
Introduction to the *Research Handbook on Law, Environment and the Global South*

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Environmental law has grown over the past five decades around conservation measures, often linked to development concerns.¹ At the international level, the Stockholm Declaration – often seen as the foundational instrument of international environmental law – had already linked environmental protection with economic development.² This link was progressively strengthened up to the point where, in 1987, the notion of sustainable development officially sanctified the bond.³ Since then, there has been no turning back and sustainable development progressively became the anchor around which environmental measures have been structured.⁴ However, what was supposed to be a more or less equal relationship between environmental protection, social development and economic development became unhinged in 2012 with the introduction of the concept of green economy, which reflects policymakers' desire to give more importance to economic growth.⁵ Indeed, one of the major trends over the past couple of decades has been the progressive economisation of environmental regulation.⁶

The linking of environment and development tends to make us forget that (economic) development has been and remains part of the problem that needs to be addressed. Policymakers have had for decades the benefit of reports like *Limits to Growth* highlighting the grave dangers associated with the existing development model.⁷ Yet, environmental law has been conceived mostly within a conceptual framework that makes conservation often subsidiary to economic development concerns. In other words, environmental conservation is largely centred around measures that will not hamper economic growth. This sidelines the fact that growth itself may be inimical to social development and the realisation of human rights.

¹ Note that while concerns for the environment can be found in different earlier legal instruments, the term 'environment' was not in common use.

² Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972, UN Doc. A/CONF.48/14/Rev.1, principle 2.

³ World Commission on Environment and Development, *Our Common Future* (OUP 1987).

⁴ Rio Declaration on Environment and Development, 14 June 1992, UN Doc. A/CONF.151/26/Rev. 1 (Vol. I), Annex II (1992), principle 4. See also Sustainable Development Goals, in UNGA Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, UN Doc. No A/RES/70/1 (21 October 2015).

⁵ United Nations Environment Programme, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication – A Synthesis for Policy Makers* (UNEP 2011) and UNGA Res. 66/288, *The Future We Want*, UN Doc. A/RES/66/288 (11 September 2012).

⁶ see Lohmann in this book.

⁷ Donella H Meadows and others, *The Limits to Growth* (Universe Books 1972).

In a world marked by vast inequalities in access to natural resources, in levels of economic development and in access to social benefits, an environmental law that is essentially structured around the development discourse is problematic. It fails to take into account the situation of the majority of countries and people, generally located in what is referred to as the global South. This term – often used interchangeably with ‘third world’ or ‘developing countries’ – refers broadly to countries of South America, Africa and Asia, in contrast with the developed world which has disproportionately high wealth and geo-political control.⁸ This binary understanding of a reality that is multi-faceted in diverse ways is itself limiting but reflects even today the reality of a divided world where the gap between countries with low human development and very high human development remains immense.⁹

This *Handbook* is centred around concerns of the global South and from a global South perspective. It looks at environmental law from the perspective of the vast majority of the world’s population, a perspective that is often sidelined in mainstream discourses and scholarship.¹⁰ This is necessary even for global environmental issues, such as climate change, desertification or biodiversity loss that have specific local dimensions that are often quite different in ‘developed’ and ‘developing’ countries. These issues are to be examined from a South-North perspective in addition to a global analysis.¹¹ Various chapters of this *Handbook* thus examine environmental issues that may arise both in the global North and the global South but cannot be reduced to a perspective mostly focused on the global North.¹² The rest of this introductory chapter looks at some of the central themes and approaches that inform the rest of this *Handbook*.¹³

1. ENVIRONMENTAL LAW: SOUTH-NORTH DIMENSIONS

Environmental law is often perceived as having had its origins mostly in the global North and to have built, for instance, on developments in the United States from the

⁸ eg Nour Dados and Raewyn Connell, ‘The Global South’ (2012) 11(1) *Contexts* 12 and Global South Studies Center, *Concepts of the Global South: Voices from Around the World* (University of Cologne 2015), accessed at <http://gssc.uni-koeln.de/node/452>.

⁹ The Human Development Index was 0.504 for countries with low human development in 2018 and 0.894 for countries with very high human development. UNDP, *Human Development Indices and Indicators: 2018 Statistical Update* (UNDP 2018) 25.

¹⁰ Among the limited existing publications, eg Shawkat Alam and others (eds), *International Environmental Law and the Global South* (Cambridge University Press 2015); Usha Natarajan, ‘Third World Approaches to International Law (TWAIL) and the Environment’ in Andreas Philippopoulos-Mihalopoulos and Victoria Brooks (eds), *Research Methods in Environmental Law: A Handbook* (Edward Elgar Publishing 2017) 207.

¹¹ eg Kaime in this book.

¹² This is the case concerning environmental impact assessment, analysed by Menon and Kohli in this book.

¹³ Note that all URLs are up to date as of March 2019.

1960s onwards.¹⁴ Further, the global North is seen as having taken a lead in addressing global environmental issues, such as in the case of the fight against the depletion of ozone layer where some developing countries needed to be coaxed into joining a regime addressing an issue that was not on their own domestic priority list at the time.¹⁵ Such narratives paint a picture of the global South being in part prodded by international standards in taking domestic action and in part lagging behind the global North in terms of environmental consciousness. This links with the idea that higher levels of development are associated with higher environmental consciousness and that environmental protection is a by-product of economic growth.¹⁶ The global South is consequently sometimes seen as failing to have its own environmental concerns and policies as well as struggling to catch up with global standards that it may fail to enforce effectively.¹⁷

This fails to appreciate the fact that ‘sustainability’ has often been a way of life for centuries in rural communities entirely dependent on their surrounding environment for survival and livelihoods.¹⁸ This also fails to recognise that the global South can also be a leader in terms of issues of global significance, such as in the case of the ban on single use plastic where African countries lead in terms of total or partial bans.¹⁹ The relationship between environmental law and the global South is thus a complex one that has been shaped by historical factors, by domestic factors and by the contribution of the South to the development and its reception of international environmental law.

In historical terms, the subjugation and exploitation of most of the global South by a geo-politically and economically dominating global North resulted in environmental injustice where the benefits of economic development went to the North and adverse implications were suffered by the global South.²⁰ This included, for instance, exploitation of natural resources, as in the case of forests where colonial governments asserted control to ensure smooth exploitation of timber in particular.²¹ This also included the

¹⁴ cf Richard J Lazarus, *The Making of Environmental Law* (University of Chicago Press 2004).

¹⁵ David Hurlbut, ‘Beyond the Montreal Protocol: Impact on Nonparty States and Lessons for Future Environmental Protection Regimes’ (1993) 4 *Colorado Journal of International Environmental Law and Policy* 344.

¹⁶ cf Chukwumerije Okereke, *Global Justice and Neoliberal Environmental Governance: Ethics, Sustainable Development and International Co-Operation* (Routledge 2008) 174.

¹⁷ eg Piers Blaikie and John Mope Simo, ‘Cameroon’s Environmental Accords: Signed, Sealed, but Undelivered’ in Edith Brown Weiss and Harold K Jacobson (eds), *Engaging Countries: Strengthening Compliance with International Environmental Accords* (MIT Press 1998) 437.

¹⁸ Even the much decried shifting cultivation can be found under certain circumstances to be a practice worth considering. See eg K Teegalapalli and others, ‘Recovery of Soil Macronutrients Following Shifting Cultivation and Ethnopedology of the Adi Community in the Eastern Himalaya’ (2018) 34/2 *Soil Use and Management* 1.

¹⁹ United Nations Environment Programme, *Single-Use Plastics: A Roadmap for Sustainability* (UNEP 2018) 25.

²⁰ Carmen G Gonzales, ‘Human Rights, Environmental Justice, and the North-South Divide’ in Anna Grear and Louis Kotzé (eds), *Research Handbook on Human Rights and the Environment* (Edward Elgar Publishing 2015) 449.

²¹ Concerning forests in India, see Gopalakrishnan in this book.

imposition of a form of environmental conservation, as in the case of the egregious treaties negotiated by colonial powers on behalf of their African colonies to preserve what was perceived as the last bastion of pristine wilderness on Earth.²² In both cases, colonial subjects were at the receiving end of measures that were justified either by a colonial conservation ethic or by economic growth imperatives. This probably led to the undermining of existing conservation policies and practices in the colonies.

The pattern of economic growth that saw the global North benefitting from a division of labour that disadvantaged the global South in environmental terms, for instance as happened during the colonial period, has changed but not disappeared. Thus, the present global economic order is in large part organised around an international production chain where the most polluting activities and resource extraction that fuel the global economy take place in the global South, whereas environmentally less harmful activities take place in the global North, leading to a 'relocation of the ecological burden' to the global South.²³ In other words, the prosperity in the global North has come at the cost of, not only environmental degradation in the global South, but also impoverishment and political conflicts. The inequity of the current framework can be summarised by looking at Africa's very limited contribution to greenhouse gases (3.8 per cent) compared to the climate change-related damages it suffers.²⁴

Another dimension of the encounter of the global South and global North in terms of the development of environmental law is the primacy of principles and norms developed in the North that acquire universal value through their incorporation in international environmental treaties. In practice, the majority of principles of environmental law found in domestic legal frameworks in the global South are thus either similar or directly incorporated from international environmental law, as with the case of the precautionary principle in India.²⁵ The combination of the legacy of the colonial encounter with the influence of international law leads in some cases to unexpected results. Thus, while the conservation treaties signed in the first half of the twentieth century by the colonial powers on behalf of their African colonies have long been replaced by conservation treaties adopted by independent African nations, the conservation policy that demarcates tracts of land where human interactions are limited or prohibited has only changed progressively and to a limited extent.²⁶ In other words, the same paradigm that saw the 'natives' kept off nature reserves but allowed hunting by

²² Convention Designed to Ensure the Conservation of Various Species of Wild Animals in Africa, which are Useful to Man or Inoffensive, London, 19 May 1900 and Convention Relative to the Preservation of Fauna and Flora in their Natural State, London, 8 November 1933.

²³ Wolfgang Sachs and Tilman Santarius, *Fair Future: Resource Conflicts, Security and Global Justice* (Zed Books 2007) 66.

²⁴ Amadou Sy, 'Africa: Financing Adaptation and Mitigation in the World's Most Vulnerable Region' (Brookings Institution 2016), accessed at https://www.brookings.edu/wp-content/uploads/2016/08/global_20160818_cop21_africa.pdf.

²⁵ *Vellore Citizens' Welfare Forum v Union of India and Others* (1996) 5 SCC 647 (Supreme Court of India, 1996); Lavanya Rajamani, 'The Precautionary Principle' in Shibani Ghosh (ed), *Indian Environmental Law: Key Concepts and Principles* (OrientBlackswan 2019) 192.

²⁶ see African Convention on the Conservation of Nature and Natural Resource, Algiers, 15 September 1968 and African Convention on the Conservation of Nature and Natural Resources, Maputo, 11 July 2003.

the colonialists still sees national parks displacing people living in them or restricting their livelihood options.²⁷ The main difference is that, in formal terms, these measures are taken by independent sovereign governments.

The subjugation of the global South to the global North has not gone unchallenged. Thus, one of the first things that newly independent countries did was to assert control over natural resources, something that came to be reflected in the principle of permanent sovereignty over natural resources.²⁸ For some time, this seemed to provide a strong basis on which the global South could build its own environmental policies. Yet, developments over the past few decades indicate that this has not necessarily been the case, as illustrated with the case of biological resources. Thus, the assertion of sovereign rights in the Convention on Biological Diversity was in part a pyrrhic victory since it was linked to an agreement to facilitate access to biological resources, thereby limiting the options that source countries have to restrict access. Even worse, all that developing countries got in return was a promise of ‘benefit sharing’,²⁹ something that can be qualified as a nice gesture but one that does not equate with the rights that private parties accessing biological resources can assert, for instance, through intellectual property rights.³⁰ In the meantime, the push for giving an economic value to nature, for instance, under the guise of ecosystem services has further affected the impact of principles like permanent sovereignty over natural resources, for which the global South fought hard a few decades ago.³¹

The global South has also attempted to challenge the very structure of international law that it saw as inimical to its interests. This culminated in an attempt to bring about a New International Economic Order that would have led to a new economic framework reflecting better the needs of the global South. These efforts failed to lead to the expected structural reforms of international law,³² but contributed to enshrining the idea that developing and developed countries were not equal in economic terms, even if they were now legally equal. Nevertheless, they led to the introduction of preferential treatment in favour of developing countries.³³ This ended up being a precursor to the principle of common but differentiated responsibilities, a key principle of international

²⁷ see Kameri-Mbote in this book and Bijoy in this book.

²⁸ UNGA Res. 1803 (XVII), Permanent Sovereignty over Natural Resources, UN Doc. A/RES/1803 (XVII) (14 December 1962).

²⁹ see Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, Nagoya, 29 October 2010, UN Doc. UNEP/CBD/COP/DEC/X/1.

³⁰ eg Philippe Cullet, ‘Environmental Justice in the Use and Exploitation of Genetic Resources’ in Jonas Ebbesson and Phoebe Okowa (eds), *Environmental Law and Justice in Context* (Cambridge University Press 2009) 371.

³¹ Sumudu Atapattu, ‘The Significance of International Environmental Law Principles in Reinforcing or Dismantling the North–South Divide’ in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (Cambridge University Press 2015) 74.

³² Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2004) 198.

³³ eg Abdulqawi Yusuf, *Legal Aspects of Trade Preferences for Developing States: A Study in the Influence of Development Needs on the Evolution of International Law* (Martinus Nijhoff 1982).

environmental law that captures in part the South-North inequality and provides the basis for differential treatment in favour of the global South.³⁴

The past few decades have also seen some large countries of the global South, in particular the BASIC countries (Brazil, South Africa, India and China), acquiring new economic and political clout. This has partly changed the nature of international negotiations, such as on climate change.³⁵ At the same time, the global South cannot be equated with BASIC countries and there is, in fact, an increasingly apparent chasm between the latter, and least developed countries and a number of sub-Saharan African countries that find themselves at the receiving end of a new assertion of power by these countries.³⁶ Thus, even though the unity of the global South remains largely intact as a negotiating group, this increasingly fails to capture the reality of a fractured large group of countries.

The South-North perspective from a statist approach provides an appropriate starting point for discussing matters related to environmental law in the global South. Yet, this is today insufficient to grasp the various issues arising. Indeed, the private sector is also a key driver of regulatory action or inaction, from standard-setting to implementation and enforcement of environmental law. This is true from a South-North perspective, as well as from a domestic perspective. Various chapters of this *Handbook* deal directly or indirectly with private sector actors in an environmental context, ranging from Union Carbide's Bhopal disaster that has local to international ramifications, to the North-South movements of hazardous waste centred around activities of private sector actors within a public law regulatory framework.³⁷

A second element that needs to be brought into the picture is the increasingly outdated fracture between the national and the international level that only considers South-North inequality at the level of countries. This tends to sideline the interests, issues and concerns of the poor and the marginalised in the South. In fact, strong economic growth in some countries of the global South over the past couple of decades has led to the strengthening of an economic and intellectual elite whose interests may be more aligned with those of people in the North than the majority of the poor in their own country.³⁸ At the same time, the poor and marginalised in the North face similar

³⁴ eg Philippe Cullet, *Differential Treatment in International Environmental Law* (Ashgate 2003).

³⁵ see Rowena Maguire and Xiaoyi Jiang, 'Emerging Powerful Southern Voices: Role of BASIC Nations in Shaping Climate Change Mitigation Commitments' in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (Cambridge University Press 2015) 214.

³⁶ eg Tukumbi Lumumba-Kasongo, 'China-Africa Relations: A Neo-Imperialism or a Neo-Colonialism? A Reflection' (2011) 10(2-3) *African and Asian Studies* 234.

³⁷ see Ramanathan in this book and Dehm and Khan in this book.

³⁸ Commentators have emphasised the emergence of a transnational capitalist class as a global ruling class that consciously tries to obfuscate the impact of global capitalism on the poor and the marginalised and on the environment. See eg Leslie Sklair, 'The Transnational Capitalist Class, Social Movements, and Alternatives to Capitalist Globalization' (2016) 6(3) *International Critical Thought* 329.

neglect and victimisation as that of their counterparts in the global South.³⁹ This leads to the need for an additional focus on the poor and the marginalised people in both the global South and North, given their relatable experiences of inequality, inequity and injustice, even though the intensity may be significantly different.

2. RETHINKING ENVIRONMENTAL LAW FOR MARGINALISED PEOPLE

One of the central themes of this *Handbook* revolves around the need to reimagine environmental law from the perspective of the marginalised people in the global South and in the global North. An important part of this exercise is to challenge some of the premises on which existing environmental law has been built and to introduce new approaches and bases that serve the interests of the poor and the marginalised people in the global South and the global North.

1. Exposing the Pitfalls of Ostensible Neutrality and A-historicism

Regulatory measures to protect the environment are today essentially justified by scientific data. Consequently, basic legal principles on which measures are justified, such as the prevention and precautionary principles find their legitimacy in scientific assessments.⁴⁰ Environmental regulation based on scientific data has a neutral appearance because of the perceived objectivity of natural sciences' results. Overall, environmental law is built on an understanding that reduces environmental issues to figures that we are called upon to understand as objective and therefore the most legitimate basis for lawmaking. One of the examples is that of climate change where the Intergovernmental Panel on Climate Change reports reflect a scientific consensus that is used as one of the main bases for lawmaking.⁴¹ In turn, this draws policymakers towards responses that address primarily the technological and economic dimensions of climate change.

The perceived neutrality or objectivity of the scientific basis on which environmental law stands effectively undermines historical approaches to understanding environmental issues, which is problematic from the perspective of people and countries in the global South. First, the differential contributions to the problems and distinct sufferings by different people and countries are generally overlooked, leading to social inequity and inequality concerns.⁴² Legal rules are made, and regulatory measures are taken on the basis of the scientific assessment provided by experts, without necessarily addressing

³⁹ eg Lucie Laurian, 'Environmental Injustice in France' (2008) 51(1) *Journal of Environmental Planning and Management* 55.

⁴⁰ Concerning the precautionary principle often accused of being opposed to science-based regulation, see eg Peter Saunders and Mae-Wan Ho, 'The Precautionary Principle is Science-Based' (2003) 18 *Science in Society Archive*, accessed at <http://www.i-sis.org.uk/sapp.php>.

⁴¹ eg Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report* (IPCC 2014).

⁴² cf Gill in this book.

the historical context. This necessitates an approach to environmental regulation based on historical considerations of equity and justice that challenge the status quo, which existing environmental law often contributes to uphold.⁴³

Second, the lack of adequate focus on history also results in ignoring the rich history of environmental conservation and use strategies followed by people and communities particularly in the global South. The legal regime related to environment refuses to recognise and learn from the experiences of people and communities in the global South.⁴⁴ Thus, the practices and systems of use, control and conservation of natural resources followed in pre-industrial societies of the global South hardly find any place in the mainstream narrative of evolution of environmentalism and environmental law. The denialist approach of the mainstream environmental law has, thus, systematically obstructed the potential contribution of the people and communities in the global South to the development of the legal regime and projected a discourse that accuses the poor of being the primary cause of environmental degradation.⁴⁵

2. Challenging and Finding Alternatives to ‘Development’

The term ‘development’ has become a buzzword that signifies overall increase in wealth and prosperity.⁴⁶ It has also been referred to as a tool for poverty eradication, a model rich countries adopted to become rich and a model which the poor countries have been following by default.⁴⁷ This capitalist development model spearheaded by the global North promotes the idea of unlimited production and consumption. It has also been referred to as a discourse that makes people accept the narratives and promises of development uncritically.⁴⁸

In a system that promotes unlimited production and consumption, environmental implications of this process are seen as inevitable side effects, which can be minimised with the help of science, technology and regulation. Thus, environmental law does not seem to question or challenge the dominant economic model but seeks to minimise its implications to the maximum extent possible. The concept of sustainable development seems to endorse this role for environmental law and underlines the fact that a balance between economic development and environmental sustainability is possible.

⁴³ For a critique of international environmental law for its ahistoric narrative, see Karin Mickelson, ‘South, North, International Environmental Law, and International Environmental Lawyers’ (2000) 11(1) *Yearbook of International Environmental Law* 52.

⁴⁴ eg Madhav Gadgil and Ramachandra Guha, *This Fissured Land: An Ecological History of India* (OUP 1992) 39.

⁴⁵ cf Amita Shah, ‘Dryland Poverty and Climate Change in South Asia’ in Anushree Sinha and others (eds), *The Environments of the Poor in South Asia: Simultaneously Reducing Poverty, Protecting the Environment, and Adapting to Climate Change* (OUP 2015) 31, 32.

⁴⁶ Jayati Ghosh, ‘Development’ in Bhupinder S Chimni and Siddharth Maalavarappu, *International Relations: Perspectives for the Global South* (Pearson 2012) 167.

⁴⁷ *ibid.*

⁴⁸ Rajan Gurukkal, ‘Death of Democracy: An Inevitable Possibility under Capitalism’ (2018) 53(34) *Economic & Political Weekly* 104, 106. See also Padel and Gupta in this book questioning this in the context of mining.

The power of the dominant discourse of development is such that commodification of nature or economisation of natural resources has received wide acceptability. In the context of neoliberal policies that see economic value and commodification as a route to ensure long-term conservation by giving people incentives to sustainably use them, a number of 'environmental resources' have surfaced in recent years.⁴⁹ This is well illustrated by the case of agricultural germplasm that was understood as a common heritage of humankind until the 1980s and was turned into a commodity that can in large part be appropriated and over which intellectual property rights can be claimed in an increasing number of cases.⁵⁰ This is despite the fact that the main relevant treaty still proclaims its attachment to the idea of free flows of germplasm.⁵¹

Any attempt to rethink environmental law from the perspective of the marginalised people, therefore, needs to understand and assess this discourse. It is imperative to foster a critical approach to the link between development, environment and poverty because the relationship between development, and environmental quality and poverty eradication is not necessarily always positive. Development may thus lead to more impoverishment and marginalisation. The case of large dams reflects, for instance, situations where a negative relationship between development and poverty eradication, marginalisation and environmental degradation exists.⁵² The presumed capacity of the mainstream development model to foster poverty eradication and to maintain a workable balance between economic development and environmental sustainability also needs to be questioned.⁵³ This leads to considering alternatives to 'development' that view human beings as part of the environment, view the environment primarily as a system for survival of all living beings rather than as a depository of resources to be exploited to become rich and are built on the needs, concerns and experience of marginalised people.⁵⁴

3. Recognising Equity and Human Rights as Key Guiding Principles

The process of rethinking environmental law internationally and domestically must include an assessment of the extent to which the existing legal regime at the international and domestic levels enshrine equity and human rights, for instance, in the context of equitable use of natural resources and equitable distribution of benefits and risks.⁵⁵ This is, for instance, an important issue in the context of developmental activities, such as nuclear power plants and large dams where these activities are

⁴⁹ see Lesniewska in this book.

⁵⁰ eg Philippe Cullet, *Intellectual Property Protection and Sustainable Development* (Butterworths/Lexis-Nexis 2005).

⁵¹ International Treaty on Plant Genetic Resources for Food and Agriculture, Rome, 3 November 2001, 2400 UNTS 303.

⁵² see Bhagat-Ganguly concerning dams in this book.

⁵³ see Lohmann in this book and Adelman in this book.

⁵⁴ see Kothari in this book.

⁵⁵ eg Kotzé and Grant in this book.

frequently challenged on the ground of allocating risks mostly to marginalised and poor sections of society while the benefits accrue mostly to a privileged minority.⁵⁶

Equity and human rights must be given a central place to ensure that environmental regulation pays special attention to the needs and rights of the poor and marginalised.⁵⁷ This is necessary for several reasons: first, there is a need to put special emphasis on the environmental needs and concerns of the poor and marginalised related, for instance, to their livelihoods and cultural connections with the environment. Second, poverty often constrains the extent to which marginalised people can claim their rights and entitlements. In other words, there is a need to go beyond the formal recognition of the importance of ensuring equity and human rights and address the actual ability of people to enjoy their rights or to get them realised, especially when they have to stand against or confront the state or powerful multinational corporations. Third, equity and human rights present powerful tools allowing the poor and marginalised to challenge inequitable legal provisions and call for their modification. Overall, equity and human rights offer important analytical tools to assess rules of environmental law and the ways in which they are implemented and interpreted in the light of the experience of the pain, struggles and sufferings of the poor and marginalised people and the resistance they offer to existing rules. These aspects are highlighted in some of the chapters in this *Handbook*.⁵⁸

The emancipatory or empowering capacity or potential of equity and human rights should, however, not be taken for granted. Adequate caution is necessary because these are malleable concepts or principles that can be used or interpreted differently in different contexts for different purposes. For instance, the language of human rights is used by anti-globalisation and anti-privatisation movements. At the same time, the language of human rights has been predominantly constructed to serve the purposes of neoliberalism and economic globalisation.⁵⁹ This highlights the fact that they can be used in both hegemonic and counter-hegemonic strategies and policies.⁶⁰ Therefore, equity and human rights are to be used and assessed for what they are capable of doing and what they have actually done rather than following them blindly on the basis of mainstream theories or narratives.

Overall, this *Handbook* contributes to redefining or reconstructing the bases of environmental law from a global South perspective and from the perspective of the poor and the marginalised of present and future generations in both global South and

⁵⁶ eg Minnie Vaid, *The Ant in the Ear of the Elephant: The Story of the People's Struggle against the Koodankulam Nuclear Plant* (Rajpal 2016) 101–2. On liability, see Bhattacharjee in this book.

⁵⁷ This is discussed in the context of the right to water by Kidd in this book.

⁵⁸ eg Gopalakrishnan in this book and Sahu in this book.

⁵⁹ eg Joe Wills, 'The World Turned Upside Down? Neo-Liberalism, Socioeconomic Rights, and Hegemony' (2014) 27(1) *Leiden Journal of International Law* 11.

⁶⁰ For an analysis of human rights as discourse in the context of the human right to water, see Madeline Baer and Andrea Gerlak, 'Implementing the Human Right to Water and Sanitation: A Study of Global and Local Discourses' (2010) 36(8) *Third World Quarterly* 1527. For a critique of human rights from a third world perspective, see Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press 2005) Ch 7.

North, focusing on the impoverished, their livelihoods and their human rights.⁶¹ The chapters of this *Handbook* engage with these questions from a variety of angles, from specific case studies to proposals for structural reforms.⁶² The main thread that the chapters in this *Handbook* follow is an understanding that environmental law has failed to deliver on its promise, to the extent that it treats the poor and marginalised as either the cause of environmental harm or as an impediment on the road to achieving sustainable development. They highlight that we can reverse the catastrophic consequences of unconscionable development, but this will have to be done on entirely new bases.

⁶¹ see Baxi in this book.

⁶² eg Razzaque in this book focusing on the Rampal coal power plant in Bangladesh and Kothari in this book addressing the need for change from a macro perspective.