces of state. Thus, intellectuals are openly coerced to "record with a show of horror the terrible deeds (real or alleged) of designated enemies, and to conceal or prettify the crimes of the state and its agents".<sup>56</sup> Chomsky goes on to document how the same outcome is obtained in capitalist states through the use of more subtle and therefore also more effective techniques that give the author the illusion of freedom;

We also know how to apply the same reasoning to correspondents in Phnom Penh, or earlier in Vietnam, who had no time for the huge flow of victims of US terror bombings, refusing even to cross the street to interview them, but later were trekking courageously through the jungle to find refugees from Pol Pot's terror.<sup>57</sup>

Paraphrasing Orwell's introduction to Animal Farm, Chomsky argues that

The sinister fact about literary censorship in England... is that it is largely voluntary. Unpopular ideas can be silenced, and inconvenient facts kept dark, without any need for any official ban. Without the exercise of force anyone who challenges the prevailing orthodoxy finds himself (sic) silenced with surprising effectiveness thanks to the internalisation of the values of subordination and conformity, and the control of the press by wealthy men who have every motive to be dishonest on certain topics.<sup>58</sup>

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and the Social Order, London, (Pluto Press, 1996); Noam Chomsky, "Market Democracy in a Neoliberal Order: Doctrines and Reality", Davie Lecture, (University of Cape Town), May 1997; <http://www.lol.shareworld.com/Zmag/chomskydavie.htm>; Noam Chomsky, "Debt: The People Always Pay", The Guardian (debt supplement), 15 May 1998, p7 and Noam Chomsky, "Judge the US by Deeds, Not Words", New Statesman, 9 April 1999, pp11-3.

<sup>56</sup> Chomsky, (1996), op cit, p61.

<sup>57</sup> ibid, p64.

<sup>58</sup> ibid, p67.

The dominant paradigm espoused by technical experts subsequently influences the opinions of individuals since, as Drengson reminds us, "we interpret the world in terms of the paradigms that are in dominant use".<sup>59</sup> Russell draws proper attention to this process of conformity by demonstrating that all other forms of power ultimately rest upon the power of opinion and in particular those forces that cause opinion.<sup>60</sup> The promotion of alternative opinions and expressions of subjugated forms of knowledge that threaten dominant social interests are prevented by processes of discreditation that have been documented by theorists as diverse as Foucault, Kuhn and Chomsky as outlined above. The two important findings of this analysis establish (i) the contentious nature of the criteria of rationality and (ii) the legitimating and discreditation of forms of rationality on the basis of the service thereby rendered to dominant social interests. These findings contest the claims made in defence of economic rationality that it is objective, value neutral or in any meaningful sense more indicative of truth than any other form.<sup>61</sup> The presumed legitimacy of the hegemonic discourse has been brought into question by establishing the relative, subjective and contingent nature of economic rationality. In summation, the rejection of environmental human rights by advocates of economic rationality reflects the commercial interests of the beneficiaries of the capitalist system that have been argued to determine the dominance of one particular epistemological paradigm.

### **Economic rationality and environmental human rights violations**

Specific aspects of economic rationality justify the violations of the environmental human rights claimed in chapters five and six.

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<sup>59</sup> Drengson, *op cit*, p225.

<sup>60</sup> Bertrand Russell, *Power: A New Social Analysis*, London, (George Allen and Unwin, 1948), pp139-40.

<sup>61</sup> Begg et al, *op cit*, p13.

### The value of nature

The paradigm of economic rationality assumes the Greco-Christian position "that since everything on earth is for man's (sic) use, he is at liberty to modify it as he will".<sup>62</sup> Claims to the intrinsic value of nature, to the existence of values from a non-human source, are dismissed by economic rationality as normative and non-quantifiable.<sup>63</sup> Instead the value of the environment is determined by economic rationality as a monetary price reflecting market forces of supply and demand, that is, as a commodity. Following from the separation of human society from ecological systems, the environment is only valued as the market mechanism specifies prices for natural resources.<sup>64</sup> Bartlett and Opschoor draw attention to the fact that crucial elements in ecological systems cannot be expressed in monetary terms and are consequently disregarded by this formula.<sup>65</sup> In the case of energy policy for instance, market forces rationalise continuing dependence on fossil fuels with environmental consequences of systematic pollution, acid rain, climate change and degradation of the areas where mining occurs.<sup>66</sup> This environmental harm is accommodated as acceptable by economic models of allocative efficiency. Environmental degradation is determined, encouraged and legitimised by the subordination of ecosystem requirements to the logic of capital and consumption.<sup>67</sup>

In contrast, the paradigm of deep ecology attributes intrinsic value to non-human life, independent of its economic or anthropocentric worth. Whitehead expresses this in

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<sup>62</sup> Tarlock, *op cit*, pp45-6.

<sup>63</sup> Gowdy, *op cit*, p166.

<sup>64</sup> Chomsky, (1994), *op cit*, p23.

<sup>65</sup> Bartlett, *op cit*, p237; see also Hans Opschoor in Zweers and Boersema, (eds), *op cit*, p180 and p194.

<sup>66</sup> Robert Hill, Phil O'Keefe and Colin Snape in John Kirkby, Phil O'Keefe and Lloyd Timberlake, (eds), The Earthscan Reader in Sustainable Development, London, (Earthscan, 1995), p79.

<sup>67</sup> Julian Saurin in Caroline Thomas, (ed), Rio: Unravelling the Consequences, Ilford, (Frank Cass, 1993), pp46-7.

the claim that "everything has some value for itself, for others, and for the whole".<sup>68</sup> Sessions and Naess similarly contend that

the well-being and flourishing of human and non-human life on Earth have value in themselves. These values are independent of the use of the non-human world for human purposes.<sup>69</sup>

This claim is supported by the characteristic imperatives of ecological rationality to (i) preserve biodiversity and all forms of life; (ii) acknowledge the right of all living beings to unfold.<sup>70</sup> Although Kant was in no sense an advocate of ecological rationality, in the *Critique of Judgement* he distinguished between an argument "according to truth" and an argument "according to man". The first considers its object as it is in itself, the second what that object "is for us".<sup>71</sup> This Kantian observation is pertinent to considerations of ascribing value to non-human life on the grounds that such beings have their own projects inherent to the phenomenon of life as experienced by them, independent of any contact with humans. For any group of humans to decide that such factors construe no value is to utilise instrumental rationality to establish what that life is for us and to value it accordingly. This violates the requirement identified above by Kant that in order to establish an argument according to truth, we must instead consider the value of the thing, life and nature in this case, as it is in itself.<sup>72</sup> According to such reasoning, it would be logically coercive to recognise a value in nature, independent of human concerns, derived from the natural unfolding of non-human life.

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<sup>68</sup> AN Whitehead quoted in Alan R Drengson, *op cit*, p234.

<sup>69</sup> Sessions and Naess in Davis, (ed), *op cit*, p157.

<sup>70</sup> Sing C Chew, "For Nature: Deep Greening World Systems Analysis for the Twenty First Century", *Journal of World-Systems Research*, Vol 3, No 3, 1997, p390; <http://csf.colorado.edu/wsystems/jwsr.html> and Holmes Rolston, "Values in Nature", *Environmental Ethics*, Vol 3, No 2, 1981, p113.

<sup>71</sup> James Lewis, "Kantian and Neo-Kantian Approaches to International Relations", paper presented at the British International Studies Association Conference, Southampton, December 1995, p2.

<sup>72</sup> *ibid.*

Rolston points out that life is only treated as valueless by economic rationality because it is taken for granted since, he argues, the discovery of life elsewhere in the universe would be recognised by the scientific community as of tremendous value.<sup>73</sup> Finally, it should be noted that Western political philosophy has traditionally used claims to nature to validate notions of justice, as exemplified in discussions over natural justice and natural rights.<sup>74</sup> Such arguments necessarily presuppose some sort of value in nature, since without such value, claims to legitimacy derived from a natural status would be non-sensical. The denial of intrinsic value has led some theorists to condemn economic rationality as a manifestation of speciesism for making decisions on morally arbitrary grounds that prejudice otherness.<sup>75</sup> One possible manifestation of speciesism is limiting the rights discourse to humans. Naess, for example, argues that

to the ecological field-worker, the equal right to live and blossom is an intuitively clear and obvious value axiom. Its restriction to humans is an anthropocentrism.<sup>76</sup>

This brief juxtaposition of economic and ecological rationality on the subject of the value of nature demonstrates two incommensurate methods of conceptualising value. Under the ecological model, the intrinsic value of all life is axiomatic. In contrast, economic rationality interprets nature and non-human life forms in instrumental terms of environmental resources to be utilised in the service of economic ends. Subsequently, forests and minerals are viewed as exploitable resources to be utilised as market factors dictate and in such a manner as to minimise private costs. In terms of environmental human rights, the paradigm of economic rationality legitimises iniquitous environmental

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<sup>73</sup> Rolston, *op cit*, p122.

<sup>74</sup> Raphael, (ed), *op cit*.

<sup>75</sup> Tim Hayward, "Anthropocentrism: A Misunderstood Problem," *Environmental Values*, Vol 6, 1997, p52.

<sup>76</sup> Naess, 1973, *op cit*, p96; see also Dinah Shelton, "Human Rights, Environmental Rights and the Right to Environment", *Stanford Journal of International Law*, Vol 28, No 1, 1991, p104.

resource ownership predicated upon ability to pay rather than considerations of either human or ecological needs.<sup>77</sup> The right to an environment free from toxic pollution is similarly discredited through a methodological focus on efficiency that advocates an optimal level of toxic pollution determined by market forces. For example, one economics textbook explains that,

the efficient quantity of pollution is not zero but rather the level at which the social marginal cost of cutting back pollution equals its social marginal benefit. The fact that pollution still exists is not sufficient to establish that policy has not been tough enough.<sup>78</sup>

The political implications of accepting an efficient quantity of pollution are exemplified in an internal memo written by Lawrence Summers of the World Bank.<sup>79</sup> In this exposition of economic rationality he enquired, "shouldn't the World Bank be encouraging more migration of the dirty industries to the less developed countries?" Due to "under pollution" and lower income levels, developing states were calculated to have lower marginal costs of pollution. Since the economic costs of pollution are calculated through a methodology of income lost through premature death or illness, Summers correctly concluded that, "the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable".<sup>80</sup> It is precisely because of this logic that economic rationality is incompatible with the realisation of the claimed environmental human right to an environment free from toxic pollution.

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<sup>77</sup> see chapter 6.

<sup>78</sup> Begg et al, op cit, pp327-8.

<sup>79</sup> then chief economist at the World Bank; memo entitled 'Global Economic Prospects', see Bruce Rich, Mortgaging the Earth: The World Bank, Environmental Impoverishment and the Crisis of Development, London, (Earthscan, 1994), pp247-9.

<sup>80</sup> ibid.

### The value of people

Despite its anthropocentrism, economic rationality is dismissive of the intrinsic value of people.<sup>81</sup> Economic rationality is misanthropic since human needs provide no legitimising basis for resource entitlement, which is the sole remit of the market mechanisms of supply and demand. The reality of economic rationality for the poorest in the world who lack any income, is continuing starvation and poverty. Quoting United Nations Economic Social and Cultural Organisation (UNESCO) figures, Chomsky observes that,

it's becoming more difficult to tell the difference between economists and Nazi doctors [since] half a million children in Africa die every year simply from debt service... It's estimated that about eleven million children die every year from easily curable diseases, most of which could be overcome by treatments that cost a couple of cents. But the economists tell us that to do this would be interference with the market system.<sup>82</sup>

Therefore, basic human rights to food or clean water are discredited as normative considerations by the focus of economic rationality on the market mechanism where money alone provides entitlement to resources.

### Growthmania

Economic rationality expresses a political agenda of facilitating and enhancing consumerism through GDP growth.<sup>83</sup> A primary focus on economic growth invariably leads to environmental degradation. Arendt observed that in a capitalist economy "not

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<sup>81</sup> Gorz, (1988), op cit, p122.

<sup>82</sup> Noam Chomsky, "Dead Children and Debt Service", Secrets, Lies and Democracy; <http://www.worldmedia.com/archive/sld/sld-2-08.html>.

<sup>83</sup> see Herman Daly in Kirby, O'Keefe and Timberlake (eds), op cit, p331; see also Gowdy, op cit, p158 and David Korten, When Corporations Rule the World, London, (Earthscan, 1995), p81.

destruction but conservation spells ruin, because the very durability of conserved objects is the greatest impediment to the turnover process [of the economy], whose constant gain in speed is the only constancy left wherever it has taken hold".<sup>84</sup> According to Arendt, continued economic growth is necessary for the very survival of capitalism.<sup>85</sup> This observation pertains to the continual need to expand markets. The desire for market expansion extends to the very formula used to calculate GDP, aspects of which must appear unfathomable to non-economists. For example, calculations of GDP treat the depletion of environmental resources as income, rather than as loss or depreciation.<sup>86</sup> Thus, supporting the conclusion of Arendt, the process of consuming rather than conserving non-renewable environmental resources such as oil is measured as a social benefit under the calculations of economic rationality. Even more bizarre is the calculation by GDP of pollution as a double social benefit, firstly for the economic activity that generated the pollution, and then again for the activity required to clean it up.<sup>87</sup> Environmental catastrophes such as the Exxon Valdez oil tanker disaster as well as personal catastrophes, such as the diagnosis of cancer patients, are all recorded in positive terms in calculations of GDP.<sup>88</sup>

Some advocates of economic growth claim that it is compatible with environmental protection, or indeed beneficial in this regard, since more resources will become available for environmental protection.<sup>89</sup> The logical fallacy of this approach is

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<sup>84</sup> Hannah Arendt quoted by Hans Achterhuis in Zweers and Boersema, (eds), *op cit*, p199.

<sup>85</sup> *ibid*, p200.

<sup>86</sup> Daly in Kirkby, O'Keefe and Timberlake, (eds), *op cit*, p333; see also Sandy Buffett, "Environment and Development: Macroeconomic Issues"; <http://www.gurukul.ucc.american.edu/ted/papers/doc1.htm>; Redefining Progress, "The Genuine Progress Indicator: Summary of Data and Methodology", 1995; <http://dieoff.org/page11.html>; Gowdy, *op cit*, p158 and Korten, *op cit*, p38.

<sup>87</sup> Redefining Progress, *op cit*.

<sup>88</sup> Kalle Lasne, "Voodoo at the Summit", Adbusters; <http://www.adbusters.org/adbusters/Articles/voodoo.html>.

<sup>89</sup> see Jagdish Bhagwati in Ken Conca, Michael Albert and Geoffrey Dabelko, (eds), Green Planet Blues: Environmental Politics from Stockholm to Rio, Boulder, (Westview Press, 1995).

forcibly documented by Dryzek who demonstrates the inherent ecological damage incurred by all economic growth and resource consumption whereas only a proportion of that growth can be diverted to environmental protection projects.<sup>90</sup> Other commentators provide convincing evidence that pollution levels in developed states are improving not because of the introduction of new technology, but rather as a consequence of a sectoral shift to service industries and the relocation of polluting industries to Third World states where environmental controls are lax or non-existent.<sup>91</sup>

Economic rationality assumes a scarcity of resources, that the total of available resources is insufficient to meet the needs of all people.<sup>92</sup> Opschoor contends that capitalism itself constructs this notion of scarcity through the idea of infinite human needs.<sup>93</sup> As Gorz also reminds us, the concept of the "sufficient" is a cultural or existential category rather than an economic category.<sup>94</sup> Giddens notes that in many subsistence economies

there is no principle of scarcity in operation... modern economics has invented scarcity in the context of a system which puts a basic stress upon the expansion of production... Members of primitive societies are characteristically at least as able to provide for their needs as those in the most economically developed capitalistic systems. Most primitive societies have at their disposal, if they so desire, all the time necessary to increase the production of material goods. They do not so desire, since the

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<sup>90</sup> John S Dryzek, (1990), op cit, p33; see also Herman Daly in Conca, Alberty and Dabelko, (eds), op cit.

<sup>91</sup> Tim Bartley and Albert Bergessen, "World-System Studies of the Environment", Journal of World-Systems Research, Vol 3, No 3, 1997, pp369-80; <http://csf.colorado.Edu/wsystems/jwsr.html>.

<sup>92</sup> Opschoor in Zweers and Boersema, (eds), op cit, p194.

<sup>93</sup> ibid.

<sup>94</sup> Gorz, (1988), op cit, p112.

expansion of material production is not experienced as a driving impulsion.<sup>95</sup>

Overall scarcity is a useful concept to excuse the existence of unprecedented opulence alongside widespread poverty since the impoverishment of one section of the global population is thereby naturalised and portrayed as an inevitable condition rather than as constructed by capitalism.<sup>96</sup> The assumption of scarcity furthermore accommodates the use of resources for the consumption of luxuries by the affluent since the vital distinction between essential and luxury goods is thereby obfuscated. The market mechanism instead provides the sole legitimising criteria for claims to products. This again naturalises the denial of essential resources for the impoverished since the market diverts resources to supplying goods to the affluent.<sup>97</sup>

### Discounting

Economic rationality encourages systematic environmental destruction through the concept of discounting. The discount rate, expressed as a percentage, reflects the economic perception that people attach more value to utility occurring in the present than in the future.<sup>98</sup> Discounting is a calculation to equate future benefits and costs of a proposed investment project to the net present value to ensure that the efficient allocation of resources is obtained.<sup>99</sup> For example, at a discount rate of ten percent, MacNeill explains that

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<sup>95</sup> Anthony Giddens, A Contemporary Critique of Historical Materialism Vol 1: Power, Property and the State, London, (Macmillan, 1981), pp83-4.

<sup>96</sup> Korten, op cit, p83; David Korten, "Taming the Giants"; <http://www.geocities.com/~combusem/korten.html>; see also Caroline Thomas, "Where is the Third World Now?" Review of International Studies, December 1999, Vol 25, p227 and Anti-Consumerist Campaign, "Champagne and Poverty"; <http://www.enviroweb.org/enviroissues/Enough/Enough03.html>.

<sup>97</sup> see chapter 6 for details.

<sup>98</sup> what economists call 'time preference', see Opschoor in Zweers and Boersema, (eds), op cit, p184.

<sup>99</sup> Jim MacNeill, Pieter Winsemius and Taizo Yakushiji, Beyond Interdependence, New York and Oxford, (Oxford University Press, 1991), p46.

a project that results in a depletion of ecological capital of \$10 million in 100 years has a present value of \$725. The implication is clear: the future consequences of global warming and sea-level rise or the future extinction of species, stemming from current investments, are of no significance.

This is patently irrational.<sup>100</sup>

It is precisely the point that, according to economic rationality, it is completely rational to take decisions that will result in even catastrophic ecological destruction in the future when such decisions can be shown to be allocatively efficient today.<sup>101</sup> Discounting stipulates that an investment must earn a high enough return to compensate the investor for the opportunity cost of making that choice, such as the interest that could otherwise be earned from placing the capital in a bank. Policies that benefit the environment in the long run, such as investing in renewable energy plants or forestry projects are invariably rejected on economic grounds since they require large initial outlays and revenue is only received in the future.<sup>102</sup> It is precisely on this point of discounting that Pigou identified a "defective telescopic faculty" in the discipline of economics.<sup>103</sup>

#### The practical manifestation of economic rationality in determining environmental human rights violations

The epistemological paradigm of economic rationality is therefore problematic for the realisation of environmental human rights. Through a deconstruction of the paradigm, constitutive elements have been identified and found to rationalise, accommodate or indeed advocate processes that cause systematic environmental degradation. To

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<sup>100</sup> ibid.

<sup>101</sup> Arjun Makhijani, From Global Capitalism to Economic Justice, New York and London, (Apex Press, 1992), p8 and Gowdy, op cit, p166.

<sup>102</sup> editorial, "The Price of Green", The Economist, Vol 323, No 7758, 9 May 1992, p87.

<sup>103</sup> Pigou quoted by Opschoor in Zweers and Boersema, (eds), op cit, p184.

demonstrate the applicability of this discussion of economic rationality to actual events, the subject of analysis now turns to look at how corporations internalise and express the paradigm of economic rationality to create violations of environmental human rights as part and parcel of the capitalist economy.

Corporations are characteristically hostile to public attempts to prioritise social and environmental concerns over economic rationality. This is exemplified in a letter from a representative of a key business organisation to a trade representative that "we will oppose any and all measures to create or even imply binding obligations for governments or business related to the environment or labor".<sup>104</sup> One group campaigning against the toxic pollution of the environment noted that the major problem faced in achieving this goal was presented by industry that has insisted on economic grounds that there be no bans or phase outs of toxic chemicals.<sup>105</sup>

The following examples describe corporate efforts to retain the right to continue the toxic pollution of the environment to keep costs down. BP spent \$171,000 in a successful campaign to prevent new regulations drafted by the Californian state legislature that would have required safety improvements to be made to oil tankers. These developments followed a 300,000 gallon spill from a BP-chartered oil tanker in February 1991 off Huntingdon beach, California.<sup>106</sup> Brenton details the history of opposition from the shipping and oil industries to proposals for more extensive pollution control equipment to be installed in tankers.<sup>107</sup>

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<sup>104</sup> Abraham Katz, President of the United States Council for International Business, 21 March 1997, letter to Deputy US Trade Representative Jeffrey Lang, quoted in Economic Working Group, "MAI: Democracy for Sale?"; <http://www.igc.org/econwg/MAI/index.html>; see also Tony Brenton, The Greening of Machiavelli: The Evolution of International Environmental Politics, London, (Earthscan, 1994), p146.

<sup>105</sup> see Greenpeace, "The Decline of Corporate Accountability"; <http://www.greenpeace.org/~comms/97/summit/account.html>.

<sup>106</sup> see McSpotlight, "British Petroleum in the McSpotlight"; <http://www.mcspotlight.org/beyond/companies/bp.html>.

<sup>107</sup> Brenton, op cit, p146.

In another demonstration of corporate interest defending the ability to maximise profits at the expense of releasing toxic pollutants into the environment, the Methyl Bromide Working Group is actively lobbying to undermine attempts in the US to phase out the usage of the pesticide methyl bromide.<sup>108</sup> Methyl bromide is classified by the US Environmental Protection Agency (EPA) as a category one acute toxin, the most deadly category of substances, with a history of adverse health effects on agricultural workers.<sup>109</sup> Similarly promoting its commercial interests at the expense of health concerns, Rhone Poulem defends its exports to the Third World of pesticides that, because of their toxicity, are banned in the US.<sup>110</sup>

Following an explosion on the 2 December 1984, a toxic cocktail of over 40 tonnes of methyl isocyanate, hydrogen cyanide and other gases leaked from a Union Carbide pesticide manufacturing plant in Bhopal, India causing 300,000 people to be injured or killed.<sup>111</sup> Over 50,000 people remain permanently disabled as a result of the disaster with diseases of the respiratory, gastro-intestinal, reproductive, musculoskeletal and neurological systems.<sup>112</sup> The response of Union Carbide following the incident exemplifies how a focus on economic rationality determines violations of environmental human rights. The corporation declined to reveal the exact chemical composition of the toxic gases released. When specifically asked to disclose this information to enable health

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<sup>108</sup> The Methyl Bromide Working Group represents three producers of the pesticide methyl bromide; see "Methyl Bromide Working Group", Corporate Watch; <http://www.corpwatch.org/trac/feature/bromide/mbwg.html>.

<sup>109</sup> Methyl Bromide Alternatives Network, "A First Class Poison", Corporate Watch; <http://www.corpwatch.org/trac/feature/bromide/poison.html>.

<sup>110</sup> Greenpeace; <http://www.greenpeace.org/>.

<sup>111</sup> Corporate Watch, "Thirteenth Anniversary Fact Sheet on the Union Carbide Disaster in Bhopal", The Corporate Planet; <http://www.corwatch.org/trac/feature/india/profiles/bhopal/bhopal13facts.html> and International Peoples' Tribunal on Human Rights and the Environment, "Statement of the International Peoples' Tribunal on Human Rights and the Environment: Sustainable Development in the Context of Globalization", Alternatives, Vol 23, No 1, 1998, p139.

<sup>112</sup> International Peoples' Tribunal on Human Rights and the Environment, op cit, p139.

workers to design effective treatment, Union Carbide refused, using trade secrecy and patent laws to keep its chemical formulas and production processes' secret from its competitors.<sup>113</sup> Although this policy secured the commercial position of Union Carbide, it compounded the damage to health of individuals exposed to the toxic gas since "as detailed data never became available, no treatment could be developed".<sup>114</sup>

With regard to the toxic pollutant ozone produced by industry and car users,<sup>115</sup> a spokesperson for the Automobile Manufacturers Association has been quoted as saying that "the effects of ozone are not that serious... what we're talking about is a temporary loss in lung function of twenty to thirty per cent. That's not really a health effect".<sup>116</sup> An oil industry lobbyist explains that "people can protect themselves" from the health effects of ozone since "they can avoid jogging, asthmatic kids need not go out and ride their bicycles".<sup>117</sup>

In response to a World Health Organisation report that concluded thousands of Europeans exposed to particulate pollution will suffer disease or die,<sup>118</sup> a representative of the oil industry stated that "to say that particles are dangerous is emotive and irresponsible".<sup>119</sup> When European environment ministers met in November 1995 for discussions to reduce the exposure of the public to particulates, the introduction of more

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<sup>113</sup> Indira Jaising, and C Sathyamala in Kirkby, O'Keefe and Timberlake, (eds), op cit, p175 and p180.

<sup>114</sup> Anil Agarwal and Sunita Narain, Towards a Green World, New Delhi, (Centre for Science and Environment, 1992), p189; see also Corporate Watch, op cit.

<sup>115</sup> see chapter 5 for details of the health effects of ground level ozone.

<sup>116</sup> Automobile Manufacturers Spokesman quoted in Al Kamen, "Lost in the Ozone", Washington Post, 3 February 1997, p4.

<sup>117</sup> "The Lawrence Summers Memorial Awards", Multinational Monitor, Vol 18, No 3, March 1997; <http://www.essential.org/monitor/hyper/mm0397.14.html>.

<sup>118</sup> particulates are pollutants of less than 10 micrometers in length which can become lodged in the alveoli of the lungs, see chapter 5 for details.

<sup>119</sup> Rob Edwards, "Industry Denies Dangers of Particle Pollution", New Scientist, Vol 148, No 2002, 4 November 1995, p5.

stringent limits on emissions was postponed "under pressure from the motor industry".<sup>120</sup> Only after a lengthy period of procrastination were more comprehensive laws on air pollution introduced in the US in November 1990. "Economic costs" were cited as being the main reason for the delay.<sup>121</sup> Similarly, "intense lobbying by most car manufacturers in Europe" delayed the decision of the European Parliament to match American standards of pollution emissions from vehicle exhausts in April 1989.<sup>122</sup> Fearing a downturn in the car market, Peugeot in 1988 lobbied the French government to block European Union (EU) agreement on more stringent exhaust emission standards for small cars.<sup>123</sup>

Corporations in the United States have recently established or funded front groups to campaign against stricter clean air legislation. By co-ordinating a number of opposition groups, a variety of tactics can be undertaken to shape public opinion, whilst at the same time ensuring that there are multiple targets to which ecological groups have to respond. Citizens for Sensible Control of Acid Rain was established by electric utilities and mining companies to oppose the 1986 Clean Air Act, which sought to reduce air pollution.<sup>124</sup> The Coalition for Vehicle Choice was created and supported by corporations in the car industry to combat increased fuel efficiency standards.<sup>125</sup> The Council for Solid Waste Solutions was established and continues to be supported by the plastics industry to

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<sup>120</sup> the introduction of the proposed limit of 0.15 grams per kilowatt-hour would have reduced PM10 emissions by 75 per cent, see Mick Hamer and Debora MacKenzie, "Brussels Blocks Britain's Clean Air Plan", New Scientist, Vol 148, No 2004, 18 November 1995, p6.

<sup>121</sup> Dennis Melamed, "Congress gets Tough on Heavy Polluters", New Scientist, Vol 128, No 1741, 3 November 1990, p20.

<sup>122</sup> Richard Gould, "The Exhausting Options of Modern Vehicles", New Scientist, Vol 122, No 1664, 13 May 1989, p42.

<sup>123</sup> Brenton, op cit, p146.

<sup>124</sup> Clearinghouse on Environmental Advocacy and Research, "Industry Deploys New Anti-Environmental Strategy"; [http://www.ewg.org/pub/home/clear/by\\_clear/air\\_attack.html](http://www.ewg.org/pub/home/clear/by_clear/air_attack.html).

<sup>125</sup> ibid.

promote the use of plastic containers.<sup>126</sup> The National Association of Manufacturers funds and shares addresses with the Air Quality Standards Coalition. This coalition "represents the industry viewpoint that current air regulations are adequate, and that more stringent regulations would harm business".<sup>127</sup> The American Petroleum Institute, the American Plastics Council and the Chemical Manufacturers Association fund Citizens for a Sound Economy, a group that produces advertisements opposing more restrictions on air pollution.<sup>128</sup> The Foundation for Clean Air Progress opposes regulations designed to force industry to cut pollution emissions, claiming that pollution can be best reduced by members of the public acting more responsibly. The American Petroleum Industry hired the public relations firm Burson-Marsteller to create the foundation that is housed in Burson-Marsteller's Washington office.<sup>129</sup>

Whereas fossil fuel usage is a significant source of pollution,<sup>130</sup> a number of petrochemical corporations have been actively campaigning for continued reliance on this energy source to promote economic growth. Mr Raymond, the Chairman of Exxon Corporation, urged developing countries to avoid environmental controls that would hinder economic development and encouraged these states to increase fossil fuel usage.<sup>131</sup>

Corporate lobbying at the Kyoto conference on climate change exemplifies the position of industry to retain dependency on fossil fuels. A series of advertisements was sponsored by lobbyists for the energy and automotive industries warning US consumers

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<sup>126</sup> ibid.

<sup>127</sup> ibid.

<sup>128</sup> ibid.

<sup>129</sup> ibid.

<sup>130</sup> Lester Brown, et al, State of the World 1998, London, (Earthscan, 1999), p12.

<sup>131</sup> Wall Street Journal, 14 October 1997, quoted in Downstream, Fall/Winter 1997; <http://www.geocities.com/Rainforest/8073/down1.html>.

of higher prices if the Clinton Administration agreed to cuts in carbon dioxide emissions at the conference.<sup>132</sup> Whereas President Clinton pledged in 1993 to cut greenhouse gas emissions to 1990 levels by the year 2000, at Kyoto he instead projected emissions of carbon dioxide, methane and other heat trapping gases to rise by thirteen per cent by the year 2000.<sup>133</sup> The failure to agree legally binding timetables for reductions in carbon dioxide emissions at Kyoto has been widely attributed to the lobbying success of coalitions of influential industries.<sup>134</sup> The Global Climate Coalition whose members include the American Automobile Manufacturers Association, the American Petroleum Institute, Amoco, Chevron, Chrysler, Dow Chemical, DuPont, Exxon, Ford and Union Carbide was one important industrial lobby group. In the run up to the Kyoto conference, the coalition sent a letter to President Clinton "asking that all current climate proposals be rejected".<sup>135</sup> Even Conservative MP John Gummer reported that in Kyoto,

I saw some of the nastiest big business arm-twisting one could imagine. A corps of 60 lobbyists from the American coal, oil and car industries, masquerading under the Global Climate Coalition... cajoling and threatening the US delegates and developing countries alike.<sup>136</sup>

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<sup>132</sup> Mary Dejevsky, "Clinton Pulls out the Stops to Turn the US Green", The Independent, 3 October 1997, p16.

<sup>133</sup> on 22 October 1997; see Imre Karacs, Mary Dejevsky and Nicholas Schoon, "America Reveals her Policy on Global Warming: Too Little, Too Late", The Independent, 23 October 1997, p1.

<sup>134</sup> Corporate Europe Observatory, "The Weather Gods: How Industry Blocks Progress at Kyoto Climate Summit", The Corporate Planet; <http://www.corpwatch.org/trac/feature/planet/gods/html>; see also John Vidal, "A Dirty Business Bogged Down in a Moral and Political Mire", The Guardian, 15 August 1998, p5; Karacs, Dejevsky and Schoon, *op cit*; Paul Brown, "How US Put a Damper on the Climate Change Debate", The Guardian, 23 October 1997, p3 and Martin Kettle, Paul Brown and Ian Traynor, "US Rips up Green Treaty", The Guardian, 23 October 1997, p1.

<sup>135</sup> July 1997; see Corporate Europe Observatory, *op cit*.

<sup>136</sup> John Gummer, former UK Environment Secretary; quoted in "Campaign Report", Greenpeace, Spring 1998, p1.

Rowell describes how the coalition was successful in its task of preventing concerted action against climate change at the 1992 negotiations in Rio and at the Framework Convention on Climate Change held in Berlin in March 1995.<sup>137</sup>

Another group, the Global Climate Information Project, is a coalition of industry groups including the American Petroleum Institute and the National Mining Association. In September 1997 the GCIP initiated a \$13 million advertising campaign against reducing fossil fuel usage, which warned of the increasing costs of goods that would result from a climate agreement.<sup>138</sup> In Europe the Employers' Confederation (UNICE), and the European Roundtable of Industrialists have openly disagreed with the EU's proposal to reduce carbon dioxide emissions.<sup>139</sup>

The same commercial incentives that cause corporations to oppose environmental protection measures also marginalise human rights concerns. The current Burmese government, known as the State Law and Order Restoration Council (SLORC), is one example of a military regime that demonstrates contempt for the concept of human rights, engaging in political tactics of torture and intimidation to stay in power.<sup>140</sup> A number of petrochemical MNCs have nonetheless chosen to invest in the state. The chief executive of one such corporation, Premier Oil, denied that such investment has any effect on the political situation and "insisted Premier was politically neutral".<sup>141</sup> Of course there are many political implications arising from the decision to operate in Burma as pointed out by the democratically elected President, kept out of power by the military regime;

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<sup>137</sup> Andrew Rowell, Green Backlash: Global Subversion of the Environment Movement, New York, (Routledge, 1996), p87; see also Friends of the Earth, "Shell Environment Report Condemned as Greenwash"; <http://www.foe.co.uk/pubsinfo/infoteam/pressrel/1997/199705061700500.html>.

<sup>138</sup> Corporate Europe Observatory, *op cit.*

<sup>139</sup> *ibid.*

<sup>140</sup> R Strider, "Blood in the Pipeline", Multinational Monitor, January/February 1995; <http://www.essential.org/monitor/hyper/mm0195.html>.

<sup>141</sup> CEO Charles Jamieson quoted in Roger Cowe, "Oil Company Inflames Burma Boycott Row", The Guardian, 15 May 1998, p21.

"Companies investing in Burma only serve to prolong the agony of my country by encouraging the present regime to persevere in its atrocities".<sup>142</sup> The response from Premier Oil is however instructive because of the sole focus on economic criteria that dictates investment decisions regardless of even the most egregious human rights violations. Neither is Premier Oil alone in its disregard for the human rights record of the states in which it invests. Unocal, Total, ARCO and Texaco have all signed contracts with the SLORC for oil, gas and pipeline construction projects.<sup>143</sup>

These examples are not isolated cases, but rather express corporate perceptions of self interest. To remain competitive in a capitalist economy, firms must prioritise profits over social or environmental concerns. In the case of the environment, the Economist editors for example point out that

[s]ince companies are not altruists, most will only be as green as governments compel them to be. They will do what is required of them and what they perceive to be in their self interest.<sup>144</sup>

Supporting this conclusion, a recent survey of business environmental practices found that

the threat of fines or prosecution has proved the most powerful incentive for adopting greener policies. Forty-eight per cent of respondents cited legislation as the key driver, followed by regulatory requirements (34 per cent)... The perception amongst managers is that green policies put up costs with little scope for future payback.<sup>145</sup>

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<sup>142</sup> Aung San Suu Kyi quoted in Sabrina Alonso, "Burma's Pain - Mitsubishi's Profit", International Rivers Network; [http://www.ran.org/ran/ran\\_campaigns/mitsubishi/mit\\_burma.html](http://www.ran.org/ran/ran_campaigns/mitsubishi/mit_burma.html); see also Julia Finch, "Human Rights Force Way onto Agenda", The Guardian, 13 May 1998, p23.

<sup>143</sup> Corporate Watch, "Deadly Partners: Dictators, Dollars and Corporate Greed in Burma", The Corporate Planet; <http://www.corpwatch.org/trac/feature/planet/gods/html>; see also Alonso, op cit.

<sup>144</sup> Economist editorial quoted in Tony Brenton, op cit, pp149-50.

<sup>145</sup> Karen Charlesworth, "Going Green", T Magazine, September 1998, pp18-9.

The purpose of this section has been to illustrate the actual manifestation of economic rationality in corporate activity to demonstrate how this encourages indifference to both environmental concerns and human rights since the focus on economic criteria becomes all pervasive. As Greider observes, in neglecting environmental and social concerns, MNCs "are merely responding to the real imperatives of the present system, doing what they think is necessary to survive".<sup>146</sup> Korten similarly notes that,

Unless a corporation is working in a particular niche situation, and is privately owned by a terribly socially conscious family or manager, it is virtually impossible to manage a corporation in a socially responsible way. Either it will be driven out of the market by competitors, who are pursuing less responsible policies, or it will be bought by a corporate raider who sees the short-term profit in taking those actions. Or, as fund managers themselves become more active in the management affairs of corporations, the managers are likely to be replaced by shareholder action driven by fund managers.<sup>147</sup>

In summary, economic rationality made manifest in the capitalist structure as commercial self interest can be identified as determining environmental harm and subsequently the systematic violation of environmental human rights.

### **The differentiation of capitalism and liberalism**

This chapter has identified the mutually reinforcing structures of economic rationality and capitalism as accommodating and normalising violations of environmental

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<sup>146</sup> William Greider, One World, Ready or Not: The Manic Logic of Global Capitalism, New York, (Simon and Schuster, 1997), p218.

<sup>147</sup> David Korten, "Interview: When Corporations Rule the World", Multinational Monitor, Vol 17, Nos 1 and 2, January/February 1996; <http://www.essential.org/monitor/hyper/mm0196.08.html>; see also Korten, (1995), op cit, p212.

human rights. Capitalism will now be juxtaposed with liberal political theory to isolate the former from the theory of justice that is often, and mistakenly, given in its defence. The focus on the liberal paradigm has been chosen for two reasons; (i) prominence and (ii) common confusion between liberalism and capitalism. Whereas capitalism will be identified as causing violations of the human right to an environment free of toxic pollution, liberalism will, in contrast, be found to logically support the right. This differentiation follows from the fundamental distinction that whereas liberalism is an (albeit broad and varied) philosophical theory that conceptualises a particular notion of just conduct in social relations between individuals, capitalism facilitates the pursuit of private interest at the expense of harming others. Capitalism is characterised by an inability to advance any theory of justice beyond a dogmatic advocacy of the market and a misanthropic belief in self interest. The environmental harm incurred by capitalism has been detailed above. <sup>ei</sup> Greider reminds us of the social harm engendered by the misanthropocentrism of capitalism; "the capitalist process, by its nature, encourages infantile responses from every quarter, as people are led to maximise self-interest and evade responsibility for the collateral consequences of their activities, the damage to other people or society or the natural environment".<sup>148</sup>

### Capitalist accommodation of toxic pollution

The capitalist economy not only accommodates the corporate interest to pollute but indeed rewards such action as a method of maximising profits by externalising costs, that is by imposing the costs arising from the production process onto others in society.<sup>149</sup> Such social costs relate to (i) the damaging effects of toxins on health; (ii) the associated increase in health costs incurred to redress this harm; (iii) the cost of cleaning

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<sup>148</sup> Greider, *op cit*, p441.

<sup>149</sup> The Ecologist, Whose Common Future? Reclaiming the Commons, London, (Earthscan, 1993), p62 and Gill, *op cit*, p419.

up pollution; (iv) damage to wildlife, crops and buildings from pollutants; (v) radiation damage to wildlife, crops and people consequent to the emission of ozone depleting chemicals and (vi) crop losses, damage to buildings and the necessary construction of sea defences required to deal with the effects of climate change.<sup>150</sup>

These externalities are a mechanism by which private interests are pursued in a capitalist society at the expense of other individuals and broader environmental concerns. Reducing or eliminating releases of pollution would raise production costs for corporations who, as the previous section has detailed, have used their considerable power to protect their interests to pollute.<sup>151</sup> As Goodwin contends, "power is largely what externalities are about. What's the point of having power, if you can't use it to externalise your costs; to make them fall on someone else"?<sup>152</sup> Similarly, Miller asserts,

businesses and individuals are seizing the opportunity to separate themselves from the costs of their actions. The focus is often on extracting the benefits and passing the cost on to other actors; in this way, a firm can profit from investments that turn out to be very costly for the community.<sup>153</sup>

Dugger likewise draws attention to the social damage incurred by a capitalist pursuit of private interest by reminding us that "the corporation has evolved to serve the interests of whoever controls it, at the expense of whomever does not".<sup>154</sup> In facilitating the externalisation of costs by accommodating the pollution of the environment,

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<sup>150</sup> this list of costs are limited to those with monetary values.

<sup>151</sup> Daly in Conca, Alberti and Dabelko, (eds), *op cit*, p182.

<sup>152</sup> Neva Goodwin quoted in Korten, (1995), *op cit*, p77.

<sup>153</sup> Marian Miller, The Third World in Global Environmental Politics, Boulder, (Lynne Rienner, 1995), p144.

<sup>154</sup> William Dugger, Corporate Hegemony, New York, (Greenwood Press, 1989), pxi.

capitalism encourages pollution, mitigated only by the increasingly limited extent to which governments are willing or able to regulate corporations.<sup>155</sup>

Individuals attempting to reduce their impact on the environment in a capitalist society are what game theorists would refer to as suckers,<sup>156</sup> that is choosing options that benefit others at the expense of their own interests. Overall pollution levels will remain virtually the same whatever activity any one individual engages in. In the case of transport for example, individuals choosing to minimise their environmental impact by walking or cycling, will nonetheless suffer the social ills of cars such as noise pollution, exhaust pollution and threats to physical injury posed by cars to other road users, without enjoying any of the private benefits that lead people to use cars in the first place. In this sense individuals are encouraged to pollute the environment as in their own self interest since environmentally responsible behaviour is discouraged by the cultural structure.<sup>157</sup> Similarly, corporations operating in a manner that prioritise environmental concerns over cost considerations will be forced out of the market by less scrupulous competitors who can undercut their prices.<sup>158</sup>

Although advocates of economic rationality may logically demand that social costs of pollution be internalised through the application of the polluter pays principle,<sup>159</sup> the elimination of pollution on grounds of human rights would necessarily be dismissed as irrational since this subordinates economic calculations of allocative efficiency to 'normative' social and environmental values.<sup>160</sup> Rather than endorsing the pursuit of

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<sup>155</sup> see chapter 4.

<sup>156</sup> Robert Axelrod, The Evolution of Co-operation, Harmondsworth, (Penguin, 1990).

<sup>157</sup> Opschoor in Zweers and Boersema, (eds), op cit, p184; see also Frans Jacobs in Zweers and Boersema, (eds), op cit, p161; Gorz, (1988), op cit, p128 and Jan Bojo, Karl-Goran Maler and Lena Unemo, Environment and Development: An Economic Approach, Dordrecht, (Kluwer Academic Publishers, 1990), p22.

<sup>158</sup> Greider, op cit, p441.

<sup>159</sup> Pearce and Turner, op cit.

<sup>160</sup> see chapter 2 for a discussion of the polluter pays principle.

private benefit at the expense of the rest of society and the environment, one obvious solution would be to change the structural incentives to identify private interest with environmental benefit. In the case of transport this could be achieved by raising the costs of car usage and using the revenue to subsidise non-polluting modes of transport.<sup>161</sup>

#### Toxic pollution as a violation of liberal political theory

The pursuit of individual interest through the production of toxic pollution characteristic of capitalism is necessarily unacceptable to liberalism. Although it must be stressed that liberal theory spans a broad range of nuanced positions, pollution necessarily contradicts two fundamental principles of liberalism that advocate (i) the autonomy of individuals and (ii) the necessary criminalisation of acts that harm others. These principles of liberalism were established in 1672 when Pufendorf ranked "first and noblest" the requirement "that no man (sic) hurt another".<sup>162</sup> Thereafter, liberal theory has advocated clear limits to the liberty of each individual, a distinction that differentiates liberalism from anarchism. Mill for example concluded that "the only purpose for which power can be rightfully exercised over any member of a civilised community, against his (sic) will, is to prevent harm to others".<sup>163</sup> Mill's claim resonates the Lockean imperative that "no-one ought to harm another in his (sic) Life, Liberty or Possessions".<sup>164</sup> Goodin points out that this principle has subsequently been institutionalised in the implementation of Western jurisprudence: "Non-malfeasance-the duty not to harm others-constitutes the common thread linking criminal and civil law, both historically and

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<sup>161</sup> see chapter 5 for details of the pollution caused by cars.

<sup>162</sup> Pufendorf quoted in Robert E Goodin, Protecting the Vulnerable, Chicago, (University of Chicago Press, 1985), p18.

<sup>163</sup> quoted in Peter Jones, Rights, Basingstoke, (Macmillan, 1994), p141.

<sup>164</sup> ibid, p75.

analytically".<sup>165</sup> This so called harm principle actualises the conceptual autonomy of individuals that lies at the heart of liberal claims to human rights.<sup>166</sup> As Gray reminds us, "the principle of liberty is to be stated as proscribing any limit on liberty except where harm to the interests of others may thereby be prevented".<sup>167</sup> Exemplifying the liberal claim to autonomy, Robinson justifies human rights that "ensure mutual respect for a principle of non-interference".<sup>168</sup> Hart defends "the equal right of all men (sic) to be free" and characteristically for a liberal rights theorist, defines freedom in negative terms, that is to say the right not to be interfered with so long as actions performed do not harm anyone else.<sup>169</sup>

Using a definition of interference as "an intervention that affects the integrity or physical well-being of a person",<sup>170</sup> the liberal principles of harm, and autonomy, defined as non interference, logically require the criminalisation of toxic pollution.

It is important at this point to differentiate between various pollutants. Non toxic pollutants such as carbon dioxide may pose great risks for climate change but have no deleterious effects on human health and consequently emissions could continue with no violation of liberal principles. A second category of pollutants only causes harm when a threshold level is reached. That is to say that exposure to low levels of such pollutants

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<sup>165</sup> Goodin, *op cit*, p18.

<sup>166</sup> Joel Feinberg, Harm to Others, Oxford, (Oxford University Press, 1984), p45 and Joel Feinberg, Harmless Wrongdoing: The Moral Limits of the Criminal Law, Volume 4, Oxford, (Oxford University Press, 1988), pix; see also Ingram, *op cit*.

<sup>167</sup> Gray, *op cit*, p133.

<sup>168</sup> Fiona Robinson, "Contractarianism and Rights-Based Morality: The Limits of a Human Rights Approach to International Ethics", British International Studies Association conference paper, Southampton, 18-20 December 1995, p16.

<sup>169</sup> HLA Hart in Waldron, (ed), *op cit*, p77; see also Cranston in Raphael, (ed), *op cit*, p43.

<sup>170</sup> Richard Desgagne, "Integrating Environmental Values into the European Convention on Human Rights", American Journal of International Law, Vol 85, No 2, April 1995, p275.

does not constitute harm. The non-interference and harm principles are only violated when levels exceed threshold levels.<sup>171</sup>

The third category of pollutants relates to toxic substances to which there is no safe exposure level. It is this category of pollutants that must be eliminated for the liberal principles of harm and non-interference to stand since toxic chemicals are, by definition, harmful to human life by virtue of their ontological property to cause cellular damage. It is precisely because certain pollutants have the capacity to harm that cigarettes now carry health warnings on their labels and that smoking is being increasingly banned in many public places.

Exemplifying the inadequacy of present environmental laws to implement the liberal harm and non-interference principles, exposure to ground level ozone damages the biochemistry of the lungs "at levels that are well below international limits for the maximum amount of ozone that should be present in clean air".<sup>172</sup> Epidemiological research demonstrates that there is no safe exposure level to particulate pollutants (PM10s) that cause approximately 60,000 deaths per year in the US and 10,000 in England and Wales.<sup>173</sup> Given that toxic pollutants like ground level ozone and PM10s are "poisonous", that they "destroy life or impair health" it is logically coercive from the position of liberalism to criminalise acts that are known to produce such pollutants.<sup>174</sup>

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<sup>171</sup> for details of the harm caused by toxic pollutants see chapter 5.

<sup>172</sup> Cathy Read, "Science: Even Low Levels of Ozone in Smog Harms the Lungs", New Scientist, Vol 123, No 1681, 9 September 1989, p40.

<sup>173</sup> figures from Joel Schwartz, an epidemiologist in the US Environmental Protection Agency quoted in William Bown, "Dying From Too Much Dust", New Scientist, Vol 141, No 1916, 12 March 1994, p12; see also Joel Schwartz and Douglas W Dockery, "Increased Mortality in Philadelphia Associated with Daily Air Pollution Concentrations", American Review of Respiratory Disease, Vol 145, 1992, pp600-4 and Michael Weisskopf, "Particulates in the Air Help Kill 60,000 a Year, Study Says", Washington Post, 13 May 1991, pA13; see chapter 5 for details.

<sup>174</sup> definitions of toxic and poisonous respectively provided by the Chambers English Dictionary, Edinburgh, (W and R Chambers, 1990), p1553 and p1126.

Research on pollution from the perspective of political theory is rare. Machan is one notable exception who contends that;

Under capitalism any pollution which would most likely lead to harm being done to persons who have not consented to being put at risk of such harm would have to be legally prohibited... This may lead to an increase in the cost of production or to the elimination of some production processes, and, in either case, to increased unemployment and increased hardship. Still, that would be the consistent way to apply the capitalist-libertarian principle in the legal system. The intentional or negligent violation of individual rights, including the rights of life, liberty and property, must be legally prohibited. To permit the production to continue on grounds that this will sustain employment would be exactly like permitting the continuation of other crimes on grounds that allowing them creates jobs for others... No one has a right to benefit from acts or practices that violate the rights of others.<sup>175</sup>

To endorse this analysis is, however, to confuse capitalism with liberalism. Liberalism requires the cessation of pollution along the exact lines which Machan mistakenly ascribes above to capitalism. This dichotomy constitutes the fundamental difference between on the one hand the system of capitalism predicated upon the principles of economic rationality and on the other, political liberalism. Whereas both systems promote a focus on private interest, capitalism condones this at the expense of harming other individuals but liberalism necessarily opposes this violation of autonomy rights and of the harm principle. The contention that individuals can justly be harmed a little by small amounts of toxic pollution or any other act is certainly defensible on grounds of economic rationality since this could be demonstrated to produce the most efficient outcome. The argument is however untenable on liberal grounds since any

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<sup>175</sup> Tibor R Machan in Tom Regan, (ed), Earthbound, Philadelphia, (Temple University Press, 1984), p97.

degree of harm inflicted against the autonomy rights of the individual is necessarily rejected.

For the harm and non-interference principles of liberalism to stand, it is necessary to cease anthropogenic emissions of toxic pollution, that is to say to change technology and production processes to ensure that zero emissions of toxic pollutants are achieved. Such a proposal already has political precedents. The Delaney clause in US federal law for example prohibited the use of carcinogenic pesticides that concentrate in processed foods. The clause explicitly stipulates a zero-risk policy and, against the vehement protestations of industry, emphasises prevention rather than control of the toxins covered under its provisions.<sup>176</sup> Although such legislation remains exceptional in capitalist societies,<sup>177</sup> niche market firms have taken the initiative to phase out use of toxic pollutants. The Body Shop has released a policy statement stating that, "processes should be designed to ensure zero toxic emissions for precautionary reasons".<sup>178</sup> Ongoing international discussions are considering the elimination, rather than reduction, of a number of toxic pollutants such as dioxins.<sup>179</sup>

Six arguments for tolerating toxic pollution on liberal grounds can be anticipated; (i) the right to use polluting property overrides the harm principle, (ii) toxic pollutants constitute public risk rather than harm, (iii) the harm caused by pollutants is unintended and therefore not a violation of the harm principle, (iv) the populace consents to the harm incurred by pollutants, (v) toxic pollution is unavoidable and (vi) the original source of the pollutant cannot be identified from the large number of pollution sources. These

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<sup>176</sup> Editorial, "Putting Environment Last", Multinational Monitor, September 1994; <http://www.essential.org/monitor/hyper/mm0994.html>.

<sup>177</sup> see chapter 4.

<sup>178</sup> David Wheeler in L Harrison, (ed), Environmental Auditing Handbook, New York, (McGraw Hill, 1993), p11.

<sup>179</sup> Reuters, "Global Anti-Pollution Pact Near", Times Colonist, 7 September 1999, pA4.

defences of toxic pollution will be examined in turn and none are found to be tenable on liberal grounds.

#### The right to pollute as a component of property rights

A defence of the right to pollute may be attempted through recourse to property rights, for example that my ownership of a car legitimises my use thereof, justifying the subsequent toxins emitted. This argument is untenable on liberal grounds for reasons articulated by Nozick; "a person has the liberty to leave his knife wherever he wants, but not in someone else's back".<sup>180</sup> The use of polluting property constitutes a contravention of personal autonomy since cellular damage is incurred on the individuals subsequently exposed.<sup>181</sup>

The harm principle clearly refutes the legitimacy of using property when this is known to cause harm.<sup>182</sup> This has been acknowledged in isolated court rulings.<sup>183</sup> The European Court of Human Rights allowed in the Fredin Case, for example, the control of private property to ensure the protection of the environment.<sup>184</sup> A precedent ruling for the so called Takings Law in Wisconsin, US, likewise found that

although a person owns property, he (sic) may not do with it as he pleases, any more than he may act according with his personal desires... It was not intended by these constitutional provisions to so far protect the individual in the use of his property as to enable him to use it to the detriment of society.

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<sup>180</sup> Nozick quoted in Marc D Davidson, "Basic Rights and the Environment", *Milieu*, May 1995; <http://www.xs4all.nl/~mdd/discus2.html>.

<sup>181</sup> see chapter 5.

<sup>182</sup> Jan Glazewski in Boyle and Anderson, (eds), op cit, p180.

<sup>183</sup> see chapter 4.

<sup>184</sup> under Article 1 of Protocol 1 to the European Convention on Human Rights; James Cameron and Ruth MacKenzie in Boyle and Anderson (eds), op cit, p131.

Where the interest of the individual conflicts with the interest of society, such individual interest is subordinated to the general welfare.<sup>185</sup>

Anderson notes that zero pollution rights claims have strong historical precursors in the common law against public nuisance and in the Roman law that "the use of one's property may not harm another", a precedent that has also been adopted in contemporary international law.<sup>186</sup> The general accommodation of toxic pollution in Western law vividly illustrates the way in which central concepts of jurisprudence such as non-malfeasance and harm are interpreted to protect existent relations of production, exchange and consumption.<sup>187</sup>

#### Exposure to toxins constitutes risk and not harm

Environmental laws that presently regulate toxic pollution in capitalist states are predicated upon the degree of harm that the general <sup>public</sup> <sub>n</sub> may justifiably be exposed to.<sup>188</sup> Under the leadership of William Reilly, the EPA of the US, for example, increased the permissible levels of benzene pollution from causing one death in a million to causing one death in 10,000.<sup>189</sup> The exposure of a constituency of one million individuals to a level of a toxic pollutant that, it is known, has a one in 10,000 chance of causing death, will logically result in the death of one hundred individuals. The argument that no harm is caused because risk exposure is shared by all and that the identity of the victims of the pollution is not known in advance appears to evidence serious logical failings. By way of analogy, the terrorist who randomly exposes the public to risk of physical injury or death

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<sup>185</sup> State v. Harper, 1923, quoted in Brian Ohm, "Principles of Takings Law in Wisconsin", Downstream, Fall/Winter 1997; <http://www.geocities.com/Rainforest/8073/down1.html>.

<sup>186</sup> Michael R Anderson in Boyle and Anderson, (eds), op cit, p12.

<sup>187</sup> see chapter 5.

<sup>188</sup> Peter Montagu, "How to Achieve Pollution Control?" Rachel's Environment and Health Weekly, Issue 154, 7 November 1989; <http://www.monitor.net/rachel/r154.html>.

<sup>189</sup> ibid.

by planting a bomb in a busy shopping centre can have little knowledge of the exact identity of the people who are subsequently killed when the bomb explodes. Although exact identity is not known in advance in either case, this in no way detracts from the very real harm subsequently caused. In both cases, it is known that a certain number of individuals are likely to die as a result of the act concerned. In the case of exposure to a bomb blast, injury is caused by foreign objects damaging bodily tissues and is mediated through an explosive device. In the case of exposure of toxins, injury is caused by foreign objects damaging cellular tissues and is mediated through a chemical pollutant.

Three points invalidate a liberal defence of toxic pollution on grounds of exposure constituting risk rather than harm. Firstly, although not all individuals exposed to toxic pollutants will necessarily die or develop a disease as a result of exposure to toxins, physiological harm is nonetheless incurred to cellular DNA. The body of an individual is by definition harmed by exposure to toxic pollutants, constituting a violation of individual autonomy rights and logically requiring liberalism to oppose toxic pollution on grounds of the harm principle.

Secondly, epidemiological evidence exists to predict the number of deaths caused by exposure of the public to certain levels of pollutants. Officials subsequently authorising permissible levels of toxic pollutants are simultaneously authorising violations of the right to life for the resulting number of individual deaths.

Thirdly, as Ulrich Beck points out, "life has turned into a survival roulette" by exposing individuals to the risks associated with pollutants. These risks are problematic from the perspective of autonomy since they result from decisions made by other people, rather than the affected individuals, and are furthermore beyond the influence of each individual.<sup>190</sup>

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<sup>190</sup> Ulrich Beck in Michael Jacobs, (ed), Greening the Millennium? Oxford, (Blackwell, 1997), p18.

### Intent

It may be suggested that the right to life is not violated by death caused by pollution, since that harm was not intended by the originator of that pollution. The epidemiological evidence however details that identifiable toxic pollutants harm the human body.<sup>191</sup> It can therefore be demonstrated beyond reasonable doubt to the originators of toxins that the pollution they produce causes harm. For individuals to decide to continue polluting regardless testifies to the characteristic tendency of individuals conditioned in capitalist states to subordinate considerations of the public good to those of private interest and personal convenience, exemplified in the use of the car as the preferred mode of transport.<sup>192</sup>

Unintended harm is in any event not excused from the provision of non-malfeasance. For example, manslaughter is a crime even though death was unintentionally caused. The toleration of the harm caused by toxic pollution on the grounds of intent must therefore be rejected under a liberal analysis.

### Consent

Another argument for tolerating toxic pollution could hold that the harm caused is justified by the overall increase in utility thereby obtained. This position would point to the majoritarian consent of citizens to tolerate toxic pollutants in return for higher economic growth and the associated increased levels of consumption and utility.

This expression of economic rationality may well be a persuasive argument for many conditioned in capitalist societies, yet it has no basis in liberal political theory. Feinberg points out that in law, as in liberal theory, consent provides no legitimate basis whatsoever for activities that cause physiological harm such as assault, battery, mayhem and homicide which "remain unexcused and unjustified even when there was a perfectly

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<sup>191</sup> see chapter 5.

<sup>192</sup> see chapter 5.

willing victim".<sup>193</sup> Again, the centrality of the harm principle requires that liberalism oppose harmful acts, regardless of the disposition of the victim. The reasons for this are clear, namely, a theoretical minefield would be entered in the case of accepting consent as a valid reason for decriminalising harmful acts. In particular the criterion by which to adjudicate laws would, by definition, be shifted away from the harm and autonomy principles that currently lie at the heart of jurisprudence.<sup>194</sup> As Gray reminds us, it is the position of liberal political theory to defend autonomy rights over majoritarian pressure to infringe those rights.<sup>195</sup> Even the utilitarian strand of liberalism promoted by Mill holds that physical security be accorded the status of a weighty moral right, in ordinary circumstances indefeasible by considerations of general welfare.<sup>196</sup>

### Toxic pollution is unavoidable

Non polluting alternatives to existing methods of production exist but are not implemented because of economic cost considerations. In the case of energy production, for example, renewable sources of energy are well known. A combination of hydro, solar, wind and tidal power energy could replace reliance on fossil fuels and nuclear energy. Offshore wind farms alone could provide more than enough electricity to meet Britain's current energy needs.<sup>197</sup> Due to high initial costs and the theory of discounting, economic rationality deems it efficient to continue relying on fossil fuels for energy generation. Although the economic logic is internally consistent in this regard, the trade-off is the systematic violation of the harm principle and endorsing unknown risks regarding future

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<sup>193</sup> Feinberg, (1988), op cit, p165.

<sup>194</sup> ibid.

<sup>195</sup> John Gray, Liberalism, London, (Routledge, 1989), p133.

<sup>196</sup> ibid.

<sup>197</sup> Severin Carrell and Geoffrey Lean, "Sea Breezes to Power Britain", Independent, 1 April 2001, p13.

climate change.<sup>198</sup> Non-polluting alternative sources of energy exist but these require political and economic investments that are deemed inefficient under the logic of economic rationality.

### Multiple sources of pollution

Pollutants have a multitude of sources and this necessarily complicates the process of identifying and holding an individual responsible for the resultant harm. Yet there is a clear distinction between a multitude of sources and no source. This is self evident to the cyclist or rambler who encounters a car and can most precisely identify the exact source of the cocktail of pollutants which from one breath to another replaces the fresh air of a country lane. A widespread cultural practice that entails harm is in no way exempt from the principle of non-malfeasance on the sole grounds that it constitutes a socially acceptable way of harming others. Instead, according to liberalism, all the sources of toxic pollution must be identified and addressed for the harm principle to stand.

### Implications

This exploration of the harm caused by toxic pollution has demonstrated a fundamental contradiction between, on the one hand, capitalism, that rationalises pollution on the grounds of efficiency and individual self interest, and liberalism on the other, that must logically condemn the practice according to the autonomy and harm principles which form the core criteria of its stipulated theory of justice. This calls into question the broadly assumed applicability of liberal political theory for providing either a justification or a defence of the existing capitalist political economy.<sup>199</sup>

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<sup>198</sup> Lester Brown, *op cit.*

<sup>199</sup> see for example John Gray, *Liberalism*, London, (Routledge, 1989).

Concerning the subsequent implications of this analysis, a choice must clearly be made between the two options described. A defence of liberalism and its associated values of the harm principle, human rights and autonomy would, according to the foregoing analysis, require the implementation of the human right to an environment free from toxic pollution. Elimination of toxic pollution would require the phasing out of certain economic processes. In particular, dependency upon fossil fuel usage must be phased out, to be replaced with renewable sources of energy. This would also address the anthropogenic causes of climate change. Hydrogen fuel offers one promising alternative that can be readily produced by energy cells utilising solar energy.<sup>200</sup>

Pollution free vehicles using hydrogen powered fuel cells have already been constructed.<sup>201</sup> These cells power the vehicle by electrochemically combining hydrogen from a fuel tank with oxygen from the air without the occurrence of combustion, so that the only by product is water vapour.<sup>202</sup> Several corporations have already developed a bus engine to run on hydrogen.<sup>203</sup> Daimler-Benz and Ford have developed prototypes of hydrogen powered cars, the latter corporation spending \$1 billion developing a model that is due to go on general sale in 2004.<sup>204</sup>

Endorsement of this liberal option is incommensurate with conditions of capitalism since the latter is predicated upon economic rationality. Economic rationality

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<sup>200</sup> 200 photovoltaic cells; see Peter Montagu, "Some Good News: We Could Give Up Oil", Rachel's Environment and Health Weekly, Issue 154, 7 November, 1989; <http://www.monitor.net/rachel/r252.html> and Joan M Ogden and Robert H Williams, Solar Hydrogen: Moving Beyond Fossil Fuels, Washington DC, (World Resources Institute, 1989).

<sup>201</sup> ibid.

<sup>202</sup> Michael McCarthy, "The \$1bn Ford is Spending to Rid your Car of Petrol", Independent, 16 September 2000, p4.

<sup>203</sup> Ballard, based in Vancouver and the Billings Energy corporation, based in Utah; see Tim Radford, "Around the Corner: The 80mpg Clean Car", The Guardian, 23 October 1997, p3; see also Tim Radford, "A Tale of Smogmobiles and Nanofibres", The Guardian, 23 October 1997, p3 and Peter Montagu, "Some Good News; We Could Give up Oil", op cit.

<sup>204</sup> the Ford prototype is known as the P2000; see McCarthy, op cit, p4.

stipulates a level of toxic pollution determined as efficient at the necessary expense of liberal principles of harm, autonomy and human rights as described above.<sup>205</sup>

### **The utilitarian defence of toxic pollution**

Of course there are alternative models to the liberal conception of justice upon which a defence of continued toxic pollution could be based. In particular, an argument could be made that capitalism is based around a utilitarian consideration that the benefits obtained from economic growth outweighs the harm incurred from polluting production processes. It should be noted that this utilitarian perspective does nothing to refute the environmental human right to an environment free from toxic pollution; it instead advocates violating this right on utilitarian grounds.

It should also be noted that a utilitarian theory of justice demonstrates fundamental contradictions with the private interest focus of capitalism. Individual rights to autonomy and property, rather than calculations of overall utility, have characteristically been central arguments for beneficiaries of capitalism to prevent economic redistribution.<sup>206</sup> This is precisely why liberalism has often (and as we have seen mistakenly) been given in defence of capitalism.<sup>207</sup> The argument now examines the polarised distribution of resources in the capitalist world order to refute a utilitarian defence of capitalism.<sup>208</sup> The global political economy institutionalises a plutocratic rather than a utilitarian model of governance.<sup>209</sup> Wallerstein points out that "the capitalist

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<sup>205</sup> Begg et al, op cit, pp327-8.

<sup>206</sup> Cranston in Raphael, (ed), op cit.

<sup>207</sup> Hart in Waldron, (ed), op cit.

<sup>208</sup> Barry Gills, Joel Rocamora and Richard Wilson, (eds), Low Intensity Democracy, London, (Pluto Press, 1993), p68.

<sup>209</sup> Gill, op cit, p405; see also Robert W Cox, "Gramsci, Hegemony and International Relations: An Essay in Method", Millenium, Vol 12, No 2, 1983, p169 and Susan George, Ill Fares the Land, Washington DC, (Institute for Policy Studies, 1984), p10.

system is and always has been one of state interference with the freedom of the market in the interests of some and against those of others".<sup>210</sup> Whilst the capitalist advocacy of the free market is a useful tactical instrument to discredit and marginalise concern for the impoverished, it is soon abandoned, "when one suggests that governments stop printing money, protecting property, guaranteeing bank accounts and purchasing large quantities of privately produced goods with money obtained by taxation".<sup>211</sup>

At the vanguard of the beneficiaries of capitalism, 500 global corporations control 70 per cent of world trade, 80 per cent of foreign investment and 30 per cent of the global Gross Domestic Product.<sup>212</sup> Forty per cent of total trade is now intra-firm trade within the largest 350 TNCs.<sup>213</sup> No African state has an annual turnover as large as that of Exxon.<sup>214</sup> The claim that the income generated by corporations benefits all is refuted by an analysis of the increasing polarisation of wealth produced within the political economy. Three hundred and fifty eight billionaires now enjoy a combined net worth of \$760 billion that is equal to the overall wealth of the poorest 2.5 billion of the world's people.<sup>215</sup> The United Nations Development Program (UNDP) reports that

no fewer than 100 countries - all developing or in transition - have experienced serious economic decline over the past three decades. As a

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<sup>210</sup> Immanuel Wallerstein, The Capitalist World Economy, Cambridge, (Cambridge University Press, 1979), p121.

<sup>211</sup> Makhijani, op cit, p95, see also Greider, op cit, p256.

<sup>212</sup> The Ecologist, op cit p79; Lorraine Eden, "Bringing the Firm Back In", Millenium, Vol 20, No 2, 1991, p197; Barbara Rose Johnston and Gregory Button in Barbara Rose Johnston, (ed), Who Pays the Price? Washington DC, (Island Press, 1994), p206 and Chakravarthi Raghavan, "Multinationals' Spreading Tentacles", Multinational Monitor, Vol 17, No 3, March 1996; <http://www.essential.org/monitor/hyper/mm0396.08.html>.

<sup>213</sup> Chomsky, Year 501: The Conquest Continues, op cit, p60.

<sup>214</sup> Lloyd Timberlake, Africa in Crisis, London, (Earthscan 1985), p32.

<sup>215</sup> Korten, (1995), op cit, p83; see also Korten, "Taming the Giants", op cit.

result per capita income in these 100 countries is lower than it was 10, 20 even 30 years ago.<sup>216</sup>

Broadly supporting this conclusion, the 1996 Human Development Report, found that there are 113 countries in the world where per capita incomes were lower when the report was written than in 1980.<sup>217</sup> The same report details that in the last 30 years, the poorest 20 per cent of the world's people saw their share of global income fall from 2.3 per cent to 1.4 per cent, whilst the richest 20 per cent saw their share increase from 70 per cent to 85 per cent.<sup>218</sup> For more than one billion people, absolute poverty is now the reality of this skewed distribution of resources.<sup>219</sup> There are 800 million people who eat a diet with less than 90 per cent of their minimum calorific requirements and one and a half billion people are deprived of primary health care.<sup>220</sup>

Two evident mechanisms that institutionalise the flow of resources from the impoverished to the affluent is Third World debt and Structural Adjustment Policies (SAPs). The debts of Sub Saharan African states now total \$222 billion, constituting 71 per cent of their combined national output.<sup>221</sup> Servicing the debt in this region costs \$10 billion each year, four times the amount spent on health and education.<sup>222</sup> Mozambique

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<sup>216</sup> Thomas, (1999), op cit, p234.

<sup>217</sup> CP Chanrasekhar, "The Right to Food", Third World Resurgence, No 79, March 1997, p36.

<sup>218</sup> see Andrew Parkin, "Moving Mountains: The Counter-Summit Confronts the G-7", Dollars and Sense, May/June 1997, p1.

<sup>219</sup> Chandra Muzaffer, "Double Standards in the West", World Press Review, September 1993.

<sup>220</sup> Sanjeev Prakash, "The Right to the Environment, Emerging Implications in Theory and Praxis", Netherlands Quarterly of Human Rights, Vol 13, No 1, 1995, pp410-1; see also Miller, op cit, p30 and Pratap Chatterjee and Matthias Finger, The Earth Brokers: Power, Politics and World Development, London and New York, (Routledge, 1994), p148.

<sup>221</sup> Charlotte Denny, "How the Problem Got out of Hand and How it is Being Tackled", The Guardian, 11 May 1998; <http://reports.guardian.co.uk/debt/analysis/19980510-03.html>; see also Miller, op cit, p30 and Chatterjee and Finger, op cit, p148.

<sup>222</sup> Sue Bailey, "The IMF's Contract on the World", Worker's World, 4 January 1996; <http://www.hartford-hwp.com/archives/25/014.html>; see also Lloyd Timberlake and Laura Thomas, When the Bough Breaks, London, (Earthscan, 1990), pp32-7 and Caroline Thomas, "Beyond UNCED: An Introduction", Environmental Politics, Vol 2, No 4, 1993, p14.

spends 8 per cent of its annual budget on education, 3 per cent on health, and 33 per cent on debt repayments.<sup>223</sup> In Zambia, the government spends 30 times more on debt repayments than on education.<sup>224</sup>

The prioritisation of debt repayments over social provisions according to the stipulations of economic rationality led the former President of Tanzania, Julius Nyerere, to ask "must we starve our children to repay our debts?"<sup>225</sup> Timberlake and Thomas comment that "it is not clear that the world gave this very serious question any very serious thought, but the answer proved to be an unequivocal yes".<sup>226</sup>

The brief history of SAPs similarly illustrates how the global capitalist economy benefits investors at the expense of the marginalised. SAPs are typically designed by neoclassical economists on behalf of Western states, the World Bank and the International Monetary Fund and recommended to debtor states, with future loans typically made conditional upon the debtor country complying with the stipulations made. The principal objective of SAPs is to ensure that borrower states are able to continue debt repayments and to prioritise this imperative over competing goals when making policy choices.<sup>227</sup>

Although specific policies are tailored for each particular state, SAPs typically recommend a combination of the opening up of the domestic economy to global capital through import and exchange liberalisation's; reductions in the money supply; encouraging exports through currency devaluation's, shifting domestic food production to the production of cash crops for export; reducing government social expenditure; improving conditions for foreign investments; realigning domestic to world market

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<sup>223</sup> James Callaghan, "Time to Stop the Third World Treadmill", The Times, 18 September 1997, p22.

<sup>224</sup> Michel Fortin, "He who Pays his Debts", Africana Plus; <http://www.dania.com~magma/pover2a.html>.

<sup>225</sup> *ibid.*

<sup>226</sup> Timberlake and Thomas, *op cit*, p31.

<sup>227</sup> see Walden Bello, Shea Cunningham and Bill Rau, "Creating a Wasteland: The Impact of Structural Adjustment on the South, 1980-94", Food First; <http://tdg.uoguelph.ca/~kwakely/polstudies/readings/imfwasteland.html>.

prices; privatisation's and the reduction of labour's share of the national income through wage suppression.<sup>228</sup>

Through enforcing adherence to these policies, SAPs are directly responsible for limiting government expenditure on basic human development concerns to an average of 13 per cent of the national budget in developing states as a whole.<sup>229</sup> The subsequently detrimental effects of SAPs on the basic human rights of the vulnerable have been extensively documented.<sup>230</sup> Government subsidies for basic necessities such as food have typically been removed with the inevitable consequence that the poor are less able to

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228 Cheryl Payer, Lent and Lost, London, (Zed Books, 1991), p96; see also Peter Gibbon in Georg Sorenson, (ed), Political Conditionality, London, (Frank Cass, 1993), pp39-54; Larry Elliott and Charlotte Denny, "A Question of Political Will", The Guardian, 14 May 1998, p6; Juliette Majot, "Brave New World: 50 Years is Enough", TEX, Vol 1, No 4, December 1994; <http://www.ups.edu/polgov/oneil/calss/brave.htm>; Sandy Buffett, op cit; Development Group for Alternative Politics, "Structural Adjustment and the Spreading Crisis in Latin America", 1995; <http://www.igc.org/dgap/crisis.html> and Bello, Cunningham and Rau, op cit.

229 \$57 billion a year; see "Fact File", United Nations Economic and Social Council Courier, March 1995, p30.

230 Miller, op cit, p31; Bailey, op cit, who notes that in Zimbabwe SAPs are called 'Suffering for African People'; Elliott and Denny, op cit, p6. Alex Duval Smith, "Zambia Sells off its Red Gold for Scrap", The Guardian, 14 May 1998, p6; Chomsky, (1997), op cit; John Pender, "You May as well Kill Me Now", Living Marxism, Issue 83, October 1995; [http://www.informie.co.uk/LM/LM83/LM83\\_Africa.html](http://www.informie.co.uk/LM/LM83/LM83_Africa.html); Gibbon in Sorenson, (ed), op cit, pp39-54; Walden Bello, "Unfinished Business: The Bretton Woods Twins and Southeast Asia", Corporate Watch; [http://www.corpwatch.org/trac/feature/planet/casino\\_bello.html](http://www.corpwatch.org/trac/feature/planet/casino_bello.html); Payer, op cit, p96; Janet Bush, "Thinking Big Makes Little Sense for the World's Poor", The Times, 10 March 1995, p27; Otton Solis, "Defending the State, Empowering the People", (interview), Multinational Monitor, September 1996, Vol 17, No 9, <http://www.essential.org/monitor/hyper/mm0996.06.html>; Camille Chalmers, "Haiti's Latest Coup: Structural Adjustment and the Struggle for Democracy", (interview); <http://www.essential.org/monitor/hyper/mm0597.08.html>; Majot, op cit; Mary Dejevsky, "Situation Critical: Forget the CIA, Send for the Bankers", The Independent, 8 January 1998, p21; Buffett, op cit; The Development Group for Alternative Politics, "The Failure of the Mexican Bailout"; <http://www.igc.org/dgap/bailout.html>; Editorial, "Battling the Bank and IMF", Multinational Monitor, Vol 15, Nos 7 and 8, July/August 1994; <http://www.essential.org/monitor/hyper/mm0894.html>; Joseph Hanlon, "Strangling Mozambique: International Monetary Fund Stabilization in the World's Poorest Country", Multinational Monitor, Vol 17, Nos 7 and 8, July/August 1996; <http://www.essential.org/monitor/hyper/mm0796.06.html>; Timberlake and Thomas, op cit, pp36-9; Daly and Cobb, op cit, pp438-9; Korten, (1995), op cit, pp48-50; editorial, "Sapping the Forests", Earth Matters, Issue 20, Winter 1993, pp8-9; John F Devlin and Nonita T Yap in Thomas, (ed), (1993), op cit, pp66-77; Rolston, op cit, p133; Katarina Tomasevski, Development Aid and Human Rights Revisited, London, (Pinter, 1993), p61 and p66 and Tony Evans and Jan Hancock, "Doing Something Without Doing Anything: International Human Rights Law and the Challenge of Globalisation", The International Journal of Human Rights, Vol 2, No 3, 1998, p15.

afford to eat. Partly as a result of SAPs, average life expectancy in Zimbabwe has for example reduced from 51 to 44 years between 1980 and 1996.<sup>231</sup>

As for the ecological consequences of SAPs, policies aimed at increasing export earnings have resulted in soil erosion, increased mine tailings and water pollution, in addition to the destruction of forests, wetlands and mangroves through encouraging logging and mining. Monoculture cash cropping has reduced biodiversity and cuts in government spending have undermined the few environmental regulations and environmental projects that had previously been in place.<sup>232</sup>

This evidence refutes a utilitarian defence of global capitalism. The statistics relating to the human impact of debt and SAPs in the Third World clearly demonstrate that global capitalism is predicated upon the suffering of large numbers of the most impoverished people as money is diverted from the poor to the rich. In this regard a utilitarian based defence of capitalism is clearly untenable since the market mechanism denies resources to large numbers of people who are in the greatest need of resources. The consistent theme is that global capitalism operates in the interests of powerful social groups at the expense of the vulnerable. The only conception of justice acknowledged by capitalism is the justice of the market mechanism which the above analysis has identified as an institutionalisation of economic dependency, repression and continued poverty for those marginalised in the global economy.

## **Conclusions**

This chapter has analysed the contested epistemological bases for evaluating the existence of environmental human rights. The fallacy of assuming a universal rationality instead of different conceptualisations of rationality, each with specific values and

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<sup>231</sup> Smith, *op cit*, p6; Chomsky, (1997), *op cit*; Chomsky, "The Clinton Vision", *op cit* and the Development Group for Alternative Politics, (1995), *op cit*.

<sup>232</sup> Miller, *op cit*, p31; Bailey, *op cit*; Bush, *op cit*, p27; Solis, *op cit*; Majot, *op cit*; Buffett, *op cit*; Hanlon, *op cit*; Timberlake and Thomas, *op cit* pp36-9; Bello, Cunningham and Rau, *op cit*.

decision making criteria, was firstly established. The dominance and legitimacy of a particular conceptualisation of rationality rather than another was argued to be a function of social power, reflecting the interests of powerful social groups who benefit from the resulting outcomes. Throughout this chapter, social interests have therefore been identified as decisive elements in determining the 'rational' from the 'irrational'. Under conditions of capitalism, this process has produced the dominance of economic rationality that benefits plutocrats by hypothesising and defining rational behaviour in terms of the utility maximising individual. This view of rational action defends the desired values of private interest, consumerism and private property ownership over conflicting values of protecting the socially vulnerable, ecological preservation or promoting a conception of justice that interferes with the market. As (i) an investigation into the construction of the dominant form of rationality and (ii) a juxtaposition to ecological rationality illustrated, the rejection of environmental human rights by economic rationality is in no sense a neutral position but rather reflects both the interests and influence of the social group from which the epistemology derives its legitimacy, authority and dominance.

A subsequent juxtaposition of capitalism to liberalism on the subject of environmental pollution established a fundamental contradiction between these two positions. Through the profit motive, capitalism encourages public harm coupled with social costs as a method of conferring commercial benefit to the individual or corporation responsible for pollution. By virtue of their toxic effects, pollutants violate two fundamental principles of liberalism, those of autonomy and of preventing harm. The common confusion between liberalism and capitalism obfuscates this contradiction and serves the beneficiaries of capitalism since the economic structure is ideologically supported by the veneer of a theory of justice. The harm resulting from toxic pollution is accommodated and encouraged by capitalism by reference to economic rationality and the associated focus on allocative efficiency. The dominance of economic rationality makes the production of pollution appear justified and natural, normalising this form of harm

that is part and parcel of the economic structure. However, the only sense in which the harm caused by toxic pollution is not really harm is to the legal, ideological and economic institutions of capitalism, which have deemed this method of harming others as culturally acceptable. In terms of understanding the political context for environmental human rights, this conclusion draws the focus of attention back to the social forces that benefit from capitalism and the forms of power that this group can employ to further its own interest.

## **CHAPTER 2**

### **STRUCTURAL POWER, ENVIRONMENTAL HUMAN RIGHTS AND VALUE CHANGE IN WORLD POLITICS**

There are a thousand hacking at the branches of evil to one who is striking at the root, and it may be that he who bestows the largest amount of time and money on the needy is doing the most by his mode of life to produce that misery which he strives to relieve.<sup>1</sup>

#### **Introduction**

The purpose of this chapter is to establish the role of environmental human rights in the process of political change, given structural limitations. Methodologically, this analysis begins by introducing the relationship between agent and structure. That is to say, the extent to which individuals and organisations constitute, and can therefore change, structures. The argument advanced in this chapter is that constructivism best explains the agent-structure relationship, that each constitutes the other. From this basis, the analysis continues by examining the nature of structural power to conclude that anti-systemic forces are severely limited in their ability to initiate change within formal capitalist structures. The more radical possibility suggested for anti-systemic movements to effectualise political change is to reject capitalism and oppose the existing political economy by campaigning in the social base.

Environmentalism and the human rights discourse are then examined in turn as examples of how structural power has co-opted the challenges posed by these movements. Structural power will be argued to have assimilated anti systemic discourses into complimenting, rather than challenging, capitalist structures of economic organisation. The chapter ends by examining the possible role of environmental human rights in the process of historical change.

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<sup>1</sup> Henry David Thoreau, Walden and Civil Disobedience, New York, (Penguin, 1993), p119.

## **Structure, hegemony and the mechanism of co-option**

Agency refers to the capability of individuals to design social and political systems free of external constraints. By contrast, structures denote those external constraints that both shape and limit the possibilities for the independent action of individuals. Agency is typically assigned by liberal political theorists as the primary, or even the only, relevant category and the importance of structures is rejected. Tully exemplifies this position, claiming that

change in processes, structures and sedimented forms of thought... is brought about, I believe, by changing the practices in which they are embedded and reproduced. It is our routine acting that holds these seemingly autonomous systems in place.<sup>2</sup>

The autonomy assigned to individuals in the shaping of political systems is denied by those theorists who interpret the individual as a product of the cultural structures that condition modes of thinking and behaviour. Exemplifying this approach, Kernohan claims that

many, if not most, of the beliefs that enter into our deliberations have simply been uncritically adopted from our culture. Our culture not only suggests beliefs to us for consideration but also provides us the background beliefs on which our deliberations depend.<sup>3</sup>

Crucially, Kernohan draws attention here not just to what individuals believe, but to the background beliefs that people have normalised to interpret the world around them.<sup>4</sup> Similarly stressing structure over individual agency, Hoare and Smith maintain that "each individual is the synthesis not only of existing relations, but of the history of these

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<sup>2</sup> James Tully, "An Ecological Ethics for the Present", (transcript), p21, later published in B Gleeson and N Low, (eds), Government for the Environment, London, (Macmillan, 1999).

<sup>3</sup> Andrew Kernohan, Liberalism, Equality and Cultural Oppression, Cambridge, (Cambridge University Press, 1998), p21.

<sup>4</sup> ibid.

relations".<sup>5</sup> According to structuralists, the preferences of individuals are not fixed and stable, but are instead a function of the structural context in which the preference is formed, that is of the existing legal rules, of past consumption choices, of the actions of peers and of the broader culture.<sup>6</sup>

Political and economic structures are themselves recreated and changed over time.<sup>7</sup> As such, these structures can be influenced by the everyday perceptions and actions of individuals. The subtlety of this interplay between individual agency and the structural context is captured by Barkun who observes that "beneath the surface of self-serving motives, every decision looks to the past for guidance and every decision bequeaths something to the future, which either reinforces or undercuts some aspect of received norms".<sup>8</sup> The approach adopted by this research to explain the nature of the agent-structure relationship is therefore that of constructivism which sees agents and structures as constituting each other. Structural change or recreation occurs because of the actions and choices of individuals. Yet these individuals are not autonomous or independent agents since their preferences and values have been produced in a social context as the structuralists have argued.<sup>9</sup> The constructivist approach is supported by Cox who argues that

Structures are in one sense prior to individuals. They are already present in the world into which individuals are born. People learn to behave within

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<sup>5</sup> Quintin Hoare and Geoffrey Nowell Smith, (eds), Antonio Gramsci: Selections from Prison Notebooks, London, (Lawrence and Wishart, 1971), p353.

<sup>6</sup> Graham Smith, Pluralism, Deliberative Democracy and Environmental Values, PhD Thesis, University of Southampton, 1996, p129 and p133.

<sup>7</sup> Kernohan, op cit, p23.

<sup>8</sup> Michael Barkun, Law Without Sanctions: Order in Primitive Societies and the World Community, New Haven and London, (Yale University Press, 1968), p158.

<sup>9</sup> Kurt Burch, "Invigorating World System Theory as Critical Theory: Exploring Philosophical Foundations and Postpositivist Contributions", Journal of World-Systems Research, Vol 1, No 18, 1995; <http://csf.colorado.edu/wsystems/jwsr.html>.

the framework of social and political structures... men make history... but not in conditions of their own choosing. To have any influence over events, or at the very least to forestall the worst eventualities, it is necessary to begin with an understanding of the conditions not chosen by oneself in which action is possible.<sup>10</sup>

Attention now turns to detail the structural power that constrains the capacity of individual agents to initiate political change. Hindess contends that, "the exercise of power will often not be recognised by those who are subject to its effects: it affects the thoughts and desires of individuals, but it does so primarily through the action of collective forces and social arrangements".<sup>11</sup>

A similar conclusion is suggested by Galbraith's idea of conditioned power which, in contrast to physical force and inducement,<sup>12</sup>

is exercised by changing belief. Persuasion, education, or the social commitment to what seems natural, proper, or right causes the individual to submit to the will of another or others... Conditioned power is the product of a continuum from objective, visible persuasion to what the individual in the social context has been brought to believe inherently correct.<sup>13</sup>

An important element of social power resides in the capacity to promote an ideological naturalisation of existing social structures and unarticulated political

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<sup>10</sup> Robert W Cox, Production, Power and World Order: Social Forces in the Making of History, New York, (Colombia University Press, 1987), p395; see also Robert W Cox with Timothy J Sinclair, Approaches to World Order, Cambridge, (Cambridge University Press, 1996), p50.

<sup>11</sup> Barry Hindess, Discourses of Power, Oxford, (Blackwell, 1996), p69.

<sup>12</sup> termed condign power and compensatory power respectively, see JK Galbraith, The Anatomy of Power, Boston, (Houghton Mifflin, 1983), pp3-5..

<sup>13</sup> ibid, pp5-6.

assumptions.<sup>14</sup> This aspect of power can be expressed through the Gramscian concept of hegemony.

Hegemony combines a social structure, an economic structure, and a political structure to produce "a form of social and political control which combines physical force or coercion with intellectual, moral and cultural persuasion or consent".<sup>15</sup> The intellectual and moral elements are integral to the operation of hegemony since these are utilised by the hegemonic power to consolidate strength and support.<sup>16</sup> As Mosca argues, hegemony "answers a real need in man's (sic) social nature; and this need, so universally felt, of governing and knowing that one is governed not on the basis of mere material or intellectual force, but on the basis of a moral principle".<sup>17</sup>

The prominent mechanism used by hegemonic orders to negate systemic challenges is through *trasformismo*, a term used by Gramsci to refer to the co-option of anti-systemic forces to disempower potential centres of opposition and to prevent the realisation of alternative structures of social organisation. As Cox explains;

In a hegemonic order, the dominant power makes certain concessions or compromises to secure the acquiescence of lesser powers in an order that can be expressed in terms of a general interest... *Trasformismo* can serve as a strategy of assimilating and domesticating potentially dangerous ideas by adjusting them to the policies of the dominant coalition and can thereby

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<sup>14</sup> Justin Rosenberg, The Empire of Civil Society: A Critique of the Realist Theory of International Relations, London, (Verso, 1994), p48 and Robert Cox in James H Mittelmann, (ed), Globalisation: Critical Reflections, Boulder, (Lynne Rienner, 1996), p28.

<sup>15</sup> Paul Ransome, Antonio Gramsci: A New Introduction, New York, (Harvester Wheatsheaf, 1992), p133; see also Cox with Sinclair, op cit, p137.

<sup>16</sup> John Hoffman, "The Life and Ideas of Antonio Gramsci", Social Studies Review, January 1988, pp94-5 and Stephen Gill, American Hegemony and the Trilateral Commission, Cambridge, (Cambridge University Press, 1990), p40.

<sup>17</sup> Gaetano Mosca in Marvin E Olson, (ed), Power in Societies, London, (Macmillan, 1970), p128.

obstruct the formation of class-based opposition to established social and political power.<sup>18</sup>

As the following analysis demonstrates, both the human rights and environmental discourses have been co-opted by structural forces to negate the potential of these movements to become established as a counter hegemonic bloc. In particular, the structures of capitalism and economic rationality act as a manifestation of social power to abrogate the challenge posed by social movements and to manipulate radical ideas into promoting capitalism.

### **Co-option of the environmental movement**

The commonality shared by environmental pressure groups is the objective of implementing some aspect of environmental protection. With the exception of radical environmental groups such as Earth First! who explicitly reject political compromises, other commonalities tend to include the desire to avoid marginalisation, to gain and retain access to politicians and other decision makers and to demonstrate practical achievements to their members. These latter factors direct organisations towards a process of interaction and compromise with governments in an attempt to mitigate the damaging effects of capitalist structures on the environment. Such an approach invariably results in co-option. Environmental advocacy forces operating within the formal political structures to influence decisions typically attain minor concessions whilst the main causes of environmental degradation inherent to capitalism remain unchallenged.<sup>19</sup>

The inclusion of environmental NGOs in formal discussions adds credibility to the hegemonic bloc, since it promotes the veneer of an inclusive, open and impartial political system.<sup>20</sup> Furthermore, many NGOs are eager to enter into dialogue and co-operation with

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<sup>18</sup> Cox with Sinclair, *op cit*, p56 and p130.

<sup>19</sup> see chapters 1 and 4.

<sup>20</sup> Larry Lohman in Ken Conca, Michael Albert and Geoffrey D Dabelko, (eds), *Green Planet Blues: Environmental Politics from Stockholm to Rio*, Boulder, (Westview Press, 1995), p225.

political authorities rather than adopt tactics of opposition because of a belief that they can prompt pro environmental systemic changes.<sup>21</sup> This section demonstrates how this approach of co-operating within the official political structure, has facilitated the assimilation of the mainstream environmental movement into the historic bloc of capitalism.

In the domestic politics of the United States, the desire of environmental NGOs to access official political channels was accommodated by the political establishment, most evidently reflected in the remarkable self description by George Bush (senior) as the "environmental president".<sup>22</sup> The tactic of mainstream environmental groups to co-operate within official political channels rather than focusing on social protest became the norm under the Clinton administrations, with the subsequent consequences summarised by the editors of Multinational Monitor:

It is time for the mainstream environmental movement to recognise that it is significantly responsible for the desperate straits in which it finds itself... Leaders of environmental groups huddled with Clinton officials behind closed doors as business groups mobilised their forces in the public arena. The de-mobilisation of the national environmental groups set the stage for corporate polluters to ascend.<sup>23</sup>

The ascent of the corporate polluters refers to the entrenchment of corporate power in American civil society during the 1990s. One tactic mobilised by corporate interest groups in securing popular support was to assimilate environmental arguments into promoting the corporate agenda. The advice of the public relations firm Burson

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<sup>21</sup> ibid, p226.

<sup>22</sup> Leonard J Waks, "Environmental Claims and Citizen Rights", Environmental Ethics, Vol 18, No 2, 1996, p144.

<sup>23</sup> "Editorial: Putting Environment Last", Multinational Monitor, September 1994; <http://www.essential.org/monitor/hyper/mm0994.html>.

Marsteller to the European Association for Bio-industries (EUROPABIO), subsequently leaked to Corporate Watch, advocates strategies to manage public opinion to the benefit of the biotechnology industry;

the primary value of B-M [Burson Marsteller] over the longer term will be at the level of the central strategy group. The basic nature of the responsibility of this group will be what we at B-M call perceptions management.<sup>24</sup>

The programme goes on to explain that,

in order to effect the desired changes in public perceptions and attitudes, the bio-industries must stop trying to be their own advocates. That approach often works in the policy world. It quite demonstrably hasn't worked and won't work in the sphere of public perceptions.<sup>25</sup>

Environmental arguments therefore constitute a possible approach to manipulate public opinion into accepting policies favouring the corporate position.

As Thomas points out, the use of environmental discourse by corporate interests has resulted in "the presentation of the problem as the solution".<sup>26</sup> The corporations most responsible for environmental damage promote their commercial interests with environmental arguments.<sup>27</sup> The World Business Council for Sustainable Development (WBCSD) is composed of 125 CEOs and describes itself as "one of the world's most influential green business networks".<sup>28</sup> In the words of the council chairman,

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<sup>24</sup> Burson Marsteller: Government and Public Affairs, "Communications Programme for Europabio", published by Corporate Watch; [http://www.corpwatch.org/trac/feature/planet/eu\\_bm.html](http://www.corpwatch.org/trac/feature/planet/eu_bm.html).

<sup>25</sup> ibid.

<sup>26</sup> Caroline Thomas, "Where is the Third World Now?" Review of International Studies, Vol 25, December 1999, p234.

<sup>27</sup> Corporate Europe Observatory, "The Weather Gods: How Industry Blocks Progress at Kyoto Climate Summit", The Corporate Planet; <http://www.corpwatch.org/trac/feature/planet/gods/html>.

<sup>28</sup> Corporate Europe Observatory, Europe Inc: Dangerous Liaisons Between EU Institutions and Industry, Amsterdam, (Corporate Europe Observatory, 1997), p40.

business... used to be depicted as a primary source of the world's environmental problems. Today it is increasingly viewed as a vital contributor to solving those problems and securing a sustainable future for the planet.<sup>29</sup>

Greenpeace contrasts the environmental rhetoric of the council with its actual political lobbying activities;

The public message of the WBCSD and other groups has been that business now understands and supports the goals of sustainable development and environmental protection, and business will be the leaders of achieving both. At the same time, they have been working to avoid regulations of their activities... [The members of the WBCSD] have opposed taxes and reductions in subsidies on environmentally harmful products. In the climate negotiations, major fossil fuel companies have lobbied against measures that would begin reversing rising greenhouse gas emissions. Some of the companies even justify this reluctance to change oil use patterns as part of sustainable development.<sup>30</sup>

Another organisation similarly concludes that the WBCSD, can be given significant credit for the lack of global progress in the areas of environment and development since its creation... By promoting self regulation in order to avoid government legislation and sprinkling their words with a liberal amount of empty rhetoric about sustainable development, the WBCSD has helped TNCs to vastly improve their

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<sup>29</sup> WBCSD Chairman Livio De Simone quoted in Corporate Europe Observatory, "The Weather Gods", op cit.

<sup>30</sup> Greenpeace, "The Decline of Corporate Accountability"; <http://www.greenpeace.org/~comms/97/summit/account.html>.

images, while at the same time pushing for unregulated economic growth and free market globalisation.<sup>31</sup>

Concerning the issue of climate change, there is a fundamental conflict between the environmental need to reduce fossil fuel usage and the commercial needs of petrochemical industries to maintain or increase sales volumes. Scientific data has, however, been selectively advanced by a consortium of corporations to promote their commercial activities. A memo from the American Petroleum Institute, leaked to the New York Times in 1998, revealed a plan by the institute undertaken on behalf of Exxon, Chevron, and a number of industry front groups to block political efforts to address climate change.<sup>32</sup> The oil industry plan proposed spending \$5 million over two years to set up a Global Climate Science Data Center, ostensibly as an objective public information source on climate change issues, which would nonetheless be staffed by scientists, "whose research in this field supports our position".<sup>33</sup> In addition the plan proposed to establish a "Science Education Task Group" that would promote the oil industries position on climate change to school-children.<sup>34</sup>

The co-option of the environmental discourse is also evident in the National Wetlands Coalition, whose logo features a duck flying over a swamp. This coalition which assumes the image of an environmental protection group is in fact sponsored by US petrochemical companies and real estate developers "to fight for the easing of restrictions on the conversion of wetlands into drilling sites and shopping malls".<sup>35</sup>

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<sup>31</sup> Corporate Europe Observatory, (1997), op cit, p40 and Corporate Europe Observatory, "The Weather Gods", op cit.

<sup>32</sup> Corporate Watch, "Big Oil's Secret Plan to Block the Global Warming Treaty", 25 February 1999; <http://www.corpwatch.org/trac/feature/climate/culprits/bigoil.thml>.

<sup>33</sup> ibid.

<sup>34</sup> ibid.

<sup>35</sup> David Korten, When Corporations Rule the World, London, (Earthscan, 1995), p143.

One tactic in the corporate co-option of environmentalism is to promote a veneer of corporate interest in environmental protection to splinter and weaken opposition movements. Corporations establishing procedural tribunals to deal with public concerns can be used to negate potential protests by redirecting opposition into controlled forums where the corporation retains ultimate authority and decision making capability. An example provided by Rowell on this point is worth quoting at length;

Companies have started to initiate dialogue with the opposition, so as to dampen down embarrassing conflict and media coverage. One PR guru has outlined a three-point strategy with which corporations can defeat activists: 'isolate' the radicals, 'cultivate' the idealists, and 'educate' them into becoming realists who can be co-opted into agreeing with industry. In 1997-98, having learnt from its operations in Nigeria and from the Brent Spar fiasco, Shell tried a different tactic in Peru, where it explored for oil and gas in virgin rainforest. The company held a series of workshops in London, Lima and Washington, to which some 90 interested 'stakeholders' were invited. The discussion was not whether the gas project should go ahead, but how it should go ahead. The process divided the NGO community on whether to take part, while the more radical groups became marginalised.<sup>36</sup>

The co-option of environmental NGOs has been demonstrated in a recent study into the influence of social movements on GEI policy decisions. In this, O'Brien concludes that the critical voices of NGOs are "fragmented and polarised" by the process of engagement and co-operation with GEIs.<sup>37</sup> In particular, the World Bank and the IMF were so successful in restricting the criticisms which were levelled at them from the

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<sup>36</sup> Andrew Rowell, "Greenwash Goes Legit", The Guardian, 21 July 1999, p5.

<sup>37</sup> Robert O'Brien, "Complex Multilateralism: The Global Economic Structures - Global Social Movements Nexus", paper presented at the British International Studies Association Annual Conference, December 1997, p17.

groups who had been bought into dialogue "that with some flexibility GEIs could cultivate a social movement constituency".<sup>38</sup> Indicative of co-option rather than reciprocal compromise, NGOs entering into dialogue with the GEIs were found in the study to be relatively ineffectual in changing the environmental and social impacts of GEIs; "the generalised principles of conduct are subject to debate, but relatively immune from revision".<sup>39</sup> Radical NGOs rejecting the mainstream tactic of dialogue with GEIs in favour of uncompromising opposition were simultaneously weakened and marginalised by appearing as an extremist minority.<sup>40</sup>

Co-option of environmental issues by corporate interests was an evident feature of the United Nations Conference on the Environment and Development (UNCED).<sup>41</sup> The organisation of the conference facilitated the unprecedented access of environmental NGO representatives to politicians and to the official conference talks, presenting the appearance of NGO participation in conference decisions. Chatterjee and Finger demonstrate that the "primary outcome" of this inclusion and engagement of environmental NGOs in UNCED was "the increased legitimisation of governments and spotlight visibility for UNCED".<sup>42</sup> The dynamic of the process of co-option of anti-systemic forces was summarised as consisting of, "the mobilisation of peoples and NGOs to participate actively in the UNCED process, while not letting them influence the outcome".<sup>43</sup> This process "led to an overall legitimisation of a process that is ultimately destructive of the very forces that were mobilised", specifically those of environmental

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<sup>38</sup> ibid, p17.

<sup>39</sup> ibid, p21.

<sup>40</sup> ibid.

<sup>41</sup> June 1992; also known as the Rio Conference.

<sup>42</sup> Pratap Chatterjee and Matthias Finger, The Earth Brokers: Power, Politics and World Development, London and New York, (Routledge, 1994), p90.

<sup>43</sup> ibid, p103.

protection.<sup>44</sup> The environmental agenda advanced by NGOs was sidelined by the official discussions at Rio, as reflected for example in the dismissal of the "10 point plan to save the Earth Summit" sponsored by environmental NGOs. This programme called for the following structural changes;

1. Legally binding targets and timetables for reduction in greenhouse gas emissions, with industrialised countries leading the way.
2. A cut in Northern resource consumption and transformation of technology to create ecological sustainability.
3. Global economic reform to reverse the South North flow of resources, improve the South's terms of trade and reduce its debt burden.
4. An end to the World Bank control of the Global Environmental Facility (GEF).
5. Strong international regulation of transnational corporations, plus the restoration of the UN Center on Transnational Corporations, rather than allowing the Business Council on Sustainable Development to go unopposed in the UNCED process.
6. A ban on the exports of hazardous wastes and on dirty industries.
7. Address the real causes of the forest destruction, since planting trees, as UNCED proposes, cannot be a substitute for saving existing natural forests and the cultures that live in them.
8. An end to nuclear weapons testing, phase-out of nuclear power plants and a transition to renewable energy.
9. Binding safety measures including a code of conduct - for biotechnology.
10. Reconciliation of trade with environmental protection, ensuring that free trade is not endorsed as the key to achieving sustainable development.<sup>45</sup>

The refusal to even discuss these topics exemplifies how the formal political agenda at Rio was insulated from genuine environmental concerns.<sup>46</sup> The opposition from political authorities to any structural change resulting from Rio was made explicit in <sup>a</sup>US memo leaked to Greenpeace International who revealed that;

On 30 March 1992 at PrepCom 4, members of the US delegation were told privately by Michael Young, US Dept. of State's Deputy Under Secretary for Economic and Agricultural Affairs, to oppose inclusion of certain matters in the Earth Summit agenda. Referring to them as the Ten

<sup>44</sup> ibid; see also Matthias Finger and Pratap Chaterjee, (untitled), EcoCurrents, Vol 2, No 2, 1992, p2.

<sup>45</sup> Chaterjee and Finger, (1994), op cit, pp39-40.

<sup>46</sup> see Caroline Thomas, "Beyond UNCED: An Introduction", Environmental Politics, Vol 2, No 4, 1993, p4; Caroline Thomas, "Unsustainable Development?", New Political Economy, Vol 1, No 3, 1996, p405 and Farhan Haq, "Earth Summit+5: A Betrayal of Rio", Third World Resurgence, No 83, 1997, pp8-9.

Commandments, he listed the topics that should be excluded from the Rio Declaration and Agenda 21:

1. the precautionary principle,
2. sharing the benefits of technology,
3. financial resource formulas,
4. liability/compensation for environmental damage,
5. commitments of any kind,
6. environmental impact assessment requirements not consistent with US law,
7. new dispute resolution requirements,
8. references to the military,
9. new institutions,
10. new UN pledges.<sup>47</sup>

The ruling out of "commitments of any kind" exemplifies the desire to avoid any meaningful change to the capitalist political economy. Instead the Rio agenda accommodated corporate interests. As Chatterjee and Finger stated, "many Northern governments have become the spokespersons of Northern business, while Southern governments were advocating more development and economic growth, thus playing into the hands of business".<sup>48</sup> TNCs were never even mentioned in the UNCED documents as constituting a potential problem for the environment.<sup>49</sup> Indeed, "the only mention of corporations in Agenda 21 was to promote their role in sustainable development".<sup>50</sup> No regulatory controls on corporate activity resulted from Rio. The World Business Council on Sustainable Development epitomised the complete failure of UNCED to address the corporate cause of environmental degradation when it stated that Rio texts "have far more to say to government than business".<sup>51</sup> As Corporate Watch comments, commercial

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<sup>47</sup> Cliff Curtis, "Standing in the Way of Progress: US Obstruction of the Earth Summit", Greenpeace International; <http://www.greenpeace.org/home/gopher/campaigns/politics/1992/usunced.html>.

<sup>48</sup> Chatterjee and Finger, (1994), op cit, p121.

<sup>49</sup> ibid, p171; see also Curtis, op cit.

<sup>50</sup> Thomas, (1993), op cit, p19.

<sup>51</sup> quoted in Corporate Watch, "Greenwash Award of the Month", The Corporate Planet; <http://www.corpwatch.org/trac/greenwash/wbcsd.html>.

lobbying groups themselves ensured this neglect of scrutiny into business activities "as they relentlessly lobbied UNCED delegates against any criticism of transnational corporations".<sup>52</sup>

Analysis of the actual texts that emerged at Rio further demonstrates the corporate co-option of the negotiations. The Biodiversity Convention is notable for facilitating the continued exploitation of biological diversity rather than implementing any mechanisms to protect or enhance diversity. Further destruction of biodiversity was accommodated by allowing states "the sovereign right to exploit their own resources pursuant to their environmental policies".<sup>53</sup> Biotechnology industry constitutes the vanguard of corporate efforts to commodify the eco system.<sup>54</sup> Yet this sector of industry was promoted in the Biodiversity Convention as being "essential for the conservation and sustainable use of biodiversity".<sup>55</sup> In a similar accommodation of commercial interests, the Agreement on Forest Principles,

goes so far as to establish every country's sovereign right to conversion of forests to other uses, which in plain language means the right to cut forests down as one pleases... Despite the fact that today's No 1 problem for the forests is deforestation, deforestation is never mentioned in these principles.<sup>56</sup>

Provisions made at Rio that went some way to addressing the causes of social and environmental problems, were invariably legally non binding and have subsequently been ignored in actual practices.<sup>57</sup> For example, principle eight of the Rio Declaration strikes at

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<sup>52</sup> ibid.

<sup>53</sup> Chatterjee and Finger, (1994), op cit, p42.

<sup>54</sup> The Ecologist, Whose Common Future? Reclaiming the Commons, London, (Earthscan, 1993).

<sup>55</sup> ibid, pp42-3.

<sup>56</sup> ibid, p47; see also Waks, op cit, p147.

<sup>57</sup> Haq, op cit.

the heart of the consumer culture by calling for the reduction in unsustainable patterns of production and consumption. This principle has conspicuously failed to have any meaningful impact in practice since the rhetoric did not translate into structural change.<sup>58</sup>

In addition to the control over the formal agenda in international environmental conferences, the co-option of the environmental agenda by corporate interests is evident in other areas. One prominent aspect is the phenomena of green consumerism. Green consumerism is the selling or purchase of a product on the grounds of benefiting the environment. This concept is therefore an oxymoron since a focus on environmental concerns requires a reduction in overall consumption patterns rather than a narrow focus of comparisons between products. The goal of reducing overall consumption contradicts the corporate desire to increase sales, to which end environmental logic has been inverted. By way of illustration Honda has marketed one particular car model on environmental grounds;

Environmentally who is the fairest of them all? Whichever colour you choose, your New Accord will be green. To make it more environmentally friendly, we've used water-based paint instead of oil-based. We've made 91.9 per cent of the car recyclable (easily surpassing the European Community's demands of 85 per cent by the year 2005). And we've made the carbon dioxide emissions a mere 33.5 per cent of the EC's maximum permitted levels. Furthermore, our manufacturing process is one of the most efficient in the world. So instead of just a pale excuse for green, you get a rich, deep, thoughtful green.<sup>59</sup>

The editors of The Corporate Planet have,

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<sup>58</sup> Waks, op cit, p51.

<sup>59</sup> Advertisement, Radio Times, 24 October 1998, pp86-7.

witnessed a slew of greenwash advertising for earth-friendly automobiles.

Common themes of the ads include fuel efficiency, recyclability and safety, and invariably, the ads exhibit a vehicle surrounded by nothing but nature. Gone are the props like large-breasted women, scantily clad and suggestively draped over the hoods of gas guzzlers. To sell eco-cars, automobile companies display their goods in wide open spaces, fresh air, and lush vegetation. It's clear that auto-executives want to capture the attention of an entirely new audience, environmentalists who feel guilty about their reliance on cars.<sup>60</sup>

In 1999, the word greenwash entered the Oxford English Dictionary, defined as "disinformation disseminated by an organisation so as to present an environmentally responsible public image".<sup>61</sup> The presentation of environmental responsibility as a means to increase sales epitomises co-option of the environmental discourse by corporate values since environmental concerns are conceptualised in a framework of marketing, sales figures, efficiency arguments and profit margins. Eden provides evidence in support of this trend through a survey of corporations that found 40 per cent of respondents believed that a green image made commercial sense.<sup>62</sup> The creation of a green image therefore becomes a useful mechanism to increase sales, a marketing instrument used by companies operating even in the most polluting sectors of the economy. The petrochemical giant Chevron for example began its "People Do" advertising program in 1985 which, at an estimated cost of \$5 to \$10 million per year, advertised a series of environmental projects that it had funded.<sup>63</sup> Corporate Watch notes that "Chevron often spends more on

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<sup>60</sup> Corporate Watch, "Greenwash Award of the Month", The Corporate Planet; <http://www.corpwatch.org/trac/greenwash/ford.html>.

<sup>61</sup> Rowell, (1999), op cit, p5.

<sup>62</sup> Sally Eden in Interdisciplinary Research Network on the Environment and Society, Perspectives on the Environment, Brookfield, Vermont, (Avebury, 1993), p95.

<sup>63</sup> Corporate Watch, "Greenwash Award of the Month", The Corporate Planet; <http://www.corpwatch.org/rac/greenwash/chevron.html>.

advertising the projects on television and in print media, than managing the projects themselves".<sup>64</sup> One example relates to the El Segundo butterfly sanctuary established and maintained by Chevron at a cost of \$5,000 per year. This project was the content of a 30 second advertisement that cost as much as \$200,000 to produce.<sup>65</sup>

Green consumerism is an expression of economic rationality since it appeals to the person as a consumer, rather than as a citizen. Consumption preferences expressed through the market mechanism are thereby suggested as the appropriate method of addressing ecological concerns.<sup>66</sup> Green consumerism restricts the focus to individual products and deflects attention away from structural aspects of capitalism that cause environmental degradation.<sup>67</sup> Most importantly, green consumerism promotes a continuation of corporate freedom since the market is assumed to ensure the production of the hypothesised environmentally friendly products. The concept of green consumerism supports corporate interests since any form of environmental regulatory controls over commercial activity are deemed unnecessary and the dominance of the market is not challenged.

The final aspect of the co-option of the environmental movement by structural forces is articulated through the polluter pays principle. This principle states that the originators of pollution must pay a specified price for the toxins emitted into the environment.<sup>68</sup> Morita-Lau explains that "the polluter pays principle is a widely recognised principle of international environmental law... this principle stipulated the requirement of individual polluters to internalise the cost of their pollution to ensure that

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<sup>64</sup> ibid.

<sup>65</sup> a figure that excludes the cost of magazine space and television time; ibid.

<sup>66</sup> John Barry in Interdisciplinary Research Network on the Environment and Society, op cit, p49.

<sup>67</sup> see chapter 1.

<sup>68</sup> David Pearce and R Kelly Turner, Economics of Natural Resources and the Environment, London, (Harvester Wheatsheaf, 1990), p173.

the market reflects the true cost of the polluter's product".<sup>69</sup> The purpose of the principle is to discourage pollution through a market based approach. Begg et al, for example, state that such a mechanism is required to reduce pollution since, "if the firm can pollute the lake without cost, its self-interest will lead it to pollute".<sup>70</sup>

The polluter pays principle may be institutionalised through a variety of mechanisms, for example, through a pollution tax.<sup>71</sup> Another prominent example is a system of tradable pollution permits whereby a polluter requires a permit to emit a unit of a specified pollutant.<sup>72</sup> These permits are bought from a total number reflecting the optimum level of pollution and at a price decided by market forces.<sup>73</sup> Whichever actual form the polluter pays principle takes, the commodification of pollution units is a necessary prerequisite for either a tax based system or for the market to determine the efficient allocation and cost of pollution permits.<sup>74</sup> Commodification refers to the economic process by which elements previously external to market considerations become perceived and traded through market transactions to ensure the efficient allocation of resources.<sup>75</sup> In this instance, pollution is perceived as an exchangeable commodity. The polluter pays principle has been championed by both NGOs and

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<sup>69</sup> Hiroko Morita-Lou, Division for Sustainable Development, UN, "Right to the Environment in the Context of Agenda 21 and its Implementation", paper presented at the Seminar of Experts on the Right to the Environment, Bilbao, Spain, 10-13 February 1999, p4.

<sup>70</sup> David Begg, Stanley Fischer and Rudiger Dornbusch, Economics, London, (McGraw-Hill, 1987), p322.

<sup>71</sup> *ibid.*

<sup>72</sup> Pearce and Turner, *op cit*, p175.

<sup>73</sup> *ibid*, p173.

<sup>74</sup> Daniel D E Rounds, "Neoliberalism in Latin America: A Critique in the Framework of Karl Polanyi"; <http://www.psirus.sfsu.edu/IntRel/IRJournal/wi95/w95neoliberalism.html>; see also David Korten, "The Financial Casino and Corporate Rule"; Corporate Watch; [http://www.ru.org/trac/feature/planet/casino\\_rule.html](http://www.ru.org/trac/feature/planet/casino_rule.html).

<sup>75</sup> Herman Daly and John Cobb, For the Common Good, Boston, (Beacon Press, 1994), p61.

environmental theorists as a method of environmental protection.<sup>76</sup> Glazewski goes so far as to claim that the basis of environmental human rights resides in "the acceptance of the norms of sustainable development and the polluter pays principle".<sup>77</sup>

Yet expressed through the polluter pays principle, the market facilitates the continued pollution of the environment since the right is ascribed to the polluter as opposed to the right of people not to be exposed to pollution. The polluter pays principle institutionalises the continued pollution of the environment with the only requirement that polluters pay a specified sum for engaging in the process, effectively expanding the remit of the market by commodifying units of pollution. As such, the allocation of pollution rights under the polluter pays principle ensures the continued systematic violation of a human right to an environment free from toxic pollution. Through adopting the polluter pays principle, environmental NGOs are legitimising the epistemological paradigm of economic rationality, which is the fundamental cause of environmental degradation, and thereby normalise and endorse the continued toxic contamination of the environment.<sup>78</sup>

To accept that the right to pollute can be purchased, and thereafter overrides the claimed right to an environment free of toxic pollution is to adopt the logic of capitalist rationality for which allocative efficiency and the market mechanism, rather than human rights, is central. In contrast, the focus of ecological rationality on the well being of the whole eco system would necessarily regard the purchasing of a permit to pollute as an illegitimate claim to damage the bio sphere. To accept the application of the market in determining the extent the of toxic pollution of the environment is to accept (i) economic efficiency as the principal criteria employed in the decision making process, to which

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<sup>76</sup> Friends of the Earth, "Leaked Letter Tips US Hand at Climate Talks", 12 November 1998; <http://www.foe.co.uk/pubsinfo/infoteam/pressrel/1998/19981112142822.html>.

<sup>77</sup> Jan Glazewski in Alan E Boyle and Michael R Anderson (eds), Human Rights Approaches to Environmental Protection, Oxford, (Clarendon, 1996), p188.

<sup>78</sup> see chapter 1.

considerations of the bio-sphere are to be subordinated, (ii) the ability to place a price on the destruction of life exposed to toxic pollution and (iii) the legitimacy of the damage subsequently incurred by the application of this formula. As Sagoff reminds us, there is nothing objective about this endorsement of market values;

to use market analysis is not to find a neutral way to choose among values but to insist upon efficiency, that is, a particular value. It is to respect only one set of opinions-those put forward by certain economists-and to provide a shadow price to all the rest.<sup>79</sup>

### **Co-option of the human rights discourse**

The following section details how the historical record of the mainstream human rights discourse evidences structural co-option. Contrary to the assertion of some analysts, violations of human rights occur not because current rights legislation is too extensive, and consequently requires an unattainable level of resources to be implemented in practice,<sup>80</sup> but rather because stipulations fail to go far enough in requiring structural changes.

Cranston dismisses needs based rights by stating that, "one of the objections to regarding the social and economic rights as authentic human rights is that it would be totally impossible to translate them in the same way into positive rights by analogous political and legal action".<sup>81</sup> In fact, like their social and economic counterparts, civil and political rights require a plethora of resources in order to be enforced. Specifically, they require police, a judiciary and prisons and a host of resources which undermines a rejection of social and economic rights based upon the claim that such rights alone require

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<sup>79</sup> Mark Sagoff, in Tom Regan, (ed), Earthbound, Philadelphia, (Temple University Press, 1984), p173.

<sup>80</sup> see for example Maurice Cranston in DD Raphael, (ed), Political Theory and the Rights of Man, Basingstoke, (Macmillan, 1967), p46.

<sup>81</sup> *ibid*, p47.

resources to be implemented. The validity of this conclusion is also supported by the observation made by Donnelly that most critics of economic and social rights effectively destroy their own arguments by defending the economic right to private property.<sup>82</sup> Cranston's argument is however an instructive example of how the human rights discourse can be used to defend the interests of power and privilege by asserting an ideology of possessive individualism over social protection of the vulnerable.<sup>83</sup>

The legal system in capitalist states is based upon an individualist ideology, for example in the stipulated subjects of law.<sup>84</sup> This ideological premise enforces the rights, powers and interests of individuals, thereby codifying through a system of penalties and rewards respect for iniquitous property ownership.<sup>85</sup> Sumner explains that

Law signifies in terms of the freedom of the individual rather than the freedom of the bourgeoisie to expand their capital at the expense of the working class, or the freedom of the workers to work for capital or starve... Freedom, property and equality are key general ideologies arising from the general nature of capitalist social relations and are expressed as such in various branches of bourgeois law (freedom of the individual, freedom of association, etc.).<sup>86</sup>

The civil and political human rights discourse articulates capitalist definitions of freedom and thereby ideologically underpins and vindicates the capitalist structure.<sup>87</sup>

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<sup>82</sup> Jack Donnelly, International Human Rights, Boulder, (Westview Press, 1993), p28.

<sup>83</sup> Cranston in Raphael, (ed), op cit.

<sup>84</sup> Claire Cutler, "Critical Reflections on the Westphalian Assumptions of International Law and Organisation: A Crisis of Legitimacy", Review of International Studies, Vol 27, No 2, 2001.

<sup>85</sup> Hugh Collins, Marxism and Law, Oxford, (Oxford University Press, 1982), p108 and Colin Sumner, Reading Ideologies, London, (Academic Press, 1979), p262.

<sup>86</sup> Sumner, op cit, p272.

<sup>87</sup> Tony Evans, "Citizenship and Human Rights in the Age of Globalization", Alternatives, Vol 25, 2000, pp419-20; see also Mark Rupert, Producing Hegemony: The Politics of Mass Production and American Global Power, Cambridge, (Cambridge University Press, 1995).

Less prominent in the existing literature is the service that social and economic rights perform in support of existing structures of economic power. Indeed, economic and social rights are often assumed to constitute a radical challenge to capitalism.<sup>88</sup> The following examples balance this common assumption by demonstrating how social and economic rights support the capitalist political economy.

The right to self-determination was used as a mechanism to accommodate the expansionary needs of US capital following the Second World War.<sup>89</sup> Gill explains that

the Council on Foreign Relations advocated the concepts of human rights and internationalism to support the idea of the Grand Area, defined as the maximum living space for the American economy. In effect this meant enlarging the territory for American exporters and investors to expand into.

Second, the creation of a Grand Area necessarily entailed a break up of the old colonial economic empires. Thus American theorists advanced the notion of national self-determination, and the need to dismantle colonial spheres-of-influence.<sup>90</sup>

Rosenberg similarly explains that

mobilisation for independence was supplemented from the outside by American pressure for unrestricted economic access, clothed in a rhetoric of freedom and self-determination. For their part, US planners recognised by May 1942 that the British Empire... will never reappear and that the United States may have to take its place; that in the light of growing nationalism there was a need to avoid conventional forms of imperialism

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<sup>88</sup> Katarina Tomasevski, Development Aid and Human Rights Revisited, London, (Pinter Publishers, 1993).

<sup>89</sup> article 1, International Covenant on Economic, Social and Cultural Rights, 16 December 1966 and article 1, International Covenant on Civil and Political Rights, 16 December 1966.

<sup>90</sup> Gill, op cit, pp220-1.

and that new institutions of international management, such as a United Nations organisation, should be developed to meet this need.<sup>91</sup>

Therefore the human right to self-determination was promoted not as an end in itself, but rather as a means to secure other goals, specifically that of ensuring global market access for US businesses.<sup>92</sup> Arguments relating to human rights and self-determination are tactical devices for the US to claim moral legitimacy for the globalisation of its capital, which as Rosenberg reminds us, was required because of the success of nationalist forces fighting colonialism.<sup>93</sup> Attacking the moral legitimacy of colonialism was useful for the promotion of US capital interests since corporations could thereby access markets that had previously been monopolised by the colonial power.

The co-option of human rights to accommodate the expansionary need of capital is evident through the promotion of economic and social rights that impact negatively upon the cultural traditions of marginalised groups. One such instance of cultural imperialism is evident in the implementation of the right to social security for First Nation people in Canada. The ICESCR states that "the States Parties to the present Covenant recognise the right of everyone to social security, including social insurance".<sup>94</sup> This economic right has been used to assimilate indigenous cultures into both state and global economic structures. Economic rights negate, through creating dependency on welfare payments, the social challenge that could otherwise be mobilised by diverse indigenous communities, who in Canada represent significant constituencies with distinct non-capitalist cultures.<sup>95</sup>

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<sup>91</sup> Rosenberg, *op cit*, p37.

<sup>92</sup> Tony Evans, US Hegemony and the Project of Universal Human Rights, Basingstoke, (Macmillan, 1996), p102.

<sup>93</sup> Rosenberg, *op cit*, p37; see also Evans, (1996), *op cit*.

<sup>94</sup> article 9.

<sup>95</sup> interview conducted at Southampton University with Dr Taiaiake Alfred, director of indigenous governance programs, University of Victoria, 29 April 1999.

The criticism that universal human rights violate cultural diversity is neither new nor is it the argument presented here. It is rather the contention that the specific manifestation of rights stipulated in the ICESCR facilitates the expansionary needs of global capital through incorporating non-capitalist cultures into the global economy by engendering a culture of dependency. These rights are therefore implemented to compliment, rather than challenge capital interests. By way of a comparison, this contrasts with the proposed environmental right to natural resources,<sup>96</sup> that could empower local communities to construct their own cultures, liberating them from dependency upon economic structures external to their own cultural traditions.<sup>97</sup>

Economic rights create the very dependency that they purport to alleviate. The dignity of humanity is undermined by the culture of dependency on handouts that characterise existing economic rights. Waks correctly identifies that economic rights have become transformed from visions of a just democratic community of equal citizens, with material provision and areas of autonomy for the poor, into underfunded, means-tested, and stigmatised social welfare programs. The language of human rights is co-opted as such attenuated positive rights become established in the pattern of citizenship.<sup>98</sup>

Economic rights do not address the human rights violations that are caused by the operations of the capitalist economy. Rather, these rights seek only to mitigate the subsequent desperate plight of the marginalised. The focus of economic rights is in this sense analogous to shutting the stable door after the horse has bolted.

The ICESCR stipulates a "right to work".<sup>99</sup> This right is also typically promoted by advocates of positive rights.<sup>100</sup> For the marginalised in the global capitalism, this

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<sup>96</sup> see chapter 6 for details.

<sup>97</sup> see chapter 6 for details.

<sup>98</sup> Waks, *op cit*, p142.

<sup>99</sup> ICESCR part III, article 6 stipulates; "the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely

freedom manifests itself as, in effect, paid slavery.<sup>101</sup> Under a banner of freedom, the right to work locks people into a capitalist economy whose reality for those in the periphery is a life of continued poverty. Although the ICESCR stipulates a right of workers to fair wages,<sup>102</sup> no further details are given. Such ambiguity allows employers currently paying below poverty line wages to argue that these wages are fair since they, for example, reflect market conditions of supply and demand.

The commodification of labour is the attaching of a market specified monetary price to human work and is itself problematic from a position focusing on human dignity, since it reifies the separation of workers from the means of production and thereby ensures the continued dependency of workers on the capitalist exchange economy.<sup>103</sup> As Marx argued in his theory of alienation, labour is treated like a commodity in the capitalist economy, resulting in the domination of people by the market, instead of society controlling the productive activities.<sup>104</sup> Although the commodification of labour has been normalised in Western society to the extent that it has acquired the status of an unquestionable norm, Rosenberg observes the exceptional nature of the concept in that the notion distinguishes modern society

from most societies known to history. For as a rule the process of production is directly social: the total labour carried on by the society is

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chooses or accepts, and will take appropriate steps to safeguard this right". Article 23 of the Universal Declaration of Human Rights, (1948) stipulates that "everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment".

<sup>100</sup> see for example Tom Campbell, The Left and Rights: A Conceptual Analysis of the Idea of Socialist Rights, London, (Routledge, 1983), p171.

<sup>101</sup> see chapter 4.

<sup>102</sup> part III, article 7(a).

<sup>103</sup> Cox, (1987), op cit, p57.

<sup>104</sup> Collins, op cit, p117.

organised through personal relations of dependence which authorise command over labour and its product.<sup>105</sup>

Chomsky reminds us that wage labour, "was considered hardly better than slavery in mainstream American thought through much of the 19th century, not only by the rising labour movement but also by such figures as Abraham Lincoln, the Republican Party, and the establishment media".<sup>106</sup> Through endorsing wage labour, existing economic rights presuppose and legitimise a central and dehumanising feature of capitalism, obfuscating this cause of oppression and exploitation.

Again by way of comparison, the right to environmental resources could be expected to help ensure greater autonomy from the tyranny of the market.<sup>107</sup> Without wanting to romanticise the desperate plight of the medieval peasant, Rosenberg comments that "unemployment held no terrors for the peasantry of medieval Europe, for they were in possession of the means of subsistence, 'free' labour is dependent in ways that tied labour never was".<sup>108</sup> Unlike existing economic rights, the claimed human right to environmental resources is not based around a concept of handouts where the recipients are inactive and disempowered receivers. Neither does it specify a right to work, which in practice operates to lock labourers into an economic order which recreates the conditions of their continuing poverty. To escape patterns of dependency created under capitalism, individuals and communities require the land and environmental resources to create and work within alternative economic structures based upon principles of communal subsistence, independence and self reliance.

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<sup>105</sup> Rosenberg, *op cit*, p147.

<sup>106</sup> Noam Chomsky, "Market Democracy in a Neoliberal Order: Doctrines and Reality", Davie Lecture, University of Cape Town, May 1997; <http://www.lol.shareworld.com/Zmag/chomskydavie.htm>.

<sup>107</sup> see chapter 6.

<sup>108</sup> Justin Rosenberg, p49.

As Dryzek observes, a further way in which stipulated social and economic rights support the capitalist system is by acting as a means to defuse destabilising popular unrest and opposition; "an extensive welfare state is necessary to legitimate the capitalist political and economic order, for it soothes the discontent of those who would otherwise suffer beyond endurance from the vicissitudes of the system".<sup>109</sup> Stammers similarly suggests that the welfare state exists to manage the social order to protect and legitimise power inequalities rather than to aid the deprived.<sup>110</sup> The absence of any redistribution in a capitalist economy would most likely create social upheaval resulting in either (i) authoritarian repression of the general population on behalf of the beneficiaries of the capitalist system or (ii) structural changes to address the dynamics that create inequality. Both of these eventualities would challenge the fundamentals of the present hegemonic bloc. Authoritarian repression in defence of global capital interests would jettison the moral component of hegemony and openly demonstrate a contempt for justice that could only further fuel popular opposition in the social base. This is best exemplified in the spiralling levels of instability in the South following the imposition of SAPs and other attacks on state support for the impoverished.<sup>111</sup> The second option, structural changes to prioritise human needs over the ability of capital to accumulate, would, by definition, be the end of capitalism. Economic rights can therefore be identified to support capitalism by acting as a pressure valve to negate popular opposition and obfuscate the inequalities caused by capitalism. Gorz explains that,

the condemnation of the welfare state in the name of economic liberalism  
is thus a piece of mindless ideology. State provision does not stifle society

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<sup>109</sup> John S Dryzek, "Ecology and Discursive Democracy: Beyond Liberal Capitalism and the Administrative State", Capitalism, Nature, Socialism, Vol 3, No 2, 1992, p32.

<sup>110</sup> Neil Stammers, "A Critique of Social Approaches to Human Rights", Human Rights Quarterly, Vol 17, 1995, p503.

<sup>111</sup> for an excellent analysis of this process see John Walton and David Seddon, (eds), Free Markets and Food Riots: The Politics of Global Adjustment, Cambridge, (Blackwell, 1994).

and limit the spontaneous deployment of economic rationality; it is born of this very deployment... and as a necessary framework preventing the market economy finishing up in a collective disaster.<sup>112</sup>

Russell similarly comments on the tactic of limited redistribution as an instrument of co-option used by capitalist forces;

Will capitalists, in fact, exploit their control to the uttermost? Where they are prudent, they would not do so, for fear of just the consequences as Marx foresaw. If they allow the workers some share in prosperity they may prevent them from becoming revolutionary; of this the most notable example is in the United States, where the skilled workers are on the whole Conservative.<sup>113</sup>

The actual implementation of economic rights is more a function of the structural conditions of the capitalist system than it is a realisation of the protection of human dignity. Several theorists have demonstrated the use of economic rights as a Keynesian mechanism to manage aggregate demand and other macro economic variables upon which future economic growth depends.<sup>114</sup> The flexibility required for the implementation of economic rights according to the needs of capitalism has been accommodated in legal texts by the concept of progressive realisation. As Bauer observes, governments have interpreted their obligation under the ICESCR

to achieve progressively the full realisation of the rights according to the maximum available resources as implying that a certain level of development must be reached before ESC rights become effective. This interpretation, rather than a human-centred approach to realising ESC

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<sup>112</sup> Andre Gorz, Critique of Economic Reason, London, (Verso, 1988), p132.

<sup>113</sup> Bertrand Russell, Power: A New Social Analysis, London, (George Allen and Unwin, 1948), p136.

<sup>114</sup> John S Dryzek, op cit, p32; see also Immanuel Wallerstein in Richard Little and Michael Smith, (eds), Perspectives on World Politics, second edition, London, (Routledge, 1991), p312.

rights, has allowed individual and group rights to be overridden by states' driven to meet development goals.<sup>115</sup>

The ICESCR paradoxically facilitates violations of its provisions since the notion of progressive realisation subordinates human needs to a macroeconomic focus on the capitalist structure. The increase in opulence in the world economy exposes the inadequacy of the claim that economic rights remain unfulfilled because of a lack of aggregate resources. The skewed distribution of these resources under capitalism ensures the continuation of absolute poverty existing alongside unprecedented opulence.<sup>116</sup>

Economic rights perform a further function in legitimating capitalist economic structures in that they are presented as a radical extreme, a wish list of a rise in living standards for the general population. This is typified by the above quote by Cranston on the stated "impossibility" of the realisation of economic rights.<sup>117</sup> Yet, in being presented as an extreme, economic rights perform an important function to negate the challenge posed to capitalist structures by the social values inherent in the project of universal human rights. That is to say, the presentation of the human rights agenda as ranging from civil and political rights on one extreme to social and economic rights on the other serves to control the challenge posed by the discourse of human rights. The presentation of economic rights as an alternative to capitalism co-opts opposition by creating support amongst anti-systemic forces for a set of rights that, in contrast to the way that they are portrayed, do much to support, rather than challenge, hegemonic economic structures. The setting of the agenda is of crucial importance as a manifestation of structural power since this works to condition the perceptions of individuals. The effectiveness of the set agenda to limit discourse and establish conceptual prisons is best exemplified not only in the lack of existing criticisms of economic rights from a social perspective, but rather

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<sup>115</sup> Joanne Bauer, "Human Rights Dialogue"; <http://www.cceia.org/dialog10.html>.

<sup>116</sup> see chapter 6.

<sup>117</sup> Cranston in Raphael, (ed), op cit, p47.



through the unquestioning endorsement of existing economic human rights by many critics of global capitalism.<sup>118</sup>

### **Environmental human rights as praxis**

None of the foregoing discussion is to deny that environmental and human rights groups can mitigate instances of environment degradation and human rights violations produced by the capitalist system. However, the potential for social movements to extract concessions in the formal political forum is circumscribed by the politics of power that ensures an ongoing prioritisation of commercial interests. There is also a price to pay for anti-systemic forces operating within official political channels. Social movements accommodate, condone and legitimise existing political structures and thereby play a part in the reproduction of the capitalist world order. Time and effort spent debating and lobbying politicians is also committed at the expense of campaigning and organising support in the social base.

To address the fundamental causes of violations of environmental human rights, there is a need to challenge existing political structures, both through academic challenge and campaigning in society.<sup>119</sup> This approach is eloquently championed by Wallerstein; we do not live in a modernising world but in a capitalist world. What makes this world tick is not the need for achievement but the need for profit. The problem for oppressed strata is not how to communicate within this world but how to overthrow it.<sup>120</sup>

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<sup>118</sup> see for example Vandana Shiva, (Interview), "Creative Principles: Fighting Capitalism and Patriarchy on a World Scale"; [http://tdg.uoguelph.ca/~kwakely/rhizone/twt/shiva\\_creative.html](http://tdg.uoguelph.ca/~kwakely/rhizone/twt/shiva_creative.html) and Tomasevski, op cit.

<sup>119</sup> David Foreman, "It's Time to Return to our Wilderness Roots", Environmental Action, Vol 15, No 5, December 1984, quoted in Arne Naess, "Deep Ecology"; <http://www.envirolink.org/elib/enviroethics/deepindex.html>; see also George Monbiot, "The Land is Ours", Schumacher Lecture, 19 October 1996, Bristol; <http://www.oneworld.org/schumachersoc/lectures96/monbiot.html>.

<sup>120</sup> Immanuel Wallerstein, The Capitalist World Economy, Cambridge, (Cambridge University Press, 1979), p133.

Radical change cannot be initiated by dialogue within formal political forums since these exclude NGOs with alternative, radical agendas from engaging in negotiations.<sup>121</sup>

The possibility for systemic change in the historical context then becomes the appropriate subject of analysis. A central constraint on the possibilities for political change has been identified in this chapter as the hegemonic mechanism of co-option. As Cox and Sinclair remind us,

hegemony is like a pillow: it absorbs blows and sooner or later the would-be assailant will find it comfortable to rest upon. Only where representation in international institutions is firmly based upon an articulate social and political challenge to hegemony - upon a nascent historic bloc and counter hegemony - could participation pose a real threat.<sup>122</sup>

For a counter hegemony to emerge, NGOs must (i) present a popular challenge to capitalism, (ii) possess the resources to affect alternatives and (iii) gain more power in affecting changes in international institutions.<sup>123</sup> Although anti-systemic forces have thus far failed in all of these requirements, challenges to the existing world order are becoming more widespread,<sup>124</sup> and now find expression in the most unlikely sources. George Soros, manager of the Quantum investment fund, for example refers to global financial markets as a "wrecking ball" and a "bubonic plague".<sup>125</sup> He comments that

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<sup>121</sup> Annie Taylor, "The Significance of Non-governmental Organisations in the Development of International Environmental Policy: The Case of Trade and Environment", PhD thesis, Southampton, (Southampton University, September 1998), p30.

<sup>122</sup> Cox with Sinclair, op cit, p139.

<sup>123</sup> Taylor, op cit, p84.

<sup>124</sup> Larry Elliott, "Fury at G8's Debt Failure", The Guardian, 18 May 1998, pp1-2 and Paul Reynolds, "Trade Protesters Spark Emergency", BBC News, 1 December 1999; [http://news.bbc.co.uk/english/world/americas/newsid\\_544000/544447.stm](http://news.bbc.co.uk/english/world/americas/newsid_544000/544447.stm).

<sup>125</sup> see Diane Coyle, "Is Capitalism Heading for Breakdown?" The Independent, 2 December 1998, p19.

I cannot see the global system surviving. Political instability and financial instability are going to feed off each other in a self-reinforcing fashion. In my opinion, we have entered a period of global disintegration only we are not yet aware of it.<sup>126</sup>

Predictions from more radical analysts of a similar fate for capitalism have been circulating since Marx noted the inherent contradiction between capital and labour in an exchange based economy.<sup>127</sup> More recently, O'Connor has coherently argued that environmental degradation produced through capitalist production constitutes a second contradiction of capitalism.<sup>128</sup> As capital degrades the environment, it increases costs of future expansion and hence leads to its own demise.<sup>129</sup> Benton has similarly argued that "capitalism tends to undermine its own ecological (and other) conditions of existence".<sup>130</sup> Claims to the demise of capitalism are open to the charge of conjecture since they are concerned with speculating about future events. The current dominance of capital interests in determining political structures furthermore suggests that the systemic demise of capitalism is neither inevitable nor imminent. Yet possibilities for systemic change nonetheless exist, dependant upon a counter hegemonic bloc achieving more support in the social base. This could either happen through anti-systemic social movements gaining in popular support or the failing of capitalism on its own terms, that is to say the inability

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<sup>126</sup> George Soros, The Crisis of Global Capitalism, quoted in William Greider, One World, Ready or Not: The Manic Logic of Global Capitalism, New York, (Simon and Schuster, 1997), p248.

<sup>127</sup> see David McLellan, (ed), Karl Marx; Selected Writings, Oxford, (Oxford University Press, 1990).

<sup>128</sup> James O'Connor, Natural Causes, London, (Guilford Press, 1997).

<sup>129</sup> ibid; see also Tim Bartley and Albert Bergessen, "World-System Studies of the Environment", Journal of World-Systems Research, Vol 3, No 3, 1997, p375; <http://csf.colorado.edu/wsystems/jwsr.html>.

<sup>130</sup> Ted Benton in Michael Jacobs, (ed), Greening the Millennium? Oxford, (Blackwell, 1997), p43; see also Robert J S Ross, "Agency and Enlightenment", Journal of World-Systems Research, Vol 2, No 2-h, 1996; <http://csf.colorado.edu/wsystems/jwsr.html>.

to continue providing aggregate economic growth because of, for example, the reasons suggested by Marx, O'Connor and Benton.<sup>131</sup>

Seemingly remote structures only exist because of implicit consent or explicit approval by which they are normalised and internalised by individuals. As such, the possibility for structural change exists through the actions of individuals, as an expression of praxis. As Giddens explains

I take praxis to be an ontological term, expressing a fundamental trait of human social existence. To speak of human social activity as praxis is to reject every conception of human beings as determined objects or as unambiguously free subjects. All human action is carried on by knowledgeable agents who both construct the social world through their action, but yet whose action is also conditioned or constrained by the very world of their creation.<sup>132</sup>

Praxis is the identification of theory and practice as an instrument for the construction, reproduction or change of political structures. It is "a critical act, through which practice is demonstrated rational and necessary, and theory realistic and rational".<sup>133</sup> Praxis is the method of constructing a counter hegemonic bloc through the development of an alternative ideology.<sup>134</sup>

Environmental human rights constitute an instrument of praxis for structural challenge for the reason suggested by Brazier; "if there is to be a way forward for the world it will lie in a new union of ideas previously labeled separately as Red and

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<sup>131</sup> McLellan, (ed), op cit; Bartley and Bergessen, op cit, p375 and Benton in Jacobs, (ed), op cit, p43.

<sup>132</sup> Anthony Giddens, A Contemporary Critique of Historical Materialism Vol 1: Power, Property and the State, London, (Macmillan, 1981), pp53-4.

<sup>133</sup> Hoare and Smith, (eds), op cit, p365.

<sup>134</sup> Gill, op cit, p51.

Green".<sup>135</sup> Environmental human rights can articulate the union of human security and environmental concerns that provides a broad basis for a counter hegemonic bloc. Environmental human rights are less susceptible to systemic co-option since they constitute an uncompromising defence of social and environmental over capitalist values.<sup>136</sup>

A discourse of environmental human rights could furthermore act as an instrument of praxis to protect the interests of future generations. Reducing (i) toxic pollution and (ii) the overuse of natural resources in the present will benefit future generations since the legacy of environmental degradation and resource depletion that the present generation leaves behind will be less severe. Future generational rights have not been stipulated in legally binding human rights texts and consequently lie outside the remit of this research. Yet a brief discussion of future generational rights is nonetheless appropriate at this stage to illustrate how the interests of this group have been marginalised by the existing human rights regime. Goodin highlights the poverty of the existing research into the subject of intergenerational rights by noting that the debate remains on the level of whether we owe future generations anything at all, constructing an agenda favouring the opponents of intergenerational justice.<sup>137</sup> One such opponent is Steiner who argues that future generations cannot have rights since "moral principles cover only people who can reciprocate" and future generations cannot demand the present recognition of their rights.<sup>138</sup> In contrast to this assertion, moral principles could be based around a notion of justice conceptualised as (i) altruism, (ii) an ethic of respect for others or (iii) protection of the vulnerable, rather than a restrictive and self serving notion of reciprocity.<sup>139</sup> By way

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<sup>135</sup> Chris Brazier, "State of the World Report", New Internationalist, Issue 287; <http://www.oneworld.org/ni/issue287/keynote.html>.

<sup>136</sup> see chapters 5 and 6.

<sup>137</sup> see Robert E Goodin, Protecting the Vulnerable, Chicago, (University of Chicago Press, 1985), p169.

<sup>138</sup> Hillel Steiner, An Essay on Rights, Oxford, (Blackwell, 1994), pp259-61.

<sup>139</sup> Goodin, op cit, pp169-73.

of an analogy, the severely mentally disabled are incapable of reciprocal relationships, and indeed, lack the reasoning faculties to demand the recognition of their rights, yet this in no way deprives them of those rights.

Rights are required most urgently precisely in relationships based not around reciprocity, which implies a parity of power between parties, but rather in conditions of structural exploitation and dependency, where power resides with one party and is used at the expense of the other. It is this abuse of power that is sanctioned by the interpretation of the recognisable subjects of rights given by Steiner that restricts the human rights discourse into a defence of power and privilege by rejecting the moral claims of the most vulnerable. Goodin demonstrates that future generations are completely dependent on the present generation regarding environmental factors such as toxic pollution, climate change and resource depletion.<sup>140</sup> He furthermore convincingly argues that the responsibility accompanying this vulnerability can be expressed in terms of human rights.<sup>141</sup>

Several notable liberal theorists have also advocated the application of human rights to future generations. Feinberg derives rights of future generations from the interests that they possess.<sup>142</sup> Du Bois derives rights of future generations from an application of the right to equality of opportunity on an intergenerational scale.<sup>143</sup> There are therefore a number of methods for deriving future generational human rights from a variety of approaches in political philosophy.

The main difficulty in institutionalising future generational rights again resides in the paradigm of economic rationality. A policy of protecting the environment and

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<sup>140</sup> *ibid*, p177.

<sup>141</sup> *ibid*.

<sup>142</sup> William T Blackstone in William T Blackstone, (ed), *Philosophy and Environmental Crisis*, Athens, (University of Georgia Press, 1974), p66.

<sup>143</sup> Francois Du Bois in Boyle and Anderson, (eds), *op cit*, p163.

conserving resources for future generations would require the present generation to decide an allocation of resources that does not maximise its own consumption levels. Since the beneficiaries of future generational rights have no political voice in the present and therefore no power, their interests have been ignored in favour of focusing on the efficient allocation of resources for the existing generation.<sup>144</sup> The economic structures of capitalism dismiss environmental responsibilities to future generations in favour of consumption in the present.<sup>145</sup> Under capitalism, complex moral imperatives and broader considerations of justice are invariably neglected because of a structural focus on individual materialistic concerns.<sup>146</sup> The absence of any future generational rights in existing human rights covenants facilitates the needs of capital by refusing to acknowledge a constraint that would limit the scope of the market and in particular the access of corporations to environmental resources. This draws the use of the environmental human rights claimed in this research back into focus as an instrument of praxis to protect the interests of future generations since environmental rights constrain the inherent tendency of the market to destroy Earth's organic heritage.<sup>147</sup>

## **Conclusion**

This chapter has examined the possibilities for structural change in world politics and has suggested a role for environmental human rights in this process. The relative influence of agent and structure was firstly introduced in order to establish the meaning and extent of the limitations on the ability of individuals to reform political structures. The conclusion of this analysis suggested a capacity of structures to condition the modes

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<sup>144</sup> The notable exception being a declaration of the United Nations Economic, Social, and Cultural Organisation (UNESCO) in 1995 which included as one of its nine "main targets" for social development "the preservation of the environmental rights of future generations"; see "Fact File", United Nations Economic, Social and Cultural Organisation Courier, March 1995, p30.

<sup>145</sup> see chapter 1.

<sup>146</sup> see chapter 1.

<sup>147</sup> see chapters 5 and 6.

of thinking and acting of individuals. In particular it identified the hegemonic function of co-option, which was found to act as a structural mechanism to negate systemic challenges by assimilating aspects of these challenges without altering fundamental traits of the hegemonic bloc. This framework was applied to an analysis of the environmental and human rights movements where co-option was identified in a multiformity of aspects. The conclusion of this examination suggested an ineffectuality for NGOs of adopting the tactic of co-operating with official political structures in an effort to modify the capitalist hegemonic bloc to prioritise environmental and social values.

The potential role for environmental human rights as an instrument for initiating political change was then analysed. The environmental human rights examined in chapters five and six reject any compromises to subordinate values of environmental protection and human security to the possessive individualist values of capitalism. A challenge to capitalism based around a radical conception of environmental human rights is therefore less susceptible to co-option than other claims to human rights and environmental protection. A role for environmental rights was therefore suggested both (i) as a goal that could institutionalise the political prioritisation of social and environmental values and (ii) as a campaigning instrument for a counter hegemonic bloc to realise structural change.

## **CHAPTER 3**

### **SOCIAL DEMANDS FOR ENVIRONMENTAL HUMAN RIGHTS**

The environment is man's first right.<sup>1</sup>

#### **Introduction**

The purpose of this chapter is to detail the nature and extent of claims to universal environmental human rights made by NGOs in the environmental and human rights movements. A questionnaire was devised and circulated to a total of 196 NGOs to elicit information on the extent to which these organisations recognised, advocated and campaigned in terms of environmental human rights.<sup>2</sup> Three other questionnaires were circulated to a selection of (i) states, (ii) MNCs and (iii) global institutions in order to establish the attitudes to environmental human rights held by institutions of political and economic power.<sup>3</sup> The response rate from NGOs was significantly higher than for the other three questionnaires and constitutes the majority of the data analysed in this chapter.<sup>4</sup> The questionnaire circulated to states concerns the formal political responses to claims of environmental human rights and the small number of replies are mentioned in chapter four.

The questionnaire to NGOs did not explicitly inquire how each organisation related to formal political institutions of power since it was devised at an early stage of this research before the theoretical analysis had been completed. Subsequently, the structure of this chapter does not separate analysis of the questionnaire responses between

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<sup>1</sup> Ken Saro-Wiwa quoted in Aaron Sachs, Eco-Justice: Linking Human Rights and the Environment, Worldwatch Paper 127, (Worldwatch Institute, 1995), p53.

<sup>2</sup> appendix 1.

<sup>3</sup> appendixes 2, 3 and 4.

<sup>4</sup> appendixes 5, 6, 7 and 8.

mainstream, co-opted and radical NGOs. The structuring of this chapter to differentiate between separate NGO categories would in any event detract from the central thematic focus on the recognition of specific environmental human rights. To keep this focus, the human rights and environmental movements will be evaluated as a whole in this chapter. The context of structural power is nonetheless addressed by discussing how NGOs perceive or have indeed used environmental human rights claims in campaigns against the capitalist political economy. Reference will also be made to NGOs working within formal political channels to realise environmental human rights but this topic is not discussed in any great depth since the formal response to environmental rights claims forms the subject of analysis in chapter four.

The questionnaire to NGOs was designed to elicit information on (i) which environmental human rights were recognised by NGOs, (ii) on what grounds and to (iii) identify campaigns that had been run on the basis of the environmental human rights demanded. The questions were therefore formulated to elicit qualitative rather than quantitative data. Consequently, no statistical analysis is included in the methodological interpretation of the data in this research. Instead the data is analysed through thematic method. Firstly, the conceptual results of the research that relate to the justification of environmental human rights will be examined. This section also addresses the conceptual potential for the use of environmental human rights as an anti-systemic instrument. Secondly, the level of recognition by NGOs of specific environmental human rights will be evaluated. Thirdly, the analysis proceeds to the practical agenda of how environmental human rights claims have been used by NGOs as a tactical instrument of praxis to initiate and promote political change to benefit human rights and environmental protection. Fourthly, the data evaluation details the nature and extent of political campaigns for environmental human rights. These campaigns will be differentiated into two categories. The first category details efforts aimed at the recognition of environmental human rights conducted on the level of global politics (hereafter termed the structural level). The

second section examines campaigns for environmental human rights based at the local level, focusing on two brief case studies of protest movements in Nigeria and Irian Jaya.

### Environmental human rights as a conceptual component of social and environmental campaigns

The questionnaire results testify to a widespread conceptual advocacy of environmental human rights amongst social movements. In response to the question of whether NGOs recognise environmental human rights, 54 organisations answered affirmatively, 36 declined to state a position and only three; Amnesty International, Earth Share and Ozone Action, stated that they did not recognise environmental human rights. Of the three dissenting groups who rejected environmental human rights, Earth Share gave no grounds for its decision.<sup>5</sup> The reason given by both Amnesty International and Ozone Action for rejecting environmental human rights was that the focus of campaigns would be lost through linking environmental protection to human rights claims.<sup>6</sup>

Before examining the details of the positive responses, analysis of the conceptual framework within which affirmations of environmental human rights were contextualised is appropriate. In particular, the existence of environmental human rights was presupposed as natural and as universal because of the philosophical paradigm which characterised the politics of a number of NGOs. This holistic paradigm identified human society as a part of the wider environment and rejected a strict ontological distinction between the two categories. This perception is significant for the study of environmental human rights since the distinction made by proponents of economic rationality between human societies on the one hand and the environment on the other is thereby dissolved.<sup>7</sup>

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<sup>5</sup> response to thesis questionnaire received from Lewellyn Belber, Earth Share, 26 October 1998.

<sup>6</sup> responses to thesis questionnaire received from Bonnie Harnden, Management Assistant, Amnesty International, 11 December 1998 and from Art Farrance, Ozone Action, 1 December 1998.

<sup>7</sup> Phyllis Deane, The Evolution of Economic Ideas, Cambridge, (Cambridge University Press, 1978).

The capitalist naturalisation of human societies exploiting the environment for the benefit of material accumulation is necessarily rejected by an ecological perspective which denies the validity of separating humans from the environment.<sup>8</sup> From the ecological perspective, human rights are seen as a mechanism to protect holistic environmental concerns, rather than as an argument used in support of economic growth in human societies at the expense of environmental considerations.<sup>9</sup> The Tibet Foundation for example defends their support of environmental human rights because "we are human and as such we are part of the environment, and also this ties in with the Buddhist philosophy of interdependence".<sup>10</sup> Another respondent similarly comments that

we share the Earth and thus must share the responsibility which comes with it... Connecting human rights to the environment helps people to see that they are not separate from the Earth.<sup>11</sup>

Earth Sangha states that "we hold the Buddhist belief that all life is inextricably bound together".<sup>12</sup> This holistic theme continued in the response from Borderlinks who explain that

we believe that social justice is inextricably intertwined with human rights. All living creatures are bonded and dependent to or on the environment. Therefore, when the environment is violated, human rights are dually violated.<sup>13</sup>

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<sup>8</sup> for the neo-classical economic perspective, see David Pearce and R Kerry Turner, Economics of Natural Resources and the Environment, London, (Harvester Wheatsheaf, 1990).

<sup>9</sup> the perspective of economic rationality, see chapter 1.

<sup>10</sup> response to the thesis questionnaire received from the Tibet Foundation, 7 January 1999.

<sup>11</sup> response to the thesis questionnaire received from Joan L Wade, Kate Sherman Fellow for Peace and the Environment, 20/20 Vision, 26 October 1998.

<sup>12</sup> response to thesis questionnaire received from Earth Sangha, 11 June 1998.

<sup>13</sup> response to thesis questionnaire received from Borderlinks, 5 November 1998.

Grossman explains that the Midwest Treaty Network recognises an intrinsic environmental component of human rights because "the overall Native America philosophy does not see human beings as separate from nature, unlike development advocates that prioritize humans, or wilderness advocates who prioritize non-human nature".<sup>14</sup> The perception of unity between all elements of the biosphere was asserted by Geist who responded that "when we begin to acknowledge that the land has its own right to exist, we see ourselves as part of this community, part of the land, and that the only thing that separates us is the divisibility of the words themselves".<sup>15</sup>

This ecological paradigm produces a more complex, interconnected and comprehensive conceptualisation of human rights juxtaposed to the capitalist perception of human rights, which assigns rights to autonomous or atomistic individuals.<sup>16</sup> The conceptual basis of environmental human rights given by the NGOs quoted above includes general environmental protection as an axiomatic human right since harm incurred on one part of nature is perceived to harm all other parts of the biosphere because all elements are seen to be unified and interconnected. Reasoning within this paradigm dictates that harming the land will necessarily harm the people connected to that land. This perception is exemplified in the Guarani nation in South America who use the same word to refer to their tribe as they do to relate to the land that they inhabit.<sup>17</sup> Thus the complete identification of the tribe with the land prevents any differentiation between the two entities within both the language and culture of the tribe. Opposing the forced relocation by the Brazilian state authorities, a member of the tribe stated for example that

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<sup>14</sup> response to thesis questionnaire received from Zoltan Grossman, Midwest Treaty Network, 12 November 1998.

<sup>15</sup> response to thesis questionnaire received from Darrell Geist, President, Cold Mountain, Cold Rivers, 28 October 1998.

<sup>16</sup> see for example Maurice Cranston in DD Raphael, (ed), Political Theory and the Rights of Man, Basingstoke, (Macmillan, 1967).

<sup>17</sup> editorial, Brazil Network Newsletter, March/April 1996, p4.

"we're part of the land and the land is a part of us... that's the reason why we cannot live without our land".<sup>18</sup> This holistic paradigm challenges capitalism since social and environmental values are assimilated into a unified whole and assume a much higher importance in the relative position of competing values than that evident in the neo-classical economic paradigm. Although this holistic paradigm was expressed in a minority of NGO responses, the trend is notable because no mention of the holistic paradigm was made on any of the questions. This meant that all the respondents referring to the concept as a justification of environmental human rights asserted the idea themselves.

The trend described above suggests a role for environmental human rights claims as an anti-systemic instrument of praxis for social forces to campaign for the institutionalisation of social and environmental values over the focus on economic competitiveness characteristic of the capitalist paradigm. The interpretation of environmental human rights as an anti-systemic instrument is endorsed by the overall rejection of the concept by corporate responses to the research questionnaire. The only exception to this trend was provided by Xerox which replied that "all of our stakeholders (employees, customers and neighbours) are entitled to a clean, safe and healthy environment in which to work and live... we promote the right of all stakeholders to a safe and healthy workplace and/or community environment".<sup>19</sup> The health and safety policy of Xerox further states that "protection of the environment and the health and safety of our employees, customers, and neighbours from unacceptable risks takes priority over economic considerations and will not be compromised".<sup>20</sup>

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<sup>18</sup> ibid.

<sup>19</sup> response to thesis questionnaire received from Liz Campbell, Health and Safety Department, Xerox, 5 May 1999.

<sup>20</sup> principle 1; "Xerox Health and Safety Policy", received via email from Liz Campbell, ibid.

Denying that environmental degradation is necessarily linked to human rights violations, a spokesperson for the European Roundtable of Industrialists (ERT), argued that "while a company or government may be accused of both damaging the environment and infringing generally accepted human rights, there is no direct logical link between the two".<sup>21</sup> Although the ERT has an environment group, its agenda is "restricted to certain cross-sectoral issues related to climate change and environmental liability... Questions of human rights do not appear on the agenda".<sup>22</sup> The questionnaire response from the ERT stated that the organisation has not referred to the environment in terms of human rights protection since "we are not an NGO for social issues".<sup>23</sup> The ERT does however advocate "rights to life, liberty and freedom of movement".<sup>24</sup> In a follow-up correspondence to clarify the meaning of freedom of movement, the focus on capital was made explicit; "reductions in immigration controls" were not intended, rather the corporate pressure group advocates "freedoms of individuals to do business in other states".<sup>25</sup> This response is useful for understanding the position of business on the subject of environmental rights since the organisation promotes the interests of its member corporations and the ERT therefore articulates a cross section of business opinion. Furthermore, the lobbying efforts of the ERT have been very influential in European political decision making circles.<sup>26</sup>

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<sup>21</sup> response to thesis questionnaire received from Caroline Walcot, Deputy Secretary General, European Roundtable of Industrialists, 29 April 1999.

<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*

<sup>24</sup> *ibid.*

<sup>25</sup> response from Caroline Walcot, Deputy Secretary General, European Roundtable of Industrialists, 3 May 1999.

<sup>26</sup> see Corporate Europe Observatory, "Summary of Europe Inc"; [http://www.corpwatch.org/trac/feature/planet/eu\\_ceo.html](http://www.corpwatch.org/trac/feature/planet/eu_ceo.html).

Global Economic Institutions responding to the questionnaire demonstrated a general disregard for the concept of environmental human rights. A spokesperson for the World Trade Organisation stated only that "we do not deal specifically with that matter".<sup>27</sup> A response from the International Monetary Fund declined to answer any of the questions posed in the questionnaire, opting instead to direct any research to the IMF web site.<sup>28</sup> The Organisation for Economic Co-operation and Development, replied "the OECD does not have any information on the human rights side of the environment as we are an economic institution".<sup>29</sup> All these responses exemplify the trend for systemic forces to discount the importance of environmental human rights in favour of a focus on economics, again suggesting the anti systemic nature of these rights.

The conclusion of this conceptual analysis is to draw attention to the way in which recognition of environmental human rights tends to be a function of the theoretical paradigms within which different organisations operate and which attribute differing degrees of importance to competing values. The overwhelming conceptual endorsement of environmental human rights in the NGOs responses to the questionnaire reflects the tendency for these social forces to prioritise social and environmental values over the concern of capital accumulation which characterises the capitalist paradigm. The conceptual endorsement also suggests a potential role for environmental human rights as an anti-systemic instrument of praxis to strengthen social and environmental claims vis a vis competing demands of economic competitiveness. Attention now moves to examine which specific environmental human rights are recognised by NGOs.

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<sup>27</sup> response to thesis questionnaire received from Nathalie Lhayani, Information Division, World Trade Organisation, 30 September 1999.

<sup>28</sup> response to thesis questionnaire received from the public affairs division, external relations department, International Monetary Fund, 19 April 1999.

<sup>29</sup> response to thesis questionnaire received from Mark Baldock, Organisation for Economic Co-operation and Development, 18 May 1999.

## **Recognition of environmental human rights by social movements**

To avoid presenting potentially leading questions, the NGO questionnaire did not specify or even mention any particular rights. Instead, the relevant question asked "Do you recognise environmental human rights? Which ones? and Why?"<sup>30</sup> Thirty-three NGOs replied that they recognised the human right to an "unpolluted", "clean" or "healthy" environment.<sup>31</sup> Eleven NGOs replied that they recognised the environmental human right to resources.<sup>32</sup> Five NGOs identified rights to environmental justice.<sup>33</sup> Environmental justice is a domestic US movement opposing the location of pollution creating industries in areas inhabited by minority and impoverished groups.<sup>34</sup> Two other environmental rights were suggested by NGOs; Action in Solidarity with Indonesia and East Timor advocates "a right to sustainability" and the Austin, Texas Sierra Club defends a right to "family planning".<sup>35</sup>

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<sup>30</sup> question 1, appendix 1.

<sup>31</sup> 20/20 Vision, Action in Solidarity with Indonesia and East Timor, Asia Pacific Center for Justice and Peace, Austin, Texas Sierra Club, Bainbridge Ometepe Sister Island Association, Banneker Center for Economic Justice, Border Links, Californians Against Waste, Campaign for Peace and Democracy, Center for Economic and Social Rights, Center for Environmental Citizenship, Citizen Alert, Clean Air Society of Australia and New Zealand, Cold Mountain, Cold Rivers, Communication Works, Earth First!, Earth Rights International, Grassroots International, Grassroots World Government, International Labor Rights Fund, Journalists About Children's and Women's Rights and the Environment in Macedonia, Kurdish Human Rights Project, Legal Environmental Assistance Foundation, Midwest Treaty Network, Pacific Institute for Studies in Development, Environment and Security, Peoples Decade of Human Rights Education, Renew America, Rights International, Sacred Earth Network, Training for Change, Wisconsin's Environmental Decade, World Information Transfer, and World Institute for a Sustainable Humanity.

<sup>32</sup> Alaska Rainforest Campaign, Alliance for the Wild Rockies, Austin, Texas Sierra Club, CAFOD, Cold Mountain, Cold Rivers, Earth Sangha, Journalists About Children's and Women's Rights and the Environment in Macedonia, Rights International, South and Meso American Indian Rights Center, Training for Change and Trust for Public Land.

<sup>33</sup> Buffalo Nations, Legal Environmental Assistance Foundation, Midwest Treaty Network, Oregon Clearinghouse for Pollution Reduction and Rights International.

<sup>34</sup> see chapter 5 for a discussion of environmental justice.

<sup>35</sup> responses to thesis questionnaire received from Paul Benedek, Action in Solidarity with Indonesia and East Timor, 23 October 1998 and Virginia Schilz, Population Chairperson, Austin, Texas Sierra Club, 23 October 1998.

The following five respondents affirmed their support for the concept of environmental human rights but declined to define any specific rights. The indigenous peoples protection group Midwest Treaty Network recognises environmental human rights because "the impacts of environmental decisions falls on human beings as well as non-human nature".<sup>36</sup> Another respondent recognises a link between the environment and human rights since "the destruction of the environment is an abuse of the rights of all people who need that environment".<sup>37</sup> The Sustainable Development Institute "applaud wholeheartedly the concept of linking the environment and human rights".<sup>38</sup> Asked whether the organisation recognises environmental human rights, the Peoples Decade of Human Rights Education responded "of course we do and it is part of our fully comprehensive program for the learning of human rights".<sup>39</sup> Another organisation recognised environmental human rights since this "builds on the understanding of human rights as a universal concept and helps to broaden understanding about what constitutes these rights".<sup>40</sup> The "primary vision" of Cold Mountain, Cold Rivers was

to communicate people's environmental and human rights struggles to the world. As such we have found that though the words are divisible the spirit of them is not.<sup>41</sup>

Two organisations recognised environmental rights according to the criteria of existing human rights international law. Legitimate environmental human rights were

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<sup>36</sup> response to thesis questionnaire received from Grossman, op cit.

<sup>37</sup> response to thesis questionnaire received from Benedek, op cit.

<sup>38</sup> response to thesis questionnaire received from Roger D Stone, Sustainable Development Institute, 18 November 1998.

<sup>39</sup> response to thesis questionnaire received from Shula Koenig, Peoples Decade of Human Rights Education, 2 December 1998.

<sup>40</sup> response to thesis questionnaire received from Pharis Harvey, Executive Director, International Labor Rights Fund, 7 December 1998.

<sup>41</sup> response to thesis questionnaire received from Geist, op cit.

perceived by these two groups as those which are required to fully implement existing universal human rights stipulations. The Institute for Agriculture and Trade Policy recognises environmental human rights that are "fundamental to the Universal Declaration of Human Rights" and "to the right to life".<sup>42</sup> Rights International advocates recognition of "the right of human beings to the protection of an environment that is necessary for the protection of civil and political rights as well as economic, social and cultural rights of human beings".<sup>43</sup> Both groups however failed to state any particular rights that would be justified by this criterion.

Endorsing the environmental human rights claimed in this research project, the two specific rights recognised by a significant number of NGOs responding to the questionnaire were those to an unpolluted environment and to a right to environmental resources. Exemplifying claims to the former, the Legal Environmental Assistance Foundation contends "that all people have the right to a clean and healthy environment".<sup>44</sup> Another group similarly claims that "all humans on the earth have the right to live in a world where they have clean air, clean water [and] enough nutritious food to eat".<sup>45</sup> Training for Change acknowledges rights "to clean air, water and earth... No one should be subject to any toxic substances in any form. All living beings have a right to a healthy, and naturally so, environment".<sup>46</sup>

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<sup>42</sup> response to thesis questionnaire received from Mark Ritchie, Institute for Agriculture and Trade Policy, 1 December 1998.

<sup>43</sup> response to thesis questionnaire received from Francisco Forrest Martin, President, Rights International, 10 June 1998.

<sup>44</sup> response to thesis questionnaire received from Cynthia Valencic, Vice President for Programs, Legal Environmental Assistance Foundation, 17 June 1998.

<sup>45</sup> response to thesis questionnaire received from Virginia Schilz, Population Chairperson, Austin Sierra Club, 23 October 1998.

<sup>46</sup> response to thesis questionnaire received from Training for Change, 10 June 1998.

Another response revealed that

Cold Mountain, Cold Rivers helped found Montana CHEER (Coalition for Health, Environmental and Economic Rights) back in 1995. As the name indicates we acknowledge that human beings have a right to a healthy environment, a right to breathe clean air, to drink clean water, to bargain collectively for living wages, a safe workplace and so on. We acknowledge these rights, and of the land (as expressed as a whole of the biotic community) itself, because they are central to who we are, and [to] our continuing existence.<sup>47</sup>

This response is instructive because of the linkage made between environmental and economic rights claims. This linkage demonstrates a practical instance of how environmental and economic rights claims have been recognised to be mutually reinforcing as an instrument to limit the systemic power of capital.

Continuing the trend of anti systemic social movements recognising rights to an unpolluted environment, another questionnaire respondent states that

the right to a sustainable, liveable, healthy environment should be the right of all people. These are very basic demands - that the environment which we require to live, should not be destroyed - rather it should be maintained for the needs of all people.<sup>48</sup>

The Campaign for Peace and Democracy claim that "a liveable environment is as much a right as freedom of press, right to a job".<sup>49</sup> A spokesperson for the Center for Environmental Citizenship affirms that "the rights of humans to clean water, air, etc. are equally important as other environmental concerns".<sup>50</sup> Tenuto states that "each person or

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<sup>47</sup> response to thesis questionnaire received from Geist, op cit.

<sup>48</sup> response to thesis questionnaire received from Benedek, op cit.

<sup>49</sup> response to thesis questionnaire received from Campaign for Peace and Democracy, 10 June 1998.

<sup>50</sup> response to thesis questionnaire received from Doug Isreal, Center for Environmental Citizenship, 1 December 1998.

community has the right to a healthful environment".<sup>51</sup> Porter asserts that "clean air, water and safety seems to be a basic need and right".<sup>52</sup> The Center for Economic and Social Rights contends that

the human right to health includes the right to a healthy environment, including clean air and water... The health of the environment is directly linked to the health of human beings and health is a human right. Therefore, we feel that we cannot talk about the right to health without talking about the right to a healthy environment.<sup>53</sup>

All of these questionnaire responses represent the positive recognition of the right to an "unpolluted", "clean" or "healthy" environment by politically active anti systemic social forces.

The right to environmental resources was the second environmental human right asserted by a number of NGOs in questionnaire responses. Recognition of the human right to environmental resources is not as widespread as that to an unpolluted environment. Only 11 NGOs suggested some variant of a right to environmental resources compared to 33 who identified a right to an unpolluted environment. All the organisations recognising the right to environmental resources did so in addition to identifying the right to an unpolluted environment. The Pacific Institute for example advocates "policy principles such as the basic right to have access to clean water [and] the right of communities to be involved in decision making processes related to natural resources".<sup>54</sup> Another NGO recognises variants of the rights to an unpolluted environment

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<sup>51</sup> response to thesis questionnaire received from Mary Ann Tenuto, Comite Emiliano Zapata, 27 October 1998.

<sup>52</sup> response to thesis questionnaire received from Pam Porter, Wisconsin's Environmental Decade, 2 December 1998.

<sup>53</sup> response to thesis questionnaire received from Shahbano Aliani, Center for Economic and Social Rights, 30 November 1998.

<sup>54</sup> response to thesis questionnaire received from Arlene K Wong, Pacific Institute for Studies in Development, Environment and Security, 10 November 1998.

and to environmental resources by advocating "rights to live in a healthy environment, to have a right to life, habitat and to safe food".<sup>55</sup> A right to habitat is however a rather ambiguous claim that could be interpreted to mean anything from a right to access natural areas to a right to control and own land.

Unifying human rights to an unpolluted environment and to environmental resources, El-Roy contends that "environmental conditions [are] at the base of any living creatures existence. Pollution and shortage of resources threatens not only the health and life of people but also their livelihood and quality of life".<sup>56</sup> Earth Rights International states that

it is a fundamental human right of all people to have a secure and healthy environment in which to live. Natural resource exploitation and other environmental degradation not only negatively affects the health and security of local communities and indigenous peoples, but also often goes hand-in-hand with fundamental human rights abuses, such as suppression of civil and political rights, summary executions, torture, rape and forced labor.<sup>57</sup>

This response is notable for the linkage made by the respondent to current processes of resource exploitation that cause both human rights violations and environmental degradation. Another respondent recognised such an important link between the protection of human rights and of the environment that any differentiation between the two concepts was rejected;

In many situations human rights abuses and environmental abuses go hand-in-hand. Local people who are engaged in the struggles to protect

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<sup>55</sup> response to thesis questionnaire received from Journalism About Children and Women's Rights and Environment in Macedonia, 1 December 1998.

<sup>56</sup> response to thesis questionnaire received from Amos El-Roy Millenium Peoples Assembly, 4 December 1998.

<sup>57</sup> response to thesis questionnaire received from Earth Rights International, 12 November 1998.

their communities do not distinguish between human rights abuses and environmental abuses - they experience it all together... It is important to work with communities based on their experience of injustice, independent of such categories as human rights and environmental destruction.<sup>58</sup>

The questionnaire results therefore demonstrate considerable NGOs support for two environmental human rights. NGO support for a variation of the human right to an environment free from toxic pollution was considerably more widespread than support for the right environmental resources. The two rights endorsed match those advanced in chapters five and six of this research, revealing a thematic link between the academic research and the campaign work of NGOs in civil society.

### **Environmental human rights as a tactical device for social and environmental campaigns**

The recognition of environmental human rights by NGOs demonstrated above is of limited significance by itself. However, when these rights are demanded to be universally implemented or are operationalised in specific campaigns, they become a potential instrument to enact political change.

There is an evident recognition amongst NGOs responding to the thesis questionnaire that the linking of environmental to human rights demands strengthens the nature of both of the claims made. That is to say that environmental human rights claims are perceived as a useful means to achieve the social and environmental goals that the organisations seek to enact. In response to the question "do you think that the linking of human rights to environmental concerns leads to the promotion, or helps to strengthen the case of either of the issues?"<sup>59</sup> Forty-five NGOs responded affirmatively, 45 left the

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<sup>58</sup> response to thesis questionnaire received from Paula Palmer, Executive Director, Global Response, 1 December 1998.

<sup>59</sup> question 3, appendix 1.

question unanswered or replied that they did not know, and only 3 answered the question negatively. As for the responses given in the negative, Californians Against Waste replied "not necessarily"; a spokesperson for Citizen Alert stated "not as far as I can tell" and Grassroots World Government claimed that "both are a threat to certain regimes and economies and it is unlikely [that] the linking would give any benefit to either one. It is likely that it would expand the front against each one as it adds to the enemies of the other".<sup>60</sup>

The remaining 45 NGOs who expressed an opinion stated that linking environmental to human rights concerns would strengthen both campaigns and constitutes a useful tactical approach for achieving political change. Twelve organisations who gave more specific reasons in support of this recognition stated that linkage of the environmental to the human rights agenda was tactically beneficial since the social base and appeal of a campaign would thereby be broadened and strengthened. Earth First! stated that "any time you join forces with other oppressed individuals you strengthen your cause and widen your base of support".<sup>61</sup> Similarly, other organisations claimed that "by having different angles, you can appeal to a broader group of people";<sup>62</sup> "collectively we are strongest"<sup>63</sup> and "unity is strength".<sup>64</sup> Earth Rights International make the same point whilst also drawing attention to the more efficient use of resources achieved by operating campaigns which link environmental to human rights issues;

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<sup>60</sup> responses to thesis questionnaire received from Mark Murray, Executive Director, Californians Against Waste, 1 December 1998; Richard Nielson, Citizen Alert, 12 October 1998; Amos El-Roy, Grassroots World Government, 4 December 1998.

<sup>61</sup> response to thesis questionnaire received from Earth First! 1 December 1998.

<sup>62</sup> response to thesis questionnaire received from Valerie Cook, Grants and Information Systems Manager, Brained Foundation, 23 June 1998.

<sup>63</sup> response to thesis questionnaire received from Benedek, op cit.

<sup>64</sup> response to thesis questionnaire received from Communication Works, 10 June 1998.

there is a lot of duplicate work being done by environmental and human rights organisations. By linking the two issues, such groups can launch joint campaigns, maximise resources, personnel and expertise and benefit from an expanded constituency for their concerns.<sup>65</sup>

The Center for Economic and Social Rights claimed that "linking environmental rights to human rights allows communities and people to work across borders and disciplines".<sup>66</sup> An organisation campaigning for the rights of First Nation peoples stated "there is a strong link between treaty rights of Native peoples and environmental concerns... The link between the two can often lend to the efficacy of a campaign, because truly these concerns are very linked and can increase public involvement in a campaign".<sup>67</sup> Claiming the mutually strengthening nature of environmental and human rights claims, another activist asserts that "this linking [of the environment to human rights] strengthens the case for both".<sup>68</sup> Lanky likewise identified a "mutual reinforcement" by linking environmental concerns to human rights.<sup>69</sup> Similarly, Martin states that environmental human rights "brings two communities of activists together resulting in greater political leverage".<sup>70</sup> Another organisation advocates the linkage of the human rights and environmental campaigns on the grounds that

both movements can benefit by expanding their constituent base and areas of interest. The environmental movement has been hurt by its

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<sup>65</sup> response to thesis questionnaire received from Earth Rights International, op cit.

<sup>66</sup> response to thesis questionnaire received from Aliani, op cit.

<sup>67</sup> response to thesis questionnaire received from Sue Nackoney, Buffalo Nations, 3 December 1998.

<sup>68</sup> response to thesis questionnaire received from William Wasch, American Association for the Support of Ecological Initiatives, 24 October 1998.

<sup>69</sup> response to thesis questionnaire received from Joanne Landy, Campaign for Peace and Democracy, 10 June 1998.

<sup>70</sup> response to thesis questionnaire received from Martin, op cit.

inability to reach out to a broader cross section of society. Linking environmental issues with human concerns will bring more communities and people into the movement.<sup>71</sup>

The tactical importance of human rights for environmental protection was stressed in the response of the Alliance for the Wild Rockies who reported that "without supporting human rights our wilderness protection efforts would not succeed".<sup>72</sup>

The second tactical reason given by a number of NGOs advocating the use of environmental human rights claims in campaigns is that a discourse of human rights makes more tangible the otherwise abstract concept of environmental protection, as the following responses demonstrate. Training for Change advocate using environmental human rights in campaigns since "all too often people just can't relate to the natural environment unless it directly affects people".<sup>73</sup> The Midwest Treaty Network advocates linkage on the grounds that "we have found that the argument that corporations limit local economic control and local political democracy attracts rural and working class people who otherwise would not be concerned with defending endangered species or nature for its own sake".<sup>74</sup> Croft advocates linkage since "environmental issues are best put in human terms... because I think it is easier philosophically to treat values within a humanistic model".<sup>75</sup> An example of the claim that environmental protection can be achieved through utilising the human rights discourse is provided in a questionnaire response from another organisation that states "there is greater public support for public

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<sup>71</sup> response to thesis questionnaire received from Doug Israel, Center for Environmental Citizenship, 1 December 1998.

<sup>72</sup> response received from Jamie Lennox, Membership Coordinator, Alliance for the Wild Rockies, 10 June 1998.

<sup>73</sup> response to thesis questionnaire received from Training for Change, 10 June 1998.

<sup>74</sup> response to thesis questionnaire received from Grossman, *op cit.*

<sup>75</sup> response to thesis questionnaire received from Thomas Croft, Campaign Manager, ATD Fourth World (UK), 2 February 1999.

health versus environmental protection".<sup>76</sup> A spokesperson for Charter 88 contends that "anti-environmentalism arguments... usually begin with 'but what about people, aren't they more important?'"<sup>77</sup> The argument forwarded by this respondent is that this criticism is refuted by the explicit anthropocentrism of environmental human rights. These questionnaire results support the findings of Eckstein and Gitlin that

where the human rights and environmental protection groups have converged, they have used each other's disciplines as mechanisms for achieving their own ends. In other words, human rights groups have begun to use environmental protection mechanisms to advance specific human rights, and environmentalists have begun to use human rights mechanisms to protect the environment.<sup>78</sup>

In summation, the questionnaire results demonstrate that a significant number of NGOs advancing human rights and environmental causes have recognised linkage of the two issues as a useful tactic for initiating political change. The following section demonstrates how NGOs have campaigned for the formal recognition and implementation of environmental human rights. This will be referred to as a structural focus since it relates to the demands that have been made by social movements for the general recognition of environmental human rights in legal regimes. The analysis then progresses to examine how anti-systemic social forces have used claims to environmental human rights in specific campaigns, including two brief case studies relating to the protest movements against Shell in Nigeria and against Freeport McMoran in Irian Jaya.

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<sup>76</sup> response to thesis questionnaire received from Porter, op cit.

<sup>77</sup> response to thesis questionnaire received from Sarah Brown, Campaigns and Press Assistant, Charter 88, 9 December 1998.

<sup>78</sup> Gabriel Eckstein and Miriam Gitlin, "Human Rights and Environmentalism: Forging Common Ground", Human Rights Brief; <http://www.wcl.american.edu/pub/humright/development/brief/i23/envt-hr.html>.

### **Campaigns for the structural recognition of the right to an unpolluted environment**

Campaigns focusing on the structural recognition of environmental human rights may appear more abstract and less productive than campaigns focusing on specific instances of violations of environmental human rights. However, campaigns aimed at the structural level seek to address the long term causes of environmental human rights violations by campaigning for such rights over private interests and economic considerations in the political structure. The success of the demands for environmental human rights made by NGOs in the formal political arena discussed in chapter four. The purpose of the analysis in this chapter is limited to establishing that NGOs are actively lobbying governments to realise environmental human rights.

A number of NGOs are campaigning for the structural implementation of a universal human right to an unpolluted environment. Friends of the Earth assert that the natural heritage that is everyone's shared birthright - an inheritance independent of status or worth - is becoming a poisoned, corrupted legacy for present and future generations. Environmental rights should equally define the guarantees that the State offers to the people it serves.<sup>79</sup>

The organisation claims that

much of the water we drink is polluted, as is some of the land on which we grow our food and build our homes. The polluters - including chemical companies and waste disposal firms - are denying us our right to a healthy environment. And the Government is opposed to strengthening the legal framework which should protect our rights. Much of Friends of the Earth's work is about defending these basic rights.<sup>80</sup>

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<sup>79</sup> Charles Secrett, "Fight for your Rights", Earth Matters, Issue 20, Winter 1993, p1.

<sup>80</sup> Editorial, "Clean Water, Healthy Land: Environmental Crime Threatens Your Rights", Earth Matters, Issue 20, Winter 1993, p13.

World Information Transfer has advocated "that each person has a right to a healthy environment", and the organisation "work[s] to educate [their] audience about them".<sup>81</sup> The World Institute for a Sustainable Humanity declared in its response to the questionnaire that "it is our job to demonstrate the interconnectedness of environmental issues to human rights" to governments around the world.<sup>82</sup> The Center for Economic and Social Rights defends its advocacy of environmental human rights on the basis that, "the health of a community depends upon the health of its environment".<sup>83</sup> Similarly, Altai promotes environmental human rights "because they are directly connected with the main human right - right for living".<sup>84</sup>

A number of environmental NGOs have been actively campaigning in the United States for the constitutional recognition of a domestic right to an unpolluted environment. Since 1995 the Sierra Club, the Public Interest Research Group and the Natural Resources Defence Council have been petitioning the United States government to adopt an Environmental Bill of Rights affirming the right to a "safe, secure and sustainable natural environment".<sup>85</sup> Another organisation has lobbied the US government to implement "the rights to clean air, soil and water and the right to defend these vital resources" stating "what could be more fundamental?"<sup>86</sup> Earth First! has demanded environmental human rights in the course of conducting ecological campaigns for improved air and water quality and forestry protection in the US.<sup>87</sup> The South West Organising Project,<sup>88</sup>

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<sup>81</sup> response to thesis questionnaire received from Carolyn T Comitta, Regional Director, North America, World Information Transfer, 10 November 1998.

<sup>82</sup> response to thesis questionnaire received from Michael Karp, World Institute for a Sustainable Humanity, 10 November 1998.

<sup>83</sup> Center for Economic and Social Rights; <http://www.cesr.org/>.

<sup>84</sup> response to thesis questionnaire received from Irina Fotieva, deputy director of Altai, 2 March 1999.

<sup>85</sup> BJ Bergman, "Standing up for the Planet", Sierra, Vol 80, No 3, May/June 1995, p79.

<sup>86</sup> response to thesis questionnaire received from Bill Pfeiffer, Sacred Earth Network, 13 November 1998.

<sup>87</sup> response to thesis questionnaire received from Earth First!, op cit.

produced their own Community Environmental Bill of Rights which demanded the implementation of a number of environmental rights;

we have the right to say 'no' to industries that we feel will be polluters and disrupt our lifestyles and traditions... We have the right to be safe from harmful exposures imposed on us against our will that would affect our health or disrupt our lifestyles. It is our right to have a comfortable lifestyle, safe from toxic chemicals, other hazardous waste and nuisance. This means having safe water, clean air, and being free of excessive and constant noise from industry.<sup>89</sup>

Other demands included rights to

participate in the formulation of public policy that prevents toxic pollution from entering our communities... the right to know what toxic chemicals industry, corporate polluters, and government have brought or intend to bring into our communities... the right to participate in the formulation of strong laws controlling toxic wastes and vigorous enforcement of those rights... [and a] right to clean up: The polluters shall bear the financial burden of clean-up.<sup>90</sup>

Demands for the recognition of environmental rights have also been advocated by individual state officials. The secretary of the Florida Department of Environmental Protection testified to the state constitution revision commission that "we have a right to live in an environment that is free from the toxic pollution of man-made chemicals".<sup>91</sup>

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<sup>88</sup> based in Albuquerque, United States.

<sup>89</sup> South West Organising Project, "Community Environmental Bill of Rights", [The Corporate Planet](http://www.corwatch.org/trac/feature/hitech/swopbill.html), <http://www.corwatch.org/trac/feature/hitech/swopbill.html>.

<sup>90</sup> *ibid.*

<sup>91</sup> Virginia Wetherell, 23 July 1997, see Andrew Langer, "Protect Environment Through Law, not by Creating New Rights", Defenders of Property Rights Florida Project; [http://www.willjohnston.com/articles/10\\_16\\_97pebl.html](http://www.willjohnston.com/articles/10_16_97pebl.html).

The judgement of the Permanent Peoples' Tribunal on Human Rights and Industrial Hazards provides an important example of a social demand for the implementation of universal environmental human rights.<sup>92</sup> This judgement has no legal force, but is a product of the work of legal, social and political academics and activists; that is to say of members of civil society working outside the formal political institutions of government. The judgement declares itself to be

not an official document, but a people's statement. Unlike most human rights documents, its content was not determined by diplomatic compromise. Rather, its substance, and hence its authority, derives directly from the collective experience of those who have been forced to live with the consequences of industrial hazards.<sup>93</sup>

The document calls for the implementation of a number of universal environmental human rights claims including the right of communities to refuse the introduction of hazardous activities to their environment;<sup>94</sup> permanent sovereignty over natural resources;<sup>95</sup> a right to a living environment free from hazards;<sup>96</sup> a right to environmental information;<sup>97</sup> a right to environmental monitoring;<sup>98</sup> a section devoted to the rights of workers focusing on health and safety rights and a section on rights to relief, focusing in particular on compensation rights.<sup>99</sup>

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<sup>92</sup> declared in Bhopal, India, October 1992, see Permanent Peoples' Tribunal, "Charter on Industrial Hazards and Human Rights", [The Corporate Planet](http://www.corwatch.org/trac/corner/altvision/charter.html); <http://www.corwatch.org/trac/corner/altvision/charter.html>.

<sup>93</sup> *ibid.*

<sup>94</sup> *ibid*, article 6.

<sup>95</sup> *ibid*, article 7.

<sup>96</sup> *ibid*, article 8.

<sup>97</sup> *ibid*, article 9.

<sup>98</sup> *ibid*, article 11.

<sup>99</sup> *ibid*, parts III and IV.

These examples demonstrate that a number of environmental advocacy groups are actively campaigning for the structural implementation of some variant of a universal human right to an unpolluted environment.

### **Campaigns for the structural recognition of the right to environmental resources**

Indigenous groups are prominent in demanding governmental recognition of the communal right to land. The 1977 Conference on Indigenous Peoples and the Land culminated in a statement demanding that

the right should be recognised of all indigenous nations or peoples to the return and control, as a minimum, of sufficient and suitable land to enable them to live an economically viable existence in accordance with their own customs and traditions, and to make possible their full development at their own pace... that the ownership of land by indigenous peoples should be unrestricted, and should include the ownership and control of all natural resources. The lands, land rights and natural resources of indigenous peoples should not be taken, and their land rights should not be terminated.<sup>100</sup>

Claims to land rights from indigenous peoples were affirmed at the Legal Commission of the International NGO Conference on Indigenous Peoples and the Land.<sup>101</sup> The declaration produced at this venue stressed the "inseparable connection between land rights of Indigenous Peoples and the right of self-determination".<sup>102</sup> The 1986 Quito Declaration by the indigenous people of Latin America further demanded "an end to assimilationist policies, juridical recognition of territorial rights based on prior ownership

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<sup>100</sup> quoted by Garth Nettheim in James Crawford, (ed), The Rights of People, Oxford, (Clarendon Press, 1992), p115.

<sup>101</sup> Geneva, 1981.

<sup>102</sup> Nettheim, op cit, p115.

including rights to the resources of the sub-soil and recognition of systems of self government".<sup>103</sup>

These statements of rights claims are supported by campaign initiatives. The mission of the South and Meso American Indian Rights Center is "to promote and work for the self-determination of Indigenous people in Meso and South America".<sup>104</sup> The organisation declares that it is "always campaigning for environmental human rights" for indigenous peoples.<sup>105</sup> The centrality of structural resource rights claims to the campaigning work of this NGO is revealed in the response from the Center that;

Environmental human rights is a central component of the advocacy work that we do... We recognize Indigenous territorial rights. We believe that Indigenous nations... [are] the only ones that can properly determine the use of the resources available on the land... In most of our work, human rights and environmental concerns are inseparable. The rights of Indigenous people involves the protection of their territories, the natural resources and the knowledge and cultural connection that they have with the land.<sup>106</sup>

Although these claims to land rights are not universal human rights demands since they are specifically claimed for indigenous peoples, they are significant to this research firstly because they represent claims to environmental resources based around a discourse of rights and secondly because they constitute a possible framework for the universal implementation of the right to environmental resources.<sup>107</sup>

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<sup>103</sup> Lisa Smith, "Indigenous Rights", Race and Class, Vol 33, No 3, 1992, p104.

<sup>104</sup> response to thesis questionnaire received from Nick Luem, South and Meso American Indian Rights Center, 1 July 1998.

<sup>105</sup> *ibid.*

<sup>106</sup> response to thesis questionnaire received from Luem, *op cit.*

<sup>107</sup> see chapter 6 for details and discussion of this claimed right.

Anti-systemic social forces are therefore actively campaigning at the structural level for the recognition of human rights to an environment free from toxic pollution and to environmental resources. Social movements have also actively used claims to universal environmental rights in specific campaigns as a vehicle to enact political change at a local level.

#### **Campaigns on the specific implementation of universal environmental human rights**

The questionnaire results suggest that specific campaigns demanding environmental human rights can be differentiated into the two general categories of (i) protests against pollution and (ii) campaigns for the control of environmental resources.

Exemplifying human rights campaigns directed specifically against pollution, Wisconsin's Environmental Decade has run campaigns demanding environmental protection as a human right on the issues of children's safety, reducing pesticide usage, breast cancer and mercury contamination of the environment.<sup>108</sup> The environmental protection and peace advocacy group 20/20 Vision "have done action alerts on a variety of environmental human rights issues" relating to pollution and provided examples of organising campaigns against the exposure of strawberry and banana workers to pesticides and against the building of plastic manufacturing plants.<sup>109</sup> Borderlinks is currently campaigning against an international toxic waste dump located in Hermosillo through a claim that the pollution escaping from the dump constitutes a violation of the human right to health of local residents.<sup>110</sup>

The Asia Pacific Center for Justice and Peace has "campaigned for environmental protection in terms of human rights... around the issue of toxic contamination on and near

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<sup>108</sup> response to thesis questionnaire received from Porter, op cit.

<sup>109</sup> response to thesis questionnaire received from Wade, op cit.

<sup>110</sup> capital city of the state of Sonora in Mexico; response to thesis questionnaire received from Borderlinks, 5 November 1998.

US military bases in the Pacific".<sup>111</sup> Linking pollutants to the human right to health the Center comments that "as the US military refuses to reveal the extent of toxic waste on its sites, communities are at high risk without full awareness and knowledge, while they suffer high rates of cancer, birth defects, etc - a clear human rights violation".<sup>112</sup> When asked whether the organisation had campaigned for environmental protection in terms of human rights, Altai responded affirmatively giving the example of an ongoing campaign against the pollution resulting from the testing of space shuttles and satellites in Russia.<sup>113</sup> The South and Meso American Indian Rights Center has operationalised claims to environmental human rights in a campaign that publicised the hazards of agricultural pesticides on the health of the Huichol in Mexico.<sup>114</sup> Another campaign by the same organisation used claims to environmental human rights to protest against the detrimental health effects to local communities resulting from mining and deforestation activities in South America.<sup>115</sup>

Demonstrating that claims of human rights to environmental resources have likewise been used in specific campaigns, the Alaska Rainforest Campaign reports that "subsistence rights have helped our campaign... Lawsuits, media, lobbying have focused on the rights of Alaskans both native and non-native to live off the land".<sup>116</sup> The indigenous Huaraoni and Quichua peoples of Ecuador responded to repeated oil spills produced by oil companies by demanding rights to control their environmental resources, which they expressed

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<sup>111</sup> response to thesis questionnaire received from Andrew Wells, Program Director, Asia Pacific Center for Justice and Peace, 14 January 1999.

<sup>112</sup> *ibid.*

<sup>113</sup> response to thesis questionnaire received from Fotieva, *op cit.*

<sup>114</sup> response to thesis questionnaire received from Luem, *op cit.*

<sup>115</sup> *ibid.*

<sup>116</sup> response to thesis questionnaire received from Diana Rhoades, Alaska Rainforest Campaign, 10 June 1998.

by picking up spears and occupying oil drilling sites. Encouraged by an upsurge in Native activism throughout the country, they won increased land rights and have expelled all the companies except Arco, which secured its permits before the Native victory.<sup>117</sup>

The Midwest Treaty Network stated that it has united indigenous people throughout the Third World to support the efforts of native tribes to protect traditional lands from metallic sulphide mining by outside companies and to protect the rights of indigenous peoples to the natural resources of that land.<sup>118</sup> The environmental organisation Earth Sangha has used claims to resource rights to support the efforts of forest monks in Thailand to maintain the dwindling forests and "to stem the development that is hurting the indigenous people of that region".<sup>119</sup> The Brazilian Movement for Landless People (MST) calls for land redistribution in terms of rights through "the expropriation of the vast areas of land which multinationals own, to end the massive ranches which aren't producing anything, and a specified maximum size for each rural property".<sup>120</sup> Since the inception of the MST in 1984, 140,000 families organised around productive co-operatives have received land titles.<sup>121</sup>

The right to food is campaigned for as an environmental human right by two organisations responding to the questionnaire. The Artist Hunger Network campaigns for the right to those environmental resources required to ensure food self sufficiency since "all humans have a basic right of accessing food that grows from the earth. Denial of this

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<sup>117</sup> Zoltan Grossman, "Linking the Native Movement for Sovereignty and the Environmental Movement"; <http://conbio.rice.edu/nae/docs/grossman.html>; reprinted from Z Magazine Vol 8, No 11, November 1995, pp42-50.

<sup>118</sup> response to thesis questionnaire received from Grossman, op cit.

<sup>119</sup> response to thesis questionnaire received from Earth Sangha, op cit.

<sup>120</sup> editorial, Brazil Network Newsletter, May/June 1996, p12.

<sup>121</sup> ibid.

right is a violation of human rights".<sup>122</sup> The 1990 'renewing the earth' action organised by CAFOD unified claims to an unpolluted environment and to environmental resources by campaigning for access of the rural poor in the Third World to productive land free of toxic pollutants in terms of environmental human rights.<sup>123</sup> The Food and Agriculture Organisation (FAO) similarly replied that they focus on implementing "the right to food, which lies at the heart of its mandate. Inherent in the right to food is the notion of sustainability, both social and environmental".<sup>124</sup>

Space limitations prevent detailed discussion of the specific campaigns outlined above. However, to illustrate and contextualise particular campaigns, the focus now turns to two brief case studies of campaigns conducted for the recognition of environmental human rights. The first campaign relates to the struggle of the indigenous peoples of Ogoniland whose homeland has suffered environmental degradation as a result of oil exploitation and the second of which concerns the struggle against the mining operations of the Freeport McMoran corporation in Irian Jaya. These examples have been chosen firstly because the two campaigns unify the demand of a right to an environment free from toxic pollution with the right to environmental resources. Secondly these examples have been chosen because of the interplay between economic forces, pollution, resource depletion and political repression that are expressed in similar patterns in both cases.

Johnston observes that "human rights violations often occur as a result of efforts to gain control of land, labour and resources of politically and/or geographically peripheral peoples".<sup>125</sup> This assessment certainly applies in the case of oil exploitation in the Ogoniland area of Nigeria where systematic pollution combined with political

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<sup>122</sup> response to thesis questionnaire received from Artist Hunger Network, 31 October 1998.

<sup>123</sup> response to thesis questionnaire received from Frank Sudlow, CAFOD, 18 November 1998.

<sup>124</sup> a global institution affiliated to the United Nations rather than an NGO; response to thesis questionnaire received from Margret Vidar, legal officer, Food and Agriculture Organization, 19 May 1999.

<sup>125</sup> Barbara Rose Johnston in Barbara Rose Johnston, (ed), Who Pays the Price? Washington DC, (Island Press, 1994), p10.

repression characterises much of its recent political history. This case study contextualises claims of resource rights in the wider political economy and demonstrates that human rights claims to resources conflict with the private economic interests that benefit from capitalist ownership rights as well as with the right to pollute. The case study reveals that the interests of global capital have been protected by the Nigerian state above the environmental human rights claimed by the indigenous population.

The role of the Shell Petroleum Development Company (SPDC) has been central to both oil exploitation and environmental human rights violations in Ogoniland. The company has made approximately 30 billion US dollars in revenue from Niger delta oil since it started operations in the region in 1958. As of 1993, the SPDC had only invested an estimated 0.000007 per cent of its oil revenue from Ogoniland in social or environmental projects in the area itself.<sup>126</sup> Neglect of the local area has resulted in the systematic pollution of the environment. One report informs us that the

flaring of gas, poor pipeline placement, chronic oil spills, and unlined toxic waste pits plague the Nigerian Delta region... The antiquated pipeline routinely spills oil. According to an independent record of Shell's spills, Shell spilled 1.6 million gallons from its Nigerian operations in 27 separate incidents from 1982 to 1992.<sup>127</sup>

Rowell reports that "at Bonny terminal, where Shell separates water from crude, the concentration of oil in river sediments has been described as 'lethal' at 12,000 parts per million".<sup>128</sup> Another author states that "unlined toxic waste pits allow pollution to seep into drinking water; open gas flares destroy plant life, cause acid rain, and deposit soot on

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<sup>126</sup> Jedrzej George Fynas, "Political Instability and Business: Focus on Shell in Nigeria", Third World Quarterly, Vol 19, No 3, 1998, p463.

<sup>127</sup> editorial, "Feature: Nigeria's Drilling Fields", Multinational Monitor, January/February 1995; <http://www.essential.org/monitor/hyper/mm0195.html>.

<sup>128</sup> Andrew Rowell, Green Backlash: Global Subversion of the Environmental Movement, New York, (Routledge, 1996), p293.

nearby Ogoni homes; and corroded pipelines criss-cross the Ogoni's fertile agricultural land, rendering it economically useless".<sup>129</sup>

Environmental degradation in Ogoniland led to the formulation of a protest campaign against the SPDC and other oil companies by the indigenous population based around a claim for the protection of their environmental human rights. A central figure in that campaign was the author Ken Saro-Wiwa who proclaimed that "the environment is man's first right".<sup>130</sup> Saro-Wiwa unified claims to environmental protection and human rights in the campaign against foreign MNCs operating in Nigeria stating that

what Shell and Chevron have done to Ogoni people, land, streams, creeks and the atmosphere amounts to genocide. The soul of the Ogoni people is dying and I am witness to the fact.<sup>131</sup>

The Ogoni people organised a series of protest marches to demand a cessation of further degradation and compensation for the ecological damage incurred by MNC operations in Nigeria. At one rally held in January 1993, an Ogoni leader stated that

our atmosphere has been totally polluted, our lands degraded, our waters contaminated, our trees poisoned, so much so that our flora and fauna have virtually disappeared... we are asking for the basic necessities of life - water, electricity, roads, education; we are asking above all for the right to self-determination so that we can be responsible for our resources and our environment.<sup>132</sup>

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<sup>129</sup> Aaron Sachs, "Dying for Oil", World Watch, May/June 1996, p16; see also Corporate Watch, "The Global Shell Game", The Corporate Planet; <http://www.corpwatch.org/trac/gallery/shell/index.html> and Greenpeace, "Shell in Nigeria"; <http://www.web.apc.org/~embargo/shell.htm>.

<sup>130</sup> Ken Saro-Wiwa quoted in Sachs, (1995), op cit, p53.

<sup>131</sup> Ken Saro-Wiwa quoted in Corporate Watch, "Surfing the Pipeline: Chevron and the Environmental Impact of Oil", The Corporate Planet; <http://corpwatch.org/trac/gallery/chevron/kutubu.html>.

<sup>132</sup> C Bakwuye, "Ogonis Protest Over Oil Revenue", Daily Sunray, 6 January 1993, p20, quoted in Rowell, op cit, p297.

This demand is especially notable for the way in which the communal ownership of the environment and natural resources is claimed to be derived from the right to self determination.<sup>133</sup> The Iko people who live alongside the Ogoni have likewise been campaigning in terms of environmental human rights, in 1980 demanding from Shell "compensation and restitution of our rights to clean air, water and a viable environment where we can source for our means of livelihood".<sup>134</sup>

The two notable features of the response from political authorities to the campaign for environmental human rights in Ogoniland were the (i) brutal level of repression employed, (ii) in defence of (and partly funded by) foreign capital interests. The response of the Nigerian state to the campaign for environmental human rights was to send the Internal Security Task Force into Ogoniland. The Task Force has subsequently been accused of conducting a terror campaign consisting of beatings, rape and extra judicial killings.<sup>135</sup>

The revealing insight provided by an examination of the repressive response to the environmental human rights campaign in Ogoniland is the way in which this was determined by foreign capital interests. Recognition of environmental human rights allowing local communities to control natural resources and address endemic pollution would at the least have forced up the costs to oil companies operating in Ogoniland and could have precipitated the expulsion of foreign companies. Subsequently, the petrochemical MNCs operating in Nigeria were eager to see the environmental human rights campaign fail and the economic power wielded by these organisations ensured the compliance of the state authorities in achieving that result. The active role played by Shell in the repression of the Ogoni environmental human rights movement is exemplified in

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<sup>133</sup> a theme developed in chapter 6.

<sup>134</sup> see Rowell, *op cit*, p294.

<sup>135</sup> Ken Saro-Wiwa, "Nigeria in Crisis", *Review of African Political Economy*, Volume 22, Issue 64, June 1995, p244; see also Rowell, *op cit*, p288.

the execution of Ken Saro-Wiwa in 1995 on falsified charges of murder following a riot on 21 May 1994. Two of the prosecution witnesses in the case have since signed sworn affidavits that they and others had been bribed by Shell to lie about who started the riots in order to incriminate Ken Saro-Wiwa.<sup>136</sup> In an interview the brother of Ken Saro-Wiwa, Owens Wiwa, revealed that he pled with the head of Shell in Nigeria for the company to intervene to save the life of his brother.<sup>137</sup> The condition reportedly set by the head of Shell was that Owens Wiwa should write a press release saying there was no environmental devastation in Ogoniland and to call off the international campaign against the Nigerian military regime and Shell.<sup>138</sup> Owens forwarded the request to Ken who wrote back to him, rejecting the demands made by Shell and saying that the campaign should only be stopped once Shell responds to the environmental concerns of the Ogonis.<sup>139</sup> After the hanging of Saro-Wiwa a prominent spokesperson for Greenpeace commented that

Shell has blood on its hands. Ken Saro-Wiwa was hanged for speaking out against Shell. He was trying to secure the most basic of human rights the right to clean air, land and water.<sup>140</sup>

Supporting this conclusion, two days after Saro-Wiwa's execution, Shell Oil signed a \$2.5 billion gas contract with the Nigerian government. Although the corporation offered an environmental clean up plan for Ogoniland, this was made conditional on factors such as

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<sup>136</sup> Sachs, (1996), op cit, p12 and Rowell, op cit, p309.

<sup>137</sup> Owens Wiwa, "A Call to End the Shelling of Nigeria", Multinational Monitor, Vol 17, Nos 7 and 8, July/August 1996; <http://www.essential.org/monitor/hyper/mm0796.05.html>.

<sup>138</sup> ibid.

<sup>139</sup> ibid.

<sup>140</sup> Lord Melchett quoted in Ian Black, Owen Bowcott and John Vidal, "Nigeria Defies World with Writer's Judicial Murder", The Guardian, 11 November 1995, p1.

the safety of company staff, despite the fact that not a single Shell worker has been killed in the campaign for environmental human rights.<sup>141</sup>

The role of Shell in the repression of the campaign for the recognition of environmental human rights in Ogoniland extended far beyond the case of Ken Saro-Wiwa. In 1987 Shell provided speedboats for the notorious Mobile Police Force to break up peaceful demonstrations against the operations of Shell.<sup>142</sup> In response to one such protest against Shell on 29 October 1990 by the Etche people at Umuechem, Shell requested security protection which was subsequently provided by the Mobile Police Force. The ensuing massacre conducted by the police resulted in 80 deaths and the destruction of 495 homes.<sup>143</sup> Human Rights Watch report that

Shell cannot absolve itself of responsibility for the acts of the military...

The Nigerian military's defence of Shell's installations has become so intertwined with its repression of minorities in the oil-producing areas that Shell cannot reasonably sever the two.<sup>144</sup>

Project Underground supported this conclusion when in 1997 the NGO revealed that Shell provided logistical and financial assistance to the Nigerian military.<sup>145</sup> A report from the International Peoples' Tribunal on Human Rights and the Environment likewise concluded that "Shell equips and maintains a police force to protect its operations in

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<sup>141</sup> Barbara Rose Johnston in Barbara Rose Johnston, (ed), Human Rights and the Environment at the End of the Millennium, Walnut Creek, (Alta Mira, 1997), p226.

<sup>142</sup> Rowell, op cit, p294.

<sup>143</sup> ibid, p295 and Jonathan Steele, "Bloody Deeds Raised Against People's Struggle to Control their Resources", The Guardian, 11 November 1997, p3.

<sup>144</sup> Human Rights Watch quoted by Rowell, op cit, p315.

<sup>145</sup> Project Underground, "Mind the Gap Between Shell's Rhetoric and Reality", Drillbits and Tailings, 21 May 1997, p1; <http://www.moles.org/ProjectUnderground/drillbits/970521/97052101.html>; see Rowell, op cit, p317 for reports of officials that testify to Shell funding military operations in Nigeria.

Ogoni".<sup>146</sup> The Tribunal quotes a letter from SPDC Managing Director PB Watts in which the company pledged

to provide complete logistics accruement and welfare support to the Opapco Police Force which will be assigned to protect SPDC's Operations... SPDC will fully support the cost of setting up and maintaining the contingents.<sup>147</sup>

Sachs reports that "Shell spokesman Eric Nickson admitted that the company had also imported guns for the troops sent into Ogoniland, underwritten the costs of the soldiers' transportation, and paid them salary bonuses".<sup>148</sup> Owens Wiwa states that the SPDC "bought and supplied arms to the military, the same arms which the military used to devastate Ogoni villages and kill 2,000 people, just to stop our legitimate protests for our rights - for our environmental rights, for the right to our land and for the right to our rivers".<sup>149</sup>

The concept of human rights is nonetheless a useful marketing tool for Shell whose advertisements rewrite history to explain that

At Shell, we are committed to support fundamental human rights... We've also spoken out on the rights of individuals - even if the situation has been beyond our control. It's part of our commitment to sustainable development, balancing economic progress with environmental care and social responsibility.<sup>150</sup>

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<sup>146</sup> International Peoples' Tribunal on Human Rights and the Environment, "Statement of the International Peoples' Tribunal on Human Rights and the Environment: Sustainable Development in the Context of Globalisation", Alternatives, Vol 23, No 1, 1998, p135.

<sup>147</sup> *ibid*, p135.

<sup>148</sup> Sachs, (1996), *op cit*, p18; see also Steele, *op cit*, p3 and Corporate Watch, "The Global Shell Game", *op cit*.

<sup>149</sup> Owens Wiwa, *op cit*.

<sup>150</sup> Royal Dutch Shell Group, Advertisement, New Statesman, 9 April 1999, pp14-5.

A similar pattern of events is discernible in the second case study to be examined that focuses on the copper and gold mine owned and operated by Freeport McMoran in Irian Jaya. The company has mined the Puncuk Jaya mountain since 1972. As a waste product from this operation, 110,000 tonnes of tailings have been dumped daily into the local Aghawagon river.<sup>151</sup> Knight reports on the environmental consequences of this operation; "the massive amount of material has clogged the river system and flooded more than 30 square kilometres of rainforest and agricultural land, threatening a diverse array of forest species".<sup>152</sup> The environmental damage incurred by this operation became so severe that on the 31 October 1995 the United States Overseas Private Investment Corporation revoked the political risk insurance of Freeport McMoran since "massive deposition of tailings from Freeport's operation has degraded a large area of lowland rainforest posing unreasonable or major environmental, health or safety hazards with respect to the rivers that are being impacted... the surrounding terrestrial ecosystem, and the local inhabitants".<sup>153</sup>

As in Nigeria, the local people responded to the environmental degradation by organising a protest campaign directed against the mining MNC based on a claim to environmental human rights. Statements issued by the local Dani, Amungme and Komoro tribes state that "we fight against [Freeport CEO] Jim Bob Moffett, Freeport and the government... because our rights are not recognised, our resources are extracted and destroyed while our lives are taken".<sup>154</sup> "For us" reads another statement from the

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<sup>151</sup> waste sediments from mining operations, see Pratap Chatterjee, "The Mining Menace of Freeport-McMoran", Multinational Monitor, Vol 17, No 4, April 1996; <http://www.essential.org/monitor/hyper/mm0496.05.html>.

<sup>152</sup> Danielle Knight, "Indonesians Sue US Mining Giant", Inter Press Service, March 1998; [http://www.oneworld.org/ips2/mar98/16\\_02\\_057.html](http://www.oneworld.org/ips2/mar98/16_02_057.html).

<sup>153</sup> the federal agency which insures US companies operating abroad; quoted in Eyal Press, "Doing Business with Indonesia's Dictator", The Christian Science Monitor; <http://plweb.csmonitor.com/plweb-turbo.html>; see also Corporate Watch and Public Underground, "Mining Gold, Undermining Justice: Freeport and Human Rights Violations", The Corporate Planet; [http://www.corpwatch.org/trac/feature/planet/gr\\_focus.html](http://www.corpwatch.org/trac/feature/planet/gr_focus.html).

<sup>154</sup> quoted in Chatterjee, April 1996, op cit.

Amungme, "the root cause of the human rights violations is Freeport... Our sacred lands have been defiled and destroyed, our lands seized and taken over".<sup>155</sup> In these statements the process of human rights violations is articulated as being synonymous with the resource appropriation and environmental degradation caused by the mining operations of the MNC.

As in Nigeria, the campaign against the corporate violation of environmental human rights was met with repression from a mutually supportive combination of state violence and corporate self interest. More than 2,000 people opposing the mine in Irian Jaya have died violently at the hands of security forces near the site since operations began.<sup>156</sup> Another report reveals that Freeport McMoran provides the Indonesian military forces that protect its mine with food, shelter and transportation.<sup>157</sup> The close ties between the Indonesian military and Freeport are further illustrated in that the company is helping to build a naval base for the Indonesian military near their portside at Amamapare.<sup>158</sup> Freeport security personnel have themselves been accused of the violent repression of indigenous rights campaigners. In April 1995, the Australian Council for Overseas Aid reported that 37 Irianese civilians had been killed by Indonesian military personnel operating in the area of the mine, and that Freeport security personnel "engaged in acts of intimidation, extracted forced confessions, shot three civilians, disappeared five Dani villagers and tortured 13 people".<sup>159</sup>

These two brief case studies exemplify campaigns based on claims to environmental human rights conducted by indigenous communities opposing

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<sup>155</sup> quoted in Eyal Press, op cit; see also Corporate Watch and Public Underground, op cit.

<sup>156</sup> Danielle Knight, op cit.

<sup>157</sup> Corporate Watch and Public Underground, op cit.

<sup>158</sup> ibid.

<sup>159</sup> report "Trouble at Freeport" quoted in Corporate Watch and Public Underground, op cit.

environmental destruction and resource exploitation. The conclusions of these studies relate to the conflictual and competing nature of rights claims to natural resource. Whereas the forces campaigning on the basis of environmental human rights derive rights from social and cultural criteria, the corporate claim interprets resource rights in possessive individualist terms of private property and therefore as a singular function of capital ownership. The dominant influence of corporate interests in the politics of both of the cases examined is demonstrated by the use of the state apparatus to repress the campaign of environmental human rights in order to facilitate the continued resource extraction by the MNCs concerned. The contempt demonstrated for human rights by a capital focus on capital accumulation is revealed by Nnameka Achebe, the former General Manager of Shell Nigeria, who told Harper's magazine in 1996 that

for a commercial company trying to make investments, you need a stable environment. Dictatorships can give you that.<sup>160</sup>

## **Conclusion**

The purpose of this chapter has been to detail and evaluate the nature of claims to environmental human rights made by social organisations dedicated to political change. The conceptual grounds provided by NGOs for advocating environmental human rights was examined and a trend was noted that evidenced a philosophical assumption of interconnectedness between all elements of the environment, including human societies. This ecological interpretation of human rights promoted rights as a mechanism to protect holistic environmental concerns, rather than as an argument used in support of economic growth at the expense of environmental considerations.

With only three exceptions, all the NGOs responding to the questionnaire who stated a preference replied that they recognised environmental human rights. Differentiating between the specific environmental rights subsequently advocated by

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<sup>160</sup> quoted by Stephen Mills, "Nigeria Moves Forward, Oil Company Stands Still"; received via e-mail from the Sierra Club, 9 November 1998.

responding NGOs, the results of the questionnaire indicated the affirmation of two categories. Most commonly asserted was the right to an "unpolluted", "clean" or "healthy" environment whilst a right to environmental resources was additionally identified by a smaller number of respondents. The main conclusion of the analysis was to suggest the possible use of environmental human rights as an anti-systemic instrument to prioritise social and environmental over economic concerns. This conclusion was supported by the generally dismissive response to the concept of environmental human rights which was noted from the results of the questionnaire sent to selected MNCs and GEIs.

Moving from the conceptual to the practical findings of the questionnaire, evidence demonstrating widespread recognition of environmental human rights as a tactical instrument to prioritise social and environmental values was a key result. The questionnaire responses further revealed evidence that social movements are campaigning for the implementation of environmental human rights on the structural level as a long term goal. A number of specific local campaigns opposing pollution, environmental degradation and resource exploitation based on ethical claims to environmental human rights were also noted, regardless of the legal status of such rights. These campaigns rely upon a moral claim to rights, meaning that they are asserted with their validity being legitimised by criteria constitutive of the cultures in which they are produced, rather than by their legal merits.

Both insider and outsider political tactics are being utilised in NGO campaigns to promote environmental human rights. That is to say that in addition to the formal channels of political influence being utilised by advocacy NGOs to lobby for the recognition of environmental human rights, protest campaigns are being organised in the social base to demand such implementation. These protest campaigns were exemplified in two case studies relating to Nigeria and Irian Jaya. The conclusion reached from the examination of these studies is to draw attention to the economic context within which claims to environmental human rights are made. Specifically, both of the environmental

human rights claimed by NGOs conflict with the corporate interests that dominate the capitalist model of political economy. The possibility for the legal implementation of environmental human rights within the policy constraints dictated by the political economy therefore becomes the focus of attention for the next chapter.

## CHAPTER 4

### LEGAL DEVELOPMENTS: THE FORMAL RESPONSE TO ENVIRONMENTAL HUMAN RIGHTS CLAIMS

Inequality and domination can only be justified mystically and that is precisely the ideological function of the law.<sup>1</sup>

#### Introduction

Chapter three examined the demands for the recognition of environmental human rights made by political forces active in the social base. The purpose of this chapter is to analyse how the formal institutions of governments have responded to these claims and to examine the limitations to the legal reforms enacted.

This chapter will begin by describing the trend towards the formal legal recognition of environmental rights, differentiating between (i) domestic (constitutional) rights and (ii) international human rights law. Structural problems with the legalistic approach of implementing human rights will then be discussed. In both domestic and international law, stipulations require the force of the state to be implemented. This is problematic since the organs of the capitalist state, like the corporations whose interests they broadly represent,<sup>2</sup> often violate human rights. Law will then be argued to be predicated upon a political ideology that reflects and sustains dominant interests in capitalist society. This relation between social power and law suggests that constitutional environmental rights that threaten the interests of the holders of capital will remain

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<sup>1</sup> Colin Sumner, Reading Ideologies, London, (Academic Press, 1979), p277.

<sup>2</sup> Immanuel Wallerstein, The Capitalist World Economy, Cambridge, (Cambridge University Press, 1979); Immanuel Wallerstein, Historical Capitalism, London (Verso, 1983); Immanuel Wallerstein, "The Modern World System and Evolution", Journal of World-Systems Research, Vol 1, No 19, 1995; <http://csf.colorado.edu/wsystems/jwsr.html>; Immanuel Wallerstein in Richard Little and Michael Smith, (eds), Perspectives on World Politics, second edition, London, (Routledge, 1991).

unimplemented in practice, a claim verified through a subsequent analysis of the actual record.

The focus then turns to examine international environmental human rights law. In particular, environmental and human rights legislations are argued to conflict with the interests of globally mobile capital and free trade legislation. As in the case of domestic law, the efficacy of international law is argued to be broadly based on the interests of the holders of capital. This criterion determines both the enforced status of international trade laws and the lack of enforcement mechanisms for international environmental human rights legislation.

### **The trend towards the constitutional recognition of environmental rights**

Constitutional texts and other legal instruments in approximately forty countries now proclaim some variant of an environmental right.<sup>3</sup> Most common is the explicit guarantee in a constitution of a right to a "healthy", "healthful", "safe" or "balanced" environment or to an environment "suitable for development".<sup>4</sup> These constitutional

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<sup>3</sup> International Peoples' Tribunal on Human Rights and the Environment, "Statement of the International Peoples' Tribunal on Human Rights and the Environment: Sustainable Development in the Context of Globalization", *Alternatives*, Vol 23, No 1, 1998, p121; Michael R Anderson in Alan E Boyle and Michael R Anderson, (eds), *Human Rights Approaches to Environmental Protection*, Oxford, (Clarendon Press, 1996), p13; Douglas-Scott in Boyle and Anderson, (eds), op cit, p110.

<sup>4</sup> Ontario Environmental Bill of Rights Act (Bill 26, December 1993); article 123, 1979 Peruvian Constitution; article 2, section 16, 1987 Philippines Constitution; section 18, Hungarian Constitution; article 69, Croatian Constitution; article 66, Portuguese Constitution; article 32, Italian Constitution; article 42, Russian Federation Constitution; section 18 of 1995 amendment to the Swedish Constitution; article 46, Constitution of Belarus; article 26, Constitution of Kazakhstan; article 45, para 1, 1978 Spanish Constitution; article 110b, Norwegian Constitution; see Yves Corriveau in Sven Deimann and Bernard Dyssli, (eds), *Environmental Rights*, London, (Cameron May, 1995), p148; Robyn Eckersley in Brian Doherty and Marius de Geus, (eds), *Democracy and Green Political Thought*, London, (Routledge, 1996), p230; Dinah Shelton, "Human Rights, Environmental Rights and the Right to Environment", *Stanford Journal of International Law*, Vol 28, No 1, 1991, p135; Commission on Human Rights, "Question of the Realization in All Countries of the Economic, Social and Cultural Rights Contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and Study of Special Problems Which the Developing Countries Face in Their Efforts to Achieve These Human Rights: Human Rights and the Environment", E/CN.4/1997/18, 9 December 1996; <http://www.unhchr.ch/HTML/menu4/chrrep/1897.html>; Douglas-Scott in Boyle and Anderson, (eds), op cit, p109 and p120; Report from Croatia in Commission on Human Rights, E/CN.4/1997/18, op cit; Michael Bothe (Chair and Project Coordinator), *The Right to a Healthy Environment in the European Union*, (Report of a Working Group Established by the European Environmental Law Association, 1996), pp1-16; Nicola Greco in Bothe (Chair and Project Coordinator), op cit, p141, Jonas Ebbesson in Michael Bothe

guarantees have been properly criticised as being vague and therefore difficult to legally enforce, since it is, for example, questionable as to when a healthy environment becomes an unhealthy environment.<sup>5</sup> To avoid such confusion, it is necessary to state the criteria upon which the meaning of a healthy environment can be established. Chapter five for example suggests the right to an environment free from toxic pollution. Similarly, the Constitution of Ecuador guarantees "the right to live in an environment free of contamination".<sup>6</sup> Ecuador is exceptional in stipulating precise environmental conditions to substantiate an environmental right. Nonetheless, this chapter will later demonstrate that environmental rights remain largely unrealised in that state. In a small number of states, the environmental rights of citizens are not explicitly stated, but have been derived by the courts from the inclusion of environmental protection in the state Constitution.<sup>7</sup>

Domestic rights should not be confused with universal human rights since the former are restricted to the citizens of one state as opposed to being attributed to all people. Notwithstanding this fact, human rights regimes are socially constructed and therefore change over time, rather than reflect an unchanging manifestation of natural justice or natural law.<sup>8</sup> The trend towards the recognition of environmental rights in domestic constitutions is consequently relevant to analysis of universal human rights since widespread changes to constitutional laws may signify the emergence of

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(Chair and Project Coordinator), op cit, p206, Y Shemshuchenko in Deimann and Dyssli, (eds), op cit, p34, Valencia Martin in Bothe (Chair and Project Coordinator), op cit, p186 and response to thesis questionnaire received from Oyvind Sather, Ministry of the Environment, Norway, 4 May 1999.

<sup>5</sup> Anderson in Boyle and Anderson, (eds), op cit.

<sup>6</sup> article 19, para 2, see Chris Jochnick, "Amazon Oil Offensive", Multinational Monitor, Vol 16, Nos 1 and 2, January/February 1995; <http://www.essential.org/monitor/hyper/mm0195.html>.

<sup>7</sup> article 24, Greek 1975 Constitution. In 1983 Austria amended its Constitution to include the protection of the environment as a task of the state, as did Austria in 1984, Belgium and Germany in 1994 and Finland in 1995, see Bothe in Bothe (Chair and Project Coordinator), op cit, p4; Jonathan Verschuuren in Bothe (Chair and Project Coordinator), op cit, p171 and Thilo Marauhn in Bothe (Chair and Project Coordinator), op cit, p121.

<sup>8</sup> Neil Stammers, "Social Movements and the Social Construction of Human Rights", Human Rights Quarterly, Vol 21, No 4, 1999, pp980-1008.

environmental rights as a norm in world politics. As environmental rights become increasingly prominent in constitutions, so the claim to universal environmental human rights is correspondingly strengthened.

Unfortunately, representatives of only three of the 41 states contacted completed the research questionnaire and such a low response rate prevents reliable conclusions to be drawn as to why environmental rights are being recognised in domestic legislatures. This limitation notwithstanding, from the responses received, representatives of two states reported that environmental rights had been incorporated into domestic law because of (i) changing international norms and (ii) demands from social movements. In response to the question; "why have environmental considerations been linked to those of human rights?" a representative of the Georgian state replied;

The legislation of Georgia corresponds with universally recognised norms and principles of international law... The people of Georgia, whose strong will is to establish a democratic social order, economic, a social and legal state, guarantee universally recognised human rights and freedoms.<sup>9</sup>

The Argentinean respondent to the same question stated that environmental rights were first incorporated into the 1994 constitution because of the "influence of international movements regarding [the] environment".<sup>10</sup> At least two states have therefore perceived a legitimisation of claims to universal environmental human rights originating from the recent growth in saliency of environmental concerns in world politics and have altered domestic law to accommodate such claims. It must however be repeated that the low response rate prevents conclusions to be made as to whether the responses received from Georgia and Argentina are typical of other states or mere anomalies.

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<sup>9</sup> response to thesis questionnaire received from Gia Abramia, Georgian Center for Environmental Research, 8 May 1999.

<sup>10</sup> article 41 of the 1994 reformed Argentinean constitution, response to thesis questionnaire received from Gustavo Saltiel, Ministry of Justice, Argentina, 4 October 1999.

## **The trend towards the international recognition of environmental rights**

The claim that universal environmental human rights are gaining formal legitimacy in world politics is supported by recent developments in international human rights legislation. However, the efficacy of the environmental rights stipulated in international law is undermined by the vague and non committal wording of the adopted legislation. For example, the 1972 Stockholm Conference on the Human Environment stated that "man (sic) has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being".<sup>11</sup> The UN General Assembly declared on 14 December 1990 that all persons have the right to live in an environment which is adequate to ensure their health and welfare.<sup>12</sup> The African National Congress Bill of Rights states that "all men and women shall have the right to a healthy and ecologically balanced environment and the duty to defend it".<sup>13</sup> Environmental human rights have also been expressed in Africa through the African Charter on Human and Peoples' Rights that states people have the right to "a general satisfactory environment favourable to their development".<sup>14</sup> The Protocol of San Salvador to the American Convention of Human Rights of 1988 proclaims that;

- (1) Everyone shall have the right to live in a healthy environment and to have access to basic public services.

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<sup>11</sup> principle 1, "Declaration on the Human Environment", Report of the United Nations Conference on the Human Environment, New York, (United Nations, 1973), UN Doc. A/CONF.48/14/Rev.1.

<sup>12</sup> resolution 45/94, see Basque Institute of Public Administration, "The Right to the Environment: Declaration of Bizkaia on the Right to the Environment", Euskalduna Concert and Congress Hall, Bilbao, 10-13 February 1999; [http://www.bizkaia.net/Bizkaia/English/Foral\\_Council/Environment/in\\_dia.html](http://www.bizkaia.net/Bizkaia/English/Foral_Council/Environment/in_dia.html).

<sup>13</sup> article 12, para 2, see Anil Agarwal and Sunita Narain, Towards a Green World, New Delhi, (Centre for Science and Environment, 1992), p174.

<sup>14</sup> Article 24, African Charter on Human and People's Rights, 27 June 1981, Organisation of African Unity, Document CAB/LEG/67/3/Rev.5; see Richard Desgagne, "Integrating environmental values into the European Convention on Human Rights", American Journal of International Law, Vol 85, No 2, April 1995, p263; see also Michael J Kane, "Promoting Political Rights to Protect the Environment", Yale Journal of International Law, Vol 18, No 1, 1993, p405.

(2) The States Parties shall promote the protection, preservation and improvement of the environment.<sup>15</sup>

Explicit recognition of the linkage between pollution and harm to health has been made in the Convention of the Rights of the Child.<sup>16</sup> This convention expresses the traditional wording of the right to health in providing that each child has the right to enjoy the "highest attainable standard of health" but unlike all previous treaties adds, "taking into consideration the danger and the risks of environmental pollution".<sup>17</sup>

All the stipulations mentioned above declare international environmental human rights but embody vague statements of intent rather than legally enforceable or clearly specified environmental standards. Breaking this mold, in 1994 the Draft Declaration of Principles on Human Rights and the Environment was presented to the United Nations.<sup>18</sup> The draft declaration was the culmination of five years of work conducted by special rapporteur Fatma Ksentini who had been requested to investigate the linkage between human rights and environmental concerns by the Sub-Commission on the Prevention of Discrimination.<sup>19</sup> The draft declaration recommends a total of 27 universal environmental human rights, many of which institutionalise uncompromising environmental values.<sup>20</sup> For example, article 14 guarantees the land rights of indigenous communities. Article five

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<sup>15</sup> article 11, para 1, "Protocol of San Salvador", Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, San Salvador, OAS Doc OEA/Ser.A/44, 17 November 1988, see Alfred Rest, "Improved Environmental Protection Through an Expanded Concept of Human Rights in Europe"; <http://www.xcom.it/icef/abstracts/rest/html>; see also Chris Jochnick, *op cit* and Michael J Kane, *op cit*, p404.

<sup>16</sup> see RR Churchill in Boyle and Anderson, (eds), *op cit*, p104.

<sup>17</sup> article 24, 1989, *ibid*.

<sup>18</sup> Final Report of the Special Rapporteur, Human Rights and the Environment, UN Doc. E/CN.4/Sub.2/1994/9 (6 July 1994).

<sup>19</sup> Barbara Rose Johnston in Barbara Rose Johnston, (ed), Who Pays the Price? Washington DC (Island Press, 1994), ppvi-viii; see also Allan McChesney, "Environment and Human Rights", Canadian Human Rights Foundation Newsletter, Vol 10, No 2, 1995; <http://www.web.net/~chrfrene/news4.html>.

<sup>20</sup> Final Report of the Special Rapporteur, *op cit*.

states that "all persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development".<sup>21</sup> Such radical stipulations that challenge fundamental premises of economic rationality and the capitalist world order have ensured that the draft declaration has been marginalised in formal UN meetings and has, since its completion, evidenced little chance of becoming a legally binding document, and less still for its provisions to be realised in practice.<sup>22</sup>

The latest international attempt to formally recognise universal environmental human rights was the 1999 Declaration of Bizkaia on the Right to the Environment.<sup>23</sup> This declaration contains nine articles, all of which are disappointingly vague. Article one for example guarantees the right to "a healthy and ecologically balanced environment",<sup>24</sup> and article three extends this politically vacuous right to future generations.<sup>25</sup> This declaration was drawn up in co-operation with the Human Rights Institute of the University of Deusto and the UNESCO Centre in the Basque Country,<sup>26</sup> and these rather obscure origins combined with its vague wording ensures that this document stands little chance of ever becoming a meaningful instrument to guarantee environmental human rights.

### **A critical evaluation of legal innovations**

On the legislative level, the above analysis answers the question addressed by this thesis; namely that environmental human rights exist as documented above. However, the

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<sup>21</sup> article 5, Draft Declaration of Principles on Human Rights and the Environment (1994); <http://www.umn.edu/humanrts/instree/1994-dec.html>.

<sup>22</sup> Boyle in Boyle and Anderson, (eds), *op cit*, pp65-9.

<sup>23</sup> Basque Institute of Public Administration, *op cit*.

<sup>24</sup> article 1, *ibid*.

<sup>25</sup> article 3, *ibid*.

<sup>26</sup> *ibid*.

legal conclusion indicating a positive trend towards the institutionalisation of both domestic and international environmental rights is both problematic and misleading when analysed from a political perspective acknowledging dynamics of social power as influencing the efficacy of law.

It is the assertion in this chapter that the political construction of law prevents legal institutions from addressing violations of human rights and environmental degradation produced by the everyday operations of the capitalist political economy. This claim will be defended in three parts. Firstly, both domestic and international law require individual states to enforce legal stipulations. From the perspective of human rights, state sovereignty is problematic since capitalist states acting in defence of powerful interests constitute structural violations of environmental human rights. Secondly, the legal focus on individual actors will be critically examined. This point relates to the retrospective tendency of law to identify and punish guilty individuals rather than pro-actively address structural, or culturally determined, causes of injustice. Thirdly, and most importantly, the function of law in capitalist societies will be argued to be to institutionalise, rather than challenge, existing power relations.

#### State sovereignty as a cause of environmental human rights violations

Barkun remarks that "rules of conduct can properly be called laws only when force or the threat of force stands behind them".<sup>27</sup> International human rights treaties lack a body to enforce them, relying instead for implementation on individual states. In the cases of domestic and international environmental human rights, an evident divergence exists in the stipulations of law on the one hand, and the actual social reality on the other, since states enforce laws in ways that accommodate the interests of corporate investors.<sup>28</sup>

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<sup>27</sup> Michael Barkun, Law Without Sanctions: Order in Primitive Societies and the World Community, New Haven and London, (Yale University Press, 1968), p8.

<sup>28</sup> see section Domestic law as a reflection of social power relations, below.

As the following examples testify, the forces violating human rights, the forces responsible for environmental degradation and the forces of the state are often one and the same.<sup>29</sup>

Aleksandr Nikitin, a former captain of the Russian Navy, was arrested by the Federal Russian Security police on 6 February 1996 and accused of high treason in the form of espionage.<sup>30</sup> Nikitin had in fact drawn international attention to the potential environmental catastrophe that was threatened by Russia's poorly maintained nuclear powered submarine fleet and the disposal of spent reactor cores that has been described as a "Chernobyl in slow motion".<sup>31</sup> The overt use of espionage laws to silence criticism of the state environmental record led Amnesty International to proclaim Nikitin the first Russian prisoner of conscience since Andrei Sakharov.<sup>32</sup> All charges against Nikitin were finally dropped and two years after the initial arrest took place, a government commission was forced to acknowledge "serious" radiation levels on a nuclear base on the Kola Peninsula since sites were confirmed to have been used by Russia as a dumping ground for nuclear waste.<sup>33</sup> The contempt demonstrated by the Russian state for the civil rights of Nikitin indicates a continuation of policy from the totalitarian era when political rights were dismissed as a political irrelevance. For example, the water inspector Piotr

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<sup>29</sup> Human Rights Watch and the Natural Resources Defence Council, Defending the Earth: Abuses of Human Rights and the Environment, Washington DC, (Natural Resources Defense Council, 1992) p73.

<sup>30</sup> under section 64(a) of the Federal Penal Codes see Jon Gauslaa, "The Nikitin Case", Bellona, 18 October 1996; <http://www.bellona.no/e/russia/nikitin/juridic/wp96-6/index.html>; Stephen Mills, "Trial Set for Russia's Alexander Nikitin", e-mail received from the Sierra Club, 2 October 1998, Igor Kudrik, "The Socio-Ecological Union Appeals to Yeltsin: Stop Criminal Prosecution of Environmentalists", Bellona, 20 April 1998; <http://www.bellona.no/e/russia/nikitin/news/980420.html> and Malcolm Gray, "Nikitin Treason Trial Goes to Round Two", National Post, 7 June 1999, pA11.

<sup>31</sup> Bellona, "Nikitin Trial: The Most Important Trial in Russian Legal History"; <http://www.bellona.no/e/russia/nikitin/overview.html>.

<sup>32</sup> editorial, "Russia's Environmental Dissident", New York Times, 22 August 1998, published in Bellona, <http://www.bellona.no/e/russia/nikitin/press/980825.html>.

<sup>33</sup> Stephen Mills, "Russia: Government Admits Serious Radiation Near Norway", National Journal's Greenwire, 11 May 1998, received as e-mail from The Sierra Club.

Kozhevnikov was arrested in 1986 and placed in a psychiatric ward for publicising the dumping of oil wastes by the Soviet Union into the Gulf of Finland.<sup>34</sup>

Disregard for the most basic of human rights is likewise evidenced in Western states. Ten minutes before midnight on 10 July 1985 two bombs exploded upon the Greenpeace vessel, the Rainbow Warrior, which was moored in Auckland harbour.<sup>35</sup> The second of these killed Fernando Pereire, a Portuguese photographer.<sup>36</sup> The bombs were planted by the French secret service. This instance offers an instructive account of how states systematically violate human rights, not because the state apparatus has engaged in an act of terror, which, as Chomsky has demonstrated, is a systematic policy of powerful states,<sup>37</sup> but rather because of the reaction of other states following the homicide. The US and British governments refused to condemn the bombing even though no warning was given before the explosions, making the bombing more egregious than many of the terrorist operations of the Irish Republican Army which are typically denounced by the same states with moral outrage.<sup>38</sup> President Jacques Chirac was quoted as saying that "the

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<sup>34</sup> Aaron Sachs, Eco-Justice: Linking Human Rights and the Environment, Worldwatch Paper 127, (Worldwatch Institute, 1995), p20.

<sup>35</sup> New Zealand.

<sup>36</sup> July 1985, see New Internationalist, No 226, December 1991, p30 and Jamil Salmi, Violence and Democratic Society: New Approaches to Human Rights, London, (Zed Books, 1993), p93.

<sup>37</sup> Noam Chomsky, "Notes on Anarchism"; <http://www.worldmedia.com/archive/other/notes-on-anarchism.html>; Noam Chomsky, On Power and Ideology: The Managua Lectures, Boston, (South End Press, 1987); Noam Chomsky, The Culture of Terrorism, London, (Pluto Press, 1988); Noam Chomsky, Chronicles of Dissent, Edinburgh, (AK Press, 1992); Noam Chomsky, Deterring Democracy, Reading, (Verso, 1992); Noam Chomsky, "The Clinton Vision", Z Magazine, December 1993; <http://www.worldmedia.com/archives/articles/z9312-clinton-vision.html>; Noam Chomsky, Rethinking Camelot, (Verso, 1993); Noam Chomsky, What Uncle Sam Really Wants, 1993; <http://www.worldmedia.com/ archive/sam/sam-3-5.html>; Noam Chomsky, Year 501: The Conquest Continues, London, (Verso, 1993); Noam Chomsky, Keeping the Rabble in Line, Edinburgh, (AK Press, 1994); Noam Chomsky, "Letter From Noam Chomsky", Covert Action Quarterly, No 54, Fall 1995; <http://caq.com/CAQ54chmky.html>; Noam Chomsky, Powers and Prospects: Reflections on Human Nature and the Social Order, London, (Pluto Press, 1996); Noam Chomsky, "Market Democracy in a Neoliberal Order: Doctrines and Reality", Davie Lecture, (University of Cape Town), May 1997; <http://www.lol.shareworld.com/Zmag/chomskydavie.htm>; Noam Chomsky, "Debt: The People Always Pay", The Guardian (debt supplement), 15 May 1998, p7; Noam Chomsky, "Judge the US by Deeds, Not Words", New Statesman, 9 April 1999, pp11-3.

<sup>38</sup> Andrew Rowell, Green Backlash: Global Subversion of the Environmental Movement, New York, (Routledge, 1996), p233.

French army had every reason to be proud of the two officers involved in the sinking of the Rainbow Warrior".<sup>39</sup> The French state has never apologised to any member of the Pereira family for the photographer's death.<sup>40</sup> Indeed, in a final demonstration of contempt for the victim's family, the French state has since made the man convicted of the manslaughter, Lieutenant Colonel Alain Mafart, a Knight of the Order of Merit.<sup>41</sup>

The violation of human rights by states applies to group as well as individual rights. International human rights law attributes group rights to peoples.<sup>42</sup> However, "peoples" have traditionally been interpreted by statespeople to mean states and to thereby support their own power base.<sup>43</sup> The historical record shows that this interpretation often becomes a source of basic human rights violations, particularly regarding the expropriation of environmental resources held by indigenous communities. The Rio Declaration on the Environment and Development for example declares that "states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and development policies".<sup>44</sup> Granting control over environmental resources to states has severe implications for the rights of indigenous peoples.<sup>45</sup> Clay observes that, "states cannot get at the resources... without denying the rights of the indigenous inhabitants, the nations, that have lived in and maintained the resource

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<sup>39</sup> ibid, p235.

<sup>40</sup> ibid, p236.

<sup>41</sup> editorial, "To Bomb Greenpeace and be Made a Knight", New Internationalist, No 226, December 1991, p30.

<sup>42</sup> ICESCR (1966) and ICCPR (1966).

<sup>43</sup> James Crawford, (ed), The Rights of People, Oxford, (Clarendon Press, 1992).

<sup>44</sup> principle 2, see United Nations Chronicle, Vol XXIX, No 3, September 1992, p66.

<sup>45</sup> for a discussion of human rights to natural resources, see chapter 6.

base".<sup>46</sup> The expropriation of communal resources is frequently legalised by states since, "a whole body of law has been developed to deny the rights of nations to natural resources when they are deemed valuable by and to the state".<sup>47</sup> Evidence in support of this claim can be found in the cases of the indigenous Penan and Kelabit tribes in the Malaysian state of Sarawak. Despite possessing recognised land rights, these tribes are unable to use the law to effectualise their opposition to deforestation since the state retains logging rights to the timber.<sup>48</sup>

Similarly, in 1990, the indigenous Huaorani were granted communal legal title to 612,560 hectares of territory in Ecuador.<sup>49</sup> Yet the Constitution,<sup>50</sup> and the Hydrocarbons Law,<sup>51</sup> state that all hydrocarbon deposits in Ecuador are the property of the state.<sup>52</sup> Therefore, although they oppose the process, the Huaorani cannot prevent the mining of oil on their lands when this has been authorised by the state, neither are they entitled to any royalties from the oil extracted. Likewise in Nigeria, although the Ogoni have secure land rights, subsoil resources are owned by the state and oil extraction has continued despite widespread indigenous protests.<sup>53</sup> Continuing this trend, the Guyanan Indians hold title to their land but not to its mineral wealth. Therefore, the government auctions mining

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<sup>46</sup> Jason W Clay in Johnston, (ed), *op cit*, p21.

<sup>47</sup> *ibid*, p22-3.

<sup>48</sup> World Rainforest Movement and Forests Monitor Ltd, High Stakes: The Need to Control Transnational Logging Companies, Montevideo, (World Forest Movement, 1998).

<sup>49</sup> The Instituto Ecuatoriano de Reforma Agraria y Colonizacion granted the land title by Order of 3 April 1990, Adriana Fabra in Boyle and Anderson, *op cit*, p252-3.

<sup>50</sup> article 46, (1), *ibid*.

<sup>51</sup> article 1, *ibid*.

<sup>52</sup> *ibid*, pp252-3.

<sup>53</sup> Aaron Sachs, "Dying for Oil", World Watch, May/June 1996, p14, see chapter 3 for details of environmental human rights claims in Nigeria.

concessions without even consulting the indigenous inhabitants.<sup>54</sup> Indeed, in Latin America, one commentator argues that governments have undertaken a policy of "systematic genocide" of indigenous people to clear forest regions for farming, the building of roads, and industrial sites.<sup>55</sup>

Further exemplifying the contempt demonstrated by states for group rights to land, thousands of communal villages were dispossessed in the 1970s by the Marcos regime in the Philippines.<sup>56</sup> In the Primorski Territory of the Russian Far East the Svetlaya logging firm started harvesting vast quantities of timber in 1990, rapidly encroaching on the traditional lands used by Udegei and Nanai communities for hunting and fishing.<sup>57</sup> In Honduras, communal mangrove swamps were sold by the state to private owners in 1988, denying locals access to the food source that they had previously relied upon for their nutrition.<sup>58</sup>

The identification of state sovereignty as a causal violation of group rights is highlighted through the history of conflicts between states and nations. Clay observes that, "of the 120 or so shooting wars today, 75 per cent are between nations and states who claim them as citizens".<sup>59</sup> Sponzel notes that the Yanomami territory is split between Venezuela and Brazil, which thereby denies the nation self determination.<sup>60</sup> The archipelago scheme, developed by the Brazilian government in 1978, originally planned

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<sup>54</sup> Barry Healy, "Development Threat to Amazon Indians Rainforest", Green Left Weekly; <http://www3.silas.unsw.edu.au/~greenlft/1997/292/292p21b.htm>.

<sup>55</sup> W Gormley, Human Rights and the Environment, Leyden, (Sijthoff, 1976), p19.

<sup>56</sup> The Ecologist, Whose Common Future? Reclaiming the Commons, London, (Earthscan, 1993), p40.

<sup>57</sup> Debra L Schindler in Johnston, (ed), op cit, p104.

<sup>58</sup> Susan C Stonich in Johnston, (ed), op cit, p116.

<sup>59</sup> Jason W Clay in Johnston, (ed), op cit, p24.

<sup>60</sup> Leslie Sponzel in Johnston, (ed), op cit, p43.

to reduce Yanomami territory by 75 per cent, fragmenting the population into 20 reserves, with the aim of opening up new lands for logging and mining activities. One researcher claimed that,

the area of each reserve would be too small to sustain the population, leading to malnutrition and even starvation. Also village size would be increased by several times, which would lead to social chaos and disintegration, given traditional socio-political dynamics. Furthermore, the fragmentation... would also severely disrupt the natural and cultural landscape ecology of the territory of the Yanomami nation, much of which they consider to be sacred space.<sup>61</sup>

In all these cases cited above, the political sovereignty of states constitutes a major barrier to the realisation of the group rights to self determination and ownership of natural resources which are currently stipulated in international law.<sup>62</sup> Assuming that states can act as vehicles for the implementation of human rights neglects the extent to which the states system itself functions as a contributory cause of ongoing rights violations. The citing of examples, however numerous, cannot be sufficient to demonstrate the inability to realise environmental human rights within the states system. The problematic nature of the states system for the realisation of human rights is instead revealed when the state is understood as an instrument of power, operating in the interests of groups powerful enough to control it.<sup>63</sup> Assuming a state framework for the realisation of human rights therefore channels the rights discourse towards the formal instruments of state, especially law, where popular mobilisation around human rights issues is constrained by the official decision making process and the challenge posed to power relations eviscerated.<sup>64</sup> The

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<sup>61</sup> *ibid*, p40.

<sup>62</sup> see chapter 6.

<sup>63</sup> Noam Chomsky, Deterring Democracy, op cit.

<sup>64</sup> Stammers, op cit, p507; see also chapter 2.

remainder of this chapter therefore focuses explicitly upon the role of the state and of law as instruments of power.

### The structural limitations of law

Expecting human rights violations to be eliminated through the passing of legislation is inadequate since law cannot by itself transform social norms.<sup>65</sup> It is both the purpose and ability of legal institutions to target the rogue actions of individuals.<sup>66</sup> As such, it is capable of providing redress against individuals and organisations who can be readily identified as engaging in deviant behaviour.<sup>67</sup> This focus on agents is however inadequate for the task of implementing human rights when rights violations are produced by the cumulative actions of individuals or institutions that together constitute a structural process. Galtung observes that law can only "locate evil in the unusual and the actor-specific, not in the normal and the actor-invariant built into the everyday working of the structure".<sup>68</sup> He goes on to identify exploitation, repression and starvation as structural processes responsible for systemic human rights violations; processes that existing laws do little to prevent, although do much to facilitate.<sup>69</sup> As has been argued elsewhere, the efficacy of human rights law is circumscribed by the fact that;

Violations of human rights owe as much to current economic and political structures and practices as they do to the self-interested, willful individual.

The international law approach to human rights relies upon the assumption that violators can be identified, made to answer for their actions and

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<sup>65</sup> Barkun, *op cit*, p68.

<sup>66</sup> Tony Evans and Jan Hancock, "Doing Something Without Doing Anything: International Human Rights Law and the Challenge of Globalisation", *The International Journal of Human Rights*, Vol 2, No 3, 1998, p16.

<sup>67</sup> *ibid*.

<sup>68</sup> Johan Galtung, *Human Rights in Another Key*, Cambridge, (Polity Press, 1994), p34.

<sup>69</sup> *ibid*, p30 and p55.

punished. However, this overlooks the fact that economic structures cannot be juridical persons with intentions and capabilities.<sup>70</sup>

The requirement for law to identify and punish individuals prevents law from enforcing pro-active measures that could tackle the cause of human rights violations and law is therefore restricted to, in effect, putting the cart before the horse.<sup>71</sup> Of course, law can influence the actions of individuals through threats of punishment to discourage deviant actions, but it cannot singularly replace the cultural, social, religious, ethical, political and economic institutions that constitute the norms and values of individuals.<sup>72</sup> The following section expands on this argument to contextualise law within the wider area of policy formulation by government. Law is argued to broadly reflect underlying power relations in society, since these relations produce the social norms that laws institutionalise. This claim will be explained with particular reference to the interests of production and finance capital that are argued to dominate social relations and to subsequently constitute the principal influence on capitalist law.

#### Domestic law as a reflection of social power relations

According to liberal theorists of political jurisprudence, law acts as an impartial institution to rectify infractions of justice and to use objective criteria to adjudicate between conflictual private interests in society.<sup>73</sup> Subsequently, the operations of social power are argued to have little bearing on the legal sphere which is insulated from such sources of undue influence.<sup>74</sup> Belief in the autonomy of legal reasoning, combined with

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<sup>70</sup> Evans and Hancock, *op cit*, p16.

<sup>71</sup> Desgagne, *op cit*, p285.

<sup>72</sup> see chapter 1.

<sup>73</sup> Joel Feinberg, Harmless Wrongdoing: The Moral Limits of the Criminal Law, Vol 4, Oxford, (Oxford University Press, 1988).

<sup>74</sup> this view has been presented by Tarlock in his study of environmental protection in the US courts; see Dan Tarlock, "Earth and Other Ethics: The Institutional Issues", Tennessee Law Review, Vol 56, 1988, pp54-5.

equal access and application of law to all, regardless of wealth or power circumstances is perhaps held by most citizens and lawyers in Western democracies.<sup>75</sup> This belief both reflects and re-enforces the liberal ideology of the neutrality of the state.<sup>76</sup> Indeed, Collins argues that "Western legal theory has become obsessed with the task of demonstrating the apolitical qualities of judicial reasoning and proving how issues of preference and interest play no part in the legal process".<sup>77</sup>

The liberal view of law is both simplistic and misleading since it obfuscates the operational dynamics of power relations. The liberal assumption that legal reasoning, applied through legislation, can address the causes of environmental human rights violations confuses cause for effect. Law reflects, rather than revolutionises power relations and codifies, rather than creates, social practice.<sup>78</sup> Theorising a legal sphere independent of either political context or content neglects the very real role played by the law for the legitimisation and recreation of existing power relations.

Judicial institutions constitute an arm of the state, and the state is both a reflection, and an instrument, of social power. As Chomsky convincingly argues, "power is sharply skewed; those who hold it use the state to defend their interests".<sup>79</sup> Chomsky crucially draws particular attention to economic power in determining political policies.<sup>80</sup>

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<sup>75</sup> Hugh Collins, Marxism and Law, Oxford, (Oxford University Press, 1982), p61.

<sup>76</sup> ibid, p141.

<sup>77</sup> ibid, p136.

<sup>78</sup> Jack Donnelly, "Human Rights, Humanitarian Intervention and American Foreign Policy", Journal of International Affairs, Vol 37, No 2, Winter 1984, p323; RJ Vincent, Human Rights and International Relations, Cambridge, (Cambridge University Press, 1986), p35; JS Watson, "Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law", University of Illinois Law Forum, No 3, 1979, p620 and Collins, op cit, p95.

<sup>79</sup> Chomsky, (December 1993), op cit.

<sup>80</sup> Chomsky, ibid; see also David A Baldwin, Paradoxes of Power, Oxford, (Basil Blackwell, 1989); John Kenneth Galbraith, The Anatomy of Power, London, (Hamish Hamilton, 1984); Anthony Giddens, A Contemporary Critique of Historical Materialism Vol 1: Power, Property and the State, London, (Macmillan, 1981); John Hoffman, State, Power and Democracy, Sussex, (Wheatsheaf, 1988); Steven Lukes, (ed), Power, London, (Blackwell, 1986); Peter Morris, Power: A Philosophical Analysis,

Similarly, Galtung explains that "there may well be situations when the state can do without popular consent, but not without corporations in general and the banks in particular".<sup>81</sup> Dryzek likewise notes the unbalanced influence of powerful economic structures in shaping the political agenda;

the distribution of power in liberal democratic systems is inevitably skewed. Business always has a privileged position due to the financial resources available to it, government officials' need for business co-operation in implementing policies, and government's fear of an investment strike and economic downturn if it pursues anti-business policies... The capitalist market imprisons both liberal democracy and the administrative state by ruling out any significant actions that would hinder business profitability.<sup>82</sup>

In the UK, Liberal Democrat MP David Alton referred to "the merging of the interests of the big corporations and the parties [which] reaches deep into Parliament itself" as the "insidious form of corruption... which breaches no law but is part and parcel of the system".<sup>83</sup> In the words of John Dewey, politics in the US is "the shadow cast on society by big business, and as long as this is so, the attenuation of the shadow will not change the substance".<sup>84</sup> Supporting this assessment, Greider notes that for "Republicans and Democrats alike, the government took its cues... from the multinationals".<sup>85</sup> In short, the

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Manchester, (Manchester University Press, 1987); Marvin E Olsen, (ed), Power in Societies, London, (Macmillan, 1970); Bertrand Russell, Power: A New Social Analysis, London, (George Allen and Unwin, 1948) and Glenn Tinder, Political Thinking: The Perennial Questions, Boston, (Little, Brown and Company, 1979).

<sup>81</sup> Galtung, op cit, p149; see also Chomsky, (1987), op cit, p116.

<sup>82</sup> John S Dryzek, "Ecology and Discursive Democracy: Beyond Liberal Capitalism and the Administrative State", Capitalism, Nature, Socialism, Vol 3, No 2, 1992, p22 and p26.

<sup>83</sup> David Alton quoted in Rowell, op cit, p78.

<sup>84</sup> John Dewey quoted in Chomsky, (1995).

<sup>85</sup> William Greider, One World, Ready or Not: The Manic Logic of Global Capitalism, New York, (Simon and Schuster, 1997), p210.

state is an instrument of power acting in the interests of groups powerful enough to dominate it, rather than the neutral adjudicator of interests in society promoted by liberal theorists.

The influence of corporate interests on the state applies directly to the judiciary. The politics of power determines that the legislative, executive and judicial arms of the state all tend to reflect, express and support the interests of economic elites. Eckersley reminds us that the legal system in capitalist states "tends to favour those with money, power, education and position".<sup>86</sup> This observation refutes the assertion that the different institutions of the state "balance" each other.<sup>87</sup> Far from being insulated, law reflects the power relations of the society in which it is located. Bertrand Russell explains that economic power "easily acquires a certain independence. It can influence law".<sup>88</sup> Marx demonstrated that property law defends unequal property ownership and that contract law institutionalises existing relations of exchange, thereby protecting capitalism from external challenges.<sup>89</sup>

The use of law as a political instrument is most blatant in the control of political protests by a state. This is self evident in totalitarian states such as Nazi Germany or the Soviet Union, where law was overtly used to ban any form of public protest.<sup>90</sup> Social control is also an evident feature of law in capitalist states. Penny Green concluded in her study of the 1984-5 miners strike in the UK that "both criminal and civil law provided a significant aspect of the overall strategy employed by the state to prevent the union

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<sup>86</sup> Eckersley in Doherty and de Geus, (eds), *op cit*, p232.

<sup>87</sup> for the classic account see Alexis de Tocqueville, Democracy in America, Harmondsworth, (Penguin, 1979).

<sup>88</sup> Russell, *op cit*, p65.

<sup>89</sup> Sumner, *op cit*, p246, see also David McLellan, Karl Marx: Selected Writings, Oxford, (Oxford University Press, 1977).

<sup>90</sup> Eric Hobsbawm, Age of Extremes: The Short Twentieth Century, London, (Michael Joseph, 1994).

engaging in effective picketing".<sup>91</sup> Moreover, law under the Thatcher governments was argued to have "played an important role both in curbing the growth of working-class organisation and in criminalising workers engaged in conflict with their employers".<sup>92</sup>

Much of the political component of law is made evident not through the overt criminalisation of political challenge but is rather expressed in a more subtle manner through the underlying ideological premises upon which law is constructed.<sup>93</sup> Gramsci significantly refined the Marxist position on law by focusing on the effect of law on popular understanding, or notions of common sense.<sup>94</sup> In particular, Gramsci argued that law combines elements of repression, morality and social codes of conduct in order to infiltrate consciousness and institutionalise a system of popular ideological belief and social conformism useful to the hegemonic bloc.<sup>95</sup> By ideological belief, Gramsci was referring in particular to respect for authority, private property and the normalisation of exploitative practices.<sup>96</sup>

Analysing law through a Gramscian focus on hegemony and underlying ideology explains why law rarely explicitly stipulates the interests of the powerful. The need to ensure order and compliance with statutes means that law must be presented as impartial and politically neutral rather than overtly promoting the interests of one group.<sup>97</sup> As Hay puts it,

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<sup>91</sup> Penny Green, The Enemy Without, Milton Keynes, (Open University Press, 1990), p83.

<sup>92</sup> *ibid.*

<sup>93</sup> Sumner, *op cit*, p258.

<sup>94</sup> Quintin Hoare and Geoffrey Nowell Smith, (eds), Antonio Gramsci: Selections from Prison Notebooks, London, (Lawrence and Wishart, 1971).

<sup>95</sup> Sumner, *op cit*, p257.

<sup>96</sup> Collins, *op cit*, p50.

<sup>97</sup> *ibid*, pp28-9.

the courts deal in terror, pain and death, but also in moral ideals, control of arbitrary power, mercy for the weak. In doing so they make it possible to disguise much of the class interest of the law.<sup>98</sup>

In summary, the political nature of law as a defence of the powerful is obscured by the inclusion of moral codes that are also expressed in statutes. Under the framework of hegemony, law is simultaneously an instrument of party politics, an enforcer of revered ideas and an agency for the regulation and maintenance of a social order.<sup>99</sup> The state and the courts alike have scope for agency and change, but only within the narrow framework given by (i) the dominant ideology and (ii) the interests of the hegemonic bloc.<sup>100</sup> Law-creation is, by definition and both in process and outcome, a matter controlled by the powerful.<sup>101</sup> Law reflects the interests of the political forces behind legislation, the choice of problems that these forces prioritise and seek to solve and the ideologies upon which these problems are identified, perceived and understood.<sup>102</sup>

There is therefore an evident paradox in expecting human rights to be implemented through existing laws for, as Stammers argues, "ideas of human rights can only be justified insofar as they challenge rather than sustain existing relations of power".<sup>103</sup> Yet the above analysis has argued that law reflects, supports and institutionalises existent relations of power in society, problematising the use of law as an instrument for the realisation of human rights. The nature of law as a defense of power and privilege is exemplified in the "floodgates" principle. Here, the courts dismiss a case

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<sup>98</sup> Hay quoted in Sumner, *op cit*, p264.

<sup>99</sup> *ibid*, p269 and p272.

<sup>100</sup> Collins, *op cit*, pp51-2.

<sup>101</sup> Sumner, *op cit*, pp266-7.

<sup>102</sup> *ibid*, p267.

<sup>103</sup> Stammers, *op cit*, p507.

not upon its merits, but rather according to the need to prevent setting a precedent for the opening of the "floodgates of litigation" that would allow a vast increase in cases, placing unworkable demands on the courts.<sup>104</sup> The floodgates argument reflects the tacit acknowledgement of the legal establishment that it either cannot, or will not, make decisions requiring radical social change.<sup>105</sup>

### Locus standi

The privileged position assigned to private capital interests over the general protection of the environment is institutionalised in capitalist legal systems through the legal concept of locus standi, or standing. Before courts can hear cases, potential litigants must first establish standing, which is to say that; "the party seeking relief must show that he (sic) is suffering or will suffer some injury, prejudice, damage or invasion of right peculiar to himself and over and above that sustained by the members of the public in general".<sup>106</sup> From the perspective of environmental protection, this stipulation is exceptionally problematic since factors such as climate change and toxic pollution harm not specific individuals but rather the whole of the biosphere. The possibility of individuals using legal instruments against indiscriminate ecological damage is arbitrarily foreclosed since claims cannot be heard from citizens unless they can demonstrate a personal stake in the outcome over and above that of the general population.<sup>107</sup> Corriveau for example notes in the case of Quebec that "unless they are directly and materially

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<sup>104</sup> Tim Hayward, "Constitutional Environmental Rights: A Case for Political Analysis", Political Studies, Vol 48, No 3, 2000, p565.

<sup>105</sup> *ibid.*

<sup>106</sup> Jan Glazewski in Boyle and Anderson, (eds), *op cit*, p189; see also Colin Reid in Brigid Hadfield, (ed), Judicial Review: A Theoretical Approach, Dublin, (Gill and Macmillan), 1995, p44.

<sup>107</sup> Eckersley in Doherty and de Geus, (eds), *op cit*, p231.

injured, environmental protection groups do not have the locus standi to resort to the judicial system".<sup>108</sup> In the case of standing in England, Reid notes that;

the difficulty can be demonstrated by considering the position in relation to wild birds. As wild creatures, they are not the property of anyone, and therefore nobody's legally recognised rights or interests are affected by anything that causes them harm. Many people may be very concerned about the fate of the birds, but in the past such concern has not been regarded as sufficient to justify permitting access to the courts when no legal interests are at stake.<sup>109</sup>

Blackstone summarises that, "one can sue individuals or corporations if they damage one's private property but not if they damage the public environment".<sup>110</sup> Reflecting the institutionalised priority of private economic interests over public environmental concerns in capitalist states, Reid reminds us that, "the law recognises only a limited range of interests, for example property rights, without taking cognisance of what might be claimed as the environmental rights of the public which are infringed whenever environmental harm is done".<sup>111</sup>

The institutionalisation of standing as a preliminary requirement to establish access to the courts can therefore be viewed as one manifestation of how the legal system favours a focus on private interests at the expense of overall environmental protection. This ideological position permeates capitalist law. In the case of English law, Alder states that;

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<sup>108</sup> Corriveau in Deimann and Dyssli, (eds), *op cit*, p139.

<sup>109</sup> Reid in Hadfield, (ed), *op cit*, p42; see also Eckersley in Doherty and de Geus, (eds), *op cit*, p231 and Alan R Drengson, "Shifting Paradigms: From the Technocratic to the Person-Planetary", *Environmental Ethics*, Vol 2, No 3, Fall 1980, pp234-5.

<sup>110</sup> William T Blackstone in William T Blackstone, (ed), *Philosophy and Environmental Crisis*, Athens, (University of Georgia Press, 1974), p18.

<sup>111</sup> Reid in Hadfield, (ed), *op cit*, p42.

there is an underlying bias in favour of financial interests. This was formed in the laissez faire era of the nineteenth century upon the foundations of property rights and freedom of contract and was incorporated by judicial interpretation into the post World War II planning system. Within this framework, environmental interests are not recognised as rights and must therefore be protected, if at all, by specific legislation.<sup>112</sup>

According to English jurisprudence, damage sustained by the environment is to be prevented by the Attorney-General and other political figures acting *ex-officio* as guardians of the public interest.<sup>113</sup> The following example typifies how this environmental responsibility is subordinated to the same economic considerations that are privileged by the courts in capitalist states. In October 1993;

Environment and Countryside Minister Tim Yeo MP, announced that the Government opposed groups such as Friends of the Earth being given a legal right under European Community law to sue those responsible for damaging the 'unowned' environment to recover the costs of clean up or remediation. The prospect of such a right, proposed by the European Commission in its Green Paper on Civil Liability for Environmental Damage, was of particular concern to banks, insurance companies and other businesses in the financial sector.<sup>114</sup>

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<sup>112</sup> John Alder in Interdisciplinary Research Network on the Environment and Society, Perspectives on the Environment, Brookfield, Vermont, (Avebury, 1993), p72.

<sup>113</sup> Eckersley in Doherty and de Geus, (eds), *op cit*, p231.

<sup>114</sup> editorial, "Citizen's Charter or Polluter's Charter?" Earth Matters, Issue 20, Winter 1993, p6.

### Legal ineffectuality

The claim that capitalist law tends to reflect private commercial interests in implementation as well as in formulation is substantiated by an examination of the ineffectuality of domestic environmental rights. It will now be argued that environmental rights are given a low political priority in capitalist states and are systematically violated with relative impunity from the courts.

The 1988 Brazilian Constitution granted land rights to indigenous people defined in terms of land "used for their productive activity, those necessary for the preservation of their natural resources and those which are important for their physical and cultural reproduction, according to their customs and traditions".<sup>115</sup> Examining the effectiveness of this legislation, one commentator summarised that the legal development, "has not solved the environmental problem, and the Brazilian environmental reality has not greatly improved since then".<sup>116</sup> The Xavante Indians in the Brazilian Amazon have, for example, had their land rights violated by illegal logging and cattle ranching without any action being taken by either the political or the judicial arms of the state.<sup>117</sup> Yanomami Indians in Brazil who have had "the economic and social fabric of their communities destroyed" by gold miners exploiting the Amazon have been similarly ignored by the bodies charged with upholding the law.<sup>118</sup> One of the political decisions most disastrous to the Yanomami nation was the construction between 1973 and 1976 of the Perimetral Norte highway, 225 km of which passed through Yanomami lands. Disease, epidemics, gold diggers, settlers and logging corporations followed the new road despite vehement

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<sup>115</sup> editorial, Brazil Network Newsletter, March/April 1996, p3.

<sup>116</sup> Fernandez in Boyle and Anderson, (eds), op cit, p282.

<sup>117</sup> Bruce Albert in Johnston, (ed), op cit, p48.

<sup>118</sup> Amongst other instances, gold miners pollute rivers, scare away game and introduce epidemics of flu and malaria into Yanomami communities; *ibid*, p48.

protests from the Yanomami.<sup>119</sup> The Inter-American Commission on Human Rights found that the Brazilian government had violated the rights to life, liberty and personal security of the Yanomami Indians after members of the tribe alleged that the highway construction had breached the American Declaration of the Rights and Duties of Man.<sup>120</sup> Yet, questioning the significance of legal stipulations, the ruling failed to significantly empower the Yanomami in their struggle against the invasion of their lands and the aggregate effects of the road on the indigenous nation have since been described as "ecocide, ethnocide and genocide".<sup>121</sup>

In the Malaysian state of Sarawak, the land rights of indigenous groups are legally recognised. However an environmental report found that "these rights to land and resources have been systematically ignored by the logging industry and breaches of native peoples' property rights have gone largely unpunished by the state, despite an increasing number of court cases brought on behalf of community representatives and individuals".<sup>122</sup> The same result testifies to the ineffectiveness of legal environmental rights in many other states. Harding for example concluded that "emphasis on formal constitutional rights is likely to result in the dismal conclusion that neither environmental rights nor human rights in general have anything more than theoretical potential".<sup>123</sup> In the case of the environmental right guaranteed under the African Charter, Churchill points out that "it is difficult to gauge what impact, if any, the environmental right which it contains has had in practice".<sup>124</sup> Douglas-Scott similarly concludes that "experience

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<sup>119</sup> Sponzel in Johnston, (ed), op cit, pp38-9.

<sup>120</sup> Desgagne, op cit, p266.

<sup>121</sup> Sponzel in Johnston, (ed), op cit, p39; these claims were substantiated in 1990 by the call from the Brazilian Attorney General for the application in the Yanomami case of the Genocide Law of 1956.

<sup>122</sup> World Rainforest Movement and Forests Monitor Ltd, High Stakes: The Need to Control Transnational Logging Companies, Montevideo, (World Forest Movement, 1998), p26.

<sup>123</sup> Andrew Harding in Boyle and Anderson, (eds), op cit, p243.

<sup>124</sup> Churchill in Boyle and Anderson, (eds), op cit, p108.

drawn from constitutionally entrenched environmental rights tends to show that such rights can provide a false hope".<sup>125</sup> In Hungary, this trend continues, for the "Constitution provides for a right to a healthy environment, and all citizens are accorded a statutory right to participate in environmental protection, but neither of these have been much utilised".<sup>126</sup> Similarly in Mexico, strict environmental legislation exists in statutes, but has rarely been enforced against endemic infractions.<sup>127</sup>

In Nicaragua, logging concessions for mahogany in the North Atlantic Autonomous Region have been granted by the government to corporations. The region is inhabited by the Miskito, Sumu and Rama indigenous peoples. One indigenous community has already been forcibly evicted from its communal lands by the activities of a logging corporation.<sup>128</sup> The logging concessions violate Nicaraguan law since, according to statute, the people of the autonomous region have ownership rights over the land and resources.<sup>129</sup> The Nicaraguan government has a ban on mahogany exports, but claims that it lacks the resources to enforce it. Despite a Supreme Court ruling that logging concessions are illegal, the Ministry of Natural Resources has created loopholes to allow logging to continue, suggesting that the state prioritises revenue from logging concessions over guaranteeing the land rights of indigenous communities.<sup>130</sup> Examining the impact of development in remote areas of Indonesia from an anthropological perspective, Aragon describes a civil service report from a region of South Kalimantan

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<sup>125</sup> Douglas-Scott in Boyle and Anderson, (eds), *op cit*, p109.

<sup>126</sup> Anderson in Boyle and Anderson, (eds), *op cit*, p20.

<sup>127</sup> David Stea, Silvia Elguea and Camilo Perez Bustillo in Barbara Rose Johnston, (ed), Human Rights and the Environment at the End of the Millennium, Walnut Creek, (Alta Mira, 1997), p220.

<sup>128</sup> *ibid.*

<sup>129</sup> South and Meso American Indian Rights Center (SAIIC), "Urgent Action: International Day of Action in Support of the Indigenous People and Land of Nicaragua's Atlantic Coast"; <http://www.nativeweb.org/saic/actions/urgent12up.html>.

<sup>130</sup> *ibid.*

that advised the Forestry Commission to ignore formal rules on selective cutting on the grounds that the logging company concerned was in any event going to ignore regulations "in order to obtain a sufficient profit" by clear cutting the affected forested areas.<sup>131</sup> These examples all draw attention to the political context within which environmental and human rights law operates and to the economic interests that influence the efficacy of legal stipulations.

The ineffectuality of the law to provide redress for marginalised groups suffering the structural violation of environmental rights will now be exemplified through the particular case of Ecuador. Ecuador has been chosen for enquiry since the state is unique in constitutionally guaranteeing a right to an environment free of contamination.<sup>132</sup> As such, specific criterion is stipulated in Ecuador's environmental right as opposed to the more common reference to a "healthy" environment. The degree of environmental degradation faced by certain communities in Ecuador is nonetheless disastrous by any standard and the opportunities available for legal redress are non-existent. The indigenous Huaorani are, for example, suffering extensive toxic contamination of their lands due to the activities of oil companies. The Huaorani have been unable to utilise their legal right to an environment free of contamination because, as Fabra explains,

for the Huaorani, the difficulties of obtaining effective access to justice are insurmountable because their distinct culture and limited contact with mainstream society hamper adequate defence of their rights: most Huaorani have no knowledge or understanding of the Ecuadorian legal system, do not speak the language in which the laws are written, and have a completely different set of values than most other Ecuadorians. In addition, indigenous

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<sup>131</sup> Lorraine V Aragon in Johnston, (ed), (1997), *op cit*, p35.

<sup>132</sup> incorporated into the Ecuadorian constitution in 1983.

groups do not generally have the financial resources to engage in any legal actions against development projects on their land.<sup>133</sup>

Despite firm and explicit legislation stipulating environmental rights in Ecuador, there is no enforcement apparatus to prevent environmental pollution or natural resource depletion.<sup>134</sup> As a result of the lack of enforcement of environmental legislation, oil companies such as Texaco have conducted their operations in the Ecuadorian Amazon with little regard for the environment, burning approximately 53,000,000 cubic feet of gas daily,<sup>135</sup> spilling oil and despoiling the natural resource base of several indigenous groups.<sup>136</sup> Since the arrival of petrochemical MNCs in the Oriente region of Ecuador in the 1970s,<sup>137</sup> the populations of the Cofanes and the Siona-Secoya indigenous groups have been reduced substantially in number,<sup>138</sup> and the Tetetes and Tagiere have been completely exterminated.<sup>139</sup> A spokesperson for the local environmental NGO Acción Ecológica claims that in the Oriente, "Texaco is viewed as the chief human rights violator" since the company "invaded the forests, killed the rivers and animals, created a health disaster and destroyed indigenous groups".<sup>140</sup>

The environmental impacts of oil operations in the Oriente are indeed catastrophic by any standard. Over four million gallons of toxic wastes were released into the Oriente's

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<sup>133</sup> Fabra in Boyle and Anderson, (eds), op cit, p254 and p261.

<sup>134</sup> according to the affidavit of a Petroecuador official made in 1994, cited in Aaron Sachs, Eco-Justice: Linking Human Rights and the Environment, Worldwatch Paper 127, Washington DC, (Worldwatch Institute, 1995), p48.

<sup>135</sup> Rowell, op cit, pp220-1.

<sup>136</sup> Sachs, op cit, p48.

<sup>137</sup> 13 million hectares of tropical rainforest lying at the headwaters of the Amazon river network.

<sup>138</sup> the number of Cofan Indians have reduced from 70,000 to 3,000 between 1975 and 1995; see Rowell, op cit, pp220-1.

<sup>139</sup> Fabra in Boyle and Anderson, (eds), op cit, p248.

<sup>140</sup> Paulina Garzon quoted in Chris Jochnick, "Amazon Oil Offensive", Multinational Monitor, Vol 16, Nos 1 and 2, January/February 1995; <http://www.essential.org/monitor/hyper/mm0195.html>.

environment in 1990 alone, with 90 per cent of the oil operations responsible for the pollution being run by Texaco.<sup>141</sup> Toxic contaminants in the drinking water measure up to 1,000 times the levels allowed by the Environmental Protection Agency (EPA) in the US.<sup>142</sup> Local health workers have subsequently reported increased rates of gastrointestinal problems, skin rashes, respiratory diseases, headaches, birth defects and cancers amongst the local inhabitants of the Oriente.<sup>143</sup> The contamination of the rivers has destroyed local fish stocks to the extent that malnutrition rates among primary school children average between 65 and 70 per cent.<sup>144</sup> Kimerling reports that locals "complain that Texaco will give them T-shirts and satchels with its emblem, but won't spend a sucre to prevent contamination to protect their health".<sup>145</sup> Texaco has repeatedly refused to clean up the environmental damage that its oil operations have caused and has similarly refused to compensate those people whose lives have been adversely affected by the corporations' disregard of the environmental right stipulated in the Ecuadorian constitution.<sup>146</sup>

Jochnick provides further evidence both for the corporate violations of environmental rights and for the connections between corporate, political and judicial power in Ecuador.<sup>147</sup> In the case of MNCs beginning oil production in the Yasuni National Park, a designated World Biosphere Reserve in Ecuador,

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<sup>141</sup> ibid; see also Judith Kimerling, Amazon Crude, (Natural Resources Defence Council, 1991), p63.

<sup>142</sup> Jochnick, op cit.

<sup>143</sup> McSpotlight, "Texaco in the McSpotlight"; <http://www.mcspotlight.org/beyond/companies/texaco.html> and Jochnick, op cit.

<sup>144</sup> Kimerling, op cit, p97.

<sup>145</sup> ibid, p96.

<sup>146</sup> McSpotlight, op cit.

<sup>147</sup> Jochnick, op cit.

lawyers initially succeeded in blocking the Conoco-Maxus operation under a constitutional provision providing for the right to a contamination-free environment and under laws prohibiting exploitation of protected areas.

However, one month after ordering a stop to the Conoco-Maxus plans, the constitutional court reversed itself in the face of what one judge later described as intense pressure from government and the oil industry.<sup>148</sup>

Ecuador exemplifies the limitations of legal environmental rights since this state alone states specific criterion for the implementation of the right to a pollution free environment. Yet even when the problem of vagueness is overcome by an uncompromising defence of environmental protection, legal rights are neglected by state institutions keen to accommodate the interests of corporate investors.

In summary, power relations have been argued to be crucial in both (i) formulation, (defining new laws) and (ii) implementation, (determining the efficacy of laws). The above focus on economic power and law endorses the claim made by Anderson that "legal recognition of environmental rights will not necessarily change anything unless disadvantaged groups possess economic and political power to mobilise legal institutions".<sup>149</sup>

### **International law as a reflection of social power relations**

It has been argued above that the legal sphere exists in a political context and institutionalises the predominant power relations in society. This claim applies equally to the case of international law as it does to domestic law. International laws and treaties on human rights can be signed for many reasons, many of which are overtly political. For example,

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<sup>148</sup> ibid.

<sup>149</sup> Anderson in Boyle and Anderson, (eds), op cit, p23.

agreeing to international human rights law offers an opportunity for governments to be seen as decisive and responsible, to garner public support and to re-enforce traditional thinking on sovereignty and international society. By entering into human rights treaties, states are seen as responding to the concerns of their citizens on human rights issues while making few, if any, fundamental changes to the structures that are the cause of many violations.<sup>150</sup>

Carr observed that international law "like politics, is a meeting place for ethics and power... it cannot be understood independently of the political foundations in which it rests and of the political interests which it serves".<sup>151</sup> Similarly focusing on the way in which international law reflects power relations, Barkun remarks that developments in international law are linked to the goal of preserving an international status quo rather than directed toward the rearrangement of political power.<sup>152</sup> The interests of global capital will now be argued to constitute the most important political factor in determining the efficacy of international law. Methodologically, this claim which dissolves the liberal distinctions between economics, politics and law,<sup>153</sup> will be validated through an assessment of the power of global capital and in particular its influence over the political decision-making process. The global capitalist economy operates to coerce governments into prioritising the interests of capital and considerations of economic competitiveness over and above implementing international law relating to universal human rights and environmental protection.

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<sup>150</sup> Evans and Hancock, *op cit*, p17.

<sup>151</sup> E H Carr, *The Twenty Years' Crisis*, London, (Macmillan, 1939), pp178-9.

<sup>152</sup> Barkun, *op cit*, pp163-4.

<sup>153</sup> Michael Doyle in TV Paul and John A Hall, (eds), *International Order and the Future of World Politics*, Cambridge, (Cambridge University Press, 1999).

Unlike domestic capital which is fixed in one particular state, global capital can choose in which state to invest. The purpose of this section is to assess the nature of the power that accompanies this capacity. In particular, competition amongst states for limited international investment forces governments to adopt policies favourable to capital or else risk losing investors to other states. This situation exists at the cost of states sacrificing policies aimed at environmental protection and the realisation of human rights.<sup>154</sup>

The growing importance of global capital is exemplified in the sixteen fold growth of Foreign Direct Investment (FDI) by US based TNCs between 1950 and 1980, with a corresponding growth of less than half in domestic investment in the US economy during the same period.<sup>155</sup> FDI is "investment abroad, usually by TNCs, involving an element of control by the investor over the corporation in which the investment is made".<sup>156</sup> The flow of private capital from OECD to non-OECD states has increased from \$18 billion in 1987 to \$225 billion in 1996.<sup>157</sup> The global turnover of the largest 200 TNCs now accounts for a quarter of all global economic activity.<sup>158</sup> The 40,000 TNCs in the world today in combination control 70 per cent of world trade, 80 per cent of FDI, and 30 per cent of world GDP.<sup>159</sup>

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<sup>154</sup> Evans and Hancock, *op cit*, p19.

<sup>155</sup> Mohameden Ould-Mey, "Global Adjustment: Implications for Peripheral States", Third World Quarterly, Vol 15, No 2, 1994, p321.

<sup>156</sup> Jo Marie Griesgraber and Bernhard C Gunter, The World's Monetary System, London, (Pluto Press, 1996), p141.

<sup>157</sup> Christopher Flavin in Lester Brown et al, State of the World 1997, New York, (WW Norton and Company 1997), p20.

<sup>158</sup> Ignacio Ramonet, "Global Authoritarian Regimes", New Renaissance; <http://www.ru.org/artgloba.html>.

<sup>159</sup> US \$300 billion per annum, see Caroline Thomas, "Beyond UNCED: An Introduction", Environmental Politics, Vol 2, No 4, 1993, p19; Marian Miller, The Third World in Global Environmental Politics, Boulder, (Lynne Rienner, 1995), p35; Corporate Europe Observatory, Europe Inc: Dangerous Liaisons Between EU Institutions and Industry, Amsterdam, (Corporate Europe Observatory, 1997), p7 and Chakravarthi Raghavan, "TNCs Control Two-Thirds of World Economy", Third World Network, 26 January 1996; <http://www.hartford-hwp.com/archives/25/007.html>.

Significant political influence accompanies this concentration of economic power.

Lindblom for example points out that,

rich in resources, the big corporations command more resources than do most government units. They can also, over a broad range, insist that governments meet their demands, even if these demands run counter to those of citizens.<sup>160</sup>

Korten remarks that "the ability to shift production from one country to another weakens the bargaining power of any given locality and shifts the balance of power from the local human interest to the global corporate interest".<sup>161</sup> Gill convincingly argues that economic globalisation "confers privileged rights of citizenship and representation on corporate capital, whilst constraining the democratisation process that has involved struggles for representation for hundreds of years".<sup>162</sup> The political influence held by economic actors that confers such privileged rights resides in the desire of states to acquire the employment, transfer skills, greater revenues and information technology that MNCs provide.<sup>163</sup> Corporate power constrains the choices open to governments since policies must favour capital interests or else risk an outflow of finance capital and FDI and face a possible economic crisis.

Meadowcroft reminds us that "companies are already able to shift their operations round the world to minimise their tax payments and extract the maximum in incentives to invest".<sup>164</sup> This capability ensures that should any state undertake policies that work

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<sup>160</sup> Charles Lindblom quoted in Arjun Makhijani, From Global Capitalism to Economic Justice, New York and London, (Apex Press, 1992), p96; see also Miller, op cit, p35.

<sup>161</sup> David Korten, When Corporations Rule the World, London, (Earthscan, 1995), p125.

<sup>162</sup> Stephen Gill, "Globalisation, Market Civilisation and Disciplinary Neoliberalism", Millenium, Vol 24, No 3, Winter 1995, p413.

<sup>163</sup> Susan Strange, "States, Firms and Diplomacy", International Affairs, Vol 68, No 1, p7; David A Lake, "Leadership, Hegemony and the International Economy: Naked Emperor or Tattooed Monarch with Potential?" International Studies Quarterly, Vol 37, 1993, p484.

against the interests of production or finance capital, investors will respond by withdrawing their assets. It is in this sense of dependency that Cox states "competitiveness in the global economy is the ultimate criterion of public policy".<sup>165</sup> One vivid example of the way in which the policy agenda is increasingly dictated by the interests of global capital is provided by the election of the Liberals in Canada in 1993. The Liberals were elected on the basis of a spending program to create jobs.<sup>166</sup> However, increased social spending is an anathema to international investors since it introduces inflationary pressures that lowers the value of international investor assets stored in the form of bonds.<sup>167</sup> Due to the concerns of the financial markets, and contrary to the platform upon which his government was elected, Prime Minister Jean Cretien was forced to cut social programs by 30 per cent.<sup>168</sup> In the global economy, financial markets now set de facto limits on policy choices of even the most powerful states, preventing the adoption of policies that would conflict with the competitiveness of capital. Korten explains that

the financial markets of course also discipline our governments if they are not happy with the way they are running things. Speculators can conduct a raid on a country's currency which causes currency devaluations, forces interest rates up and may lead to bank failures which can be disastrous for politicians.<sup>169</sup>

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<sup>164</sup> James Meadowcroft, "Taking Issue with UNCED's Critics", New Political Economy, Vol 1, No 3, 1996, p19.

<sup>165</sup> Robert W Cox with Timothy J Sinclair, Approaches to World Order, Cambridge, (Cambridge University Press, 1996), p529.

<sup>166</sup> Paul Weinberg, "Selling Myth of Powerlessness in Global Economy", Inter Press Service, 18 April 1998; [http://www.oneworld.org/ips2/apr98/04\\_25\\_006.html](http://www.oneworld.org/ips2/apr98/04_25_006.html).

<sup>167</sup> *ibid.*

<sup>168</sup> *ibid.*

<sup>169</sup> David Korten, "The Financial Casino and Corporate Rule", Corporate Watch; [http://www.corpwatch.org/trac/feature/planet/casino\\_rule.html](http://www.corpwatch.org/trac/feature/planet/casino_rule.html).

Cox similarly reminds us that "the very hint of a threat by a government to control capital movements can lead to an investment strike and capital flight, precipitating thereby an exchange crisis that will require foreign borrowing and possibly devaluation of the national currency".<sup>170</sup>

The power of global capital constitutes a decisive political consideration in an age of globalisation. Capital flows into those states most successful in increasing competitiveness and punishes those that work against corporate interests with the very real threat to relocate abroad. One prominent corporate lobbying organisation for example asserts; "governments must recognise today that every economic and social system in the world is competing with all of the others to attract the footloose businesses".<sup>171</sup> Exemplifying this process, McDonnell's president of operations in China, Peter Chapman, explains that "we're in the business of making money for our shareholders. If we have to put jobs and technology in other countries, then we go ahead and do it".<sup>172</sup>

To maximise their competitiveness, corporations are keen to minimise private costs, such as those relating to labour and environmental controls and fiscal burdens.<sup>173</sup> The political power held by corporations as outlined above therefore forces the adoption of pro-corporate policies by governments around the world at the necessary expense of environmental human rights. Typifying the trend of adopting political policies that prioritise the interests of foreign capital producers, the Philippine government has placed advertisements in the global business press reading, "to attract companies like yours... we have felled mountains, razed jungles, filled swamps, moved rivers, relocated towns... all

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<sup>170</sup> Cox with Sinclair, op cit, pp204-5.

<sup>171</sup> European Roundtable of Industrialists, Benchmarking for Policy-Makers: The Way to Competitiveness, Growth and Job Creation, 1996, p11, quoted in Corporate Europe Observatory, op cit, p20.

<sup>172</sup> quoted in Greider, op cit, p126.

<sup>173</sup> Robert W Cox, Production, Power and World Order: Social Forces in the Making of History, New York, (Colombia University Press, 1987), p321.

to make it easier for you and your business to do business here".<sup>174</sup> Korten notes that this claim was not mere hyperbole.<sup>175</sup>

Athanasiou documents a specific case of the trend to relocate businesses in order to minimise private costs;

California had the largest tuna-canning industry in the world, but today - these are approximate figures - the wages in California are about \$17 an hour. So the industry moved, first to Puerto Rico, where wages are about \$7 an hour, and then, when they decided that was too much, to American Samoa, where wages are about \$3.50 an hour. From there it moved to Ecuador, where workers are paid about \$1 an hour, and then on to Thailand, where a great deal of the industry is today, and wages are about \$4 a day. And now, amazingly enough, there is some movement to Indonesia, where wages are as low as a couple of dollars a day.<sup>176</sup>

Sweatshops can be viewed as a product of capital mobility and free trade in the global economy. Garment industry giants locate according to the lowest labour costs and the highest profit margins.<sup>177</sup> Many garment workers in the Third World subsequently work in oppressive conditions for less than a living wage, for example in Vietnam garment workers average \$0.12 per hour.<sup>178</sup> Therefore, the structure of global capitalism determines that wages in the periphery of the global economy remain below the poverty line. Goldsmith explains that,

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<sup>174</sup> Philippine government advertisement in Fortune magazine, quoted in Korten, (1995), p159.

<sup>175</sup> ibid.

<sup>176</sup> Tom Athanasiou quoted in Chris Brazier, "State of the World Report", New Internationalist, Issue 287; <http://www.oneworld.org/ni/issue287/keynote.html>.

<sup>177</sup> Sweatshop Watch, "The Garment Industry"; <http://www.sweatshopwatch.org/indur.html>.

<sup>178</sup> ibid.

In most developed nations, the cost to an average manufacturing company of paying its workforce is an amount equal to between 25 per cent and 30 per cent of sales. If such a company decides to maintain in its home country only its head offices and sales force, while transferring its production to a low-cost area, it will save about 20 per cent of sales volume. Thus, a company with sales of 500 million dollars will increase its pre-tax profits by up to 100 million dollars every year. If, on the other hand, it decides to maintain its production at home, the enterprise will be unable to compete with low-cost imports and will perish.<sup>179</sup>

This trend towards the lowering of wages serves the interests of global capital at the expense of workers who suffer continued poverty and the denial of economic rights.<sup>180</sup> Corporate profits depend increasingly on reducing wages and environmental costs.<sup>181</sup> Korten explains that to attract foreign investors, governments have suppressed unions and held down wages, benefits, and labour standards.<sup>182</sup> The incentive to minimise costs can therefore be seen to lead directly to violations of human rights. For example, in May 1995, banana workers in the Cowpen region of Belize established the United Banners Banana Workers' Union (UBBWU) in response to the working conditions on Fyffes farms where workers had no access to medical care and drew water from a source contaminated with pesticide residues.<sup>183</sup> Fyffes responded by firing 15 union executives in a display of

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<sup>179</sup> Sir James Goldsmith, "The New Utopia: GATT and Global Free Trade", testimony before the Senate Commerce Committee, 5 October 1994; <http://www.hartford-hwp.com/archives/25a/004.html>.

<sup>180</sup> see Robert Weissman, "Book Notes", Multinational Monitor, Vol 18, No 5, May 1997; <http://www.essential.org/monitor/hyper/mm0597.12.html.237.6>.

<sup>181</sup> Martin Woollacott, "A World Forced to Keep Bad Company", The Guardian, 18 November 1995, p8.

<sup>182</sup> Korten, (1995), op cit, p159.

<sup>183</sup> Macdara Doyle, "Busting Banana Unions in Belize", Multinational Monitor, Vol 17 No 9, September 1996; <http://www.essential.org/monitor/hyper/mm0996.08.html>; article 8, para 1(a) International Covenant on Economic, Social and Cultural Rights, (1966).

contempt for "the right of everyone to form trade unions".<sup>184</sup> The general irrelevance of human rights to corporations is illustrated in a Boston based survey that found only 10 per cent of US TNCs had any guidelines at all on overseas human rights.<sup>185</sup>

The corporate interests that determine violations of economic human rights also ensure deepening environmental degradation. Williams claims that "direct foreign investment is influenced by a range of factors, and the share of environmental costs in output value is too small to be an important component in firms' decision-making".<sup>186</sup> In contrast to this assertion, Agarwal and Narain argue that "increasingly strong pollution control measures in the West have resulted in numerous industries, which are extremely polluting and dangerous, moving into the Third World".<sup>187</sup> The following argument contends that, of these two positions, Agarwal and Narain are correct in their assessment and that the tactic of externalising costs to maximise profit is indeed an important consideration for corporations making location decisions.

Knight notes that to accommodate the best interests of foreign producers in India, "forestry regulations appear to have been loosened for the pulp and paper industry and mining laws watered down by mining corporations".<sup>188</sup> Also in India, the chairperson of the dyes and pigments manufacturers association recently admitted that MNCs are now moving into India because of stronger pollution control laws in the West.<sup>189</sup> Rowell reports that in its negotiations on terms of investment with the state of Goa in India, Du

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<sup>184</sup> ibid.

<sup>185</sup> the study focused on major US retailers and brand name goods manufacturers, Craig Forcese, Commerce With Conscience? Montreal, (International Centre for Human Rights and Democratic Development, 1997), p20.

<sup>186</sup> Marc Williams in Caroline Thomas, (ed), Rio: Unravelling the Consequences, Ilford, (Frank Cass, 1993), p85.

<sup>187</sup> Agarwal and Narain, op cit, p187.

<sup>188</sup> Danielle Knight, "Multinationals undermine environment", Inter Press Service, 14 October 1997; <http://www.oneworld.org/ips2/oct/multinationals.html>.

<sup>189</sup> Agarwal and Narain, op cit, p187.

Pont drew up a contract that specifically exonerates the company from any liability should its industrial operations result in damage to either the environment or worker's health.<sup>190</sup> In his study into business investments in Nigeria, Flynas concluded that, "governments have often sought to attract foreign investors by permitting ecological dumping, in other words, lower environmental standards".<sup>191</sup>

The Rare Earth company relocated to Malaysia after it was prevented from operating in Japan due to a tightening of Japanese environmental laws. Its factory processed monazite for electronic components from chlorides and carbonates. Radioactive thorium hydroxide is produced as a by-product of this process and as the least costly option, this has been openly dumped near to villages in the Malaysian state of Perak where the company plant has been relocated.<sup>192</sup> The Australian mining company BHP is responsible for the daily dumping of 80,000 tons of tailings<sup>193</sup> into the Ok Tedi and Fly rivers at the Ok Tedi copper and gold mine in Papua New Guinea.<sup>194</sup> Responding to compensation writs for environmental damage filed in August 1995 by 30,000 inhabitants of the Fly River Basin, BHP drafted legislation for the Papua New Guinea Parliament that subjected anyone who sued BHP to fines of up to \$75,000.<sup>195</sup> Remarkably, the bill also applied the same fine to anyone attempting to challenge the constitutional validity of the proposed law in the courts.<sup>196</sup>

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<sup>190</sup> Rowell, op cit, p97.

<sup>191</sup> Jedrzej George Flynas, "Political Instability and Business: Focus on Shell in Nigeria", Third World Quarterly, Vol 19, No 3, 1998, p465.

<sup>192</sup> Harding in Boyle and Anderson, (eds), op cit, p238.

<sup>193</sup> mining waste products containing copper, zinc, cadmium and lead.

<sup>194</sup> Aviva Imhof, "The Big Ugly Australian Goes to Ok Tedi", Multinational Monitor, Vol 17, No 3, March 1996; <http://www.essential.org/monitor/hyper/mm0396.05.html>.

<sup>195</sup> ibid.

<sup>196</sup> ibid.

Graf summarises that "hundreds of Northern plants have been relocated to the Third World specifically to avoid the costs of higher safety and health standards in the North".<sup>197</sup> Tetreault similarly concludes, "the incentive to reduce costs creates a trend for MNCs to pick up and locate anywhere that it can maximise its ability to externalise costs".<sup>198</sup> At a time when the value and extent of FDI was a fraction of what it is today,<sup>199</sup> the Brundtland Commission estimated that MNCs would have to spend \$14 billion on pollution controls on their plants located in the Third World to raise them to the environmental standards stipulated in the US.<sup>200</sup>

The citing of examples, however widespread, is methodologically insufficient to demonstrate that the political power held by global capital is the structural feature of the global economy that derogates environmental human rights. To demonstrate that the capitalist organisation of the global economy allows capital to pursue its own interests at the expense of the claimed universal environmental human rights, it is necessary to identify the specific traits of capitalism that cause corporations to violate such rights. The method now adopted to undertake this task is to isolate and examine the record where capitalism operates in its purest form. Such an examination reveals the ontology of capitalism, that is its inherent tendencies and attributes, that cause structural violation of environmental human rights.

Global capital is accorded almost complete freedom in Export Processing Zones (EPZs). EPZs are free trade areas in the Third World that are exempt from tax, labour and environmental regulations. EPZs therefore reflect the corporate interest to minimise government regulations, perceived as an anathema by industry. For example ERT

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<sup>197</sup> William D Graf, "Sustainable Ideologies and Interests: Beyond Brundtland", Third World Quarterly, Vol 13, No 3, 1992, p557.

<sup>198</sup> Mary Ann Tetreault, "Regimes and Liberal World Orders", Alternatives, Vol XIII, 1988, p5.

<sup>199</sup> Peter Dicken, Global Shift: Transforming the World Economy, London, (Sage, 1999), pp20-1.

<sup>200</sup> The Ecologist, op cit, p115.

Secretary-General Keith Richardson claimed in relation to environmental protection; "the wrong thing to do is to just go around and publish new taxes and new regulations. It causes a lot of trouble".<sup>201</sup> Operating in EPZs, foreign investors are free to choose their own level of wages and pollution. This most closely resembles a pure capitalist structure since public restraints on the process of production and accumulation are entirely absent. The following discussion argues that the minimisation of private costs under conditions of capitalism necessarily results in the violation of the claimed environmental human rights.

To attract foreign investors, Kenya provides EPZ investors with a 10-year tax holiday.<sup>202</sup> Egypt offers investors complete exemption from all taxes.<sup>203</sup> In addition to a 10 year complete exemption from taxes, investors in Cameroon's EPZ are given "flexibility in hiring/firing workers".<sup>204</sup> The maquiladora is an EPZ in Mexico, just to the South of the US border, that contains over two thousand TNC plants. It was created by the 1965 maquila program between the US and Mexican governments that was meant to industrialise the border region. Relocation to the maquiladora is encouraged through providing exemptions from environmental and workers rights legislation.<sup>205</sup> TNCs operating in the maquiladora are, for example, allowed to fire and blacklist trade union leaders. Korten describes the subsequent disturbing economic context of human rights violations;

To maintain the kind of conditions transnational corporations prefer, the Mexican government has denied workers the right to form independent

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<sup>201</sup> quoted in Corporate Europe Observatory, op cit, p32.

<sup>202</sup> Robert Weissman, "Waiting to Export: Africa Embraces Export Processing Zones", Multinational Monitor, Vol 17, Nos 7 and 8, July/August 1996; <http://www.essential.org/monitor/hyper/mm0796.05.html>.

<sup>203</sup> ibid.

<sup>204</sup> ibid.

<sup>205</sup> Daniel D E Rounds, "Neoliberalism in Latin America: A Critique in the Framework of Karl Polanyi"; <http://psirus.sfsu.edu/IntRel/IRJournal/wi95/w95neoliberalism.html> and Korten, (1995), op cit, p129.

labour unions and has held wage increases far below productivity increases. In the summer of 1992, more than 14,000 Mexican workers at a Volkswagen plant turned down a contract negotiated by their government dominated labour union. The company fired them all, and a Mexican court upheld the company's action. In 1987, in the midst of a bitter two-month strike in Mexico, Ford Motor Company tore up its union contract, fired 3,400 workers, and cut wages by 45 per cent. When the workers rallied around dissident labour leaders, gunmen hired by the official government-dominated union shot workers at random in the factory.<sup>206</sup>

The rights of workers are at best neglected and at worst systematically violated by corporations making decisions according to efficiency concerns institutionalised in the capitalist economy, freed from legislative restraints. Corporations have a similarly poor record in the case of environmental protection in the maquiladora. Firms located in the maquiladora have been criticised for failing to provide their work force with basic health and safety precautions.<sup>207</sup> Exempt from environmental regulations, toxic waste "has been indiscriminately dumped" in the maquiladora area,<sup>208</sup> and "75 per cent of the industries were dumping toxic wastes directly into the public waterways".<sup>209</sup> Residents in the EPZ "are living in a virtual cesspool, afflicted by high rates of infectious diseases, cancer, neurological disorders and birth defects" caused by the pollution.<sup>210</sup> Clusters of communities suffering unusually high rates of congenital disease, such as anencephaly, a

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<sup>206</sup> Korten, 1995, op cit, p129.

<sup>207</sup> ibid; see also Johnston and Button in Johnston, (ed), (1994), op cit, p211 and Sachs (1995), op cit, pp37-8.

<sup>208</sup> Pauline Herrman, "Human Environmental Crisis and the Transnational Corporation: The Question of Culpability", Human Ecology, Vol 23, No 2, June 1995, p286.

<sup>209</sup> Johnston and Button in Johnston, (ed), (1994), op cit, p210.

<sup>210</sup> according to the American Medical Association, see Herrman, op cit, p286.

fatal birth defect in which a child is born without a fully developed brain, have been reported in specific neighbourhoods.<sup>211</sup>

Assessing the full impact of the physical damage to health caused by the systematic pollution is hampered by the absence of right-to-know laws in Mexico, problematising efforts to establish accurate details of amounts and types of toxic chemicals in the environment.<sup>212</sup> The scale of this phenomenon should not be underestimated. In December 1996 the maquiladora assembly sector was second only to oil in generating foreign income for Mexico.<sup>213</sup> The examples cited above cannot be discounted as rogue commercial actors acting on the periphery of the global economy. They indicate the choices made by business freed from social responsibilities and able to follow their own private interest defined in terms of competitiveness and efficiency, that is a "pure" form of capitalism. Should any corporation prioritise social or environmental concerns over profit maximisation they would be penalised or eliminated by the structural forces of the market that rewards cost efficiency. An example of these structural forces in operation is provided by Korten;

Some investment funds specialise in buying and selling companies in labour-intensive industries that have resisted moving to low-wage countries. The AmeriMex Maquiladora Fund, a group of US and Mexican investors initially backed by Nafinsa, Mexico's largest national development bank, was formed specifically to target US companies that have resisted the move abroad. According to its prospectus: 'The Fund will purchase established domestic United States companies suitable for maquiladora acquisitions, wherein a part or all of the manufacturing

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<sup>211</sup> *ibid.*

<sup>212</sup> Nancy Nusser and Ralph KM Haurwitz, "Toxic Waste Pollution One of Border Region's Worst Problems", Cox News Service; <http://www.latinolink.com/news/bort1223.html>.

<sup>213</sup> Kevin Hall, "NAFTA Affects Health and Safety", NAFTA Inter-American Trade Monitor, 13 December 1996; <http://www.hartford-hwp.com/archives/40/028.html>.

operations will be relocated to Mexico to take advantage of the cost of labour... We anticipate that manufacturing companies that experience fully loaded, gross labour costs in the \$7 - \$10 per hour range in the US may be able to utilise labour in a Mexican maquiladora at fully loaded, gross labour cost of \$1.15 - \$1.50 per hour. Though each situation may vary, it is estimated that this could translate into annual savings of \$10,000 - \$17,000 per employee involved in the relocated manufacturing operations'.<sup>214</sup>

### **The interest of capital accumulation as the criterion for the efficacy of international law**

The foregoing discussion has claimed that the nature of the political power wielded by global capital encourages states to allow low cost production at the expense of continuing human rights violations and the socialisation of costs through pollution. It will now be argued that power relations determine the efficacy of international law. In particular, the interests of capital determine the generally ineffectual enforcement of international environmental law and human rights law relative to the strict enforcement of international trade, commerce and property laws. The strict enforcement of global investment rights suggests that international law can be vigorously enforced in specific circumstances, a situation that refutes the realist argument that international law per se is ineffectual.<sup>215</sup> The following section shows that international law can be enforced when this reflects economic power relations. The argument therefore presented here is that the foregoing discussion on domestic law is also appropriate to an analysis of international law.

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<sup>214</sup> Korten (1995), op cit, pp213-4.

<sup>215</sup> for the realist position see Michael Mastanduno in Paul and Hall, (eds), op cit.

Infractions of the provisions of international human rights law are notoriously endemic and those responsible for violations rarely face any sanctions.<sup>216</sup> Similarly in the case of global environmental politics, legally binding treaties are seldom agreed and are more rarely still backed by sanctions or enforcement mechanisms, as will now be exemplified in the international response to the problem of climate change.

In August 1990 the Intergovernmental Panel on Climate Change (IPCC) released its First Assessment Report that estimated 60-80 per cent cuts in carbon dioxide emissions would be required to stabilise atmospheric carbon dioxide levels.<sup>217</sup> The international community of states have since conspicuously failed to agree any legally binding reductions in greenhouse gas emissions despite holding a number of high profile conferences on the subject. For example the 1992 UN Framework Convention on Climate Change committed 154 states to reduce carbon dioxide emissions to 1990 levels by the year 2000.<sup>218</sup> Subsequent Conference of Parties (CoPs) in 1995,<sup>219</sup> 1996,<sup>220</sup> and in 1997,<sup>221</sup> saw numerous unsuccessful attempts to set these commitments in a legally binding treaty. In December 1997 the Kyoto Protocol was agreed. Under the (non-binding) terms of the protocol, states signed up for overall nominal reduction in carbon dioxide emissions of 5.2 per cent by 2010 against 1990 levels.<sup>222</sup> The latest climate conference was held in the Hague in November 2000 with the intention of making the

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<sup>216</sup> David P Forsythe, Human Rights in International Relations, Cambridge, (Cambridge University Press, 2000).

<sup>217</sup> Greenpeace, "Conferences"; <http://www.greenpeace.org/~climate/politics/reports/conferences.html>.

<sup>218</sup> at the United Nations Conference on Environment and Development, see Corporate Europe Observatory, "The Weather Gods: How Industry Blocks Progress at Kyoto Climate Summit", The Corporate Planet; <http://www.corpwatch.org/trac/feature/planet/gods/html>.

<sup>219</sup> 1st CoP in Berlin; *ibid*.

<sup>220</sup> 2nd CoP held in Geneva, Greenpeace, *op cit*.

<sup>221</sup> 3rd CoP held in Bonn, *ibid*.

<sup>222</sup> *ibid*.

provisions of the Kyoto protocol legally binding.<sup>223</sup> However, talks broke down on the 25 November when European delegates rejected a US proposal that would have allowed the US a smaller reduction in carbon dioxide emissions than that which they agreed to make at Kyoto.<sup>224</sup>

International law has proved completely ineffectual either in establishing or enforcing binding limits on greenhouse gas emissions, despite a total of eight international conferences having been held to achieve this outcome.<sup>225</sup> International law has not been effective in addressing climate change since such a result contradicts the power relations that operate in the global political economy. In particular, cuts in fossil fuel usage would constrain economic growth and the opulent lifestyle of the present beneficiaries of capitalism, the very goals economic rationality is predicated upon. Nowhere is this better illustrated than through the consumerism in the US. Emitting 24 per cent of global carbon dioxide emissions, the US has only four per cent of the world's population.<sup>226</sup> Between 1990 and 1997 US greenhouse gas emissions had risen by eight per cent, compared to the 5.2 per cent reduction between 1990 and 2000 that was agreed in the Framework Convention of 1992.<sup>227</sup> The most recent figures report that the US government expects a 30 per cent increase of carbon dioxide emissions on 1990 levels by 2010.<sup>228</sup> This figure could rise further since the April 2001 announcement from President

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<sup>223</sup> Robin McKie, "Climate Talks End in Disarray", The Observer, 26 November 2000, p1.

<sup>224</sup> ibid.

<sup>225</sup> including CoPs to the UN Framework Convention on Climate Change.

<sup>226</sup> ibid, p3.

<sup>227</sup> Imre Karacs, Mary Dejevsky and Nicholas Schoon, "America Reveals her Policy on Global Warming: Too Little, Too Late", The Independent, 23 October 1997, p1.

<sup>228</sup> Paul Brown, "Climate Talks Near Collapse", The Guardian, 11 November 1998, p2.

George Bush that, because of economic considerations, he no longer intends Congress to ratify the Kyoto protocol.<sup>229</sup>

The dismal record of international human rights and environmental law stands in direct contrast to the broadly successful enforcement of international trade and property laws.<sup>230</sup> Exemplifying the privileged position accorded to trade related international law compared to international human rights law, the US Clinton Administrations put pressure on state legislatures not to pass pro human rights laws that might conflict with World Trade Organisation (WTO) rules.<sup>231</sup> This development followed the imposition by Maryland of investment and trade sanctions against the then military dictatorship in Nigeria and measures imposed by Massachusetts against the dictatorship of Burma.<sup>232</sup> In both of these cases the sanctions were introduced in a response to the egregious use of torture and violations of the right to life in the targeted states.<sup>233</sup> The prioritisation of trade based international law over human rights legislation by the US is especially notable because of the privileged position enjoyed by this particular state in determining the priorities and direction of the world order.<sup>234</sup>

International laws defending the interests of business have been successfully enforced to protect market access for global corporations. Indeed, free trade laws have been used to force developing states to allow imports of Western goods that are even

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<sup>229</sup> Greenpeace, *op cit.*

<sup>230</sup> Tony Evans, "Citizenship and Human Rights in the Age of Globalization", *Alternatives*, Vol 25, 2000, pp419-20.

<sup>231</sup> Public Citizen, "Another Broken NAFTA Promise: Challenge by US Corporation Leads Canada to Repeal Public Health Law", *Public Citizen*; <http://www.citizen.org/pctrade/nafta/ethyl.html>.

<sup>232</sup> *ibid.*

<sup>233</sup> *ibid.*

<sup>234</sup> Tony Evans, US Hegemony and the Project of Universal Human Rights, Basingstoke, (Macmillan, 1996).

known to damage health, such as tobacco products.<sup>235</sup> In 1991 free trade laws were used by the multinational chemical company Hoechst to force a reversal of the Philippine government's ban on the pesticide endosulfan, even though use of the pesticide is banned in the US due to its deleterious effects on health.<sup>236</sup> In 1989, the US General Accounting Office estimated that a quarter of the pesticides exported by US MNCs were banned domestically.<sup>237</sup>

A further example of the successful implementation of free trade laws at the expense of the human right to health is provided in the case of baby foods in Guatemala. In 1983, Guatemala adopted the International Code of Marketing of Breast Milk Substitutes into its law. The code was designed to protect the lives of infants by promoting breast-feeding over breast-milk substitutes. The law forbids the use of pictures of babies on baby food labels. The food manufacturer Gerber threatened Guatemala with trade sanctions under GATT rules for not allowing it to use its trademark of the Gerber baby in the marketing of its baby food products. In 1995 the government stopped enforcing the law and the following year the Guatemalan Supreme Court ruled that imported products were exempt from the ban on the use of baby photos on foods.<sup>238</sup>

Unlike the human rights regime and international environmental laws, international economic institutions, specifically the NAFTA, the GATT and the WTO, have been specifically designed and resourced to ensure compliance through the imposition of graduated sanctions. Japan has, for instance, successfully used GATT provisions to reverse national bans on the export of unprocessed timber from Indonesia, Malaysia, Brazil, Thailand and the US.<sup>239</sup> These exports bans were introduced to protect

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<sup>235</sup> Chomsky, Deterring Democracy, op cit.

<sup>236</sup> Sachs (1995), op cit, pp38-9.

<sup>237</sup> ibid.

<sup>238</sup> Russell Mokhiber, "The Ten Worst Corporations of 1996", Multinational Monitor, Vol 17, No 12, December 1996; <http://www.essential.org/monior/hyper/mm1296.04.html>.

<sup>239</sup> Agarwal and Narain, op cit, p92.

forested areas from unsustainable logging practices and their repeal has directly contributed to continued deforestation in the affected states.<sup>240</sup> The WTO has institutionalised rule compliance through a dispute settlement system (DSS) backed by a graduated system of sanctions.<sup>241</sup> As Chimni points out, the lament that international law is not law as it lacks enforcement mechanisms, categorically does not apply in the instance of the WTO.<sup>242</sup>

NAFTA institutionalises the privileged position of capital interests over human rights or environmental concerns since under its provisions "there are no transnational citizenship rights other than those accorded to capital".<sup>243</sup> Although NAFTA incorporates side agreements protecting workers rights and environmental considerations, these have been properly criticised for being underfunded and lacking adequate enforcement mechanisms juxtaposed to the provisions relating to free trade.<sup>244</sup> The ability of NAFTA to enforce through law international corporate interests is illustrated in a case brought to a NAFTA panel by the Ethyl corporation. In April 1997 Canada imposed a ban on the import and inter-provincial transport of the petrochemical additive MMT. MMT is a manganese-based compound that is added to gasoline to reduce engine knocking. However, the primary ingredient of MMT is manganese, a known human neurotoxin that prompted the Canadian ban. Ethyl is the only manufacturer of MMT.<sup>245</sup> As Public Citizen reports,

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<sup>240</sup> *ibid*, p92.

<sup>241</sup> BS Chimni, "Marxism and International Law: A Contemporary Analysis", Economic and Political Weekly, Vol 34, No 6, 6 February 1999, pp343.

<sup>242</sup> *ibid*, p343.

<sup>243</sup> Gill, *op cit*, p415.

<sup>244</sup> Caroline Thomas and Martin Weber in Annie Taylor and Caroline Thomas, (eds), Global Trade and Global Social Issues, London, (Routledge, 1999), pp133-50.

<sup>245</sup> Corporate Watch, "USA: The Ethyl Corporation has Filed a \$251 Million Lawsuit Against the Canadian Government", The Corporate Planet; <http://www.corpwatch.org/trac/corner/worldnews/other/other44.html>.

Ethyl responded to Canada's public health law with a \$250 million lawsuit claiming the law violated its investor protections under NAFTA. Ethyl argued that the law was an 'expropriation' of its assets or an action 'tantamount to expropriation' because it would eliminate profits Ethyl expected to earn through Canadian sales of the additive. The Canadian government settled the NAFTA suit... agreeing to pay Ethyl \$13 million in damages and to cover the company's legal costs. It will also proclaim publicly that MMT is 'safe' - in direct contradiction of the view of its national environmental protection agency.<sup>246</sup>

This case illustrates the way in which corporate interests are privileged in NAFTA rules above concerns of public health. The Ethyl lawsuit is also instructive since it demonstrates that international law can be enforced when conducive to business concerns. International human rights law and international environmental legislation that threaten business interests can be violated with relative impunity not because of an inherent inability to enforce international laws but rather because the efficacy of international law is determined by power relations.<sup>247</sup> In particular, international trade laws have been enforced, even when these conflict with domestic environmental health legislation, as exemplified through the Ethyl case that effectively allowed an international investor to demand compensation for complying with Canadian environmental regulations.<sup>248</sup>

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<sup>246</sup> Public Citizen, "Ethyl Corporation vs Government of Canada", Public Citizen; <http://www.citizen.org/pctrade/nafta/Ethylbri.html>; see also Robert Weissman, "Another NAFTA Nightmare", Multinational Monitor, Vol 17, No 10, October 1996; <http://www.essential.org/monitor/hyper/mmm1096.03.html>; Public Citizen, "Multilateral Agreement on Investment", Public Citizen; <http://www.citizen.org/pctrade/factshee.html>; Nicola Bullard, "MAI: The Devil you Don't Know"; [http://www.corpwatch.org/trac/feature/planet/mai\\_bullard.html](http://www.corpwatch.org/trac/feature/planet/mai_bullard.html) and Noam Chomsky, "Interview: Just Intuition", Third Way, Vol 20, No 2, January 1998, p17.

<sup>247</sup> Chimni, op cit.

<sup>248</sup> Public Citizen, "Ethyl Corporation vs Government of Canada", Public Citizen; <http://www.citizen.org/pctrade/nafta/Ethylbri.html>.

The week following the settlement of the Ethyl case the Canadian government faced another lawsuit that similarly illustrates the ability of corporate interests to use the economic provisions of NAFTA to force the reversal of domestic environmental protection laws. In an attempt to reduce the pollution resulting from the trade in toxic wastes, Canada banned the export of PCB contaminated waste in 1995. In early 1997 the ban was revoked after US firms announced they would challenge the validity of the law under NAFTA provisions. The US based Poly-chlorinated Biphenyl (PCB) treatment company, Myers Inc., also demanded an undisclosed sum from the Canadian government for profits lost during the 15 month period of the ban. Barlow comments that this case again exemplified how NAFTA empowers a company to demand compensation from states for environmental protection legislation that restricts sales.<sup>249</sup>

A juxtaposition of international trade law on the one hand with international environmental and human rights law on the other, demonstrates that the criterion determining whether international legislation is implemented in practice is that of power relations. Reflecting upon the centrality of global capital interests in the social base Chimni accurately summarises that; "changes in international law over the past two decades have made it an instrument for safeguarding transnational capital".<sup>250</sup>

## **Conclusion**

This chapter has identified law as an integral aspect of hegemonic power rather than as an impartial rules based instrument.<sup>251</sup> For legal environmental human rights to be realised in practice it is necessary to address the power relations that determine the

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<sup>249</sup> Maude Barlow, volunteer national chairperson with the Council of Canadians quoted in Margrete Strand Rangnes, "Canada Slapped with NAFTA Lawsuit Against Another Environmental Law", Public Citizen Global Trade Watch, 24 August 1998; [http://www.ban.org/ban\\_news/canada\\_slapped.html](http://www.ban.org/ban_news/canada_slapped.html); see also Chomsky, (1997), *op cit*; David Francis, "Study Shows Accord has Cost 250,000 Jobs: Firms use it to Thwart Unions", Christian Science Monitor; <http://plweb.csmonitor.com/plwebturbo/cg...b?getdoc+plain1+archives+178457+8++NAFTA.html>.

<sup>250</sup> Chimni, *op cit*, p337.

<sup>251</sup> Sumner, *op cit*.

capabilities and the efficacy of law. International law can indeed be implemented in practice and can even force reversals in domestic policies and legislation provided that they protect the interests of global capital.<sup>252</sup> In contrast, widespread environmental degradation and human rights violations continue largely unaffected by the stipulations of the relevant international laws. Power relations, especially the interests of international investors, have been identified to explain this disparity in the efficacy of international law.<sup>253</sup>

An examination of the subject of environment human rights restricted to the legislative level is misplaced since it confuses cause for effect. Whereas a methodological approach based on legal analysis presupposes that considerations of jurisprudence and legislation determines social relations, the analysis conducted in this chapter argued that the converse is the case.<sup>254</sup> It is not only the assertion here that legally stipulated environmental human rights are not being implemented in practice, it is rather that they cannot be realised in the capitalist political economy given (i) the current configuration of power in the social base that, by definition, favours capital interests and (ii) the ideological component of law as a hegemonic instrument of politics reflecting powerful social interests.

The criticisms made on the ability of law to implement environmental human rights must be properly differentiated from the values embodied in the legal rights themselves. The concepts expressed in legal environmental rights suggest an alternative social order that rejects the supremacy of economic rationality and thereby also the validity of existing capitalism. The problems encountered in realising environmental human rights reside in the vague wording of both domestic and international

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<sup>252</sup> Chimni, *op cit.*

<sup>253</sup> *ibid.*

<sup>254</sup> Collins, *op cit.*

environmental rights and in the subsequent inadequate application.<sup>255</sup> Isolated exceptions notwithstanding, environmental rights have been interpreted by both the courts and politicians in ways that accommodate existing economic relations. The evisceration of both domestic and international environmental rights has been compounded by the lack of enforcement mechanisms and sanctions against corporate transgressors.<sup>256</sup>

In summary, there has been an evident trend towards the formal acknowledgement of environmental rights by political institutions in domestic and international legislation. Examining the political component of law, this chapter has identified power relations as determining the formulation and implementation of environmental human rights in vacuous terms. Formal political institutions have ensured the ineffectuality of environmental human rights in realising political change whilst promoting the veneer of responding to environmental concerns by officially recognising environmental rights. The following two chapters focus on environmental values to offer an alternative interpretation of existing human rights legislation and thereby establish the political foundations of two environmental human rights.

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<sup>255</sup> Desgagne, *op cit* and Boyle and Anderson, (eds), *op cit*.

<sup>256</sup> Johnston, (ed), 1997, *op cit*.

## **CHAPTER 5**

### **THE HUMAN RIGHT TO AN ENVIRONMENT FREE FROM TOXIC POLLUTION**

A man with a good car needs no justification.<sup>1</sup>

#### **Introduction**

This chapter claims the human right to an environment free from toxic pollution based on (i) the harm principle and (ii) interpreting existing human rights from an environmental perspective. The human right to an environment free from toxic pollution could conflict with the human right to economic development when this latter right is interpreted as endorsing a principal political focus on economic growth at the expense of environmental considerations.<sup>2</sup> Such conflicts between human rights are, however, nothing new and established procedures exist to resolve such dilemmas.<sup>3</sup> The subsequent matter of implementation can be differentiated from establishing the validity of environmental human rights in the first place, which is the explicit purpose of this research project.

An environment free from toxic pollution differs from an environment free from toxic chemicals, since a number of toxins found in the environment are produced from natural, rather than anthropogenic sources.<sup>4</sup> The argument that, since toxic chemicals occur naturally in the environment, the anthropogenic production of toxic pollution is

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<sup>1</sup> Gang of four, "A Man with a Good Car", 1983, quoted in Matthew Paterson, "Car Culture and Global Environmental Politics", Review of International Studies, Vol 26, No 2, 2000, p253.

<sup>2</sup> ICESCR article 1.

<sup>3</sup> Tim Hayward, "Constitutional Environmental Rights: A Case for Political Analysis", Political Studies, Vol 48, No 3, 2000, pp558-73.

<sup>4</sup> J Simpkins and JJ William, Advanced Biology, London, (Collins, 1992), p692.

exempt from violating human rights,<sup>5</sup> is an invalid claim. Nature cannot cause violations of rights since human rights are, by definition, restricted to considerations of political organisation in human societies. By way of analogy, someone may suffer injury in a landslide during a hike. Yet the claim that a mountainside had violated their rights to non-interference is non-sensical. Similarly, the courts are likely to view with little sympathy the claim that theft is justified on the grounds that this happens in nature, for example that magpies are known to take items of jewellery left unattended. In the following discussion of toxic pollution, the focus of attention is therefore restricted to anthropogenically produced, rather than naturally occurring, toxic substances since these alone can be affected by political policies.

A number of environmental activists and advocacy groups have already claimed that pollution violates basic human rights.<sup>6</sup> The same connection has also been made by political theorists.<sup>7</sup> Blackstone states for example that "none of our rights can be realised without a liveable environment",<sup>8</sup> and access to unpolluted air and water was identified by Shue to be a basic subsistence right.<sup>9</sup> It is therefore evident that both academics and activists have identified a capacity for violations of human rights to be mediated via environmental degradation. Yet it is also evident that the precise nature of this form of violation tends to be implicitly presupposed as axiomatic, rather than being explicitly demonstrated. This is a notable shortcoming given the characteristic unwillingness or

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<sup>5</sup> Against Nature, Channel 4 documentary, 30 November 1997.

<sup>6</sup> see chapter 3.

<sup>7</sup> Alan E Boyle in Alan E Boyle and Michael R Anderson, (eds), Human Rights Approaches to Environmental Protection, Oxford, (Clarendon Press, 1996), p49 and Richard Desgagne, "Integrating Environmental Values into the European Convention on Human Rights", American Journal of International Law, Vol 85, No 2, April 1995, p264.

<sup>8</sup> William T Blackstone in William T Blackstone, (ed), Philosophy and Environmental Crisis, Athens, (University of Georgia Press, 1974), p32.

<sup>9</sup> Henry Shue, Basic Rights: Subsistence, Affluence and United States Foreign Policy, Princeton, (Princeton University Press, 1980), p23.

inability of courts to address instances of toxic pollution either in terms of violations of the harm principle (malfeasance) or as a cause of basic human rights violations.<sup>10</sup>

It is therefore the explicit purpose of this chapter to detail three ways by which toxic pollution violates human rights. Firstly, the environmental justice movement in the US is examined for its campaign against toxic pollution. Environmental justice has become a civil rights issue since toxic waste dumps disproportionately affect minority and impoverished communities. Secondly, violations of the right to a private life incurred through pollution will be examined. Thirdly, and most importantly, toxic pollution will be argued to constitute harm and to subsequently violate basic human rights to non-interference, security of the person, the right to health and the right to life. Methodologically, this claim is established through a review of epidemiological research into the physiological effects of specific pollutants, illustrated through a brief case study of the toxic pollution generated by cars.

This chapter will then apply the analysis of law conducted in chapter four to the specific case of the claimed human right to an environment free from toxic pollution. Through recourse to the epidemiological evidence it is argued that for non-malfeasance and human rights stipulations to be realised, toxic pollution must be classified and criminalised as harm. Herein lies the paradox for law since this outcome would contradict the capitalist organisation of the political economy that is predicated upon environmental degradation.<sup>11</sup> This paradox is argued to explain the continuing reluctance of the courts to acknowledge toxic pollution as harm and to thereby accommodate the environmental degradation resulting from capitalist modes of production and consumerist lifestyles.

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<sup>10</sup> see chapter 1.

<sup>11</sup> see chapter 1.

## **Environmental justice**

Civil rights in the United States have been adversely affected by toxic pollution because of the tendency for toxic sites to disproportionately impact on impoverished and minority communities. Earth Rights International for example points out that "poor and minority communities are common sites for nuclear power plants, incinerators and other potentially harmful development".<sup>12</sup> This trend has resulted in the creation of the environmental justice movement that interprets the tendency as a form of environmental apartheid. In particular, the movement claims that civil rights to racial equality are being violated,<sup>13</sup> since communities of colour are 47 per cent more likely than average to be exposed to industrial pollution.<sup>14</sup>

A recent study of hazardous waste landfills by the General Accounting Office found that three quarters of waste sites were located in low income or minority communities.<sup>15</sup> The Oregon Clearinghouse for Pollution Reduction "observe patterns of disproportionate environmental degradation occurring in areas with lower incomes and less ability to protect lifestyle".<sup>16</sup> Explaining this modality from the industry perspective, Cerrell Associates stated in a 1984 report that,

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<sup>12</sup> response to thesis questionnaire received from Earth Rights International, 12 November 1998.

<sup>13</sup> ICCPR article 26 stipulates "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

<sup>14</sup> Nadirah Z Sabir, "A Hazardous Existence", Black Enterprise, Vol 25, Issue 8, March 1995, p30, Aaron Sachs, Eco-Justice: Linking Human Rights and the Environment, Worldwatch Paper 127, (Worldwatch Institute, 1995), p10 and Zoltan Grossman, "Linking the Native Movement for Sovereignty and the Environmental Movement"; <http://conbio.rice.edu/nae/docs/grossman.html>, reprinted from Z Magazine, Vol 8, No 11, November 1995, pp42-50.

<sup>15</sup> Barbara Rose Johnston in Barbara Rose Johnston, (ed), Who Pays the Price? Washington DC, (Island Press, 1994), p227.

<sup>16</sup> response to thesis questionnaire received from Oregon Clearinghouse for Pollution Reduction, 10 December 1998; see also Michael R Anderson in Alan E Boyle and Michael R Anderson, (eds), op cit, p199 and EJ Mishan, The Costs of Economic Growth, Revised Edition, London, (Weidenfeld and Nicolson, 1993), p28.

all socio-economic groupings tend to resent the nearby siting of major facilities, but middle and upper strata possess better resources to effectuate their opposition. Middle and higher socio-economic strata neighborhoods should not fall within the one-mile and five-mile radius of the proposed site.<sup>17</sup>

This leaked report exemplifies the structural tendency to impose the environmental hazards of economic activity onto marginalised groups who lack the power and resources to defend their interests.

### **Pollution as a violation of privacy rights**

Pollution can be interpreted to violate the stipulation that, no one shall be subjected to arbitrary interference with his (sic) privacy, family, home or correspondence... Everyone has the right to the protection of the law against such interference or attacks.<sup>18</sup>

Pollution has, for example, been acknowledged by the European Court on Human Rights to constitute a source of interference with individuals by virtue of its status as a public nuisance.<sup>19</sup> In isolated cases, this contravention of autonomy has been legally recognised as violating rights to privacy on the grounds that the affected individual is arbitrarily exposed to disutility over which he or she has no influence or control.<sup>20</sup> In 1994, the Spanish government was ordered by the European Court to pay compensation of four million Pesetas to Gregoria Ostra who was found to have suffered a violation of her rights to a private and family life because of the pollution coming from a nearby tannery waste

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<sup>17</sup> quoted in Mishan, op cit, p23.

<sup>18</sup> Universal Declaration article 12; an identical right is repeated under article 17, paras 1 and 2 of the ICCPR.

<sup>19</sup> Michael Bothe (Chair and Project Coordinator), The Right to a Healthy Environment in the European Union, report of a working group established by the European Environmental Law Association, 1996, p31.

<sup>20</sup> Arthur Roger, "Environmental Rights", The Lancet, Vol 344, Issue 8938, 17 December 1994, p1695.

treatment plant.<sup>21</sup> In this instance, pollution caused nausea, vomiting, allergic reactions, bronchitis and anorexic conditions within members of the complainant's family. The European Court ruled that,

it is self evident that grave pollution of the environment can impair the well-being of the individual and so hinder the individual's use of his or her home that his or her private and family life is also impaired, even when the health of the person concerned is not seriously endangered.<sup>22</sup>

This ruling is significant since pollution has been recognised to cause violations of privacy rights in the absence of the pollutant seriously endangering the health of the victim.<sup>23</sup> Article eight was found by the European Court to be similarly violated in the cases of *Arondelle v UK* and *Baggs v UK*. In these two cases, home-owners complained that the noise pollution originating from the airports of Gatwick and Heathrow constituted a violation of the right to privacy.<sup>24</sup> Recognition of pollution as a public nuisance that can violate privacy rights is therefore established in the law of the European Union.<sup>25</sup> The chapter now turns to critique the legal categorisation of pollution as a source of public nuisance, and argues instead that toxic pollution should be classified in the more serious category of harm.

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<sup>21</sup> *ibid*, p1695.

<sup>22</sup> European Court of Human Rights judgement, 9 December 1994, EuGRZ 1995, p530 quoted by Christian Calliess in Michael Bothe (Chair and Project Coordinator), *op cit*, p31.

<sup>23</sup> Alfred Rest, "Improved Environmental Protection through an Expanded Concept of Human Rights in Europe"; <http://www.xcom.it/icef/abstracts/rest/html>.

<sup>24</sup> Both cases resulted in settlement with compensation before the Commission issued an opinion on the merits, *ibid*.

<sup>25</sup> *ibid*.

### **Toxic pollution constitutes harm**

As we have seen in the case of the European Union, the courts have traditionally categorised toxic pollution not as harm but rather as public nuisance or as environmental risk, falling under the proper jurisdiction of environmental regulations rather than human rights or criminal law.<sup>26</sup> This categorisation is of central importance since the classification of toxic pollution as harm would necessarily require legislation to criminalise its production for the principle of non-malfeasance to stand. The refusal by the courts to acknowledge toxic pollution as harm relegates the importance of the injuries incurred by pollutants and indeed deems such injuries as socially acceptable and, by definition, not even as harm.

Epidemiologists can demonstrate the numbers of deaths in the general population attributable to toxic pollutants.<sup>27</sup> Those individuals who suffer illness or die from the effects of exposure to toxic pollutants, according to the legal categorisation, have not been the victims of harm, but have rather suffered the unfortunate consequences of exposure to environmental risks.<sup>28</sup> As Beck points out, the legitimacy of this argument assumes the validity in exposing the public to, what is in effect, a game of Russian roulette and as such can be questioned from a rights based perspective.<sup>29</sup> Beck's argument, although valid, circumvents the central point which is that toxic pollution causes harm by definition, even if this harm does not appear as a diagnosed disease in the exposed individuals. Deaths and diseases attributable to pollution are merely symptoms of the harm incurred by previous exposure to toxins. Harm is caused by the damaging of cellular material exposed to toxic pollution that may, or may not, subsequently manifest in certain illnesses or death. This epidemiological fact refutes the position of the legal

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<sup>26</sup> Boyle and Anderson, (eds), *op cit* and Michael Bothe (Chair and Project Coordinator), *op cit*.

<sup>27</sup> see below

<sup>28</sup> Ulrich Beck in Michael Jacobs, (ed), *Greening the Millennium?* Oxford, (Blackwell, 1997).

<sup>29</sup> *ibid.*

establishment that toxins do not necessarily cause harm through personal injury, but merely expose individuals to the risk of harm.<sup>30</sup>

The categorisation of toxic pollution as nuisance and environmental risk, rather than as harm, facilitates ongoing toxic pollution, mitigated only to the extent by which governments and courts are able or willing to stipulate and enforce environmental regulations. Controlling pollution emissions through environmental laws is incompatible with the enforcement of human rights to health, security of the person and to life, since the smallest of quantities of certain toxic pollutants are known to damage human physiology. Toxic pollution constitutes harm at levels well below those stipulated in existing environmental legislation. Levels of air pollutants below those limits set by legislation in the US, for example, have been linked to cancer, cardiopulmonary diseases and a reduced life span.<sup>31</sup> Similarly, research published in World Health concludes that "even legally permissible levels of air pollution can lead to heart and lung disease".<sup>32</sup> The oxymoronic argument that a human activity known to shorten the life-span of others does not constitute harm is properly rejected by the courts in virtually all cases besides deaths caused by pollution.<sup>33</sup>

Through analysis of the epidemiological evidence, it will now be argued that toxic pollutants violate human rights to life,<sup>34</sup> to the security of the person (non-intervention),<sup>35</sup> and to health.<sup>36</sup> It is necessary to recognise the claimed right to an

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<sup>30</sup> for a detailed account of the epidemiological harmful effects of specific toxic pollutants, see below.

<sup>31</sup> editorial, "Legal Air Pollution may also Kill", New Scientist, Vol 145, No 1, 1 January 1994, p15.

<sup>32</sup> editorial, "Air Pollution", World Health, Vol 141, No 22, September/October 1993, p19.

<sup>33</sup> although euthanasia is permitted in some states, this is still acknowledged as harm. The argument given is that it is right to cause this harm to alleviate the suffering of a person. The trumping status of the harm principle rules even this compassionate form of harm illegal in most states, see Joel Feinberg, Harmless Wrongdoing: The Moral Limits of the Criminal Law, Vol 4, Oxford, (Oxford University Press, 1988).

<sup>34</sup> Universal Declaration, article 3; ICCPR article 6.

<sup>35</sup> ICCPR article 3.

environment free from toxic contamination to realise these legal human rights since exposure to certain pollutants damages cellular structures. Damage incurred on cells can result in the development of a subsequent disease such as cancer. Increased air pollution in Chinese cities has, for example, been responsible for raising the death rate from cancer by 6.2 per cent and from lung cancer by 18.5 per cent between 1988 and 1995.<sup>37</sup> It is because of the ability of pollutants to harm human physiology that environmental conditions are specifically covered by health and safety employment rights, as expressed for instance in the European Social Charter,<sup>38</sup> the American Protocol,<sup>39</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>40</sup> As Lee and Manning have observed, it is paradoxical that exposure to dangerous substances at the workplace is now strictly controlled, with clear benefits to health, while the exposure of the general population to the same pollutants has hitherto been disregarded as a human rights issue.<sup>41</sup>

The routine use of certain pesticides in modern agriculture is a prominent source of harm. Many pesticides are poisonous to humans. For example, 90 per cent, by weight, of fungicides used in America have a known tumour forming capacity.<sup>42</sup> In the developing world where pesticide regulations are lax, the situation causes even more

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<sup>36</sup> ICCPR article 9; ICESCR article 12; article 11 of the European Social Charter, and part 2 articles 8 and 9 of the Draft Principles On Human Rights and the Environment.

<sup>37</sup> Lindsey Swope, Margaret Byrne Swain, Fuquan Yang and Jack D Ives in Barbara Rose Johnston, (ed), Human Rights and the Environment at the End of the Millennium, Walnut Creek, (Alta Mira, 1997), p43.

<sup>38</sup> European Social Charter, part 1, article 3, guarantees that "all workers have the right to safe and healthy working conditions".

<sup>39</sup> article 7 of the American Protocol stipulates a right to "safety and hygiene at work", see RR Churchill in Boyle and Anderson, (eds), op cit, pp101-2.

<sup>40</sup> ICESCR article 7(c) stipulates "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensures, in particular: safe and healthy working conditions".

<sup>41</sup> John Lee and Lucy Manning, "Environmental Lung Disease", New Scientist, Vol 147, No 1995, 16 September 1995, p4.

<sup>42</sup> according to a 1987 study by the US National Academy of Sciences; see Lloyd Timberlake and Laura Thomas, When the Bough Breaks, London, (Earthscan, 1990), p99.

concern. A 1990 study estimated that 25 million agricultural workers in the developing world are poisoned to some extent each year by pesticides.<sup>43</sup> Moreover, pesticides with a mutagenic effect constitute an insidious legacy since these substances cause mutation at the cellular level, and can thereby harm future generations.<sup>44</sup>

Another variety of toxins, heavy metals, accumulates in the human body and, after a threshold level is reached, can harm the individual through inhibiting enzyme activity.<sup>45</sup> A notorious example was the release of mercury from the Chisso Corporation factory in Minimata, Japan, into a local bay in the 1950s. Forty-six members of the local community subsequently died as a result of consuming mercury contaminated fish.<sup>46</sup> A number of Yanomami Indians have been similarly killed by poisoning from mercury released into their traditional lands by gold diggers.<sup>47</sup>

Heavy industry in the former totalitarian states of Eastern Europe left a legacy of soil, water and air pollution. This has caused higher incidence of respiratory illnesses and childhood lead poisoning with many children consequently exhibiting evidence of anaemia and chromosome damage.<sup>48</sup> The province of Katowice contains much of the heavy industry in Poland, and severe pollution has resulted from a total lack of environmental regulations. The resident population consequently suffers from 15 per cent more circulatory disease, 30 per cent more tumours and 47 per cent more respiratory disease than the average Pole.<sup>49</sup> In Hungary, one in every 17 deaths has been attributed by

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<sup>43</sup> see Sachs, *op cit*, p39.

<sup>44</sup> Johnston in Johnston, (ed), (1997), *op cit*, p14.

<sup>45</sup> Simpkins and William, *op cit*, p692.

<sup>46</sup> *ibid*, p695; Andy Coghlan, "The Green Empire", *New Scientist*, Vol 140, No 1893, 2 October 1993, p48 and Kevin Pickering and Lewis Owen, *Global Environmental Issues*, London, (Routledge, 1994), p148.

<sup>47</sup> mercury is used to separate the gold from surrounding elements; see Leslie Sponzel in Johnston (ed), (1994), *op cit*, p43.

<sup>48</sup> Fred Pearce, "Soils Spoilt by Farming and Industry", *New Scientist*, Vol 134, No 1821, 16 May 1992, p7.

<sup>49</sup> Timberlake and Thomas, *op cit*, p65.

government estimates to air pollution.<sup>50</sup> The air is so heavily polluted in Bombay, that breathing in this Indian city has been estimated to incur the same physiological harm as smoking ten cigarettes each day.<sup>51</sup>

Exposed individuals are harmed by toxic pollutants released into the environment by virtue of the epidemiological properties of these substances to damage cellular material and physiological processes. This physical harm necessarily violates rights to the health and to the security of the person since cellular integrity is arbitrarily damaged through exposure to pollutants released by other individuals or corporations. Crucially, violations of these rights are not limited to the individuals recorded as statistics of disease victims. As epidemiologists explain;

many inhaled pollutants do not kill cells, but are responsible, directly or via their breakdown products, for mild, ongoing damage to DNA and other cellular structures. The combination of continuing cell division for repair and gradual DNA damage may eventually lead to the development of cancer.<sup>52</sup>

From a review of the epidemiological evidence, it is logically coercive to identify toxic pollutants as a ubiquitous form of harm. This harm constitutes a violation of the autonomy rights of the person, since the very being of the individual is deleteriously affected in a way that he or she would not have been in the absence of exposure to the toxins. Toxic pollution is consequently implicated in violating the right to life of the population in general, by an average of between one and two years according to epidemiologist Douglas Dockery.<sup>53</sup>

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<sup>50</sup> ibid, p87.

<sup>51</sup> ibid, p87; see Jorge Hardoy and David Satterthwaite in John Kirkby, Phil O'Keefe and Lloyd Timberlake (ed), The Earthscan Reader in Sustainable Development, London, (Earthscan, 1995), p185 for a comprehensive list of toxic pollutants routinely found in the modern environment and their associated health effects.

<sup>52</sup> Lee and Manning, op cit, p5.

Toxic pollution constitutes an arbitrary source of physiological harm that is more direct than other forms of legally recognised harm. Theft, for example, may certainly be inconvenient and unjust to the victim, but in the absence of any physical violence, does little to harm the actual body of a person. Yet a plethora of property and contract laws exist to define very precisely ownership rights. Contravention's of ownership rights are subsequently classified as harm.<sup>54</sup> The harm incurred by pollution has been downplayed by capitalist law, even though, unlike contravention's of property rights, toxic pollution can incur physical harm, diseases or even death.

#### Dangerous driving: A case study of the car culture

By way of illustration, the harm caused by toxic pollution will now be exemplified through a brief case study of the car culture. Methodologically, this will be demonstrated through a review of the epidemiological evidence that testifies to the physiological harm incurred on the public through the use of cars. The following environmental impacts of the internal combustion engine are additional to its generation of greenhouse gases.<sup>55</sup>

Vehicle emissions constitute the single most important categorised source of toxic air pollutants.<sup>56</sup> Specific pollutants harm the physiology of individuals by virtue of their capacity to damage cellular structures. Such harm can result in brain damage, cardiovascular diseases, respiratory problems or infections, bronchitis, lung cancer, a

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<sup>53</sup> see editorial, "Legal Air Pollution may also Kill", op cit, p15.

<sup>54</sup> Feinberg, op cit.

<sup>55</sup> cars produce 23 per cent of all carbon dioxide emissions in OECD states, excluding the carbon dioxide released from fuel extraction, processing, transport and associated road construction; see Matthew Paterson, Global Warming and Global Politics, London, (Routledge, 1996), p11.

<sup>56</sup> see Richard Gould, "The Exhausting Options of Modern Vehicles", New Scientist, Vol 122, No 1664, 13 May 1989, pp42-7; see also Robert Read and Cathy Read, "Breathing can be Hazardous to your Health", New Scientist, Vol 129, No 1757, 23 February 1991, p34 and Pickering and Owen, op cit, p149.

decline in lung function, emphysema, headaches, leukemia, damage to the immune system or damage to the nervous system or induce allergies.<sup>57</sup>

Although the medical evidence suggests that pollutants cannot cause asthma, certain pollutants emitted from cars such as nitrogen dioxide have been demonstrated to trigger asthma attacks in people genetically predisposed to the condition.<sup>58</sup> Being induced to have an asthma attack because of the actions of a third party can be interpreted as a violation of rights to autonomy and security of the person, since a physical condition is thereby created, that could even violate the right to life in the case of a serious attack.

When the French Public Health Society conducted a three year study on the health effects of air pollution, 350 Parisians were estimated to die each year from heart problems caused by everyday pollution.<sup>59</sup> The London smog of December 1952 lasted for five days and killed approximately 4,000 people. At the height of this episode, Londoners were dying at a faster rate than during the cholera epidemic in the previous century.<sup>60</sup> Death

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<sup>57</sup> Paterson, (2000), op cit, p259; see also Lee and Manning, op cit, p4; Antony Seaton, "Bookshelf", The Lancet, Vol 346, Issue 8977, 16 September 1995, p759; editorial, Maclean's, "Wheezing and Worrying", Vol 108, Issue 24, 12 June 1995, p3; Mick Hamer, "Drivers can Damage your Health", New Scientist, Vol 143, No 1938, 13 August 1994, p8; Antony Seaton, William McNee, Kenneth Donaldson and David Godden, "Particulate Health Pollution and Acute Health Effects", The Lancet, 21 January 1995, pp176-8; editorial, "Air Pollution", World Health, Vol 141, No 22, September/October 1993, pp18-9; J Schwartz, "Air Pollution and Daily Mortality: A Review and Meta-Analysis", Environmental Research, Vol 64, 1994, pp36-52; DJ Bates, "Health Indices of the Adverse Effects of Air Pollution: The Question of Coherence", Environmental Research, Vol 59, 1992, pp336-49; CA Pope, J Schwartz, MR Ransome, "Daily Mortality and PM 10 Pollution in the Utah Valley", Archive of Environmental Health, Vol 47, 1992, pp211-7; J Schwartz, "What are People Dying of on High Pollution Days?" Environmental Research, Vol 64, 1994, pp26-35; DW Dockery, FE Speizer, DO Strom et al, "Effects of Inhaled Particles on Respiratory Health of Children", American Review of Respiratory Disease, Vol 139, 1989, pp587-94; CA Pope, DW Dockery, JD Spengler and ME Raizenne, "Respiratory Health and PM10 Pollution: A Daily Time Series Analysis", American Review of Respiratory Disease, Vol 144, 1991, pp668-74; W Roemer, G Hoek and B Brunekreef, "Effect of Ambient Winter Air Pollution on Respiratory Health of Children with Chronic Respiratory Symptoms", American Review of Respiratory Disease, Vol 147, 1993, pp118-24 and CA Pope and RE Kanner, "Acute Effects of PM 10 Pollution on Pulmonary Function of Smokers with Mild to Moderate Chronic Obstructive Pulmonary Disease", American Review of Respiratory Disease, Vol 147, 1993, pp1336-40.

<sup>58</sup> Seaton, op cit, p759.

<sup>59</sup> Tara Patel, "French Smog Smothers Hundreds", New Scientist, Vol 149, No 2017, 17 February 1996, p7; see also Tara Patel, "Killer Smog Stalks the Boulevards", New Scientist, Vol 144, No 1947, 15 October 1994, p8 for details of a Parisian study examining correlations between disease, death rates and concentrations of particulates, nitrogen dioxide, sulphur dioxide and ozone.

rates rose by 10 per cent when a smog submerged London for four days in December 1991, indicating that this episode of pollution killed an additional 160 people.<sup>61</sup> During the incident, the number of deaths from respiratory and heart diseases were respectively 22 and 14 per cent higher than normal.<sup>62</sup>

Besides causing deaths through urban smog, vehicle exhaust fumes include a number of pollutants that can be individually isolated as causing physiological harm. Sulphur dioxide constitutes harm by virtue of its property to cause respiratory illness and to worsen certain health conditions.<sup>63</sup> A 1998 government report on the effects of air pollution found that sulphur dioxide 'hastened the deaths' of 3,500 people in the UK each year.<sup>64</sup> Here, it is important to note that although terrorists invariably hasten the deaths of their victims, it is rarely described by the state in such moderate and accepting terminology.

Nitrogen dioxide pollution irritates the eyes but more seriously also damages the lungs.<sup>65</sup> In the case of inhalation of the pollutant, Bown explains that "exposure to 400-800 parts per billion of nitrogen dioxide causes epithelial cell dysfunction" in the lungs.<sup>66</sup> During the episode of smog in London in December 1991, levels of nitrogen dioxide reached 423 ppb and death rates increased in line with the epidemiological predictions.<sup>67</sup>

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<sup>60</sup> Fred Pearce, "Back to the Days of the Deadly Smogs", New Scientist, Vol 136, No 1850, 5 December 1992, p25.

<sup>61</sup> William Bown, "Deaths Linked to London Smogs", New Scientist, Vol 142, No 1931, 25 June 1994, p4.

<sup>62</sup> *ibid.*

<sup>63</sup> editorial, "Air Pollution", *op cit*, p18; see also John Lidstone in John Lidstone, (ed), Global Issues of Our Time, Cambridge, (Cambridge University Press, 1995), p122.

<sup>64</sup> Paul Brown, "Alarm at Killer Traffic Fumes", The Guardian, 14 January 1998, p2.

<sup>65</sup> Pearce, (5 December 1992), *op cit*, p27.

<sup>66</sup> Josep Anto and Jordi Sunyer, "Nitrogen Dioxide and Allergic Asthma: Starting to Clarify an Obscure Association", The Lancet, 18 February 1995, p402.

<sup>67</sup> by 10 per cent according to an unpublished report for the Department of Health; see William Bown, "Comment: Smog Alert", New Scientist, Vol 142, No 1931, 25 June 1994, p3.

When levels of nitrogen oxides and ozone pollution rose above the levels regarded as safe by the European Community and the World Health Organisation in May 1995, asthma sufferers were warned to stay at home and "hospital admissions for people with respiratory complaints soared".<sup>68</sup> Another researcher contends that levels of nitrogen dioxide as low as two parts per billion are enough to trigger an attack of asthma.<sup>69</sup> In 1991 vehicles in Europe emitted 6.5 million tonnes of nitrogen oxides.<sup>70</sup>

Research has highlighted particulates (PM10s) as a pollutant incurring serious harm. Each particulate is less than 10 micro-metres wide and carries damaging chemicals, such as acids, into the alveoli of the lungs. In the alveoli, PM10s inflame tissues, stimulating affected cells to produce the coagulants fibrinogen and factor 8 to levels that can strain the cardiovascular system.<sup>71</sup> One researcher has linked increasing levels of particulates with increasing risks of heart and lung disease.<sup>72</sup> Another epidemiologist concludes that, "recent research provides convincing evidence for a link between mortality and PM10... higher levels of particulate correlate not only with more deaths, but also with more hospital admissions and more reports of symptoms from asthmatics".<sup>73</sup> An incremental increase of 10 micrograms of PM10s per cubic metre causes a correlative and sustained rise in the death rate from heart attacks of 1 per cent,<sup>74</sup> and from respiratory

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<sup>68</sup> editorial, "Britain's Last Gasp", New Scientist, Vol 146, No 1977, 13 May 1995, p3.

<sup>69</sup> Keith Mason of the Center for Exploitation of Science and Technology; see Coghlan, *op cit*, p6.

<sup>70</sup> Lidstone in Lidstone, (ed), *op cit*, p122.

<sup>71</sup> Hamer, *op cit*, p8.

<sup>72</sup> Tony McMichael, professor of epidemiology and population sciences at the London School of Hygiene and Tropical Medicine; *ibid*, p8.

<sup>73</sup> William Bown "Dying From Too Much Dust: Calculations Based on Unpublished Government Data Suggest that Fine Particles in Exhaust Fumes Are Killing 10,000 People a Year in England and Wales", New Scientist, Vol 141, No 1916, 12 March 1994, p13.

<sup>74</sup> Mick Hamer and Debora MacKenzie, "Brussels Blocks Britain's Clean Air Plan", New Scientist, Vol 148, No 2004, 18 November 1995, p6.

illnesses of 3.4 per cent.<sup>75</sup> One group of epidemiologists in the United States has concluded that "thousands of deaths every year are associated with particulate air pollution, even at levels well below that which the Environmental Protection Agency considers safe".<sup>76</sup>

The only significant pollution in Provo, a town located in the Utah Valley, consists of PM10s emitted by a local steel mill. For this reason, Provo was selected for a major study into the health effects of PM10s. The results of this research found that "for every increase of 100 micrograms per cubic meter of PM10 pollutants, there was a 16 per cent increase in the death rate, and no threshold was observed".<sup>77</sup> The lack of a threshold level is important since this means that any amount of exposure to the pollutant, however small, causes physiological harm. The study also found that hospital admissions trebled when the PM10 level rose from normal levels to 150 micrograms per cubic metre.<sup>78</sup>

A study in Athens linked high levels of PM10 pollution to a 5 per cent increase in deaths.<sup>79</sup> This figure is consistent with research conducted by a World Health Organisation (WHO) panel examining deaths from PM10s.<sup>80</sup> The WHO estimated that 'thousands' of Europeans who are exposed to airborne particles common in cities "will suffer or die".<sup>81</sup> A 1998 UK governmental report placed the number of annual deaths in

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<sup>75</sup> Douglas Dockery quoted in Fred Pearce, "Mounting Evidence Ties Asthma to Car Fumes", New Scientist, Vol 143, No 1945, 1 October 1994, p4.

<sup>76</sup> Greater Boston Physicians for Social Responsibility, "Health Effects of Air Pollution"; <http://www.igc.apc.org/psr/airpol.html>.

<sup>77</sup> see Peter Montagu, "Invisible Killers: Fine particles", Rachel's Environment and Health Weekly, Issue 154, 7 November 1989; <http://www.monitor.net/rachel/r373.html>.

<sup>78</sup> Lee and Manning, op cit, p2.

<sup>79</sup> findings of research published in the Journal of Epidemiology and Community Health; reported in editorial, "Death in the City", New Scientist, Vol 150, No 2025, 13 April 1996, p10.

<sup>80</sup> Rob Edwards, "Industry Denies Dangers of Particle Pollution", New Scientist, Vol 148, No 2002, 4 November 1995, p5.

<sup>81</sup> ibid, p5; see also Robert Read and Cathy Read, op cit, p34 for WHO estimates of air pollutants causing deaths and illnesses.

Britain 'hastened' by PM10s at 8,100 with another 10,500 requiring hospital treatment as a result of exposure to the pollutant.<sup>82</sup> Bown observes that,

there are no safe levels of PM10... On those few days of the year when concentrations of PM10 are high, there are peaks in mortality. But most of the deaths take place during the rest of the year, when PM10 levels are nearer average. For this reason, reducing only the peak levels of PM10 will have little effect on total mortality.<sup>83</sup>

The WHO has refused to set a safe limit for PM10 exposure since it has concluded that none exists.<sup>84</sup> Further supporting evidence for this conclusion is provided by research establishing that for each increase of 100 micrograms of particulates, an increase of 4 per cent in the death rate is observed, with no safe threshold level above zero.<sup>85</sup> The anthropogenic release of PM10s violates the human right to life, since deaths are caused by particulate air pollution, even at levels below those specified in environmental legislation.<sup>86</sup> Human rights to health and to the security of the person are likewise routinely violated by PM10 polluters who expose the general population to harmful substances. PM10s cause between 300,000 and 700,000 deaths annually in cities around the world.<sup>87</sup> The primary source of PM10s is from vehicle emissions.<sup>88</sup>

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<sup>82</sup> Brown, op cit, p2.

<sup>83</sup> Bown, (1994), op cit, p12.

<sup>84</sup> Edwards, op cit, p5.

<sup>85</sup> Joel Schwartz and Douglas Dockery, "Particulate air pollution and daily mortality in Steubenville, Ohio", American Journal of Epidemiology, Vol 135, 1992, pp 12-9; see also Montagu, (1989), op cit.

<sup>86</sup> Greater Boston Physicians for Social Responsibility, op cit.

<sup>87</sup> Figures estimated by the World Bank, see Peter Sloep and Andrew Blowes, (eds), Environmental Policy in an International Context, London, (Arnold, 1996), p99.

<sup>88</sup> William Bown, "Forum: How Green were our Hopes for Diesel?" New Scientist, Vol 142, No 1928, 4 June 1994, p47; see also William Bown (1994), op cit, p12 and Hamer and MacKenzie, op cit, p6.

Another pollutant, ground level ozone, is produced by sunlight reacting with vehicle exhaust fumes. Ground level ozone can worsen asthma conditions, increase susceptibility to binoviruses,<sup>89</sup> impair the immune system and lung function, cause respiratory tract infections and coughing, difficulty in breathing, chest tightness, nausea and lung inflammations.<sup>90</sup> One biochemist explains that "ozone is a very powerful oxidising agent, so it reacts with a number of biological molecules causing damage to the lungs".<sup>91</sup> Vaughan and Cross point out that, "ozone weakens the body's immune system and attacks lung tissue: according to the US Center for Disease Control, ozone destroys lung tissue about as well as some chemical weapons do".<sup>92</sup> The 1998 UK government report on the effects of air pollution found that 12,500 people have their deaths 'hastened' by ground level ozone in Britain each year with the pollutant causing a further 9,900 to seek hospital treatment.<sup>93</sup> Again, this evidence testifies to the harmful effects of a specific toxic pollutant.

Carbon monoxide produced in the combustion of petrol is "highly toxic" since it combines with the haemoglobin of the blood more effectively than oxygen does.<sup>94</sup> Half the urban populations in North America and Europe are routinely exposed to harmful levels of carbon monoxide.<sup>95</sup> In 1991 motor vehicles in Europe emitted 28 million tonnes

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<sup>89</sup> one of the major causes of the common cold.

<sup>90</sup> Read and Read, *op cit*, p36; editorial, "Air Pollution", *op cit*, p18; Mick Hamer, *op cit*, p8; Pearce (5 December 1992), *op cit*, p27 and Cathy Read, "Science: Even Low Levels of Ozone in Smog Harm the Lungs", *New Scientist*, Vol 123, No 1681, 9 September 1989, p40.

<sup>91</sup> William McDonnell, (interview), "The Effects of Ozone on Human Health", *Environmental Review Newsletter*, Vol 1, No 1, January 1994; <http://www.igc.org/envreview/mcdonnel.html>.

<sup>92</sup> Chris Vaughan and Michael Cross, "Streetwise to the Dangers of Ozone", *New Scientist*, Vol 126, No 1718, 26 May 1990, pp56-9; see also Read and Read, *op cit*, p36.

<sup>93</sup> Brown, *op cit*, p2.

<sup>94</sup> Ann Fullick and Patrick Fullick, *Chemistry*, Oxford, (Heinemann, 1994), p248; see also Read and Read, *op cit*, p37.

<sup>95</sup> figure provided by the UN, see Timberlake and Thomas, *op cit*, p89.

of carbon monoxide, constituting 86 per cent of the total quantity of the pollutant found in urban areas.<sup>96</sup>

Hydrocarbon pollutants are "both toxic and carcinogenic" at any level of exposure.<sup>97</sup> Exhaust fumes from vehicles in Europe included 5.5 million tonnes of hydrocarbons in 1991.<sup>98</sup> 1,3 butadiene is another routine by-product of combustion. It is a genotoxin,<sup>99</sup> also classified by the US Environment Protection Agency as a "probable human carcinogen".<sup>100</sup>

Due to its effects of causing hyperactivity and impairing brain function in children, lead has been traditionally identified as the most damaging pollutant in petrol, providing the rationalisation for policies encouraging the use of 'green' unleaded petrol. However, in addition to the production of all the pollutants already reviewed above, unleaded petrol also emits a higher proportion of benzene than leaded petrol. Benzene is highly carcinogenic, even at low levels.<sup>101</sup>

Episodes of high levels of air pollution are characterised by higher concentrations of several of the pollutants reviewed above, exacerbating the damaging health effects of exposure. Anto for example concludes that "the more complex mixtures of pollutants likely to be present in urban air could induce even larger inflammatory and functional changes" than the inhalation of one form of pollutant alone.<sup>102</sup> Death rates from bronchitis, pneumonia and heart failure have, for example, been demonstrated to rise as

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<sup>96</sup> Read and Read, *op cit*, p34; Vaughan and Cross, *op cit*.

<sup>97</sup> Fullick and Fullick, *op cit*, p248.

<sup>98</sup> Read and Read, *op cit*, p34.

<sup>99</sup> a substance damaging to DNA.

<sup>100</sup> Andy Coghlan, "Britain's Green Vision Stuck in Traffic Jam", *New Scientist*, Vol 140, No 1902, 4 December 1993, p6.

<sup>101</sup> *ibid*, p6 and Pearce, (5 December 1992), *op cit*, p27.

<sup>102</sup> Anto and Sunyer, *op cit*, p402 and Read, *op cit*, p40.

the public is exposed to increased levels of sulphur dioxide in combination with smoke originating from the combustion of fossil fuels.<sup>103</sup>

It was argued in chapter one that the harm produced by pollution is normalised under the interest based politics of economic rationality and of capitalism. State support of the car industry exemplifies this prioritisation of economic growth over the liberal principle of non-malfeasance. The public subsidises vehicle users through government expenditure on road construction and maintenance. Each lorry in the UK for example causes on average £28,000 of damage to roads per year but generates just £25,000 in revenue from fuel tax and vehicle excise duty.<sup>104</sup> Therefore the public subsidises every lorry operator to the tune of £3,000 per year.<sup>105</sup> A strong car industry has been central to the capitalist political economy, as explained in an informative article by Paterson;

state promotion of cars is perhaps best understood in terms of the state's structural role in capitalist societies, its general imperative to support the conditions for capital accumulation... The acceleration of the movement of goods, the transformation of production by car manufacturers in what became known as Fordism, and the most direct stimulation of the economy by the car industry, all meant that the car has played a key role in promoting accumulation in the twentieth century, and thus in reproducing capitalist society on a global scale. It has also played an important role in integrating the economy globally as car manufacturers have led the way in organising production transnationally. As a consequence of its role in

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<sup>103</sup> sulphur dioxide slows ciliary activity in the respiratory tract, allowing more particulates into the alveoli; see Simpkins and William, *op cit*, pp689-90.

<sup>104</sup> these costs only cover road damage and take no account of costs caused by congestion, policing, accidents, costs to health or of pollution as a contributory factor in acid rain and climate change; see Barrie Clement, "Tax on Lorries Fails to Cover Cost of Road Damage", *The Independent*, 23 September 2000, p10.

<sup>105</sup> *ibid.*

reproducing capitalism, it also became a part of state managers' strategies for reproducing their own state power, legitimising their rule through promoting the car and thus economic growth.<sup>106</sup>

Paterson's research detailing the political and economic centrality of the car industry is instructive in understanding why the harm caused by car use has been downplayed in the official political forum and denied by capitalist legal institutions in direct contradiction to the epidemiological facts.<sup>107</sup>

#### Other applications of the human right to an environment free from toxic pollution

This chapter has detailed the role played by toxic air pollutants in constituting harm and thereby violating basic human rights. The same reasoning applies to the depletion of the ozone layer and radiation pollution. At the latitude of Seattle, for example, enough of the stratospheric ozone layer has been depleted to increase the incidence of malignant skin cancer by approximately 25 per cent.<sup>108</sup> As in the case of air pollutants detailed above, this process constitutes a violation of human rights to life, health and to the security of the person by virtue of the damage to DNA sustained through exposure to unnaturally high levels of radiation. The regulation of ozone depleting chemicals is therefore of direct interest to human rights, as well as to environmental politics.

Low levels of radiation exist as a cosmological fact as explained by the laws of physics.<sup>109</sup> As in the case of naturally occurring toxic chemicals, the natural source of radiation can be differentiated from anthropogenic sources, since such harm cannot be

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<sup>106</sup> Paterson, (2000), op cit, p266 and p269.

<sup>107</sup> ibid.

<sup>108</sup> Peter Raven, "What is Biological Diversity and why is it Important to Us?", The Melinda Denton Lecture 1995, Environmental Review, June 1995; <http://www.igc.apc.org/envreview/raven.htm>.

<sup>109</sup> Melvin Leon, Particle Physics: An Introduction, New York, (Academic Press, 1973) and David Cheng, Elementary Particle Physics, Reading, MA, (Addison-Wesley, 1979).

affected by any decisions made by human societies. The harm caused by anthropogenic destruction of the ozone layer relates, as in the case of toxins, to the subsequent cellular damage in the exposed individuals, that may result in disease or death.

This process is relevant to an enquiry into the human right to an environment free from toxic pollution since permanent physiological damage is incurred on individuals by the decision to increase exposure of the public to higher levels of radiation, for example through nuclear weapons testing. Increasing rates of liver, lung and skin cancer have been recorded in the Lop Nur region of Xinjiang province, since the establishment there of a nuclear weapons test site for the Chinese military.<sup>110</sup> The Bravo tests of the hydrogen bomb were conducted in the Marshall islands by the US military in 1954. These involved the deliberate exposure of the populace in the nearby atolls of Rongelap and Uterik to radioactive fallout "for the purpose of creating a controlled population for long term study" of the health effects of exposure to fallout; a policy intention made explicit in a US Atomic Energy Commission transcript that has since been made public knowledge.<sup>111</sup> Between 1949 and 1962 the Soviet military conducted over 300 nuclear tests at its weapons base at the town of Semipalatinsk. At no time during this testing period was the civilian population warned of the potential dangers of the resulting fallout.<sup>112</sup>

The radiation experiment that has intentionally incurred the most serious violations of human rights exposed the Musliova community in the Ural mountains of the Soviet Union to the radiation of the Mayak nuclear reprocessing plant. Between 1950 and 1958 the water supplies of 124,000 people were contaminated by highly radioactive isotopes as a result of both the deliberate and accidental releases of nuclear waste into the Techa river. The exposed population received aggregate doses of radiation 3,500 times greater than that recommended as safe by the British National Radiological Protection

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<sup>110</sup> Barbara Rose Johnston and Margaret A Byrne in Johnston, (ed), (1994), op cit, p76.

<sup>111</sup> Johnston in Johnston, (ed), (1994), op cit, pp131-3.

<sup>112</sup> Johnston in Johnston, (ed), (1994), op cit, p225.

Board.<sup>113</sup> Eight thousand people are known to have died as a direct result of radiation exposure and a further 935 are diagnosed as suffering from chronic radiation sickness.<sup>114</sup> Half of the adults in the region are classified as sterile and one third of babies born have a physical disorder. In addition to a general increase in disease, cancer rates have risen by 21 per cent in the affected area and vascular disease by 31 per cent.<sup>115</sup> In addition to the destruction of thousands of lives, the nuclear waste constitutes an insidious legacy for the generations yet to be born.<sup>116</sup>

### **The paradox of law**

The epidemiological evidence, as reviewed above, that specific pollutants can violate the right to life has been acknowledged in certain human rights conferences, particularly in regard to the hazard posed by toxic waste. The World Conference on Human Rights declared in 1992 that "dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone".<sup>117</sup> The United Nations Human Rights Commission similarly declared in April 1998 that the dumping of toxic waste "had a humanitarian as well as an environmental angle" because of the threat posed to the right to life.<sup>118</sup> Moving beyond a focus on toxic waste, the Inter-American Commission on Human Rights has declared that, "water is life"

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<sup>113</sup> according to official figures kept secret during the totalitarian era; Judith Perera, "Tragedy of Muslimova", *New Scientist*, Vol 141, No 1917, 19 March 1994, p40.

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid*, p41.

<sup>116</sup> Pickering and Owen, *op cit*, p150.

<sup>117</sup> quoted by Bothe in Bothe (Chair and Project Coordinator), *op cit*, p55.

<sup>118</sup> Gustavo Capdevila, "Dumping of Toxic Waste Affects Human Rights", *Inter Press Service*, April 1998; [http://www.oneworld.org/ips2/apr98/16\\_44\\_044.html](http://www.oneworld.org/ips2/apr98/16_44_044.html).

and stated that receiving water free from toxic pollution is a constituent component of the right to life.<sup>119</sup>

Domestic legal developments in several states have likewise recognised the threat posed by toxic pollution to the realisation of the right to life. Rulings by judges in India have established that "the right to life includes the right to live in a healthy environment, a pollution-free environment, and an environment in which ecological balance is protected by the state".<sup>120</sup> The Supreme Court in India has further ruled that every individual has a fundamental right to the "enjoyment of pollution free water and air".<sup>121</sup> In the Tulua case, the Constitutional Court of Colombia stated that the right to a healthy environment is fundamental "for the survival of the human species" and that there was "an evident connection between the right to enjoy a healthy environment and other constitutional rights, such as the right to sanitation, to life, to work, and to the prevalence of the general interest".<sup>122</sup> The Brazilian courts have similarly ruled that "since the maintenance of an environmental quality is fundamental to human life, the legal protection of the environment is a realisation of the right to life".<sup>123</sup> All these developments reflect recognition from the courts that toxic pollution constitutes a possible causal violation of the right to life.

The application of judicial principles of non-malfeasance and human rights that take into account epidemiological facts testifying to the effects of pollution, strongly suggest law as a mechanism to guarantee and implement the right to an environment free from toxic pollution. And herein lies the paradox of law, since, as argued in chapter four,

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<sup>119</sup> Adriana Fabra in Boyle and Anderson, (eds), op cit, p261.

<sup>120</sup> Anderson in Boyle and Anderson, (eds), op cit, p7.

<sup>121</sup> Subhash Kumar v Bihar, see Anderson in Boyle and Anderson, (eds), op cit, p199.

<sup>122</sup> Fundepublico v Mayor of Bugalagrande and others, Courte Constitucional, Sentencia Junio de 1992, Expediente, (June 1992), see Fabra in Boyle and Anderson, (eds), op cit, pp262-3.

<sup>123</sup> Edesio Fernandes in Boyle and Anderson, (eds), op cit, p267.

the general efficacy of legal stipulations is a function of existent power relations.<sup>124</sup> Enforcement of human rights that properly criminalised the production of toxic pollution would conflict with the interests of industry to pollute and would furthermore contradict the market allocation of resources that advocates an 'optimal' level of toxic pollution.<sup>125</sup> This contradiction circumscribes the efficacy of law to realise the human right to an environment free from toxic pollution.

With the notable exceptions of the cases listed above, domestic courts have consistently interpreted of the right to life in ways that exclude toxic pollution.<sup>126</sup> Exemplifying this omission, the right to life provided in article two of the European Convention on Human Rights has been interpreted by the European Court in a limited sense of protection only against the arbitrary deprivation of life by the state.<sup>127</sup> Under such a circumscribed meaning of the right to life, the production of toxic pollution, along with other corporate activities, is excused from constituting a possible violation. Refuting the asserted position of the courts on this matter, epidemiological evidence unequivocally demonstrates the process by which toxic pollutants violates the right to life. In Britain for example, 24,000 deaths were attributed to three pollutants alone in 1998.<sup>128</sup>

The general reluctance of the courts to interpret toxic pollution as a violation of the right to life is necessary to legitimise polluting economic activities.<sup>129</sup> Systemic concerns of efficiency and capital accumulation join the profit motivated interests of

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<sup>124</sup> see chapter 4.

<sup>125</sup> see chapter 1.

<sup>126</sup> Boyle and Anderson, (eds), Human Rights Approaches to Environmental Protection, Oxford, (Clarendon Press, 1996).

<sup>127</sup> Hayward, op cit, p562. For details of the use of human rights as an instrument of hegemonic power, see Tony Evans, US Hegemony and the Project of Universal Human Rights, Basingstoke, (Macmillan, 1996), p39.

<sup>128</sup> ground level ozone, PM 10s and sulphur dioxide; according to the 1998 UK government report on the effects of air pollution, see Brown, op cit, p2.

<sup>129</sup> see chapter 1.

industry in influencing the dominant legal decision on what constitutes a violation of the right to life. Crucially, violations of the right to life caused by routine, or structural, exposures to toxic pollutants are accommodated and normalised as culturally acceptable by legal institutions. Violations of the right to life that result from the structural operations of the political economy are therefore accommodated through policies of obfuscation and denial by a legal system which is itself a central bloc of the capitalist architecture.<sup>130</sup>

The pressing issue of whether new legislation can institutionalise the universal human right to an environment free from toxic pollution is therefore ambiguous. It is the nature of the existing form of law that legal stipulations cannot by themselves resolve the structural causes of human rights violations.<sup>131</sup> Yet it also the case that, as a hegemonic instrument, law must maintain the veneer of impartiality rather than be overtly seen to operate in the interests of power.<sup>132</sup> Therefore a scope exists at the margins for anti-systemic forces to subvert the function of law as an instrument of the powerful by working to enforce legally stipulated environmental human rights.<sup>133</sup> Exemplifying this possibility, the environmental movement has had isolated yet notable successes in the courts. For instance, in 1987 the Indian Supreme Court ordered the closure of certain limestone quarries on the grounds that the poisoning of local inhabitants caused by the mining amounted to a violation of the constitutional right to life.<sup>134</sup> In this case a comprehensive interpretation of the right to life was implemented, prioritising

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<sup>130</sup> see chapter 4.

<sup>131</sup> see chapter 4.

<sup>132</sup> see chapter 4.

<sup>133</sup> see chapters 2 and 3 for discussions on how environmental human rights as an instrument of praxis can act both as a means and as a goal of structural transformation.

<sup>134</sup> article 21 of the Constitution, see Anil Agarwal and Sunita Narain, *Towards a Green World*, New Delhi, (Centre for Science and Environment, 1992), p52.

environmental human rights over commercial considerations and the corporate desire to pollute.

However, the extent to which law can be implemented on a widespread basis to combat systematic pollution is circumscribed by the structural constraints of power within which law operates. The Indian courts, for example, have certainly not subordinated general economic activity to the goal of eradicating toxic pollution.<sup>135</sup> Instead, legal action is only taken against industry in isolated cases where environmental damage is especially flagrant.

Whereas legal recognition is necessary for the realisation of the right to an environment free from toxic pollution, it is not by itself a sufficient condition. Legal recognition is not a sufficient condition because of the ability of powerful social and economic interests to determine the efficacy of, rather than to be themselves defined by, legal stipulations.<sup>136</sup> That this circumscribes the ability of social change to be initiated by law can be demonstrated in the 'floodgates' argument,<sup>137</sup> or the way that harm, malfeasance and human rights have been interpreted by the courts in ways that diffuse possible challenges to capitalism.<sup>138</sup>

The opportunities available for the realisation of the right to an environment free from toxic pollution in a capitalist legal system are unlikely in the extreme. The realisation of this human right would require phasing out anthropogenic sources of toxic pollution, addressing patterns of over-consumption and replacing dependency on fossil fuels with an investment in renewable forms of energy.<sup>139</sup> This agenda of opposing

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<sup>135</sup> *ibid.*

<sup>136</sup> see chapter 4.

<sup>137</sup> see chapter 4.

<sup>138</sup> as exemplified in chapter 4 through examination of environmental human rights.

<sup>139</sup> Robert Costanza and Carl Folke in Susan Hanna, Carl Folke and Karl-Goran Maler, (eds), *Rights to Nature: Ecological, Economic, Cultural and Political Principles of Institutions for the Environment*, Washington DC, (Island Press, 1996), p22.

economic rationality and capitalism links the requirements of basic human rights to the policies required to address pressing global environmental problems.<sup>140</sup>

## **Conclusion**

The capitalist political economy has been identified as preventing the realisation of the claimed human right to an environment free from toxic pollution. Imperatives of private interest and economic rationality that characterise capitalist societies normalise the harm caused by pollution as culturally acceptable.<sup>141</sup> The courts, it has been argued, have accommodated this viewpoint by defining human rights and the harm principle in ways that exclude considerations of toxic pollution.<sup>142</sup> Whereas the most minor act of theft is seen in legal terms as harm, the courts do not consider that harm is caused by permanent physical injury produced by toxic pollutants that damage the health and cellular integrity of an individual.<sup>143</sup> Harm has been argued to be perceived by capitalist legal institutions in terms of economic rationality, whereby economic values are elevated over considerations of human security or environmental protection. This conclusion substantiates the perception of capitalist law as a reflection of power relations.<sup>144</sup>

Legal interpretations notwithstanding, toxic pollution constitutes an insidious and ubiquitous form of harm caused by the choices of individuals making rational decisions in a capitalist political economy.<sup>145</sup> Crucially, it is the very exposure to toxic pollution

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<sup>140</sup> see chapter 1.

<sup>141</sup> see chapter 1

<sup>142</sup> Desgagne, *op cit.*

<sup>143</sup> *ibid.*

<sup>144</sup> see chapter 4.

<sup>145</sup> see chapter 1.

that constitutes harm.<sup>146</sup> The statistics relating to diseases or deaths attributable to toxic pollutants have been argued to be subsequent symptoms, rather than causes, of this harm.<sup>147</sup> This is important since it refutes the legal classification of toxic pollution as risk rather than as harm.

In conclusion, the findings in this chapter are twofold. Firstly, the epidemiological effects of toxins demonstrate that the implementation of the human right to an environment free from toxic pollution is a prerequisite for the realisation of human rights to a private life, non-interference, security of the person, the right to health and the right to life. Secondly, legal reluctance to recognise this argument, compounded by a legal definition of harm that omits the epidemiological effects of pollution, indicates the principal role of law as a hegemonic instrument to reify the ideological and economic basis of capitalism.

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<sup>146</sup> Lee and Manning, *op cit*, p4; see also Seaton, *op cit*, p759; editorial, *Maclean's*, *op cit*, p3; Hamer, *op cit*, p8; Seaton, McNee, Donaldson and Godden, *op cit*, pp176-8; editorial, "Air Pollution", *World Health*, *op cit*, pp18-9; Schwartz, 1994, *op cit*, pp36-52 and Bates, *op cit*.

<sup>147</sup> *ibid.*

## CHAPTER 6

### THE HUMAN RIGHT TO NATURAL RESOURCES

The poorest man hath as true a title and just a right to land as the richest man.<sup>1</sup>

#### Introduction

This chapter suggests and defends an environmental human right to ownership of natural resources. Ownership is "the ideology of valid possession",<sup>2</sup> and thereby legitimises property rights. Ownership rights to natural resources are defined as "enforceable authority to undertake particular actions related to a specific domain".<sup>3</sup> The claimed human right covers specific local resources such as water, lakes, land, forests and sub soil resources rather than industry, services or the global commons, such as the atmosphere and oceans.<sup>4</sup>

This chapter begins by establishing that ownership systems to natural resources are socially constructed and that a political choice exists as to which system to adopt. This claim will be substantiated by differentiating between six specific ownership systems. Two of these systems in particular; (i) private property rights and (ii) common property resources (CPRs) will be compared and contrasted from the perspective of basic human rights requirements. The capitalist system of assigning rights to natural resources constructs property rights in private terms that maximises economic efficiency and

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<sup>1</sup> Gerard Winstanley quoted in editorial, "Land in Whose Hands? The Facts", The New Internationalist, No 177, November 1987, p21.

<sup>2</sup> Colin Sumner, Reading Ideologies, London, (Academic Press, 1979), p221.

<sup>3</sup> Elinor Ostrom and Edella Schlager in Susan Hanna, Carl Folke and Karl-Goran Maler, (eds), Rights to Nature: Ecological, Economic, Cultural and Political Principles of Institutions for the Environment, Washington DC, (Island Press, 1996), p13.

<sup>4</sup> Fikret Berkes in Susan Hanna, Carl Folke and Karl-Goran Maler, (eds), Rights to Nature: Ecological, Economic, Cultural and Political Principles of Institutions for the Environment, Washington DC, (Island Press, 1996), p87.

aggregate production. The focus on economic variables comes at the cost of dismissing claims of, and thereby ensuring the violations of, human rights to (i) cultural self-determination and (ii) freedom from hunger, as well as causing systematic environmental degradation. An alternative structuring of property rights based around CPRs is suggested to be more conducive to facilitating cultural diversity and the satisfaction of basic human needs, as will be exemplified through an analysis of food provision. Juxtaposed to private property rights, CPRs are furthermore found to lessen the human impact on the environment.

Continuing the theme permeating previous chapters, the global capitalist economy is identified as the most important structural barrier for the recognition of the claimed environmental human right to natural resources. The characteristic ability of global markets to divert resources into supplying luxury goods for the opulent explains why essential resources are denied to the impoverished.

By endorsing a subsistence based CPR economy, rather than the exchange based economy of capitalism, the environmental human right to natural resources links the human rights agenda to a less environmentally destructive economic system.<sup>5</sup> Processes of environmental commodification and distanciation that characterise global capitalism will be highlighted as causing particular concern from an environmental perspective. Distanciation is the feature of globalisation that facilitates economic benefits to be acquired by an individual or group in one location through a process that imposes the environmental and social costs on people living elsewhere in the world, thereby spatially separating the benefits of consumption from the environmental damage caused during the production process.<sup>6</sup>

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<sup>5</sup> The Ecologist, Whose Common Future? Reclaiming the Commons, London, (Earthscan, 1993).

<sup>6</sup> Julian Saurin in Caroline Thomas, (ed), Rio: Unravelling the Consequences, Ilford, (Frank Cass, 1993), p47.

The purpose of this chapter is to establish the principle of a human right to the ownership of environmental resources. Although CPRs are suggested as an ownership system conducive to the realisation of the claimed environmental human right, this chapter is not specifically concerned with the practicalities of implementation. These concerns relate, for example, to how specific resources can be equitably allocated between communities. Such matters are best resolved in a case by case basis, taking all relevant local factors into account to ensure that all can meet basic needs.<sup>7</sup> Specifying a precise or universally applicable model for the implementation of this human right would also arbitrarily curtail, rather than facilitate cultural diversity.<sup>8</sup>

### **The social construction of property rights**

Sagoff reminds us that far from being universal or unchangeable, the nature, meaning and extent of property rights to resources is a constructed function of the legal and political regimes that define them through political choice.<sup>9</sup> This is important since it establishes the possibility to choose between distinctive systems of resource ownership rights. Systems of rights to natural resources can be differentiated into the following six broad categories.

#### **[i] Open Access Resources**

An open access system of resource exploitation describes a situation that allows everyone unlimited access to environmental resources. This system has therefore no mechanisms for limiting the ecological impact of human exploitation and has

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<sup>7</sup> Robert Costanza and Carl Folke in Hanna, Folke and Maler, (eds), *op cit*.

<sup>8</sup> Susan Hanna, Carl Folke and Karl-Goran Maler in Hanna, Folke and Maler, (eds), *op cit*, p4.

<sup>9</sup> Mark Sagoff in Andrew Brennan, (ed), *The Ethics of the Environment*, London, (Dartmouth, 1995), p463.

subsequently been correctly criticised for inexorably leading to overuse and environmental degradation.<sup>10</sup>

### [ii] No Access

No access systems deny all humans access to a given spatial area. The only notable example of a no access system is the Antarctic Wilderness Area that, under international agreement, has been designated as an area from which anthropogenic activity is to remain absent.<sup>11</sup> The no access model effectively reverses the benefits and drawbacks of the open access system since it is of great benefit to biodiversity and habitat preservation but prevents humans from using environmental resources to provide for their own needs. On ecological criteria this model could be applied to designated areas that are of particular importance to biodiversity but is clearly unattainable on a global scale, given the needs of the human populace.

### [iii] State Control

This system of environmental resource ownership places property rights under the control of the state and has been severely criticised from a number of positions. Capitalists characteristically decry the notorious allocative inefficiencies of such a centralised system.<sup>12</sup> Further strengthening the state is also problematic for the realisation of human rights, given the nature of the state as an instrument of power.<sup>13</sup> From the ecological perspective, state ownership of natural resources has often preempted environmental degradation as environmental concerns are subordinated to considerations

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<sup>10</sup> John Vogler, The Global Commons: A Regime Analysis, Chichester, (John Wiley and Sons, 1995), pp4-6.

<sup>11</sup> ibid.

<sup>12</sup> Phyllis Deane, The Evolution of Economic Ideas, Cambridge, (Cambridge University Press, 1978).

<sup>13</sup> see chapter 4.

of power and economic growth. This is exemplified through the granting of logging concessions to the corporations responsible for widespread deforestation in East Asian states.<sup>14</sup> In cases where the state does not allow corporate control over resources but reserves this right for local inhabitants, nationalised resources invariably degenerate into open access systems as non-compliance with complex or inappropriate bureaucratic regulations becomes established as the norm.<sup>15</sup>

#### [iv] Public Goods Systems

Public goods relate to global environmental commons such as the atmosphere, climate and oceans which, by their global nature, lie outside the sovereign jurisdiction of any particular state.<sup>16</sup> Strictly speaking, public goods systems therefore describe the global nature of important environmental categories rather than conceptualising property rights over environmental resources. The notion of public goods is nonetheless important for the discussion of ownership rights over environmental resources since this highlights how resource decisions can impact at a global level, for example in the case of pollution, climate change or the over exploitation of fisheries.<sup>17</sup>

#### [v] Private Property Rights

Under the capitalist system of assigning resource rights, legal recognition of individual claims to environmental resources is a function of market transactions. Land and environmental resources are treated as commodities, since they are demarcated and separated from the surrounding land. That is to say that land is commodified by virtue of

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<sup>14</sup> World Rainforest Movement and Forests Monitor Ltd, High Stakes: The Need to Control Transnational Logging Companies, Montevideo, (World Forest Movement, 1998).

<sup>15</sup> exemplified in the case of New England fisheries, see Berkes in Hanna, Folke and Maler, (eds), *op cit*, p99.

<sup>16</sup> Vogler, *op cit*, pp4-6.

<sup>17</sup> *ibid.*

being bought and sold by individuals or corporations at a price specified by the market. Decisions relating to land use, as well as the resulting incomes, are thereafter the private concern of the property holder. Under capitalist conditions, decisions are invariably made according to commercial criteria and considerations of private gain. The landowner is legally empowered to exclude others from utilising privately owned land.

The private property system of environmental resource rights is therefore an expression of economic rationality. This position is predicated upon the normative belief that market conditions ought to define resource rights to ensure the general good of society, defined in terms of maximising (i) allocative efficiency and (ii) aggregate wealth.<sup>18</sup> Proponents of economic rationality characteristically conceptualise private property rights as the only legitimate system of resource ownership.<sup>19</sup>

Although many liberal theorists defend individual property rights to land,<sup>20</sup> not all conclude that ownership titles should be decided by the market. There exists a plethora of nuance<sup>d</sup> positions from different liberal theorists and some radical liberals have allocated land rights on an egalitarian basis, that is irrespective of individual wealth. Beitz for example concludes on the grounds of equality of opportunity that, "each inhabitant of the world has an equal basic entitlement to natural resources".<sup>21</sup> Similarly Locke had previously stated a right for each individual to claim a part of nature, as long as he or she leaves "enough and as good" for others.<sup>22</sup> Notwithstanding Locke's political agenda to justify the ownership of American lands by individuals, rather than the crown, capitalist

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<sup>18</sup> see chapter 1 for details on economic rationality.

<sup>19</sup> see Barbara Rose Johnston, "Human Rights and the Environment", Human Ecology, Vol 23, No 2, June 1995, p116.

<sup>20</sup> as exemplified by John Locke; see Matthew Kramer, John Locke and the Origin of Private Property, Cambridge, (University of Cambridge Press, 1997).

<sup>21</sup> Charles Beitz, "Economic Rights and Distributive Justice in Developing Societies", World Politics, Vol 33, No 3, 1981, p150.

<sup>22</sup> Neal Wood, John Locke and Agrarian Capitalism, Berkeley, (University of California Press, 1984), p34.

property rights over land can be criticised on radical liberal grounds since liberals have used the language of human rights to impose limits on the unlimited ownership of natural resources by the wealthy.<sup>23</sup> The reasoning behind this claim is that, when denied control over land, individuals are restricted in the potential to shape their lives. Requirements of freedom subsequently necessitate an egalitarian allocation of natural resources.<sup>24</sup> Under this radical liberal interpretation, agrarian capitalism becomes a repressive social system denying the impoverished the means to provide for their basic subsistence requirements.

The radical liberal critique of capitalism is nowhere better exemplified than through Thomas Paine. In Agrarian Justice,<sup>25</sup> Paine claimed that the introduction of the system of private land ownership had deprived the community of the right to make free use of the earth. Paine demanded either respect for egalitarian ownership rights to land,<sup>26</sup> or else a system of compensation for the loss of this right. Under the latter option, each owner of land should pay rent to a collective fund corresponding to the size of his or her holding and that the proceeds of this fund should be distributed amongst all members of the population equitably.<sup>27</sup>

An example of the implementation of the radical liberal right to land is evident in the case of the distribution of land in America during the second half of the nineteenth century following Lincoln's Homestead Act. This legislation distributed free land titles to millions of acres.<sup>28</sup> The right of English people to allotments also reflects a right of individuals to land. A differentiation between capitalism and liberalism on the question of

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<sup>23</sup> Kramer, op cit, p67.

<sup>24</sup> ibid.

<sup>25</sup> Thomas Paine, Thomas Paine Reader, London, (Penguin, 1987).

<sup>26</sup> perceived as a natural right by Paine, ibid.

<sup>27</sup> ibid.

<sup>28</sup> William Greider, One World, Ready or Not: The Manic Logic of Global Capitalism, New York, (Simon and Schuster, 1997), p437, of course it should be noted that much of the land distributed had been forcibly taken from indigenous inhabitants.

resource ownership is important since it questions a defence of a market based system of land rights from the perspective of liberal political theory.

#### [vi] Common Property Resources (CPR)

Australian Aborigines and indigenous North Americans had no concept of private land ownership until the first Europeans made land claims.<sup>29</sup> Referring to indigenous culture in the Malaysian state of Sarawak, a native elder rejected private property rights to land by insisting that "the land belongs to the countless numbers of people who are dead, the few who are living, and the multitude of those yet to be born".<sup>30</sup> In many non-capitalist cultures, land is therefore perceived not as a commodity to be exploited for private profit, but as a spiritual phenomena, central to cultural practices and accessible for all members of the community who are duty bound to protect the land for other individuals. Resource rights in non-capitalist cultures are typically based upon a variant of the CPR system.

CPRs can be defined as systems within which long term use rights for environmental resources, such as land, timber, water and sub soil resources, are controlled by identifiable groups.<sup>31</sup> CPR systems are consequently characterised by a construction of resource management rules to meet communal needs based on collective choice arrangements.<sup>32</sup> CPRs are controlled by local community groups, rather than by individuals or by states, and provide livelihoods for the people directly managing them,

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<sup>29</sup> Vanessa Baird, "Land Rights and Wrongs", The New Internationalist, No 177, November 1987, p5.

<sup>30</sup> quoted in World Rainforest Movement and Forests Monitor Ltd, op cit, p23.

<sup>31</sup> Anil Agarwal and Narain Sunita, Towards a Green World, New Delhi, (Centre for Science and Environment, 1992), p156.

<sup>32</sup> Jason W Clay in Barbara Rose Johnston, (ed), Who Pays the Price? Washington DC, (Island Press, 1994), p28; see also The Ecologist in John Kirkby, Phil O'Keefe and Lloyd Timberlake, (eds), The Earthscan Reader in Sustainable Development, London, (Earthscan, 1995), p228.

rather than commodities for global markets.<sup>33</sup> The decentralised and diverse nature of CPR systems prevents a more specific definition of the regime, since the specific form taken is derived from local environmental conditions and cultural traditions.

To operate effectively, CPRs require clearly defined rules of resource access for communities, households and individuals, enforceable by a system of monitoring and graduated sanctions to prevent over usage at any of these levels.<sup>34</sup> Numerous studies have documented the various norms, monitoring systems and sanctions against rule breakers that have been implemented to protect resources. These studies relate to CPRs in Africa;<sup>35</sup> the forests in Törbel;<sup>36</sup> three million hectares of agricultural land in the Hirano, Nagaike and Yamanoka regions of Japan,<sup>37</sup> and the Cofyal forest run by the Yanomama Indians in the Peruvian Amazon.<sup>38</sup> The Huerta irrigation system of the Valencia region of Spain has allocated water between villages for 1,000 years and has various levels of monitoring to ensure the enforcement of the correct distribution of scarce water to each farmer. The success of this system is reflected in an infraction rate of only 0.008 per cent, despite the compelling incentive to cheat since "stealing water during a dry season ... might on occasion save an entire season's crop from certain destruction".<sup>39</sup>

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<sup>33</sup> Pratap Chaterjee and Matthias Finger, The Earth Brokers: Power, Politics and World Development, London and New York, (Routledge, 1994), p26.

<sup>34</sup> Costanza and Folke in Hanna, Folke and Maler, (eds), op cit, p27.

<sup>35</sup> Francois du Bois, "Water Rights and the Limits of Environmental Law", Journal of International Law, Vol 6, No 1, 1994, pp73-84.

<sup>36</sup> in Switzerland, Elinor Ostrom, Governing the Commons, Cambridge, (Cambridge University Press, 1990), pp61-4.

<sup>37</sup> ibid, pp65-9.

<sup>38</sup> for details see Aaron Sachs, Eco-Justice: Linking Human Rights and the Environment, Worldwatch Paper 127, (Worldwatch Institute, 1995), p32.

<sup>39</sup> Ostrom, (1990), op cit, p59 and pp70-5.

Research conducted by Ostrom supports the claim that CPRs can be effective in enforcing rules restricting resource usage by individual members.<sup>40</sup> Ostrom's study into the social and environmental effectiveness of a number of CPRs concluded that violations of the rules of CPR systems relating to environmental usage was extremely exceptional, even when opportunities to break the rules were plentiful and the sanctions relatively light.<sup>41</sup> This result was achieved because of clearly defined boundaries of resource usage, collective (participatory) choice arrangements, monitoring systems, graduated sanctions, conflict resolution mechanisms and relative autonomy from state structures.<sup>42</sup> The enforcement of rules in CPR systems is typically achieved by allowing a portion of the fines extracted from rule breakers to be kept by the individual who monitored and caught the infractor.<sup>43</sup> In the same way that taxpayers generally pay the correct amount of taxes, Ostrom concludes that individuals in the commons generally adhere to the rules or adopt a strategy of quasi-voluntary compliance when they have confidence that the other members of the community will similarly adhere to the rules.<sup>44</sup>

As well as requiring mechanisms to resolve disputes between individuals within a commons system, neighbouring CPR systems must also have procedures for deciding conflicts. In the Philippines, for example, competing claims to water rights among different communities have customarily been decided by inter-village councils composed of elders from the relevant communities.<sup>45</sup> Successful dispute resolution mechanisms between communities can extend the applicability of CPR systems beyond fixed

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<sup>40</sup> *ibid.*

<sup>41</sup> *ibid*, p59.

<sup>42</sup> *ibid*, p90.

<sup>43</sup> *ibid*, p96.

<sup>44</sup> *ibid*, p94.

<sup>45</sup> The Ecologist in Kirkby, O'Keefe and Timberlake, (eds), *op cit*, p229.

resources such as land, forests and lakes and to migrating fish stocks and other non-exclusivist natural resources.<sup>46</sup>

### **Social power as the deciding variable in determining the system of resource rights**

The political importance inherent in deciding upon a system of ownership rights over environmental resources resides in the observation made by both Barry and Beitz that claims to natural resources stand logically prior to any claims to products which are subsequently produced from these resources.<sup>47</sup> Therefore, choosing a system of ownership rights to natural resources is a fundamental variable in questions of equality, economic justice, the distribution of power in society and in questions of human rights.

Goodin argues that unequal ownership of natural resources can be justified on the grounds that "some people have done something to render those pre-existing resources useful to mankind, if only by discovering them".<sup>48</sup> Yet Goodin presupposes here the very condition which is correctly problematised by Beitz and Barry, namely that of original ownership rights to natural resources. Whereas a petrochemical MNC for example locates and utilises oil reserves in the Third World, this only occurs as a result of the legal and economic institutions that have been constructed to legitimise private property rights to natural resources over conflicting claims to those resources by local communities who may well oppose the extraction of oil reserves in favour of conservation.<sup>49</sup> Constructing a legal basis to empower and exclude people from making claims to natural resources and land usage is therefore in the first instance a political, rather than a jurisprudence or

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<sup>46</sup> Costanza and Folke in Hanna, Folke and Maler, (eds), *op cit*, p27.

<sup>47</sup> see Robert E Goodin, *Protecting the Vulnerable*, Chicago and London, (University of Chicago Press, 1985), p160.

<sup>48</sup> *ibid*, p161.

<sup>49</sup> see for example Ken Saro-Wiwa, "Nigeria in Crisis", *Review of African Political Economy*, Vol 22, Issue 64, June 1995, pp234-56.

philosophical question since a decision must first be made as to whose claims to natural resources should be legitimised and protected.

The methodology that is undertaken here to understanding the legal institutionalisation of one system of rights to natural resources over other possible systems is to focus on social power relations within which ownership rights are embedded and on which basis they are constructed.<sup>50</sup> In particular, capitalist power relations legitimise the private property system of resource ownership. Of the six categories of conceptualising rights to environmental resources outlined above, this chapter now juxtaposes CPR to private property rights. Private property rights have been chosen for analysis since these represent the form of legal resource ownership rights in the capitalist global economy. CPRs have been chosen as the second system of resource ownership since this system offers a distinct and widespread alternative through which to compare and contrast private property rights.

The system of private property rights institutionalises the power relations of capitalism by facilitating inequality in the allocation of environmental resources on the basis of economic rationality. CPRs in contrast characteristically benefit the disempowered and marginalised since CPR systems tend to focus on self reliance and on serving the basic needs of all members before resources are diverted into the production of luxury goods for profit, gain or income.<sup>51</sup>

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<sup>50</sup> see chapter 1; see also Vogler, *op cit*, p26; Annie Taylor, "The Significance of Non-governmental Organisations in the Development of International Environmental Policy: The Case of Trade and Environment", PhD thesis, Southampton, (Southampton University, 1998), pp29-30 and S Pejovich, "Towards an Economic Theory of the Creation and Specification of Property Rights", *Review of Social Economy*, Vol 30, 1972, p315 quoted by du Bois, *op cit*, p75.

<sup>51</sup> the Ecologist in Kirkby, O'Keefe and Timberlake, (eds), *op cit*, p235 and Arjun Makhijani, *From Global Capitalism to Economic Justice*, New York and London, (Apex Press, 1992), p110.

## **Land rights as human rights**

A number of theorists have interpreted existing human rights texts as legitimising the communal right to natural resources.<sup>52</sup> Endorsing these claims, it will now be argued that organising rights to environmental resources on a private basis according to the capitalist model creates violations of the human rights to self-determination and to be free from hunger. In particular, the global mining and cash crop economies exemplify how capitalism diverts resources to supply market demands at the expense of considerations of basic human rights.

## **The right to cultural self-determination**

The stipulations of existing legal agreements on human rights assign environmental resource rights to groups rather than to individuals. Both the ICCPR and the ICESCR omit to even mention human rights to private property. Instead both covenants grant natural resources rights to peoples, derived from the right to self-determination. The ICESCR, part 1, article 1 and the ICCPR part 1, article 1 stipulate the following in identical wording:

1 All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2 All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual

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<sup>52</sup> Ernst B Haas, The Web of Interdependence, Englewood Cliffs, New Jersey, (Prentice Hall, 1970), p91; RJ Vincent, Human Rights and International Relations, Cambridge, (Cambridge University Press, 1986), p81; Ben Wisner, "The Reconstructing of Environmental Rights in Urban South Africa", Human Ecology, Vol 23, No 2, June 1995, p259 and James Crawford in James Crawford, (ed), The Rights of People, Oxford, (Clarendon Press, 1992), p63 and pp170-1.

benefit, and international law. In no case may a people be deprived of its own means of subsistence.<sup>53</sup>

Of crucial importance in this article is the derivation of a peoples distinct cultural development as an aspect of the right to self-determination.

Other articles in international human rights covenants which mention natural resource rights reinforce this designation of group rights. ICCPR part 5, article 47 and ICESCR part 4, article 25 both state that; "nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources". The legal right of peoples to sovereignty over natural resources is further supported by General Assembly Resolution 1803, article 1, that declares a "right of peoples and nations to permanent sovereignty over their natural resources".<sup>54</sup> In all of these cases, rights to natural resources are linguistically stipulated as a group right. In no human rights text is it stated that ownership rights over natural resources are assigned to individual people or corporations.

The right to self-determination and the derived rights to natural resources, have however been traditionally interpreted as an individual, rather than as a communal right in formal international human rights fora.<sup>55</sup> This interpretation facilitates iniquitous resource ownership benefiting corporate agribusiness at the expense of local communities, again demonstrating a political interpretation of human rights that reflects the distribution of power in the capitalist political economy.<sup>56</sup>

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<sup>53</sup> Council of Europe, Human Rights in International Law, Brussels, (Council of Europe Press, 1992), p18 and p32.

<sup>54</sup> 'Permanent Sovereignty Over Natural Resources', General Assembly Resolution 1803 (XVII), United Nations GAOR Supp. (Number 17) at 15, UN Doc A/5217 (1962); <http://www.umn.edu/humanrts/instree/c2psnr.htm>.

<sup>55</sup> see Tony Evans, US Hegemony and the Project of Universal Human Rights, Basingstoke, (Macmillan, 1996).

<sup>56</sup> see chapter 4.

Formal interpretations of international law notwithstanding, the systematic violation of the right to cultural self-determination remains a salient feature of the global economy. The cultural importance of traditional lands to indigenous cultures is evident from the response of indigenous communities faced with separation from their lands. To facilitate commercial exploitation of sub soil resources in indigenous peoples lands, members of the Macuxi, Kaiowa and Guarani tribes in Brazil have, for example, been relocated to reserves in open contempt of their rights to cultural identity.<sup>57</sup> Reflecting a cultural attitude to territory prevalent in non-capitalist cultures, traditional lands are revered by these tribes "as irreplaceable and even to be defended at all costs".<sup>58</sup> Dramatically illustrating how commercial operations can violate cultural self-determination, members of the Guarani tribe have even been committing mass suicide, "as loss of their land leaves them with no reason to go on living".<sup>59</sup>

The US based Occidental corporation is currently in a dispute with indigenous people in Colombia who have similarly threatened to commit mass suicide if oil exploration proceeds as planned on their traditional tribal lands. In 1992, Occidental signed a contract with the Colombian government to explore a 200,000 hectare area in eastern Colombia that is also home to 4,000 U'wa people.<sup>60</sup> Chief Cobaira of the U-wa tribe has stated that

any kind of tampering with our land goes against the core of our traditions, but our cries seem to be falling on deaf ears... If the white man

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<sup>57</sup> the Ecologist, (1993), op cit, p12.

<sup>58</sup> ibid.

<sup>59</sup> Brazil Network Newsletter, May/June 1996, p3.

<sup>60</sup> Larry Luxner, "Business Bats for Colombia", Multinational Monitor, May 1997, Vol 18, No 5; <http://www.essential.org/monitor/hyper/mm0597.12.html>; see also Shannon Wright, "U'wa Indigenous Leader Beaten and Threatened", Rainforest Action Network, 20 October 1997; <http://www.alphacdc.com/ien/uwa.html> and Yadira Ferrer, "Colombia-Environment: OAS Backs U'wa in Dispute with Oil Giant", Inter Press Service; <http://www.oneworld.org/ips2/sep/colombia.html>.

starts making holes and sucking the veins of our most revered Mother Earth we will have no choice but to bring our lives to an end".<sup>61</sup>

The indigenous rights organisation Project International highlights the threat to the culture of the U'wa presented by the privatisation of their lands for oil exploration through observing that, "whether it is through the pollution of the land they consider sacred, the increased violence that the project will inevitably bring, or by their own hand, oil exploration means the death of the U'wa".<sup>62</sup> This case exemplifies the centrality of traditional lands to the customs, culture and existence of tribal communities and the culturally destructive results of commodifying and privatising rights to land. Weissbrodt explains that

Indigenous peoples have a unique, spiritual relationship to their land...

They do not view their land as a commodity, but, as an intimate part of their life, culture, personality, religion, self-determination, and governmental structure.<sup>63</sup>

This cultural interpretation of the land is incommensurate to that of the capitalist model. Floriano Carique, founder of Mapuche,<sup>64</sup> states that

Indigenous thought does not distinguish the environment from the self.

Kume Moignen, or harmony, is central to our lives. We must live well with ourselves, with the community, our physical environment and with the cosmos.<sup>65</sup>

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<sup>61</sup> quoted in Gabriella Gamini, "Andes Tribe makes Suicide Threat to Halt Oil Drilling", The Times, 4 October 1996, p13.

<sup>62</sup> Project International, "Occidental and Shell threaten U'wa of Colombia", 19 October 1997; <http://www.alphacdc.com/ien/uwa.html>.

<sup>63</sup> Weissbrodt quoted by Garth Nettheim in James Crawford, (ed), op cit, p117.

<sup>64</sup> Peoples Organisation, Chile.

<sup>65</sup> "Interview: Mapuche put Earth First", Multinational Monitor, Vol 16, No 11, November 1995; <http://www.essential.org/monitor/hyper/mm1195.09.html>.

Stockton similarly remarks that in Australia the aborigines commonly state that 'I am the land'.<sup>66</sup> It is the cosmological aspect of their cultural beliefs that Aborigines view rights to land as originating with the design and creation of the world rather than with alienable legal title. Aborigines look at land as being a part of the wider whole and therefore also as a part of themselves, and that they are a part of the land.<sup>67</sup> Demonstrating both the incommensurability of capitalism with aboriginal culture, and the subtle cultural imperialism evident in capitalist politics, Hill remarks that "this focus on a spiritual/cultural definition of land instead of a material/resource-driven approach emerged as something that white Australians fail to comprehend, regardless of their level of sympathy for Aboriginal land rights".<sup>68</sup> The key conclusion to be drawn from these examples is to establish the relativism of the capitalist position to differentiate and commodify land and people. Human rights to self-determination and to a traditional cultural heritage are ignored when the incommensurate values and ontological categories of capitalist conceptualisations of land use are imposed on non-capitalist cultures. Yet this is precisely the logic of global capitalism, of commodifying natural resources and allowing the market to decide subsequent usage, regardless of the non-economic purpose of land for distinct cultural traditions.<sup>69</sup>

The irrelevance demonstrated by the actions of commercial actors for environmental values and the cultural rights of non-capitalist societies is a structural feature of capitalism,<sup>70</sup> exemplified through the recent history of petrochemical MNCs

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<sup>66</sup> E Stockton quoted in editorial, "This Singing Land", The New Internationalist, No 177, November 1987, p12.

<sup>67</sup> Ronald Paul Hill, "Blackfellas and Whitefellas: Aboriginal Land Rights, the Mabo Decision and the Meaning of Land", Human Rights Quarterly, Vol 17, No 2, 1995, pp308-9.

<sup>68</sup> *ibid*, p313.

<sup>69</sup> *The Ecologist*, (1993), op cit, p39.

<sup>70</sup> Immanuel Wallerstein, Historical Capitalism, London, (Verso, 1983), p50; see also Stephen Gill, "Globalisation, Market Civilisation and Disciplinary Neoliberalism", Millennium, Vol 24, No 3, Winter 1995, p410.

operating in the Amazon. In 1996, Occidental received military assistance to force the Siona and Secoya peoples of the Ecuadorian Amazon to give up their land to enable oil exploration.<sup>71</sup> Survival International has charged Mobil with risking the lives of some of the last uncontacted indigenous people in the Peruvian Amazon since Mobil workers introduced whooping cough and pneumonia to the communities whilst conducting oil explorations.<sup>72</sup>

Chevron and FINA have both demonstrated an interest to drill for oil and gas in the sacred Badger Two-Medicine land,<sup>73</sup> that is central to the cultural and religious practices of the Blackfeet Nation.<sup>74</sup> In 1987 the Human Rights Committee ruled that oil and gas exploration was threatening the culture and way of life of the indigenous Lake Lubicon Band in Canada in violation of the right to culture.<sup>75</sup>

The same process of neglect for the cultural rights of indigenous communities is also evident in the case of certain hydroelectric projects. Fighting the James Bay hydroelectric project in northern Quebec in 1992,<sup>76</sup> the Cree Vice-Grand Chief Diom Saganash asserted that tribal peoples are threatened by hydroelectric projects all over the world. He argued that,

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<sup>71</sup> Project Underground, "Occidental: Supporting Suicide", 27 November 1997; <http://www.moles.org/ProjectUnderground/drillbits/motherlode/oxy.html>.

<sup>72</sup> editorial, "Behind the Lines", Multinational Monitor, Vol 17, No 11, November 1996; <http://www.essential.org/monitor/hyper/mm1196.01.html>.

<sup>73</sup> an area south of Glacier National Park in Montana, USA.

<sup>74</sup> response to thesis questionnaire received from Darrell Geist, president, Cold Mountain, Cold Rivers, 28 October 1998 and from Jamie Lennox, membership coordinator, Alliance for the Wild Rockies, 10 June 1998.

<sup>75</sup> specifically article 27 of the ICCPR which guarantees the rights of minorities to culture, religion and language, UN Doc. E/CN.4/Sub.2/1992/7, see James Cameron and Ruth MacKenzie in Alan E Boyle and Michael R Anderson, (eds), Human Rights Approaches to Environmental Protection, Oxford, (Clarendon Press, 1996), p131; see also Aaron Sachs, op cit, p47.

<sup>76</sup> which affects an area containing 10,000 Cree and 6,000 Inuit, see Penny Park, "Canadian Cree take Quebec's Hydro Scheme to Tribunal", New Scientist, Vol 133, No 1806, 1 February 1992, p15.

our basic human rights, right to a livelihood and right to survival are threatened by these projects being forced upon us. They are killing our ways of life.<sup>77</sup>

Mining corporations have similarly pursued private commercial interests at the expense of the human right to cultural self-determination. The Ecologist states that "indigenous people are regularly dispossessed of their lands to make way for mines without compensation or any share of the profits".<sup>78</sup> The US mining giant Peabody is strip-mining coal on sacred Dineh and Hopi lands in Arizona.<sup>79</sup> In 1985, mining corporations operating in Australia campaigned against political recognition of aboriginal land rights because of a concern over potential rising costs and denial of access to resources in the event of land being ceded to aboriginal communities.<sup>80</sup> In 1992 US based Golden Star Resources began mining gold reserves in the interior of Suriname.<sup>81</sup> The firm's operations led to the forced eviction of thousands of indigenous people. In September 1995, conflict at mining sites exploded as police shot at Maroon people trying to access their traditional forests.<sup>82</sup> In all these cases, corporations benefit from the enforcement of private property rights to natural resources at the expense of indigenous communities being removed from the land upon which their cultural traditions depend.

The same pattern described above in relation to mining corporations disregarding rights to cultural self-determination is also evident in the case of logging operations. McMillan Bloedell and Interfor have been criticised for over-exploiting the temperate

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<sup>77</sup> *ibid.*

<sup>78</sup> *the Ecologist*, (1993), op cit, p42.

<sup>79</sup> Inter Press Service, "G-7 Environment: Indigenous Tribunal to Try Sumiteers", 19 June 1997.

<sup>80</sup> Editorial, "This Singing Land", op cit, p13.

<sup>81</sup> North East Latin America.

<sup>82</sup> see Marcus Colchester, "Asia Logs Suriname", Multinational Monitor, Vol 16, No 11, 1995, <http://www.essential.org/monitor/hyper/mm1195.05.html>.

rain forests of the Nuu-Chah-Nulth and Nuxalk indigenous peoples of British Columbia, Canada.<sup>83</sup> Mitsubishi's operations have polluted the lands of the Lubicon Cree of Alberta, Canada.<sup>84</sup> Logging by Russian, Japanese, South Korean, and US MNCs has destroyed the resource base of the Udege indigenous people of Siberia and caused soil erosion and siltation of river systems upon which the indigenous community depended for its subsistence.<sup>85</sup> All these cases exemplify how the right to cultural self-determination is violated by corporations whose right to pursue profits is prioritised by the system of private property rights to natural resources. For the right to cultural self-determination to mean anything other than subordination to the global capitalist economy, the resource base required for the subsistence and independence of non-capitalist cultures must first be secured.<sup>86</sup> Property and ownership rights to natural resources are required since there can be no cultural self-determination where non-capitalist communities suffer invasions of their lands at the behest of global markets. The granting of access or usufruct rather than ownership rights to natural resources would be insufficient conditions for the realisation of the right to self-determination since ultimate ownership of lands would not be controlled by the communities themselves. The ability and readiness of corporations to disregard considerations of cultural diversity in favor of the search for profits means that non-capitalist societies require the conditions for independence and self sufficiency, of which the ownership of traditional lands is the most important.

For the reasons given in chapter five in the case of the right to an environment free from toxic pollution, the legal recognition of the right to environmental resources is

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<sup>83</sup> Inter Press Service, (1997), op cit.

<sup>84</sup> ibid.

<sup>85</sup> Aaron Sachs, op cit, p27 and Worldwatch Institute, "Worldwide Repression of Peaceful Environmental Protestors Spurs new Coalitions with Human Rights Activists", 9 December 1995; <http://www.antenna.nl/news/women/180days/mn 00161.html>.

<sup>86</sup> for the application of this argument in a number of African societies see Robert K Hitchcock in Barbara Rose Johnston, (ed), Human Rights and the Environment at the End of the Millennium, Walnut Creek, (Alta Mira, 1997), pp81-95.

an insufficient requirement for the realisation of this right.<sup>87</sup> It is unlikely in the extreme that new laws by themselves will protect the cultural diversity of non-capitalist cultures from corporate interests, given that the efficacy of law depends on power relations in the political economy.<sup>88</sup> For the human right to environmental resources to be realised, anti-systemic forces have to organise and campaign to challenge the power relations that presently legitimise the cultural imperialism of global capitalism. Recent political activism by indigenous communities in Latin America exemplifies how human rights claims to natural resources can garner popular support around an organic challenge to the global market system.

The Committee for the Defense of Human Rights in Honduras (CODEH) has campaigned for the rights to ownership of tribal lands on the grounds that this is "inextricably linked" to human rights of free expression of tribal identity and lifestyle.<sup>89</sup> Claims to land rights from indigenous peoples were affirmed at the Legal Commission of the International NGO Conference on Indigenous Peoples and the Land.<sup>90</sup> Stressing the importance of land to cultural traditions of indigenous nations, the declaration produced at this venue stated an "inseparable connection between land rights of Indigenous Peoples and the right of self-determination".<sup>91</sup> The 1986 Quito Declaration,<sup>92</sup> similarly challenged the capitalist political economy by demanding "an end to assimilationist policies" and "juridical recognition of territorial rights based on prior ownership including

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<sup>87</sup> see chapter 5.

<sup>88</sup> see chapter 4.

<sup>89</sup> James Phillips in Johnston, (ed), (1997), op cit, p180.

<sup>90</sup> held at Geneva in 1981.

<sup>91</sup> see Nettheim in Crawford, (ed), op cit, p115.

<sup>92</sup> a declaration from the indigenous people of Latin America, see Lisa Smith, "Indigenous Rights", Race and Class, Vol 33, No 3, 1992, p104.

rights to the resources of the sub-soil and recognition of systems of self government".<sup>93</sup>

Rights to natural resources are therefore claimed in this declaration as a means to achieving cultural and political independence from the forces of the capitalist economy.<sup>94</sup>

Coinciding with the day that NAFTA took effect,<sup>95</sup> the Zapatista Army of National Liberation (EZLN) launched an armed revolt against the Mexican government. Based in the Chiapas region, the rebellion was composed largely of Mayans who challenged the loss of indigenous lands, or ejidos.<sup>96</sup> The right to ejidos, guaranteed under article 27 of the 1917 Mexican constitution, was abolished in 1992 as a part of pro-market reforms undertaken by President Carlos Salinas de Gortari.<sup>97</sup> The important feature of the Zapatista uprising was the way in which the movement rejected the pro-market structural adjustments of the Salinas government and instead demanded land rights as a means of securing political and economic independence from the market.<sup>98</sup> The uprising was also characterised by indigenous opposition to the environmental degradation of the forests in Chiapas, especially in the Lacandon Biosphere Reserve, where the introduction of monoculture cash crops had reduced the ecological biodiversity of the region.<sup>99</sup> The Zapatista uprising therefore exemplifies a campaign for cultural independence and environmental protection based around demands for land rights.<sup>100</sup>

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<sup>93</sup> ibid.

<sup>94</sup> ibid.

<sup>95</sup> 1 January 1994.

<sup>96</sup> The Zapatistas are composed primarily of the Tzotzil, Tzeltal, Chol, Tojolabal, Mam and Zoque Mayans; see David Stea, Silvia Elguea and Camilo Perez Bustillo in Johnston, (ed), (1997), op cit, p226.

<sup>97</sup> ibid.

<sup>98</sup> Oriol Pi-Sunyer and R Brooke Thomas in Johnston, (ed), (1997), op cit, p207.

<sup>99</sup> Stea, Elguea and Bustillo in Johnston, (ed), (1997), op cit, p217.

<sup>100</sup> ibid.

The conclusion of this discussion is that private property rights to natural resources are unable to secure human rights to cultural self-determination since land use patterns are instead determined by market forces. Placing rights to natural resources in the hands of local communities would empower local groups with the means to achieve independence from the tyranny of the market. The foregoing analysis argued that such empowerment is a prerequisite for the human right to cultural self-determination to be prioritised over considerations of profit that are institutionalised in the capitalist system.

### The right to be free from hunger

The claimed human right to ownership of environmental resources is necessary to realise the right to be free from hunger as stipulated in the ICESCR.<sup>101</sup> Hunger is a necessary consequence of adopting a market based system of natural resource ownership rights and largely avoidable through assigning rights over environmental resources to local communities.<sup>102</sup>

Capitalist property rights to land ownership are excellent at supplying market demands but at the necessary expense of causing hunger for hundreds of millions of people who lack the funds to access the market.<sup>103</sup> This situation presently applies to 1.3 billion people, approximately one fifth of the world's population.<sup>104</sup> Forty thousand children subsequently die daily from the combination of malnutrition and poor

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<sup>101</sup> article 11 (para 2) stipulates, "the States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed... taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need".

<sup>102</sup> Johan Galtung, Human Rights in Another Key, Cambridge, (Polity Press, 1994), p69.

<sup>103</sup> David Goodman and Michael Redclift, Food, Ecology and Culture, London, (Routledge, 1991), p163.

<sup>104</sup> Christopher Flavin in Lester Brown et al, State of the World 1997, New York, (WW Norton and Company, 1997), p3; see also Makhijani, op cit, p54.

sanitation.<sup>105</sup> More than 800 million people suffered from chronic under nourishment during the period 1980-90.<sup>106</sup>

These statistics result from individuals and groups lacking sufficient land to provide for their own subsistence requirements. Refuting the claim that hunger results from a lack of overall land availability, the evidence demonstrates that hunger is the principal result of commodifying land and thereby redirecting use to serve market demands. This process is exemplified in the case of those living in the Dande Valley of northern Zimbabwe, who were deprived of access to wildlife, forests and fish after their traditional lands were sold off as by the state to raise revenue. The land is now used for cash crops and hunting by paying tourists. Traditional hunting practiced by the indigenous population has been criminalised as poaching and a formally self-sufficient community has become dependent for survival on food from NGOs and the Zimbabwean state.<sup>107</sup>

The trend towards cash crop production exemplifies how environmental resources are skewed away from providing for basic needs and towards serving luxury markets when land rights are privatised. That starvation is a function of food entitlement rather than of overall availability explains why only sectors of the population who lack income starve and why, "there has probably never been a famine in which every group has suffered".<sup>108</sup> The net weight of food exported from Ireland during the 1845-50 famine exceeded the weight of foods imported during the same period.<sup>109</sup> Similarly, more food was exported from famine areas than was imported in the cases of the Bangladeshi

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<sup>105</sup> Galtung, op cit, p139.

<sup>106</sup> CP Chanrasekhar, "The Right to Food", Third World Resurgence, No 79, March 1997, pp35-6; see also "Fact File", UNESCO Courier, March 1995, p30 and Chris Brazier, "State of the World Report", New Internationalist, Issue 287; <http://www.oneworld.org/ni/issue287/keynote.html>.

<sup>107</sup> see Yash Tandon in Wolfgang Sachs, (ed), Global Ecology, London, (Zed Books, 1993), p209.

<sup>108</sup> Amartya Sen in A Gauer, (ed), South - South Strategy, Penang, (Third World Foundation, 1983), p96.

<sup>109</sup> Seamus Metress, "The Great Starvation and British Imperialism in Ireland", The Irish People, 10 January 1996; <http://www.vms.utexas.edu/~jdana/iphunger.html>.

famine of 1974 and the 1973 Ethiopian famine.<sup>110</sup> Despite the threat of famine, Sudan sold 400,000 tons of sorghum to the EC in 1989.<sup>111</sup> This trend is further identified by Goodman and Redclift who conclude that, "the food crisis in developing countries, with few exceptions, arises from the regressive distribution of income, which finds expression in patterns of land use dictated by export markets and the demand of higher income groups".<sup>112</sup> Smith observes that, "many of the countries in which millions of people are inadequately fed, if not permanently hungry, have a modern agricultural economy in which large plantations supply the advanced industrial nations with food and raw materials".<sup>113</sup> The privatisation of communal lands in Mexico has created the situation whereby "productive resources including peasant holdings previously used for self-provisioning, have been diverted to luxury crops, such as frozen strawberries and feed grains, particularly for poultry, which are excluded from the diet of the majority".<sup>114</sup> Honduras has the lowest level of per-person daily calorific consumption in the Western hemisphere. Governmental incentives for cash crops have ensured rapid expansion in this sector of the Honduran economy since 1965, whilst the availability of basic foods such as maize, beans and sorghum for the domestic population has consistently declined.<sup>115</sup>

This evidence refutes the contention that hunger is a consequence of overall scarcity, a theory typically advanced by corporate agribusiness. Monsanto's Chief Executive Officer (CEO), Robert Shapiro, writes for example in the introduction to the company's 1996 Environmental Review that the use of genetically engineered crops "will

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<sup>110</sup> Sen in Gauer, (ed), *op cit*, p100.

<sup>111</sup> editorial, untitled, *Third World Resurgence*, No 50, October 1994, p18.

<sup>112</sup> Goodman and Redclift, *op cit*, p153.

<sup>113</sup> David M Smith, *Where the Grass is Greener*, Harmondsworth, (Penguin, 1981), p81.

<sup>114</sup> Goodman and Redclift, *op cit*, p163.

<sup>115</sup> Phillips in Johnston, (ed), (1997), *op cit*, p174.

help immensely in closing the gap between hungry people and adequate food supplies".<sup>116</sup> In contrast to this claim, the weight of evidence suggests that hunger is a function of skewed production patterns in favour of luxury markets under conditions of capitalism. Five million hectares of land around the world are for example used to grow tobacco, illustrating how capitalism determines land use to serve frivolous market demands at the expense of basic needs.<sup>117</sup> This conclusion is further supported by the fact that during the Ethiopian famine of 1983-4, while thousands died of hunger, fields bloomed with carnations destined for European consumers.<sup>118</sup>

Mass starvation continues because under conditions of capitalism, those without the necessary money to buy food have no legally recognisable claim to food.<sup>119</sup> In 1980 the world cereal harvest measured 1,556 million tons. Only 0.002 per cent of this would have been required to adequately feed the fifteen million children who died that year from hunger and hunger related illnesses.<sup>120</sup> The UNESCO Courier summarises that "the overall availability of food in the world is not a problem. There is enough food to offer everyone in the world around 2,500 calories a day-200 calories more than the basic minimum".<sup>121</sup>

Current patterns of starvation are therefore a constructed function of the global market economy, of commodifying land in the hands of private individuals and

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<sup>116</sup> Kenny Bruno, "Corporate Watch Gives Winter Greenwash Award to Monsanto", The Corporate Planet; <http://www.corpwatch.org/trac/greenwash/monsanto.html>.

<sup>117</sup> Lester Brown in Brown et al, op cit, p38.

<sup>118</sup> Sachs, op cit, p39.

<sup>119</sup> Amartya Sen, "Thinking About Human Rights and Asian Values", Human Rights Dialogue, Vol 4, March 1996; <http://www.cceia.org/dialog4.html>.

<sup>120</sup> Susan George, Ill Fares the Land, Washington DC, (Institute for Policy Studies, 1984), p4.

<sup>121</sup> "Fact File", UNESCO Courier, op cit, p30.

corporations who thereafter use the land for cash crops to maximise profits. This fact is made most evident through analysis of the global meat industry. Rifkin observes that;

145 million tons of grain were fed to livestock in 1979. Of that, only 21 million tons were available to human beings, after the energy conversion, in the form of meat, poultry and eggs. The rest, 124 million tons of grain and soybeans became inaccessible to human consumption... If world-wide agricultural production were shifted from livestock feed to grains for direct human consumption, more than a billion people on the planet could be fed.<sup>122</sup>

Energy conversion refers to the 90 per cent of calorific energy that is lost to humans when plants are fed to non-human animals that are subsequently consumed by humans.<sup>123</sup> The Artist Hunger Network highlights the inverted logic of the argument of raising cattle to provide protein for humans in pointing out that "it takes 10 pounds of protein in the form of grain to create 1 pound of protein in the form of flesh to be eaten".<sup>124</sup> Sagoff reminds us that "the world already produces enough cereals and oilseeds to feed 10 billion people a vegetarian diet adequate in protein and calories".<sup>125</sup>

The criticism that the right to be free from hunger is unattainable, meaning that its provision can be neither expected nor delivered due to an aggregate lack of resources, must therefore be recognised as an untenable claim. It has been argued here that hunger is a product not of an aggregate lack of resource, but rather a product of relying upon the market mechanism to decide competing claims over resources. In 1998 the UNDP estimated that an additional \$13 billion would have been required to achieve basic health

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<sup>122</sup> Jeremy Rifkin, "Bovine Burden", Geography Magazine, July 1992, p13.

<sup>123</sup> Tom Regan in Tom Regan, (ed), Earthbound: New Introductory Essays in Environmental Ethics, Philadelphia, (Temple University Press, 1984), p7.

<sup>124</sup> response to thesis questionnaire received from Artist Hunger Network, 31 October 1998.

<sup>125</sup> Mark Sagoff, "Do we Consume too Much?" The Atlantic Monthly, Vol 279, No 6, June 1997; <http://www.theatlantic.com/atlantic/issues/97jun/consume.html>.

and nutrition for all.<sup>126</sup> This compares with global military spending in the same year of \$780 billion.<sup>127</sup> Violations of the right to be free from hunger are tolerated, normalised and reproduced by political choices designed to serve powerful groups benefiting from the capitalist political economy and can be effectively redressed by changing political priorities to favor basic human needs concerns.

One effective way through which the prioritisation of basic needs can be institutionalised is by implementing a communal right to the ownership of natural resources. The dynamics of this process can be summarised as following from the tendency of community controlled lands to be used to provide for the basic needs of all members and to therefore cultivate food rather than cash crops.<sup>128</sup> Food security theorists have convincingly demonstrated that hunger is most effectively avoided through ensuring that communities have the environmental resources required to meet their own subsistence needs.<sup>129</sup> Through an analysis of the implementation of land reforms in Mexico, Bolivia and Kenya, Rehman concluded that distributing the ownership of natural resources to local communities, "realises equitable growth in the agricultural sector whilst arresting the growth of rural poverty".<sup>130</sup> Further evidence in support of this claim is provided by the International Labour Organisation which found that, "redistribution of land rights is the most direct and effective method of improving food entitlements of the poor".<sup>131</sup> The communal right to natural resources is therefore required for the right to be

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<sup>126</sup> Caroline Thomas, "Where is the Third World Now?", Review of International Studies, December 1999, Vol 25, pp225-44.

<sup>127</sup> *ibid.*

<sup>128</sup> Sobhan Rehman, Agrarian Reform and Social Transformation, London, (Zed Books, 1993), p115.

<sup>129</sup> George, *op cit*, p7.

<sup>130</sup> Rehman, *op cit*, p115.

<sup>131</sup> ILO quoted by Katarina Tomasevski, Development Aid and Human Rights Revisited, London, (Pinter, 1993), p178.

free from hunger to be realised since local communities are thereby empowered with both the resources and opportunities to provide for their own subsistence requirements.<sup>132</sup>

### **Land rights as a function of environmental criteria**

According to criterion of biodiversity preservation, the ideal form of land rights is that of the no access system.<sup>133</sup> A degree of human interference with the non human world is however inevitable and the possible extent of no access systems is limited. The question from an environmental perspective then becomes one of constructing human activity to ensure that this impact is minimised. In the case of rights to environmental resources CPR systems have been correctly identified by a number of theorists as being advantageous from the perspective of environmental protection. It is important to state that this does nothing to validate claims to environmental resources made using the discourse of human rights, but environmental considerations nonetheless offer another set of criteria to inform political decisions relating to the design of resource rights.

### **Private property land rights cause environmental degradation**

Exemplified by Garret Hardin, many capitalists maintain that CPR systems are, in environmental terms, inherently disaster prone.<sup>134</sup> Predicting the actions of each individual within a CPR system, Hardin concluded that over exploitation would result from all members seeking to maximise their personal income from the common resource, leading inexorably to environmental degradation. Applying his theory to the case of a number of herdsmen sharing a single grazing field, Hardin argued that

the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another... Each man is

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<sup>132</sup> Sanjeev Prakash, "The Right to the Environment, Emerging Implications in Theory and Praxis", *Netherlands Quarterly of Human Rights*, Vol 13, No 1, 1995, p415.

<sup>133</sup> see above.

<sup>134</sup> Vogler, op cit, pp10-1.

locked into a system that compels him to increase his herd without limit, thereby leading to overuse and environmental degradation.<sup>135</sup>

As Vogler points out, the assumptions of this 'tragedy of the commons' hypothesis are, however, a product of capitalist theory, making the claim at best questionable when applied to diverse societies that are sustained by value systems typified by communitarian norms.<sup>136</sup> In particular, Hardin assumes that individuals will inevitably make choices based upon the logic of economic rationality that categorically do not exist in non-capitalist societies.<sup>137</sup> As Hanna and Jentoft remind us,

when people act in self-centred ways, it is because the social, economic, or regulatory environment promotes such behaviour. And correspondingly, people act collectively when there are positive incentives to do so.<sup>138</sup>

Hardin's hypothesis can therefore be criticised for falsely universalising the individualistic values of economic rationality. Moreover, environmental degradation often occurs when natural resources are privatised because the anti-social assumption of individualism in the Hardin model becomes a self fulfilling prophecy.<sup>139</sup> Numerous examples in the case of fisheries testify to the individualistic assumptions in the Hardin hypothesis constructing the situation whereby the predicted model outcomes are in fact produced.<sup>140</sup> Citing cases in Norway and Canada, Hanna and Jentoft demonstrate that it is the removal of the individual interest from the collective interest that causes overuse of resources: "Traditional resource management practices of many local subsistence exchange

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<sup>135</sup> Garret Hardin, "The Tragedy of the Commons", *Science*, Vol 162, 1968, p1244.

<sup>136</sup> Vogler, op cit, p13.

<sup>137</sup> see chapter 1.

<sup>138</sup> Hanna and Jentoft in Hanna, Folke and Maler, (eds), op cit, p38.

<sup>139</sup> for a discussion of the social conditioning of the individual, see chapter 2.

<sup>140</sup> Susan Hanna and Svein Jentoft in Hanna, Folke and Maler, (eds), op cit, p47.

economies have been weakened or destroyed through interactions with external markets that have undermined the moral authority for resource management".<sup>141</sup> Thus, in extending the market mechanism to cover natural resources to prevent the tragedy of the commons, environmental damage is exacerbated rather than alleviated.<sup>142</sup> As the Ecologist editors summarise, the tragedy of the commons is more accurately described as a 'tragedy of enclosure', where traditional communal controls on resource use are destroyed by the wider structural incentives of profit concerns operating in a capitalist economy.<sup>143</sup>

In failing to differentiate between CPR and open access systems, Hardin fails to appreciate how CPRs institutionalise community controls to prevent patterns of over exploitation. Typifying confusion on this issue, Demsetz interpreted overhunting and the subsequent eradication of many fur-bearing animals in eastern Canada as being due to a lack of property rights.<sup>144</sup> In fact, as Gowdy demonstrates, it was the introduction of the capitalist economy that caused the collapse in numbers of favored species as profit concerns replaced traditional indigenous peoples customs in determining hunting patterns.<sup>145</sup> Traditional customs that had previously prevented over use related to environmental awareness, religious restrictions and a fear of reprisal from the spirit world. Indeed, indigenous cultures are typified by a characteristic underuse of resources, compared to the ecological potential.<sup>146</sup> That native American hunters drove large numbers of bison off cliffs has been oft cited by pro-market theorists as evidence that

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<sup>141</sup> ibid, p48.

<sup>142</sup> ibid, p47.

<sup>143</sup> the Ecologist, (1993), op cit, pp232-3.

<sup>144</sup> John Gowdy, Coevolutionary Economics: The Economy, Society and the Environment, Boston, (Kluwer, 1999), pp79-80.

<sup>145</sup> ibid, p80.

<sup>146</sup> ibid.

indigenous cultures are unable to maintain ecological sustainability. Yet it was only with the arrival of the Europeans that numbers of bison in North America were decimated from 40 million to 500 animals.<sup>147</sup>

Organising land use according to economic criterion is mutually exclusive to the organisation of use according to ecological principles.<sup>148</sup> The capitalist system of natural resource rights leads inexorably to environmental degradation because the efficient use of resources requires usage of pesticides, monocultures, cash crops, deforestation and habitat destruction.<sup>149</sup> Monocultures are crops that are grown in isolation from other species to maximise yields, typically in combination with the use of pesticides and insecticides.<sup>150</sup> From the ecological perspective, such an approach creates de facto deserts, devoid of any notable biodiversity, except for the single species of cultivated crop. Cash cropping also entails environmental damage since large numbers of landless or land-poor peasants deprived of the land turned over to cash crop production are forced onto steep hillsides, rain forests, and other environmentally sensitive or agriculturally marginal areas.<sup>151</sup> The clearing of land for cash crops in the Brazilian Amazon resulted in the destruction of 40,000 square miles of rain forest between 1966 and 1983.<sup>152</sup> Jose Lutzenberger, former Brazilian Minister of the Environment, testified that the iniquitous ownership of land in

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<sup>147</sup> ibid, p81.

<sup>148</sup> Hanna, Folke and Maler in Hanna, Folke and Maler, (eds), op cit, p9; see also CS Holling and Steven Sanderson in Hanna, Folke and Maler, (eds), op cit, p59.

<sup>149</sup> see chapter 1 for details.

<sup>150</sup> Goodman and Redclift, op cit, p53.

<sup>151</sup> Michael Renner in Brown et al, op cit, p127; see also Lloyd Timberlake, Africa in Crisis, London, (Earthscan, 1985), p91; The Ecologist, (1993), op cit, p44; and Caroline Thomas, "Unsustainable Development?" New Political Economy, Vol 1, No 3, 1996, p405.

<sup>152</sup> Rifkin, op cit, p14 and George Monbiot, "The Land is Ours", 1996 Schumacher Lecture, October 19, Bristol; <http://www.oneworld.org/schumachersoc/lectures96/monbiot.html>.

the state was creating land shortages and pushing peasants into the Amazonian rain forest.<sup>153</sup>

Private property rights systems of land ownership also tend to cause environmental damage because of the feature of distanciation. Distanciation refers to the separation of areas of environmental degradation caused in the manufacturing of a product from the place where the good is finally consumed.<sup>154</sup> That is to say, distanciation "increases the distance between those making the decision and experiencing the consequences" of environmental policies relating to land use.<sup>155</sup> This results in less environmental protection since the individuals making decisions are spatially and consequentially removed from the environmental impact of their decisions. By way of an example, the British based corporation Rio Tinto Zinc plans to mine ilmenite and titanium dioxide in 4,000 hectares of pristine Madagascan rainforest for use in toothpaste.<sup>156</sup> Eventual consumers will almost certainly be unaware that the production of their toothpaste involved the destruction of rain forests and will neither suffer, nor pay for that environmental damage, since they will most likely live as far from the site of destruction as the CEOs who designed the mining operation.

#### CPR protection of the environment

Communal ownership systems to natural resources are suggested here to be more environmentally benign than the market model because subsistence and long term environmental sustainability typically replace the profit motive in determining resource use. The decentralised nature of CPR systems as well as the pool of common knowledge

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<sup>153</sup> see Human Rights Watch and the Natural Resources Defense Council, Defending the Earth: Abuses of Human Rights and the Environment, Washington DC, (Natural Resources Defense Council, 1992), p4.

<sup>154</sup> Galtung, op cit, p114.

<sup>155</sup> Johnston, (1995), op cit, p115.

<sup>156</sup> Nick Nuttall, "Campaign Launched to Save Madagascan Forests from Mining", Times, 19 January 1995, p7.

about the local environment built into CPRs over the generations allow commons based systems to effectively respond to natural disturbances and reduce the chances of large scale ecological collapse.<sup>157</sup>

The right to ownership of natural resources could be implemented to minimise economic activity that degrades the environment in the long run. Ecological rationality is conducive to reducing the human impact on the environment, and is likely to be fostered through local subsistence based economies rather than the global market system.<sup>158</sup> A decentralised economic system cannot eradicate the conflict between human interests and environmental protection, but evidence suggests that the CPR systems can help minimise the environmental effects of human activities. George Monbiot succinctly explains the predisposition of CPRs to conserve resources when he asserted that

I had seen environmental destruction following land alienation. When traditional landholders are dispossessed and either private businesses, large proprietors or state bureaucracies take over, habitats are destroyed. I came to see that rural communities are often constrained to look after their land well, as it is the only thing they have, and they need to protect a diversity of resources in order to meet their diverse needs.<sup>159</sup>

Examples of the ways in which CPRs are conducive to environmental protection can be illustrated through specific cases.<sup>160</sup> One study for example describes how a 1988 National Forest Policy in India granted resource rights to local communities and subsequently reversed a policy of deforestation.<sup>161</sup> The Communal Areas Management

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<sup>157</sup> Costanza and Folke in Hanna, Folke and Maler, (eds), *op cit*, p27.

<sup>158</sup> see chapter 1.

<sup>159</sup> Monbiot, *op cit*; see also Agarwal and Sunita, *op cit*, p157.

<sup>160</sup> Clay in Johnston, (ed), (1994), *op cit*, p28.

<sup>161</sup> rights to the use of land and to the resulting profit, but not to the ownership of land; see Charlie Pye-Smith and Grazia Borrini Feyerabend in Kirkby, O'Keefe and Timberlake, (eds), *op cit*, p303.

Program for Indigenous Resources (CAMPFIRE) in Zimbabwe uses customary practices of group ownership to sustain the natural wildlife resource base, allocating resource usage rights around the criterion of ecological sustainability.<sup>162</sup>

Another example of an ecologically beneficial CPR system is that of forest management practiced by the Sherpas of Nepal. Traditionally, the 'shingo naua', or forest guards, have prevented deforestation by controlling which trees could be felled and by punishing transgressors.<sup>163</sup> The extractive reserves established by the rubber tappers of the Brazilian Amazon also exemplify an ecologically sustainable CPR. These reserves are co-operatives of rubber tappers and indigenous communities based around an economic system that preserves the forest eco-system whilst harvesting renewable forest products such as rubber, fish and nuts.<sup>164</sup> This system has protected biodiversity and the ecosystem from quick profit uses and deforestation and is now practiced in ten per cent of the land area in the Brazilian province of Acre.<sup>165</sup> Refuting the assumptions underlying Hardin's critique of the commons,<sup>166</sup> successful exclusion under CPR systems is the rule rather than the exception.<sup>167</sup> There was, for example, no widespread tragedy of the commons in England before the enclosure movement since rules such as 'stinting' limited the number of animals each owner could graze on the commons.<sup>168</sup> Because of the fusing

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<sup>162</sup> Zimbabwe Trust, Department of National Parks and Wildlife Management and the CAMPFIRE Association, People, Wildlife and Natural Resources - The CAMPFIRE Approach to Rural Development in Zimbabwe, Harare, (Zimbabwe Trust, 1990), p3; see also Bill Derman, "Environmental NGOs, Dispossession and the State: The Ideology and Praxis of African Nature and Development", Human Ecology, Vol 23, No 2, June 1995, p202 and Camilla Toulmin, Ian Scorer and Joshua Bishop in Kirkby, O'Keefe and Timberlake, (eds), op cit, p254.

<sup>163</sup> Jeffrey A McNeely, "Common Property Resource Management or Government Ownership?" International Relations, Vol 10, No 3, May 1991, pp214-5.

<sup>164</sup> Chico Mendes, Fight for the Forest: Chico Mendes in his own Words, London, (Latin American Bureau, 1989); see also World Rainforest Movement and Forests Monitor Ltd, op cit, p37.

<sup>165</sup> McNeely, op cit, p215.

<sup>166</sup> Hardin, op cit, pp1243-8.

<sup>167</sup> Berkes in Hanna, Folke and Maler, (eds), op cit, p95.

of individual and public interests in CPR systems, members adhere to norms and social values since these are (i) identified with self interest, (ii) enforceable through sanctions and (iii) individuals are politically involved and morally committed to the group.<sup>169</sup>

### Resource rights and global capitalism

CPR systems of resource use are a necessary, rather than a sufficient, condition for environmental protection.<sup>170</sup> The institutionalisation of CPRs alone will be unlikely to prevent ongoing environmental degradation whilst global capitalism remains in place. Implementing CPRs without structural changes to global capitalism can be expected to change only the agents of environmental destruction. Chapters one and four detailed how the capitalist political economy structurally determines patterns of environmental degradation. When placed within a capitalist structure, traditional taboos on resource overuse in CPRs are broken down and, as numerous examples testify, individuals typically become over exploiters to gain short term profits.<sup>171</sup>

The director of indigenous governance programs of the University of Victoria points out that there is no basis for rationalising processes of environmental degradation within North American indigenous cultures and traditions.<sup>172</sup> When such degradation has occurred on indigenous lands, this has been the direct result of the structural commercial incentives operating in the global economy. In particular, the commodification of nature combined with market incentives dictate that it is more profitable for the present owners

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<sup>168</sup> ibid, p99.

<sup>169</sup> Hanna and Jentoft in Hanna, Folke and Mäler, (eds), op cit, p46; see chapters 1 and 2 for a discussion on the influence of culture and structure on individuals.

<sup>170</sup> the Ecologist in Kirkby, O'Keefe and Timberlake, (eds), op cit, p233.

<sup>171</sup> McNeely, op cit, p224; see also Bodley in Johnston, (ed), (1997), op cit, p33, for examples of this in the cases of the Shipibo and Ashaninka in the Amazon; and Robert W Cox, Production, Power and World Order: Social Forces in the Making of History, New York, (Columbia University Press, 1987), p54.

<sup>172</sup> interview with Dr Taiaiake Alfred at the University of Southampton, 29 April 1999.

of resources to exploit, and thereby gain revenue from mineral and forest reserves, rather than to conserve them.<sup>173</sup>

Exemplifying the limitations placed by global capitalism upon the possibilities for CPRs to protect the environment, the Kayapo Indians of the Brazilian Amazon negotiated contracts with loggers and miners for large-scale extraction of mahogany and gold on their lands after a successful and high profile land rights campaign led the Brazilian government to cede to the indigenous group a 65,000 square-kilometer reserve.<sup>174</sup> Several Kayapo chiefs have since used the income from the sale of the contracts to buy satellite dishes, cars and private jets, whilst other tribal members have seen no benefits.<sup>175</sup> Transferring resource rights to communities in the absence of structural changes to the global economy will therefore dictate that these groups will most likely replace individuals, states or corporations as the agents of environmental degradation. An enquiry into alternative structural arrangements more conducive than capitalism to long term environmental protection lies outside the scope of this thesis, but the reader can be directed to the works of Herman Daly for excellent analysis.<sup>176</sup>

## **Conclusions**

Private property rights legitimise ownership of natural resource in the global capitalist economy.<sup>177</sup> This commodifies land and grants legal title to individuals or corporations who purchase the land.<sup>178</sup> Under this system, land rights are therefore a

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<sup>173</sup> see chapter 1.

<sup>174</sup> Aaron Sachs, *op cit*, pp15-6.

<sup>175</sup> *ibid*.

<sup>176</sup> Herman Daly in Kirkby, O'Keefe and Timberlake, (eds), *op cit* and Herman Daly and John Cobb, For the Common Good, Boston, (Beacon Press, 1994).

<sup>177</sup> Wallerstein, *op cit*.

<sup>178</sup> Hardin, *op cit*, p1244.

function of private wealth.<sup>179</sup> An alternative system of ownership rights provided by CPRs has been introduced and discussed in this chapter. CPR systems furthermore suggest an alternative to the illusionary choice between market and state.<sup>180</sup> CPR systems politicise the ownership of natural resources and facilitate the use of land according to socially agreed criteria.<sup>181</sup>

The conclusions of this chapter are threefold. Firstly, recognition of the human right to ownership of natural resources was argued to be required for the realisation of human rights to (i) cultural self-determination and (ii) freedom from hunger. Secondly, the implementation of this right is required on a communal, rather than an individual, basis. Formal interpretations of international law notwithstanding, neither the ICCPR nor the ICESCR stipulate rights for individuals to own natural resources. Resource rights are instead reserved in both covenants for peoples, reflecting a focus on basic needs and self-determination rather than global capital. Although CPRs have historically prioritised social and environmental over economic criteria in determining patterns of resource usage, this feature has been largely corrupted by the expansion of global capitalism.<sup>182</sup> The third conclusion of this chapter is therefore to eliminate the possibility of achieving ecological sustainability in the global capitalist economy. It has been argued that the characteristic ability of capitalism to provide a multitude of goods for the rich alongside insufficient goods for the impoverished also makes the structure incapable of adequately providing for universal basic needs.<sup>183</sup> Exemplified through cash crops, the consumption of luxury consumer goods necessarily deprives the impoverished of entitlement to resources that are instead diverted by the market mechanism to satisfying frivolous

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<sup>179</sup> *ibid.*

<sup>180</sup> for details of the market-state relation, see chapter 4.

<sup>181</sup> Ostrom, (1990), *op cit.*

<sup>182</sup> *ibid.*

<sup>183</sup> Rehman, *op cit.*, p116.

desires. Future generations will also inherit a world impoverished through climate change, biodiversity reduction and resource depletion as a result of current economic decisions predicated upon capitalism and the use of the environment as advocated by the logic of economic rationality.<sup>184</sup> The human rights and environmental discourses have therefore separately and in combination problematised the capitalist economic system that facilitates a lifestyle of opulence for some whilst denying environmental resources to the impoverished, future generations and to the non-human world.

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<sup>184</sup> see chapter 1.

## CONCLUSION

Life is worth much more than gold.<sup>1</sup>

### Environmental human rights and capitalism

This thesis has argued that universal environmental human rights to (i) an environment free from toxic pollution and to (ii) natural resources, are required for existing legal human rights to be realised. The central theme in this research has identified the power relations of capitalism as the barrier to the realisation of the two claimed environmental human rights. The market mechanism is problematic from the perspective of both human rights and environmentalism since it disproportionately serves powerful social groups irrespective of any broader principle of justice.

Chapter one argued that economic rationality determines 'normal' political choices made in the capitalist political economy.<sup>2</sup> Environmental protection is only deemed appropriate by governments following the logic of economic rationality when such action leads to the efficient allocation of resources, utility maximisation and economic growth, upon which criteria 'rational' political decisions are made.<sup>3</sup> Environmental degradation and resource depletion are the inevitable consequences of accepting the political terms of reference advocated by economic rationality.<sup>4</sup> For example, forests, biodiversity, wilderness habitats, non-human life and biological systems are all devoid of inherent value according to economic rationality.<sup>5</sup> From this viewpoint, deforestation for example

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<sup>1</sup> Bob Marley and the Wailers, "Jamming", Exodus, Island Records Inc, 1977.

<sup>2</sup> John S Dryzek, Discursive Democracy: Politics, Policy and Political Science, Cambridge, (Cambridge University Press, 1990) and John S Dryzek, "Ecology and Discursive Democracy: Beyond Liberal Capitalism and the Administrative State", Capitalism, Nature, Socialism, Vol 3, No 2, 1992, pp18-42.

<sup>3</sup> see for example David Pearce and R Kerry Turner, Economics of Natural Resources and the Environment, London, (Harvester Wheatsheaf, 1990).

<sup>4</sup> see chapter 1.

<sup>5</sup> Graham Smith, Pluralism, Deliberative Democracy and Environmental Values, PhD Thesis, Southampton, (University of Southampton, 1996).

can become the appropriate option since timber can be sold as a commodity on the market irrespective of the broader ecological function of the forest.<sup>6</sup>

Environmental degradation is further built into economic rationality since the concept of discounting legitimises, and indeed advocates as rational, policies that produce severe environmental damage in the distant future when such choices satisfy conditions of allocative efficiency in the present.<sup>7</sup> Endorsing consumerism, unlimited economic growth, distanciation, global free trade and comparative advantage all further illustrate how economic rationality advocates environmental damage as a consequence of an epistemological focus on macroeconomic variables.<sup>8</sup>

Ecological rationality was introduced as an alternative conceptualisation of political terms of reference to critique economic rationality from the perspective of environmental politics. Expressing ecological rationality in a protest against corporate plans to drill oil on their traditional lands, the U'wa nation declared that,

we are left with no alternative other than to continue fighting on the side of the sky and earth and spirits or else disappear when the irrationality of the invader violates the most sacred of our laws... Our words should be a warning that reunites us again as one family in order to ensure our future in harmony with the whole universe, or they will be one more voice that prophesises the destruction of life because of the absurd disposition of the white man.<sup>9</sup>

Ecological rationality therefore rejects allocative efficiency as the decision-making criterion of the political economy and instead advocates the integrity and well being of

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<sup>6</sup> John Gowdy, Coevolutionary Economics: The Economy, Society and the Environment, Boston, (Kluwer, 1999).

<sup>7</sup> Jim MacNeill, Pieter Winsemius and Taizo Yakushiji, Beyond Interdependence, New York and Oxford, (Oxford University Press, 1991), p46.

<sup>8</sup> see chapters 1 and 6.

<sup>9</sup> Berito Cobaria et al, "Communiqué from the U'wa people", Earth Island Journal, 10 August 1998; [http://www.earthisland.org/eijournal/fall98/wn\\_fall98uwa.html](http://www.earthisland.org/eijournal/fall98/wn_fall98uwa.html).

life as the central organising principle.<sup>10</sup> Both ecological and economic variants of rationality are internally consistent. This research has, however, explicitly criticised economic rationality since it advocates policies that harms life, including the wider environment as well as people.<sup>11</sup>

The epistemological dominance of a particular form of rationality is a function of social power.<sup>12</sup> This research has highlighted in particular the interests of global plutocrats who, through a manifestation of power as normalisation,<sup>13</sup> validate those forms of rationality conducive to their self-interest.<sup>14</sup>

Chapter one concluded by arguing that capitalism was based on the pursuit of economic self-interest through the market mechanism, irrespective of a broader principle of justice.<sup>15</sup> Commercial benefits rather than ethical considerations were argued to constitute the decision-making criteria of economic rationality upon which capitalism is predicated.<sup>16</sup> The political theory of liberalism is commonly assumed to provide a philosophical justification of the capitalist political economy.<sup>17</sup> Such a claim was found to be untenable since the two positions of liberalism and capitalism can be clearly differentiated on the grounds of harm.<sup>18</sup> Under the liberal concept of non-malfeasance toxic pollution must necessarily be criminalised for arbitrarily contravening the autonomy

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<sup>10</sup> Aldo Leopold, A Sand County Almanac, Oxford, (Oxford University Press, 1949), see also George Sessions and Arne Naess in John Davis, (ed), The Earth First! Reader, Layton, UT, (Gibbs Smith, 1991), pp157-8.

<sup>11</sup> legalistic definitions of harm notwithstanding; see chapter 5 for a discussion.

<sup>12</sup> David Carroll, Paraesthetics: Foucault, Lyotard, Derrida, London, (Routledge, 1989).

<sup>13</sup> Michel Foucault, Ethics: Subjectivity and the Truth, New York, (The New Press, 1994).

<sup>14</sup> see chapter 1 for a discussion of this process.

<sup>15</sup> Immanuel Wallerstein, The Capitalist World Economy, Cambridge, (Cambridge University Press, 1979).

<sup>16</sup> ibid.

<sup>17</sup> see for example Francis Fukuyama, The End of History and the Last Man, London, (Penguin, 1992).

<sup>18</sup> John Gray, Mill on Liberty: A Defence, London, (Routledge, 1983).

of individuals.<sup>19</sup> In contrast, the political prioritisation of allocative efficiency in capitalism rationalises the systemic harming of people as well as the wider environment.<sup>20</sup> An optimal level of toxic pollution is advocated by the paradigm of economic rationality as a means of achieving allocative efficiency and economic growth and is furthermore enthusiastically generated by industry seeking to minimise private costs.<sup>21</sup>

Chapter two examined structural power in world politics. This topic was included to understand the possibilities and constraints on the realisation of specific human rights and in particular, how power relations of capitalism prevent the realisation of the two claimed environmental human rights. An investigation into the nature of power held by agents and structures revealed a limited capacity for individuals to reform political structures.<sup>22</sup> Whereas marginal policies and questions of implementation can be affected by the lobbying efforts of environmental groups, the fundamental value premises and political goals of capitalist governments remain insulated from the consultation process.<sup>23</sup> Such insulation occurs because power operates through conditioning how individuals think and act as well by more overtly controlling the issues and agenda discussed in formal political channels.<sup>24</sup> For example, many environmental critics of global capitalism assume the dominant political terms of reference given by economic rationality when demanding more investment in renewable energy or more recycling.<sup>25</sup> That is to say, demands for environmental protection are made on grounds of efficiency since advocacy of the inherent value of nature appears judgmental or even embarrassing in a political

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<sup>19</sup> chapter 5 develops this argument further in the context of the claimed environmental human right to an environment free from toxic pollution.

<sup>20</sup> see chapter 1.

<sup>21</sup> David Begg, Stanley Fischer and Rüdiger Dornbusch, Economics, London, (McGraw-Hill, 1987), p327.

<sup>22</sup> Robert W Cox, Production, Power and World Order: Social Forces in the Making of History, New York, (Colombia University Press, 1987), p395 and Robert W Cox with Timothy J Sinclair, Approaches to World Order, Cambridge, (Cambridge University Press, 1996), p50.

<sup>23</sup> Wallerstein, op cit and Robert J S Ross, "Agency and Enlightenment", Journal of World-Systems Research, Vol 2, No 2, 1996; <http://csf.colorado.edu/wsystems/jwsr.html>.

<sup>24</sup> Carroll, op cit and Ben Attias, "Intellectuals and Power: A Conservation Between Michel Foucault and Gilles Deleuze", 18 June 1996; <http://www.csun.edu/~hfspc002/foucB3.html>.

<sup>25</sup> the Ecologist, Whose Common Future? Reclaiming the Commons, London, (Earthscan, 1993).

culture where a discourse of economic rationality is dominant.<sup>26</sup> The way in which values become prioritised in society is therefore an important manifestation of structural power since this process establishes the criteria that must be used by all parties to make persuasive arguments in policy making circles.<sup>27</sup> Reification of capitalism becomes a self-fulfilling prophecy as economic values of allocative efficiency and aggregate growth are established by hegemonic forces as the 'normal' or 'common sense' criteria by which to make political judgments.<sup>28</sup>

Further investigation of structural power highlighted the feature of co-option as the most important mechanism by which challenges to capitalism are diffused and negated.<sup>29</sup> Politicians offering symbolic gestures of environmental protection divide opposition to capitalism from environmental groups. Less radical groups are co-opted with the offer of concessions from politicians and business groups and become eager participants in the negotiating process, thereby legitimising formal politics with the veneer of impartiality and inclusivity.<sup>30</sup> More radical groups rejecting the concessions as window dressing and insisting on fundamental change appear as isolated extremists and are marginalised in the formal political process.<sup>31</sup> A policy of co-option therefore promotes the appearance of participatory and open governance whilst simultaneously diffusing opposition to capitalism and retaining tight control over policy outcomes.<sup>32</sup>

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<sup>26</sup> Mark Sagoff, "Do we Consume too Much?" The Atlantic Monthly, Vol 279, No 6, June 1997, pp80-96; <http://www.theatlantic.com/atlantic/issues/97jun/consume.html>.

<sup>27</sup> Dryzek, (1990), op cit.

<sup>28</sup> Robert V Bartlett, "Ecological Rationality: Reason and Environmental Policy", Environmental Ethics, Vol 8, 1986, pp221-39.

<sup>29</sup> Quintin Hoare and Geoffrey Nowell Smith, (eds), Antonio Gramsci: Selections from Prison Notebooks, London, (Lawrence and Wishart, 1971).

<sup>30</sup> Larry Lohman in Ken Conca, Michael Albert and Geoffrey D Dabelko, (eds), Green Planet Blues: Environmental Politics from Stockholm to Rio, Boulder, (Westview Press, 1995), p225.

<sup>31</sup> Annie Taylor, "The Significance of Non-governmental Organisations in the Development of International Environmental Policy: The Case of Trade and Environment", PhD thesis, Southampton, (Southampton University, 1998).

<sup>32</sup> Robert O'Brien, "Complex Multilateralism: The Global Economic Structures - Global Social Movements Nexus", paper presented at the British International Studies Association Annual Conference, December 1997, p17.

The application of this framework to analysis of the environmental and human rights movements demonstrated how the radical potential of these forces to initiate value changes in society have been eviscerated by a policy of co-option.<sup>33</sup> The conclusion of this examination was to suggest a limited effectiveness for NGOs who adopt a co-operative strategy with formal political institutions in an effort to mitigate the environmental degradation and human rights violations caused by capitalism.<sup>34</sup> To institutionalise respect for environmental protection and human rights, a fundamental change in values is instead required that rejects economic rationality and the hegemonic politics of capitalism.<sup>35</sup> A role for environmental human rights in initiating such a process of political change was suggested, since these rights insist on values of environmental protection and the human security of all people over the possessive individualism of capitalism.<sup>36</sup> A challenge to capitalism based around a radical conception of environmental human rights is therefore less susceptible to co-option since the claim is predicated on ecological rationality and explicitly rejects the values, discourse and political terms of reference of economic rationality. Until the dominance of economic rationality is challenged in society, capitalism will be justified, since it is the capitalist system that most precisely realises the values and political objectives of economic rationality.<sup>37</sup> Through an examination of structural power, environmental human rights were therefore suggested to function both (i) as a goal for institutionalising environmental values and (ii) as a campaigning instrument for a counter hegemonic bloc to realise systemic change.<sup>38</sup>

Chapter three examined the demands for environmental human rights made by the human rights and environmental movements. This investigation was based on a

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<sup>33</sup> Pratap Chatterjee and Matthias Finger, The Earth Brokers: Power, Politics and World Development, London and New York, (Routledge, 1994).

<sup>34</sup> see chapter 2.

<sup>35</sup> Leopold, op cit.

<sup>36</sup> see chapter 2.

<sup>37</sup> Dryzek, (1992), op cit, pp18-42.

<sup>38</sup> see chapter 2.

questionnaire circulated to NGOs. The results revealed three findings; (i) a consensus endorsing environmental human rights, (ii) that campaigns are being conducted both for the formal recognition of environmental human rights and by demanding environmental protection through claims to human rights regardless of their legal status and (iii) advocacy of environmental human rights on the holistic basis of ecological rationality. With only three exceptions, all of the NGOs responding to the questionnaire stating a preference replied that they recognised environmental human rights.<sup>39</sup> Campaigns demanding environmental human rights are being conducted both within the formal political channels and as protests against the capitalist structure. In line with the arguments made in chapter two, the ability of NGOs to realise environmental human rights within the capitalist structure has been of limited success, restricted to gaining symbolic concessions at the margins of policy making.<sup>40</sup> One illustration of NGO success in campaigning for environmental human rights is the evident legal trend acknowledging such rights. However, this achievement is betrayed by the systematic violation of the stipulations provided.<sup>41</sup> Chatterjee and Finger also highlight the limited ability of NGOs to influence political outcomes through participation in formal political channels in their analysis of the Rio Summit.<sup>42</sup> Here, apparent inclusivity in access to politicians and official conference forums contrasted the tightly controlled policy outcomes that, for example, removed any mention of the environmental degradation caused by the market.<sup>43</sup> Participation of NGOs in the Rio Summit was subsequently criticised by Chatterjee and Finger for "leading to the legitimisation of a process that is ultimately destructive of the forces of environmental protection".<sup>44</sup>

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<sup>39</sup> see chapter 3 for discussion of these results.

<sup>40</sup> Alan E Boyle and Michael R Anderson, (eds), Human Rights Approaches to Environmental Protection, Oxford, (Clarendon Press, 1996).

<sup>41</sup> see chapter 4 for details.

<sup>42</sup> Chatterjee and Finger, *op cit.*

<sup>43</sup> *ibid.*

<sup>44</sup> *ibid*, p103.

The use of environmental human rights as an instrument of political protest was exemplified in two case studies relating to campaigns in Irian Jaya and Nigeria. These two campaigns were based not on demands for financial aid or greater access to global markets but rather on a fundamental rejection of the basis of the capitalist system.<sup>45</sup> Allocation of local resources by the global market was opposed through demands for communal rights to environmental resources that were instead made on the grounds of cultural autonomy and environmental protection.<sup>46</sup> These campaigns illustrate the tactical use of environmental human rights as an instrument of praxis,<sup>47</sup> challenging the value basis of capitalism.

Exemplifying the central theme of this research, both of these protest campaigns have failed to achieve the environmental human rights that they demanded because of the defense by commercial actors of their self-interest. Existent power relations institutionalised under capitalism through the designation of property rights,<sup>48</sup> and expressed through economic rationality,<sup>49</sup> have prevented the success of protest campaigns for environmental human rights.<sup>50</sup> However, environmental human rights campaigns have generated significant international exposure, for example the hanging of Ken Saro-Wiwa in Nigeria led to the suspension of that state from the Commonwealth.<sup>51</sup> The importance of these campaigns lies therefore not in their ability to reform capitalist structures, but rather in rejecting the legitimacy of capitalism and the associated system of

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<sup>45</sup> Andrew Rowell, Green Backlash: Global Subversion of the Environmental Movement, New York, (Routledge, 1996), p293; see also Aaron Sachs, "Dying for Oil", World Watch, May/June 1996, p16; Corporate Watch, "The Global Shell Game", The Corporate Planet; <http://www.corpwatch.org/trac/gallery/shell/index.html> and Greenpeace, "Shell in Nigeria"; <http://www.web.apc.org/~embargo/shell.htm> and Pratap Chatterjee, "The Mining Menace of Freeport-McMoran", Multinational Monitor, Vol 17, No 4, April 1996; <http://www.essential.org/monitor/hyper/mm0496.05.html>.

<sup>46</sup> Rowell, op cit, Sachs, op cit and Chatterjee, op cit.

<sup>47</sup> see chapter 2.

<sup>48</sup> see chapter 4.

<sup>49</sup> see chapter 1.

<sup>50</sup> see chapter 3.

<sup>51</sup> Ian Black, Owen Bowcott and John Vidal, "Nigeria Defies World with Writer's Judicial Murder", The Guardian, 11 November 1995, p1.

values that is a necessary starting point for the long term realisation of the claimed environmental human rights.<sup>52</sup>

A significant finding of the survey established that a considerable number of NGOs justified environmental human rights by assumptions characterising ecological rationality.<sup>53</sup> The most popular reason given by NGOs for recognising environmental human rights was a perceived interconnectedness between all elements of the environment, including human societies.<sup>54</sup> This basis of environmental human rights is notable because it demonstrates that ecological rationality is being actively promoted by NGOs.<sup>55</sup> The philosophical principle was, for example, offered rather than being prompted by the wording of the questionnaire.<sup>56</sup> The assumption of ecological interconnectedness evident in NGO responses to the questionnaire contrasts the individualistic basis of economic rationality.<sup>57</sup> Under the epistemological assumptions of ecological rationality, the interests of people and nature are therefore one and the same, rather than in inherent conflict. By identifying human interests and human rights with the long-term health and protection of the wider eco-system, ecological rationality redefines the purpose of human society as ensuring the health and well being of the entire ecosystem.<sup>58</sup> From the perspective of ecological rationality, consumer society and the pursuit of profit becomes the cause of environmental degradation, rather than human societies per se.<sup>59</sup>

The formal political response to social demands for environmental human rights was examined in chapter four through analysis of the current legal status of environmental

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<sup>52</sup> see chapter 1.

<sup>53</sup> a linkage first suggested in chapter 1.

<sup>54</sup> see chapter 3.

<sup>55</sup> see chapter 1 for details of ecological rationality.

<sup>56</sup> see appendix 1.

<sup>57</sup> see chapter 1.

<sup>58</sup> Aldo Leopold's land ethic; see chapter 1.

<sup>59</sup> see chapter 1 for details.

rights in both domestic and international law. An evident trend towards the legal recognition of environmental human rights was noted.<sup>60</sup> However, this modality contrasts the systematic violation of these same rights in actual practice.<sup>61</sup> The apparent contradiction between legal stipulations and the social reality was explained by identifying law as an instrument of hegemonic power rather than as an impartial rule based instrument.<sup>62</sup> Whereas a methodological investigation of environmental human rights based on legal analysis presupposes that considerations of jurisprudence and legislation determine social relations, the evaluation conducted in chapter four argued that the converse is the case.<sup>63</sup> This is important since it follows that the social power relations of capitalism broadly determine the capabilities and efficacy of legal stipulations.<sup>64</sup> This claim was found to broadly apply to the design and implementation of both domestic and international law.<sup>65</sup> Chapter four analysed the nature of the power held by MNCs and international finance capital to argue that policy and law making is increasingly restricted to the corporate agenda of deregulation and market freedom.<sup>66</sup>

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<sup>60</sup> Sven Deimann and Bernard Dyssli, (eds), Environmental Rights, London, (Cameron May, 1995); Robyn Eckersley in Brian Doherty and Marius de Geus, (eds), Democracy and Green Political Thought, London, (Routledge, 1996), p230; Dinah Shelton, "Human Rights, Environmental Rights and the Right to Environment", Stanford Journal of International Law, Vol 28, No 1, 1991; Michael Bothe, (Chair and Project Coordinator), The Right to a Healthy Environment in the European Union, (Report of a Working Group Established by the European Environmental Law Association, 1996).

<sup>61</sup> Boyle and Anderson, (eds), op cit; Johnston, (ed), Who Pays the Price? Washington DC, (Island Press, 1994); Barbara Rose Johnston, (ed), Human Rights and the Environment at the End of the Millennium, Walnut Creek, (Alta Mira, 1997); Richard Desgagne, "Integrating Environmental Values into the European Convention on Human Rights", American Journal of International Law, Vol 85, No 2, April 1995, pp263-94.

<sup>62</sup> Colin Sumner, Reading Ideologies, London, (Academic Press, 1979).

<sup>63</sup> Hugh Collins, Marxism and Law, Oxford, (Oxford University Press, 1982).

<sup>64</sup> Tony Evans and Jan Hancock, "Doing Something Without Doing Anything: International Human Rights Law and the Challenge of Globalisation", The International Journal of Human Rights, Vol 2, No 3, 1998, pp1-21.

<sup>65</sup> Collins, ibid; and BS Chimni, "Marxism and International Law: A Contemporary Analysis", Economic and Political Weekly, Vol 34, No 6, 6 February 1999, pp337-49.

<sup>66</sup> Arjun Makhijani, From Global Capitalism to Economic Justice, New York and London, (Apex Press, 1992) and David Korten, When Corporations Rule the World, London, (Earthscan, 1995).

State sovereignty was problematised from the perspective of human rights since the power of global capital forces individual states to adopt policies conducive to the corporate interest.<sup>67</sup> The notion of the state exercising significant control over markets has become anachronistic in an age of globalisation.<sup>68</sup> State sovereignty is furthermore problematic for the realisation of human rights and environmental protection since the state has historically facilitated or indeed actively engaged in violations of these considerations as a consequence of focusing on the consolidation of political power and economic growth.<sup>69</sup> This prioritisation of issues by states is exemplified in the continuing reluctance of many states to even acknowledge the existence of environmental human rights.<sup>70</sup>

Overt political rejection of environmental protection as a human right is, however, becoming increasingly untenable given social campaigns highlighting the evident connections.<sup>71</sup> Furthermore, research conducted by the epistemic community has further detailed the linkages between environmental degradation and human rights violations.<sup>72</sup> Therefore, states are increasingly recognising environmental human rights in domestic and international legislation.<sup>73</sup> However, the formal recognition of environmental human rights does not, by itself, lead to the realisation of those rights.<sup>74</sup> Domestic and international categories of environmental rights have been characteristically formulated in

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<sup>67</sup> Stephen Gill, "Globalisation, Market Civilisation and Disciplinary Neoliberalism", Millenium, Vol 24, No 3, Winter 1995, p413.

<sup>68</sup> Cox with Sinclair, op cit, p529.

<sup>69</sup> Human Rights Watch and the Natural Resources Defence Council, Defending the Earth: Abuses of Human Rights and the Environment, Washington DC, (Natural Resources Defense Council, 1992), p73.

<sup>70</sup> Barbara Rose Johnston, "Human Rights and the Environment", Human Ecology, Vol 23, No 2, 1995, pp111-23.

<sup>71</sup> see chapter 3.

<sup>72</sup> see for example Deimann and Dyssli, (eds), op cit, Tim Hayward, "Constitutional Environmental Rights: A Case for Political Analysis", Political Studies, Vol 48, No 3, 2000, pp558-73; Arthur Rogers, "Environmental Rights", Lancet, Vol 344, Issue 8938, 17 December 1994, p1695 and Shelton, op cit.

<sup>73</sup> Boyle and Anderson, (eds), op cit.

<sup>74</sup> ibid.

vacuous terms and have had little impact on social practice, eviscerating the potential of environmental human rights as a radical challenge to capitalist power relations.<sup>75</sup> The formal recognition of environmental human rights can therefore be understood in terms of hegemony, whereby states seek to enhance credibility and legitimacy by institutionalising in formal rights the environmental concerns raised by environmental NGOs and citizens, whilst prioritising corporate interests by neglecting to implement the stipulated rights.<sup>76</sup> Under this assessment, the most blatant acts of environmental degradation perpetrated by unscrupulous corporations have been visibly addressed through human rights legislation in domestic courts, whilst the environmental damage built into the everyday working of the market continues unaffected by the symbolic changes enacted.<sup>77</sup>

Domestic and international law alike can be effective mechanisms to enforce 'normal' social practices.<sup>78</sup> Domestic criminal law, for example, effectively institutionalises cultural norms against certain forms of harm such as theft.<sup>79</sup> Likewise international law has been effectively implemented and has indeed forced reversals in domestic policies and legislation.<sup>80</sup> However, this has only been possible when the general interests of global capital are thereby served.<sup>81</sup> Related back to the central theme of this research, legal environmental human rights have failed to promote social change because the efficacy of law reflects the capitalist interests in society that benefit from the

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<sup>75</sup> ibid and Johnston, (ed), (1997), op cit.

<sup>76</sup> see chapter 4.

<sup>77</sup> Boyle and Anderson, (eds), op cit.

<sup>78</sup> Barkun, op cit.

<sup>79</sup> Joel Feinberg, Harmless Wrongdoing: The Moral Limits of the Criminal Law, Vol 4, Oxford, (Oxford University Press, 1988).

<sup>80</sup> Chimni, op cit.

<sup>81</sup> Corporate Watch, "USA: The Ethyl Corporation has Filed a \$251 Million Lawsuit Against the Canadian Government", The Corporate Planet, <http://www.corpwatch.org/trac/corner/worldnews/other/other44.html>; Robert Weissman, "Another NAFTA Nightmare", Multinational Monitor, Vol 17, No 10, October 1996; <http://www.essential.org/monitor/hyper/mmm1096.03.html>; Public Citizen, "Multilateral Agreement on Investment", Public Citizen; <http://www.citizen.org/pctrade/factshee.html>; Nicola Bullard, "MAI: The Devil you Don't Know"; [http://www.corpwatch.org/trac/feature/planet/mai\\_bullard.html](http://www.corpwatch.org/trac/feature/planet/mai_bullard.html); Public Citizen, "Ethyl Corporation vs Government of Canada", Public Citizen; <http://www.citizen.org/pctrade/nafta/Ethylbri.html>.

violation of these rights.<sup>82</sup> The centrality of power relations in determining the efficacy of law is epitomised in the construction and implementation of a sanctions regime that enforces adherence to stipulations.<sup>83</sup> Compliance with trade laws is ensured by the WTO through a relatively sophisticated and precise system of sanctions.<sup>84</sup> The lack of any similar organisation or of an enforcement mechanism to implement environmental or human rights legislation reveals the bias of law as a hegemonic instrument.<sup>85</sup>

The hegemonic role of law is further demonstrated through the way in which terms and concepts have been defined in the legal forum. Chapter five examined the principle of harm in the context of the claimed environmental human right to an environment free from toxic pollution. In particular, the definition of harm in capitalist law excludes toxic pollution.<sup>86</sup> This loophole accommodates the political goals of capitalism since the continued emission of toxic pollution is required to ensure allocative efficiency and to serve the interests of corporate actors who benefit from lower production costs.<sup>87</sup>

Through investigation of the epidemiological evidence, chapter five established that toxic pollution, by definition, deleteriously affects the physiology of individuals exposed to that pollution.<sup>88</sup> When a specific pollutant does not damage human

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<sup>82</sup> Tom Athanasiou Divided Planet, quoted in Chris Brazier, "State of the World Report", New Internationalist, Issue 287; <http://www.oneworld.org/ni/issue287/keynote.html>; Sir James Goldsmith, "The New Utopia: GATT and Global Free Trade", testimony before the Senate Commerce Committee, 5 October 1994; <http://www.hartford-hwp.com/archives/25a/004.html>; Martin Woollacott, "A World Forced to keep Bad Company", The Guardian, 18 November 1995; Craig Forcese, Commerce With Conscience? Montreal, (International Centre for Human Rights and Democratic Development, 1997), p20; Jędrzej George Frynas, "Political Instability and Business: Focus on Shell in Nigeria", Third World Quarterly, Vol 19, No 3, 1998; Mary Ann Tetreault, "Regimes and Liberal World Orders", Alternatives, Vol XIII, 1988.

<sup>83</sup> Barkun, op cit.

<sup>84</sup> Chimni, op cit.

<sup>85</sup> see chapter 4.

<sup>86</sup> Boyle and Anderson, (eds), op cit.

<sup>87</sup> see chapter 5.

<sup>88</sup> Matthew Paterson, "Car Culture and Global Environmental Politics", Review of International Studies, Vol 26, No 2, 2000, p259; see also Antony Seaton, William Mcnee, Kenneth Donaldson and David Godden, "Particulate Health Pollution and Acute Health Effects", The Lancet, 21 January 1995, pp176-8; editorial, "Air Pollution", World Health, Vol 141, No 22, September/October 1993, pp18-9; J Schwartz, "Air Pollution and Daily Mortality: A Review and Meta-Analysis", Environmental Research, Vol 64, 1994,

physiology, that substance is not classified as toxic.<sup>89</sup> The damage incurred on human physiology becomes manifest through a range of symptoms ranging from asthma attacks and allergies to cancer and death.<sup>90</sup> However, toxic pollution harms not only those individuals whose medical conditions are caused by exposure to toxins, but rather causes harm to the cellular tissues of all individuals, irrespective of this harm leading to the diagnosis of an illness.<sup>91</sup> Toxic pollution was therefore argued to constitute a ubiquitous form of harm and must be criminalised for the principle of non-malfeasance to stand.<sup>92</sup>

In addition to being derived from the principle of non-malfeasance, the claimed environmental human right to an environment free from toxic pollution is required for existing basic rights to be realised. Through a case study of toxins found in vehicle exhaust fumes, chapter five argued that systematic violations of basic human rights to (i) life, (ii) security of the person and to (iii) the highest attainable standard of health, are caused by toxic pollutants.<sup>93</sup> The refusal of the legal system to acknowledge the validity of these claims further demonstrates the purpose of law as a hegemonic instrument of power rather than as the impartial implementation of a system of rules.<sup>94</sup> Toxic pollution

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pp36-52; DJ Bates, "Health Indices of the Adverse Effects of Air Pollution: The Question of Coherence", Environmental Research, Vol 59, 1992, pp336-49; CA Pope, J Schwartz, MR Ransome, "Daily Mortality and PM 10 Pollution in the Utah Valley", Archive of Environmental Health, Vol 47, 1992, pp211-7; J Schwartz, "What are People Dying of on High Pollution Days?" Environmental Research, Vol 64, 1994, pp26-35; DW Dockery, FE Speizer, DO Strom et al, "Effects of Inhaled Particles on Respiratory Health of Children", American Review of Respiratory Disease, Vol 139, 1989, pp587-94; CA Pope, DW Dockery, JD Spengler and ME Raizenne, "Respiratory Health and PM10 Pollution: A Daily Time Series Analysis", American Review of Respiratory Disease, Vol 144, 1991, pp668-74; W Roemer, G Hoek and B Brunekreef, "Effect of Ambient Winter Air Pollution on Respiratory Health of Children with Chronic Respiratory Symptoms", American Review of Respiratory Disease, Vol 147, 1993, pp118-24 and CA Pope and RE Kanner, "Acute Effects of PM 10 Pollution on Pulmonary Function of Smokers with Mild to Moderate Chronic Obstructive Pulmonary Disease", American Review of Respiratory Disease, Vol 147, 1993, pp1336-40.

<sup>89</sup> J Simpkins and JJ William, Advanced Biology, London, (Collins, 1992).

<sup>90</sup> Antony Seaton, "Bookshelf", The Lancet, Vol 346, Issue 8977, 16 September 1995, p759; see also editorial, Maclean's, "Wheezing and Worrying", Vol 108, Issue 24, 12 June 1995, p3; Mick Hamer, "Drivers can Damage your Health", New Scientist, Vol 143, No 1938, 13 August 1994, p8.

<sup>91</sup> editorial, "Legal Air Pollution may also Kill", New Scientist, Vol 145, No 1, 1 January 1994, p15.

<sup>92</sup> see chapters 1 and 5 for details.

<sup>93</sup> ICCPR article 3, ICCPR article 6, ICCPR article 9, ICESCR article 12.

<sup>94</sup> see chapter 4.

cannot be categorised as harm for law to fulfill its hegemonic function of serving the needs of the capitalist economy.<sup>95</sup> The legal system cannot acknowledge that toxic pollution constitutes harm and that this harm is justified since this violates the principle of non-malfeasance that must trump utilitarian concerns.<sup>96</sup> Therefore, toxic pollution is currently categorised by law as risk and public nuisance rather than as harm.<sup>97</sup> According to the legal definition of pollution as risk, shortening the life span of people through exposure to toxins does not constitute harm, nor does it violate human rights to non-interference, to the highest attainable standards of health or to life.<sup>98</sup> This argument is unusual since being deprived of life by the actions of others in society appears to be the most blatant example of harm.<sup>99</sup> Indeed, denying this fact quite literally adds insult to injury. Permanent physical injury or hastening deaths of people is more damaging to health than acts of theft. The categorisation of infractions of property laws as harm, but not exposing others to toxins, exemplifies how the legal concept of harm has been defined in terms that support existent modes of consumption, production, exchange and inequality at the expense of environmental and health considerations.<sup>100</sup>

The questionnaire results demonstrate the practical relevance of the claimed environmental right to an environment free from toxic pollution since the claimed right commands widespread support amongst environmental NGOs actively campaigning in civil society.<sup>101</sup>

Control over natural resources was examined from a human rights perspective in chapter six and the principle of communal ownership rights to natural resources was

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<sup>95</sup> see chapter 4.

<sup>96</sup> Feinberg, *op cit.*

<sup>97</sup> Boyle and Anderson (eds), *op cit.*

<sup>98</sup> Bothe, *op cit.*

<sup>99</sup> Tibor R Machan in Tom Regan, (ed), *Earthbound*, Philadelphia, (Temple University Press, 1984), p97 and Michael J Kane, "Promoting Political Rights to Protect the Environment", *Yale Journal of International Law*, Vol 18, No 1, 1993, pp389-411.

<sup>100</sup> see chapter 5.

<sup>101</sup> see chapter 3.

subsequently claimed as a second environmental human right. In particular, CPRs were suggested as a method to realise this claimed right. The right to natural resources is derived from human rights to (i) freedom from hunger,<sup>102</sup> and (ii) cultural self-determination.<sup>103</sup> Both of these human rights will continue to be violated in the absence of impoverished communities controlling the natural resources which they require to provide for their own subsistence needs.<sup>104</sup> Furthermore, group rights to natural resources are suggested in the stipulations of international human rights law that identify peoples as possessors of these rights.<sup>105</sup>

In line with the central theme of this research, the global capitalist economy was identified as the structural barrier to the realisation of the claimed human right to natural resources.<sup>106</sup> The characteristic ability of capitalism to provide a multitude of luxury goods for the opulent, alongside insufficient goods for the impoverished, makes the system fundamentally problematic for the universal satisfaction of basic human needs.<sup>107</sup> The diversion of resources to serve the wealthy was exemplified through the global cash crop economy.<sup>108</sup> Under market conditions, needs provide no legitimisation of access to resources and twenty per cent of the world's population subsequently fail to meet their sustenance requirements in the market due to poverty.<sup>109</sup> The argument that starvation continues because of an overall lack of resources was rejected as an untenable claim since

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<sup>102</sup> ICESCR article 11.

<sup>103</sup> ICESCR, part 1, article 1 and the ICCPR part 1, article 1.

<sup>104</sup> Sobhan Rehman, Agrarian Reform and Social Transformation, London, (Zed Books, 1993).

<sup>105</sup> ICESCR, part 1, article 1 and the ICCPR part 1, article 1.

<sup>106</sup> David Goodman and Michael Redclift, Food, Ecology and Culture, London, (Routledge, 1991).

<sup>107</sup> Walden Bello, Shea Cunningham and Bill Rau, "Creating a Wasteland: The Impact of Structural Adjustment on the South, 1980-1994", Food First; <http://tdg.uoguelph.ca/~kwakely/polstudies/readings/imfwasteland.html>.

<sup>108</sup> Vandana Shiva, The Violence of the Green Revolution: Third World Agriculture, Ecology and Politics, Penang, (Third World Network, 1991).

<sup>109</sup> Christopher Flavin in Lester Brown, et al, State of the World 1997, New York, (WW Norton and Company, 1997), p3.

iniquitous land ownership, rather than overall availability, was found to determine hunger for the impoverished in a market based economy.<sup>110</sup>

The economic values of capitalism praised by the opulent for providing freedom and independence becomes an oppressive mechanism for institutionalising the starvation and squalor of the impoverished.<sup>111</sup> It is for this reason that Chomsky observes that,

it's becoming more difficult to tell the difference between economists and Nazi doctors [since] half a million children in Africa die every year simply from debt service... It's estimated that about eleven million children die every year from easily curable diseases, most of which could be overcome by treatments that cost a couple of cents. But the economists tell us that to do this would be interference with the market system.<sup>112</sup>

Here, Chomsky vividly highlights the structural oppression in the market mechanism that justifies mass suffering and the denial of basic resources to the impoverished when this outcome is conducive to allocative efficiency.<sup>113</sup>

The production of meat for human consumption exemplifies the waste of resources to serve market desires at the expense of basic needs.<sup>114</sup> Feeding crops to farm animals that are then consumed by humans results in the loss of 90 per cent of the calorific intake of food.<sup>115</sup> Yet demand for meat in luxury markets determines that the market allocates crops to rearing farm animals, crops that could otherwise be used to feed people or else to return farmland to wilderness areas and thereby enhance biodiversity.<sup>116</sup>

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<sup>110</sup> Susan George, Ill Fares the Land, Washington DC, (Institute for Policy Studies, 1984).

<sup>111</sup> John Walton and David Seddon, (eds), Free Markets and Food Riots: The Politics of Global Adjustment, Cambridge, (Blackwell, 1994).

<sup>112</sup> Noam Chomsky, "Dead Children and Debt Service", Secrets, Lies and Democracy; <http://www.worldmedia.com/archive/sld/sld-2-08.html>.

<sup>113</sup> ibid.

<sup>114</sup> Sagoff, op cit.

<sup>115</sup> Jeremy Rifkin, "Bovine Burden", Geography Magazine, July 1992, p13.

<sup>116</sup> Tom Regan in Regan, (ed), op cit.

Overall resources exist to satisfy the basic needs of all people.<sup>117</sup> It is as an inescapable consequence of adopting allocative efficiency as its central point of reference that capitalism recreates hunger and suffering for the impoverished.<sup>118</sup>

This thesis has argued that the desperate plight of impoverished communities around the world can be significantly improved through equitably redistributing the means to provide for subsistence requirements.<sup>119</sup> Land reforms expressed in the human right to ownership of natural resources were suggested to allow presently dispossessed communities to meet their needs in a self-reliant manner.<sup>120</sup> Furthermore, land rights are being claimed, especially by indigenous groups.<sup>121</sup> Such demands are characteristically based on claims for cultural self determination and independence from the market mechanism, rather than calls for financial aid or further inclusion into the capitalist system.<sup>122</sup> Land rights claims are therefore anti-systemic since they reject the values of economic rationality in favour of cultural autonomy and a CPR, subsistence-based economy.<sup>123</sup> CPR systems that characterise non-capitalist economies focus typically on providing for basic human needs whilst prioritising resource conservation and ecological integrity over the production of luxury goods.<sup>124</sup> The human right to natural resources expressed through the CPR system can therefore be expected to promote environmental

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<sup>117</sup> "Fact File", United Nations Economic and Social Council Courier, March 1995, p30.

<sup>118</sup> Caroline Thomas, "Where is the Third World Now?", Review of International Studies, December 1999, Vol 25, pp225-44.

<sup>119</sup> Anil Agarwal and Narain Sunita, Towards a Green World, New Delhi, (Centre for Science and Environment, 1992), p156.

<sup>120</sup> Susan Hanna, Carl Folke and Karl-Goran Maler, (eds), Rights to Nature: Ecological, Economic, Cultural and Political Principles of Institutions for the Environment, Washington DC, (Island Press, 1996); Francois du Bois, "Water Rights and the Limits of Environmental Law", Journal of International Law, Vol 6, No 1, 1994, pp77-84; Elinor Ostrom, Governing the Commons, Cambridge, (Cambridge University Press, 1990).

<sup>121</sup> see chapter 3 and 6.

<sup>122</sup> Aaron Sachs, Eco-Justice: Linking Human Rights and the Environment, Worldwatch Paper 127, (Worldwatch Institute, 1995), p32.

<sup>123</sup> Ostrom, op cit.

<sup>124</sup> John Kirkby, Phil O'Keefe and Lloyd Timberlake, (eds), The Earthscan Reader in Sustainable Development, London, (Earthscan, 1995).

protection and cultural diversity by rejecting the consumerist values arbitrarily universalised by economic rationality.<sup>125</sup>

Both environmental human rights claimed in this research could be expected to benefit the environment. Toxic pollution harms not only people, but also organisms in the wider ecosystem and any policies to reduce the amounts of pollution entering the environment can only be beneficial from the ecological perspective.<sup>126</sup> The environmental human right to natural resources can also be expected to protect the environment since market forces and the application of economic rationality necessarily result in environmental degradation.<sup>127</sup> A more independent, subsistence based economy offers an alternative model to global free trade, allocative efficiency and the associated environmental degradation.<sup>128</sup>

### **Suggestions for further research**

This research raises a number of questions that could be investigated by future research projects. The thesis questionnaire demonstrated a high degree of recognition and endorsement of environmental human rights amongst advocacy NGOs.<sup>129</sup> The realisation of environmental human rights is, in part, dependent upon the success of NGOs to effectuate this positive endorsement of the concept. As such, a future research project could conduct a similar questionnaire of NGOs to establish whether demands for environmental human rights are growing in resonance, the extent to which use of the concept features in specific campaigns and the effectiveness of such demands. The key variable in this study would be to establish the extent to which NGOs can promote anti-systemic values in society to encourage environmental awareness.

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<sup>125</sup> Hanna, Folke and Maler, (eds), *op cit.*

<sup>126</sup> Tom Regan, (ed), *op cit.*

<sup>127</sup> see chapters 1 and 6.

<sup>128</sup> Annie Taylor in Annie Taylor and Caroline Thomas, (eds), *Global Trade and Global Social Issues*, London, (Routledge, 1999).

<sup>129</sup> see chapter 3.

The main difficulty in conducting such a project would relate in the first instance to the problem of measuring changes in abstract values that are not easily reducible to empirical measurements. In addition to this problem, the causes of any changes in social values would have to be clearly established. Such changes could result from (i) the effects of critical academic discourse, (ii) a growth in the number of high profile environmental catastrophes or (iii) from advancements in scientific knowledge clarifying the nature and extent of environmental threats, in addition to the campaigning activities of NGOs. Most likely, value change would result from a combination of these factors, complicating empirical investigation into the process of value change in society. A future survey of NGOs could also investigate readiness to co-operate with formal political channels. Such a project could identify the extent to which NGOs are being co-opted into hegemonic politics or are rejecting the validity of formal politics through engaging in protest campaigns.

This thesis has investigated the existence of environmental human rights using criteria of existing human rights legislation, although when appropriate, reference has been made to rationality and epistemological paradigms. The two environmental human rights claimed in this research are rights that are required for existing human rights stipulations to be realised. A more extensive list of environmental human rights could be arrived at from an inquiry predicated upon environmental ethics. Another research project could therefore examine the existence of environmental human rights in political philosophy. Looking at questions relating to the basis of human rights from the position of environmental politics can provide an innovative and distinctive approach to the topic of human rights. For example, chapter six argued that the environmental human right to natural resources is necessary for the protection of cultural diversity, inverting the lament that universal human rights necessarily curtails cultural diversity.<sup>130</sup> Furthermore, this research has suggested that basic human rights provide reasons not for continued environmental degradation in the furtherance of human interests, but rather for the

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<sup>130</sup> see for example Bilahari Kausikan, "Asia's Different Standard", Foreign Policy, Vol 92, No 3, 1993, pp24-41.

protection of Earth's organic heritage from the destructive tendencies of the capitalist political economy.<sup>131</sup>

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<sup>131</sup> chapters 1, 2, 4, 5 and 6.

## **APPENDIX 1: QUESTIONNAIRE SENT TO NGOs**

I am Jan Hancock, a PhD student researching for public knowledge the topic of environmental human rights. As part of my assessment of the level of recognition and demand for environmental rights, I have compiled the following brief questionnaire for NGOs to answer. The key purpose of this questionnaire is to find which campaigns have been undertaken to promote human rights that are connected to the environment. I appreciate that you must be very busy, but if you could find the time to answer this questionnaire as comprehensively as possible, it would be greatly appreciated as a vital component of my research project.

Many thanks in advance,

Jan Hancock

1 Do you recognise environmental human rights? Which ones and why?

2 Do you, or have you in the past campaigned for environmental protection in terms of human rights?

If yes, please give details of such campaigns, specifically purpose, dates, actions undertaken, results achieved and whether the campaign was local, national, international or global in focus.

3 Do you think that the linking of human rights to environmental concerns leads to the promotion or helps to strengthen the case of either of the issues?

Please give reasons

4 Any other relevant information? eg do you know of another NGO organising environmental campaigns based around human rights?

## **APPENDIX 2: QUESTIONNAIRE SENT TO STATES**

I am Jan Hancock, a PhD candidate student at Southampton University (England) researching for public knowledge the topic of environmental human rights. As part of my assessment of the level of recognition of environmental rights, I have compiled the following brief questionnaire for selected states to answer.

The key purpose of this questionnaire is to find what, if any, legislation has been stipulated to guarantee human rights that are connected to the environment. As a necessary component of my fieldwork, could you please answer the following questionnaire on behalf of your state, or else forward it to the appropriate official?

Many thanks in advance for your time and attention in dealing with this questionnaire.

Jan Hancock

1 Under the law and constitution of your state, are environmental rights recognised? Please give details.

2 If the answer to question 1 is yes, when did interest in environmental rights begin and why?

3 If the answer to question 1 is yes, why have environmental considerations been linked to those of human rights?

4 If the answer to question 1 is yes, what criteria has been used to validate environmental rights?

5 If the answer to question 1 is no, can you give details as to why environmental categories of human rights violations have not been acknowledged?

### **APPENDIX 3: QUESTIONNAIRE SENT TO CORPORATE INTERESTS**

I am Jan Hancock, a PhD candidate at Southampton University (England) researching for public knowledge the topic of environmental human rights. As a part of my research fieldwork I am contacting you to understand how this subject is perceived by a key player in the business community. I would be very grateful if you could spare the time to answer the following questions on behalf of [company name here], or else could you please forward them to the appropriate person in your organisation for attention?

Many thanks for your time and attention,

Jan Hancock

1 Can environmental damage be linked to human rights violations? How/why not?

2 Does [company name here] acknowledge or promote any environmental human rights?

If so, which ones?

3 Has the environment ever been referred to in terms of human rights protection (or vice versa) in the decision making process of [company name here]?

4 Does the business community have a responsibility to protect the environment and human rights? What are they?

#### **APPENDIX 4: QUESTIONNAIRE SENT TO GLOBAL INSTITUTIONS**

I am Jan Hancock, a PhD candidate at Southampton University (England) researching for public knowledge the topic of environmental human rights. As a part of my research fieldwork I am contacting you to understand how this subject is perceived by a key player and a norm-creating institution in the field of international development.

I would be very grateful if you could spare the time to answer the following questions on behalf of [name of institution here] or else could you please forward them to the appropriate person in your organisation for attention?

Many thanks for your time and attention,

Jan Hancock

1 Does [name of institution here] perceive environmental damage to be connected to human rights violations? Please give details as to why/why not.

2 Does [name of institution here] acknowledge or encourage any environmental human rights? If so, which ones and why?

3 Has the environment ever been referred to in terms of human rights protection (and vice versa) in [name of institution here] policy documents or decisions? Please give as many details as possible.

4 Any other comments by [name of institution here] on the subject of environmental human rights?

## APPENDIX 5:RESPONSES TO THE QUESTIONNAIRE SENT TO NGOs

Organisation name	E-mail address	Date reply received <sup>1</sup>
20/20 Vision National Project	vision@2020vision.org	26/10/98
Academic Youth Ecological Club of Bulgaria	ecomar@sf.icn.bg	nr
Accesso	info@accesso.or.cr	10/6/98
Acerca	acerca@sover.net	nr
Action for Solidarity, Equality, Environment and Development in Europe	aseedeur@antenna.nl	2/12/98
Action in Solidarity with Indonesia and East Timor	Paul.Benedek@BTAL.Com.au	23/10/98
African Faith and Justice Network	sfjn@igc.apc.org	nr
African Wildlife Foundation	awfwash@igc.apc.org	nr
Alaska Boreal Forest Council	abfc@polarnet.com	nr
Alaska Rainforest Campaign	akrain@boo.net	10/6/98
Alaska Wilderness League	awl@boo.net	23/10/98
Alliance for Democracy	peoplesall@aol.com	nr
Alliance to end Childhood Lead Poisoning	aeclp@aeclp.org	nr
Altai	katun@glas.apc.org	2/3/99
Alternatives for Community and Environment of Massachusetts	psloh@ix.netcom.com	nr

<sup>1</sup> nr indicates non respondent

American Association for the Support of Ecological Initiatives	wwasch@wesleyan.edu	24/10/98
American Land Conservancy	alc@econet.org	nr
American Lung Association of Georgia	chuck@alaga.org	nr
American Lung Association of Sacramento	staff@alaset.org	nr
American Rivers	amrivers@amrivers.org	nr
Americans for the Environment	afedc@igc.apc.org	nr
Amizade	Amizade@worldnet.att.net	1/12/98
Amnesty International USA	bross@aiusa.org	22/10/98
Amnesty International-Australia	ataylor@amnesty.org.au	nr
Amnesty International-Canadian Section	info@amnesty.ca	nr
Amnesty International-Dornbirn, Austria	amnesty@gmx.net	nr
Artist Hunger Network	ENDHUNGER@aol.com	31/10/98
Asia-Pacific Center for Justice and Peace	apcjp@igc.apc.org	14/1/99
Association Promoting Education and Conservation of the Amazon	apeca@unidial.com	nr
ATD Fourth World	atd.uk@ukonline.co.uk	2/2/99
Austin Texas Sierra Club	lobogris@texas.net	23/10/98
Bainbridge Ometepe Sister Islands Association	bosia@igc.apc.org	29/10/98
Banneker Center for Economic Justice	banneker@progress.org	5/12/98
Bare Wisdom	linda@bare-wisdom.org	nr

Bay Institute	bayinfo@bay.org	10/6/98
Behavioural Science Centre of Gujarat, India	sxnifes@ad1.vsnl.net.in	nr
Benevolent Organisation for Health, Development and Insight	csbustler@tassie.net.au	nr
Biointensive for Russia	cvesecky@igc.apc.org	11/6/98
Blazers Youth Organization	penrose@earthlink.net	22/10/98
Borderlinks	Borderlinks@igc.apc.org	5/11/98
Brainerd Foundation	info@brainerd.org	23/6/98
Bucks County Sierra Club	sierrabucks@freeyellow.com	nr
Buffalo Nations	buffalo@wildrockies.org	3/12/98
Catholic Fund for Overseas Development	fsudlow@cafod.org.uk	18/11/98
California Network for a New Economy	cnne@peacenet.apc.org	nr
Californians Against Waste	cawmark@tomatoweb.com	1/12/98
Campaign for Labor Rights	cin@igc.apc.org	nr
Campaign for Peace and Democracy	camppeacedem@igc.apc.org	10/6/98
Canadian Council for Refugees	ccr@web.net	nr
Cascade Chapter of the Sierra Club	cascade.chapter@sierraclub.org	19/11/98
Center for Democratic Values	raronso@cll.wayne.edu	nr
Center for Economic and Social Rights	cesr@igc.apc.org	30/11/98
Center for Economic Conversion	cec@igc.org	nr
Center for Environmental Citizenship	cecnw@teleport.com	1/12/98

Center for International Environmental Law	cielus@igc.apc.org	nr
Center for Russian Nature Conservation	rcn@igc.org	26/10/98
Center for Third World Organizing	ctwo@igc.apc.org	nr
Charter 88	info@charter88.org.uk	9/12/98
Citizen Alert	citizenalert@igc.org	12/10/98
Citizens Network for Sustainable Development	citizensnet@igc.org	nr
Clark Fork Pend Oreille Coalition	cfpoc@montana.com	nr
Clean Air Society of Australia and New Zealand	n.bofinger@qut.edu.au	2/12/98
Cold Mountains, Cold Rivers	cmcr@wildrockies.org	28/10/98
Colombia Support Network	csn@igc.apc.org	nr
Comite Emiliano Zapata	comite_zapata@geocities.com	30/11/98
Committee in Solidarity with the People of El Salvador	cispesnatl@igc.org	nr
Communication Works	works@igc.org	10/6/98
Communities for a Better Environment	cbesf@igc.apc.org	10/6/98
Corporacion Cedelcoop de Chile	patosantacruz@hotmail.com	nr
Defenders of Wildlife	info@defenders.org	nr
Democracy Works	alternet@democracyworks.org	nr
Democratic Socialist Party of Australia	dsp@peg.apc.org	nr
Desert Survivors	bighorn@desert-survivors.org	nr
Earth First!	Earthfirst@igc.apc.org	1/12/98
Earth Island Institute	earthisland@earthisland.org	nr

Earth Island Institute Urban Habitat Program	earthisland@igc.apc.org	nr
Earth Rights International	earth@ksc8.th.com	12/11/98
Earth Sangha	earthsangha@earthsangha.org	11/6/98
Earth Share	info@earthshare.org	26/10/98
East Timor Human Rights Centre	ethrc@minihub.org	nr
Ecology Center Inc	ecocenter@wildrockies.org	nr
Economics Workings Group	rcaplan@igc.org	11/6/98
Environmental Protection Information Center	epic@igc.org	nr
Equal Exchange	eqex@igc.apc.org	nr
Fellowship of Reconciliation	fornatl@igc.apc.org	nr
Food First	foodfirst@igc.apc.org	nr
Forests Monitor	fmonitor@gn.apc.org	2/12/98
Foundation for a Compassionate Society	technomama@igc.apc.org	nr
Foundation for a Global Community	infor@globalcommunity.org	1/12/98
Fund for Peace	comments@fundforpeace.org	9/6/98
Fundacion Social	relaciones_externas@fundacion-social.com.co	1/12/98
Fundepublico	fpublico@latino.net.co	nr
Global Response	globresponse@igc.apc.org	1/12/98
Global Rivers Education Network	green@green.org	28/10/98
Global Survival Network	ingsn@igc.org	nr
Grassroots International	grassroots@igc.apc.org	9/12/98
Grassroots World Government	crop@ix.netcom.com	4/12/99
Green Alliance	gralliance@gn.apc.org	12/11/98
Green Party	gptyoffice@gn.apc.org	9/6/98

Greenlife Society	greenlifesociety@msn.com	nr
Greenpeace	http://www.greenpeace.org/com ms-cgi-bin/mail/offices/cgi	9/6/98
Haitian Platform for Alternative Development	papda@acn.com	nr
Human Health and Environment Project	psrmabo@igc.apc.org	nr
Human Rights Action Group	hrag@apc.org.nz	nr
Human Rights Advocates International	cfphrai@bellatlantic.net	9/11/98
Human Rights Awareness	hra@hrawareness.org	nr
Human Rights Education Associates	info@hrea.org	12/11/98
Human Rights in China	hrichina@igc.apc.org	nr
Human Rights Watch	hrwdc@hrw.org	9/11/98
Human Unity	humanunity@igc.apc.org	nr
Hunger Project	info@thp.org	11/11/98
Indigenous Environment Network	ien@igc.apc.org	12/11/98
Infact	infact@igc.apc.org	nr
Institute for Agriculture and Trade Policy	khoff@iatp.org	1/12/98
Institute for Cultural Affairs	icajapan@gol.com	11/6/98
Institute for Energy and Environmental Research	ieer@ieer.org	nr
Instituto de Estudos Pro- Cidadania	promarco@gold.com.br	nr
Instituto de Permacultura da Bahia	hanzibra@svn.com.br	nr
Inter Action	forum@interaction.org	nr
International Institute for Ecological Agriculture	dblume@permaculture- institute.org	nr

International Labor Rights Fund	laborrights@igc.apc.org	7/12/98
International Organization for Chemical Sciences in Development	iocd@igc.apc.org	nr
International Rivers Network	irnweb@irn.org	11/12/98
Jobs with Justice	wsjwj@labornet.org	nr
Journalists About Childrens and Womens Rights and Environment in Macedonia	dokovska@yahoo.com	1/12/98
Kurdish Human Rights Project	khrp@khrp.demon.co.uk	16/6/98
Labor/Community Strategy Center	laborctr@igc.apc.org	nr
Lao Coordination Committee	FreeLao@igc.org	nr
Latin American and Caribbean Solidarity Association	cwelch@igc.org	nr
Latin American Working Group	lawg@igc.org	nr
Lawyers Committee for Human Rights	ifi@lchr.org	23/11/98
Legacy International	mail@legacyintl.org	nr
Legal Environmental Assistance Foundation	leaf@igc.apc.org	17/6/98
Living Earth	livearth@gn.apc.org	nr
Madre	madre@igc.apc.org	nr
Mexicopeace	mexicopeace@igc.org	nr
Midwest Treaty Network	mtn@igc.apc.org	12/11/98
Minnesota Advocates for Human Rights	mnadvocates@igc.apc.org	10/11/98
Mountain Institute	summit@igc.apc.org	9/6/98

National Association of Service and Conservation Corps	nascc@nascc.org	nr
National Audubon Society	webmaster@list.audubon.org	16/11/98
National Campaign for Pesticide Policy Reform	ncppr@igc.apc.org	nr
National Center for Human Rights Education	ROSSCHRE@aol.com	nr
National Heritage Institute	nhi@n-h-i.org	nr
National Network for Immigrant and Refugee Rights	nnirr@nnirr.org	nr
National Resources Defense Council	nrdcinfo@nrdc.org	nr
National Whistleblower Center	mjw@whistlebowers.org	nr
New England Grassroots Environmental Fund	cfischer@plainfield.bypass.com	nr
New Haven/Leon Sister City Project	newhaven@igc.apc.org	9/11/98
Northern Alaska Environmental Center	naec@mosquitonet.com	nr
Nuclear Age Peace Foundation	waginpeace@napf.org	nr
Nuclear Information and Resource Service	nirsnet@igc.apc.org	nr
Oregon Clearinghouse for Pollution Reduction	orcpr@orcpr.org	10/12/98
Ozone Action	ozone_action@ozone.org	1/12/98
Pacific Institute	pistaff@pacinst.org	10/11/98
Partnership to Control Asthma in Schools	pawatson@umich.edu	30/11/98
Peace and Justice Center	peacejustice@igc.apc.org	nr
Peace Brigades International	pbiio@gn.apc.org	13/11/98

Peace Works	peaceworks@peaceworks.org	nr
Peoples Decade of Human Rights Education	pdhre@igc.apc.org	2/12/98
Pesticide Action Network	panna@panna.org	24/10/98
Pesticide Action Network North America	panna@panna.org	nr
Pesticide Education Center	pec@igc.apc.org	nr
PIRGs	pirg@pirg.org	nr
Plenty International	plenty@usit.net	nr
Political Ecology Group	peg@econet.org	nr
Political Economy Research Center	Linda@perc.org	nr
Population Action International	acalise@popact.org	nr
Population Reference Bureau	popref@prb.org	nr
Project South	projectsouth@igc.apc.org	nr
Project Underground	project_underground@moles.org	9/11/98
Rainforest Action Network	wrm@gn.apc.org	9/6/98
Rainforest Concern	rainforest@gn.apc.org	nr
Renew America	mlouis_renewamerica@counterp	9/11/98
Rights International	ricenter@igc.org	10/6/98
Sacred Earth Network	sacredearth@igc.org	13/11/98
SHARE Foundation	sharedc@igc.apc.org	nr
Sierra Club	information@sierraclub.org	9/6/98
Silicon Valley Toxics Coalition	svtc@igc.apc.org	nr
South and Meso American Indian Rights Center	saiic@igc.apc.org	1/7/98
Southern Alternative Agriculture Network	pdavid@ratree.psu.ac.th	nr
Stope Nade Mostar	stope-nade1@int.tel.hr	nr
Sustainable Development Institute	susdev@igc.org	18/11/98

Thoreau Center for Sustainability	thoreau@igc.org	nr
Tibet Foundation	getza@gn.apc.org	7/1/99
Training for Change	peacelearn@igc.apc.org	10/6/98
Trust for Public Land	<a href="http://www.igc.apc.org/tpl/feedback.html">http://www.igc.apc.org/tpl/feedba ck.html</a>	9/6/98
Union of Concerned Scientists	ucs@ucsusa.org	nr
Voz de la Tierra	vmoscoso@uvg.edu.gt	nr
Wild Rockies	awr@wildrockies.org	10/6/98
Wildlife Center for Preventing Roads	WildlandsCPR@wildrockies.org	10/6/98
Wisconsin's Environmental Decade	pporter@itis.com	2/12/98
Women's Environment and Development Organisation	wedo@igc.apc.org	nr
World Information Transfer	wit@igc.apc.org	10/11/98
World Institute for a Sustainable Humanity	anmkarp@pacificrim.net	10/11/98
World Views	worldviews@igc.org	nr

## APPENDIX 6: RESPONSES TO THE QUESTIONNAIRE SENT TO STATES

State Contacted	E-mail Address	Date reply received <sup>1</sup>
Argentina	www@jus.gov.ar	30/9/99
Australia	info@south-aus.org	4/5/99
Azerbaijan	askonka@wroclaw	nr
Belgium	guy.lutgen@mail.interpac	20/5/99
Brazil	webmaster@senado.gov.hr	nr
Canada	enviroinfo@ec.gc.ca	12/5/99
Chile	cperalta@congreso.cl	nr
Colombia	presiden@cdomsat.net.co	nr
Croatia	webmaster@sabor.hr	nr
Cyprus	piox@cytanet.com.cy	nr
Czech Republic	public@mucr.cz	nr
Denmark	um@um.dk	11/10/99
Egypt	parli@idsc.gov.eg	nr
Estonia	sekretar@vpk.ee	nr
Finland	faktayllapito@eduskunta.fi	nr
France	president@assemblee-nationale.fr	7/6/99
Georgia	admin@parliament.ge	8/5/99
Guatemala	webmaster@ns.gt	nr
Hungary	webmaster@mkogy.hu	nr
Iceland	karl@althingi.is	29/4/99
India	webmaster@alpha.nic.in	nr
Ireland	info@oireachtas.irlgov.ie	nr
Italy	dlnsito@camera.it	nr
Japan	jpm@kantei.go.jp	nr
Kuwait	webmaster@kems.net	nr
Lithuania	WebAdm@Irs.It	nr
Mexico	fernando@cddhcu.gob.mx	nr
Mongolia	webmaster@mail.parl.gov.mn	nr
New Zealand	library@courts.govt.nz	13/5/99

<sup>1</sup> nr indicates non respondent.

Nicaragua	norwing@correo.asemblea.gob.ni	nr
Norway	odin@ft.dep.telemex.no	4/5/99
Paraguay	webmaster@camdip.gov.py	nr
Peru	usuarios-rcp@rcp.net.pe	nr
Russian Federation	mfa@olvit.ru	nr
Singapore	http://wwwdb1.gov.sg/fback/owa /govt.feedback	nr
South Africa	med_js@ozone.pwv.gov.za	nr
Sweden	webmaster@royalcourt.se	4/5/99
Switzerland	webmaster@admin.ch	nr
Turkey	www@tbmm.gov.tr	nr
United Kingdom	betterregulation@gtnet.gov.uk	nr
United States	president@whitehouse.gov	nr

**APPENDIX 7: RESPONSES TO THE QUESTIONNAIRE SENT TO**  
**CORPORATE INTERESTS**

Corporation or Lobbying Group	E-mail address	Date response received <sup>1</sup>
3M	<a href="http://www.3M.com/">http://www.3M.com/</a>	nr
Cargill	public_relations@cargill.com	nr
European Roundtable of Industrialists (ERT)	contact@ert.be	29/4/99
Hewlett-Packard	<a href="http://www.hp.com/ghp/assist/general.html">http://www.hp.com/ghp/assist/general.html</a>	nr
IBM	<a href="http://www.ibm.com/contact/query">http://www.ibm.com/contact/query</a>	nr
Monsanto	<a href="http://www.monsanto.co.uk/comments/comments.html">http://www.monsanto.co.uk/comments/comments.html</a>	nr
Organisation for Economic Co-operation and Development (OECD)	<a href="http://www.oecd.org/">http://www.oecd.org/</a>	18/5/99
Shell	TELL-SHELL@SI.shell.com	13/5/99
World Business Commision on Sustainable Development (WBCSD)	info@wbcisd.ch	nr
World Intellectual Property Organisation	PUBLICINF.mail@wipo.int	nr
Xerox	xerox-ehs@mc.usa.xerox.com	5/5/99

<sup>1</sup> nr indicates non respondent

**APPENDIX 8: RESPONSES TO THE QUESTIONNAIRE SENT TO GLOBAL INSTITUTIONS**

Global Institution	E-mail address	Date response received <sup>1</sup>
Food and Agriculture Organisation	webmaster@fao.org	28/4/99
International Fund for Agricultural Development	ifad@ifad.org	nr
International Labor Organisation	webinfo@ilo.org	nr
International Monetary Fund	publicaffairs@imf.org	nr
United Nations Department of Sustainable Development	dsd@un.org	nr
United Nations Environment Programme	eisinfo@unep.org	nr
United Nations High Commission for Human Rights	webadmin.hchr@unog.ch	nr
World Bank Group	Info@worldbank.org	28/4/99
World Health Organisation	info@who.int	nr
World Trade Organisation	enquiries@wto.org	30/9/99

<sup>1</sup> nr indicates non respondent

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