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People and forests at the legal frontier: Introduction

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Abstract

Across the globe, deforestation and conflicts over forests are taking place on a frontier of competing claims, narratives and worldviews, expressed through territoriality, normative orders, and forms of violence against people and nature. Policymakers have yet to find solutions that effectively address this crisis over human-forest relations in ways that are also equitable for forest peoples. This special issue responds to this challenge with an interdisciplinary collection of theoretical and empirically grounded studies that explore human-forest relations at the legal frontier. The authors explore how law affects the ecological, cultural and moral foundations of human-forest relationships, and the need to go beyond dominant economic and rights-based legal framings, towards developing further legal dimensions of socio-ecological relations for forest governance. The contributions as a whole highlight the importance of co-constructing laws that are culturally situated in local meanings of forest and interact with global, state and other local normative orders in decolonial, transformative ways. This opens the possibility of a new legal frontier for people and forests of multidimensional more-than-human forms of interlegality.

Keywords: deforestation; forests; indigenous peoples; interlegality; legal pluralism; more-than-human
Introduction

At first I thought I was fighting to save rubber trees, then I thought I was fighting to save the Amazon rainforest. Now I realize I am fighting for humanity.

Chico Mendes (1944-1988)

The assassination of the Brazilian rubber tapper, environmentalist and social activist Chico Mendes by a rancher in 1988 brought global attention to the destruction of tropical rainforests and the struggle for conservation and forest peoples’ rights. In the twenty-first century, the biodiversity and climate crises have reawakened a sense of urgency to protect and restore Earth’s forests for future generations. Yet, across the globe, deforestation and conflicts over forests are taking place, often at the edge of law, on a frontier of competing claims, narratives and worldviews, expressed through territoriality, normative orders, and forms of violence against people and nature. What is now required are discourses, legal frameworks and practices that rebalance power relations between people, nature, states and corporate actors in forest governance, reflecting the diversity and indivisible nature of human-forest relationships, and ensuring their security and protection for the future. This special issue responds to this challenge with an interdisciplinary collection of theoretical and empirically grounded studies that explore human-forest relations at the legal frontier.

Meanings of forest

Despite the urgent need to protect and restore forests, humanity in general has only a limited understanding of the rich complexity of the earth’s forests and their astonishing biodiversity. Forests first emerged around 380 million years ago (Algeo et al. 2001). Today, they cover around four billion hectares, or 30 percent of Earth’s land surface, and are home to 80 percent of terrestrial biodiversity, including many endangered species (UN FAO 2018). Temperature and precipitation levels shape the range of species of flora, fauna and fungi that live within forest biomes across the earth’s climate zones. Forest biomes are classified into three broad types: tropical, which are the richest in terms of biodiversity and tree species; temperate, which are found in the temperate zones of the northern and southern hemispheres and are characterised by deciduous and evergreen broadleaved tree species; and boreal forests of the circumpolar region, which includes Scandinavia, Siberia, Alaska and the majority of Canada. Boreal forest is the world’s largest terrestrial biome, but also the least biodiverse, with a canopy consisting of needle-leaved and scale-leaved evergreen trees. Human-forest relations in all three of these major forest biomes are considered in this special issue.

The meaning of forests to the people who live there is as diverse as humanity itself. It is estimated that 1.6 billion people use forests for all or part of their livelihoods, including 70 million indigenous people1 (UN SDG n.d.). Forests have long formed an intrinsic part of human cultural identities, spiritual belief systems, livelihoods and wellbeing, and there are hundreds of definitions of forest across human societies, as well as policy contexts2 and academic disciplines (Schuck et al. 2002). Many forest peoples’ knowledges and worldviews transcend the corporeality of forests and have endured despite the impact of colonialism and other more recent incursions by external actors into their societies and territories. By contrast,
in Europe, Christianity had eliminated ancient pagan connections to forests by the late Middle Ages. The dualist separation of people and nature in European Enlightenment philosophy and religion underpinned colonial encounters and legitimated ideologies of rights-based property frameworks and anthropocentric visions of forests as commodities to be exploited. Yet, despite the threats posed by external actors, normative orders and unequal power relations, forest peoples have continued to express and defend their cultural values, land rights, livelihoods and spiritual relationships with forests.

**Deforestation**

Over the last 10,000 years of the Holocene epoch, humans and forests have evolved together, initially through ecological cycles and hunter-gathering and later, through the emergence of agro-forestry and shifting cultivation practices (Ritter and Dauksta 2013; Southgate 2019; Williams 2002). With the development of agricultural and industrial societies however, human dependence on forests turned to plunder. Large-scale tree cover loss in Europe began in the Neolithic and Bronze Ages and continued throughout the pre-industrial period into the eighteenth century. Globally, two billion hectares of forest have been lost, including 1.4 billion hectares in the last 300 years (UN FAO 2012). Between 1990 and 2015 forest area decreased from 31.6 percent of land area to 30.6 percent (UN FAO 2016). This dramatic acceleration in the rate of deforestation is attributed to industrialisation and the conversion of forest land to intensive agricultural production: a period in Earth’s history that has become known as the Anthropocene.

Current rates of deforestation vary across the globe. Since 2000, rates of deforestation have risen most dramatically in the tropics, due to clearance for agriculture and development projects as well as natural causes (UN FOF 2020). Forests store around 45 percent of terrestrial carbon, which means that human conversion of forest land to agriculture is a leading cause of climate change, accounting for nearly 20 percent of all greenhouse gas emissions (UN FAO 2018). This human-induced climate change further accelerates deforestation. The Intergovernmental Panel on Climate Change (IPCC) has forecast high-latitude boreal forests as being at particular risk of climate change-induced degradation and loss (Masson-Delmotte et al. 2019). Forests sequester carbon, purify air and water, prevent soil erosion and reduce the risk of flooding, influence rainfall patterns and mitigate the effects of droughts (UN FAO 2018). However, in recent years, climate change and increasingly severe large-scale forest fires, notably in Australia, Brazil, California, the Canadian Arctic, Indonesia and Siberia have brought devastating consequences for the people, flora and fauna that live there. Distressing images of forest fires broadcast around the world have also heightened the immediacy of the crisis in global public consciousness.

**Law, legal pluralism and policy**

There is currently no comprehensive international legally binding treaty for the conservation and sustainable use of forests. International instruments containing measures relating to forests and forest peoples include: the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the 1989 Indigenous and Tribal Peoples Convention (ILO Convention 169); the United Nations (UN) Convention on Biological
Diversity (CBD), UN Framework Convention on Climate Change (UNFCCC) and Agenda 21, which followed the 1992 Rio Earth Summit; the 2006 International Tropical Timber Agreement; the 2007 UN REDD Programme and REDD+, which aim towards reducing emissions from deforestation and forest degradation through sustainable management of forests and enhancement of forest carbon stocks; the 2007 Non-legally Binding Instrument on All Types of Forests (which became known as the UN Forest Instrument); the International Arrangement on Forests; and the 2017 UN Strategic Plan for Forests, which established a set of voluntary and universal Global Forest Goals and associated targets to increase forest area by 3 percent worldwide by 2030 (Sands et al. 2018, 428-31).

The different meanings of forest are not without consequences in terms of rights-based discourses and legal claims to forest lands by states, corporate actors and forest peoples. These often become manifest in conflicts involving multiple contradictory definitions of rights between competing authorising institutions. Policies for forest governance that are based on principles of payments for ecosystem services, biodiversity and carbon offsetting have faced sustained criticism as global “green-grabbing”, and for their adverse ecological, socio-economic and cultural impacts on forest peoples (Fairhead et al. 2012; Cabello and Gilbertson 2010; Gómez-Baggethun 2010). Numerous studies show that deforestation rates are lower where states recognise communities’ rights over their forests and there is government support for enforcement and management (Stevens et al. 2014).

Globally, 1.5 billion forest peoples have reportedly secured rights over forest resources through community-based tenure (UN FAO 2018). However, many forest peoples have yet to gain recognition of their customary rights and remain vulnerable to marginalisation and dispossession from forest lands (Hensbergen 2018). State recognition is also not necessarily the final solution to this issue. Where power differences exist between recognising and recognised parties, this can lead to further incorporation and disappearance of local cultural meanings given to forests.

Outline of the special issue

The theoretical and empirical contributions in this special issue explore how legal and economic frameworks, power, and legal and institutional pluralism have shaped and could address these challenges in forest governance. The contributors to this special issue are from four different continents and seek to advance interdisciplinary debates and intercultural dialogue on human-forest relations by bringing scholars from law and legal pluralism studies, forestry, anthropology, land economy, political science, and Indigenous Peoples into conversation. The authors explore how law affects the ecological, cultural and moral foundations of human-forest relationships, and the need to go beyond dominant economic and rights-based legal framings, towards developing further legal dimensions of socio-ecological relations for forest governance.

Helen Dancer offers a critique of two contrasting approaches to human-forest relations in global debates on sustainable development, which she identifies as nature as service-provider and Nature as subject, and the potential of legal pluralist approaches to reconfigure law and policy on these relations for the future. Most international organisations and states have adopted law and governance frameworks on forests based on
commodification, rather than their wider significance to humans and other species. Recent developments in the field of Earth justice and Rights of Nature have opened a space for the fusion of Earth jurisprudence and Indigenous worldviews in state legal frameworks. However, unequal power relations between people, states and nature risk the continued subjugation of people-forest relationships through legal structures in practice. To avoid the double colonisation of people and nature, Dancer argues that what is needed is a new deep legal pluralism that both decentres anthropocentric thinking on the environment and decentres the state in the development of law (Dancer 2021).

Pingyang Liu and Neil Ravenscroft’s article is based on long-term empirical research in Southern China and analyses the shifting nature of human-forest relations in response to policy reforms on collective forest governance since the late 1990s. Their longitudinal analysis shows policy reform shifting from state centrist to a more decentralised approach and back again, resulting in ebbing and flowing of connections and disconnections between people and their local forests. The authors’ findings demonstrate that the legal frontier is often located at the local level of governance where property rights and resource allocation take place. A decentralised approach, where villages determine their own plans for the distribution of collective forest land rights, appears to strengthen local communities’ cultural relations with forests as well as their individual and collective responsibility for sustainable silviculture. However, provincial level policies for environmental protection have had the unfortunate consequence of destabilising local approaches to the distribution of property rights that had developed over time. They argue that the culture of common and collaborative forest management practices has weakened as people take pre-emptive action in response to their sense of insecurity over policy changes, and that a return to the more pluralist approach to regulation is needed (Liu and Ravenscroft 2021).

Two papers on forest conservation and carbon territories under the UN REDD+ programme provide further evidence of the sensitivity of human-forest relations to top-down regimes of forest governance. Mattias Hjort’s contribution focuses on the high-level global policy context and takes a Foucauldian governmentality approach to analyse the REDD+ negotiations under the UNFCCC and the disciplinary techniques it has developed towards forest inhabitants as subjects of forest governance. Instead of protecting the knowledge and rights of forest inhabitants, the policy outcomes of the REDD+ negotiations treat them as malleable human capital subjects whose conduct should be “improved” by engaging them in monitoring and reporting processes. In some cases, this has resulted in forest inhabitants using REDD+ projects to safeguard customary lands. However, the lack of recognition of forest peoples’ rights under the UNFCCC leaves local community norms, spiritual and cultural human-forest relationships vulnerable to subjugation under the scheme (Hjort 2021).

Melis Ece’s paper analyses rights-based discourses in the commodification of tropical forests in Africa. Based on empirical research in Lindi, Tanzania, she explores the multiple ways in which market-based and rights-based languages are used by REDD+ projects as a basis for legitimising carbon territories. She observes that, while REDD+ has recognised customary rights, neoliberal strategies for creating a favourable climate for investment through market-based interventions and accelerating land titling processes has had the effect
of fuelling land conflicts and crystallising the denial of claims to forest lands of local inhabitants. Throughout these processes the language of property rights has been invoked both to legitimate REDD+ claims related to carbon markets, climate conservation and development goals, as well as to secure the adherence of villagers to project norms that has ultimately led to a sense of insecurity and erasure of claims to forest lands (Ece 2021).

This thread of contested claims to forest lands is continued with two papers on Indigenous Peoples’ rights in North and South America. Estair Van Wagner’s article on the private forest lands of Vancouver Island in the Canadian province of British Colombia, reveals the unsettled legacy of historical usurpation by Anglo-Canadian private property law of pre-existing place-based Indigenous claims to forest land. While Vancouver Island was treated by the Crown as terra nullius there are unresolved questions in Canadian law about the beneficial interests of Indigenous title holders to the lands, power relations in processes of consultation between the state and Indigenous Peoples, and the role that Indigenous Peoples should play in governance of these territories. Van Wagner argues that since Indigenous forest relations concern the physical and metaphysical realms of the forest, a legal pluralist analysis requires us to ask questions of legal pluralism in terms of not only State-Indigenous legal relations, but also of human relations with the more-than-human world (Van Wagner 2021).

The final article by Andrea Vásquez Fernández and her collaborators presents recommendations for praxis following a six-year project between scholars and Asheninka and Yine Peoples in the Peruvian Amazon. The methodology of the project reflects the subject of the paper itself by seeking to transform conventional approaches to consultation based on hegemonic processes of “mutual respect” towards a practice of “intercultural respect” based on Asheninka and Yine Peoples’ own protocols of interaction. The article makes an important contribution to intercultural relations between Indigenous and Originary Peoples and external actors, setting out ten principles to guide intercultural respect, both in terms of research methodology and in social, political and legal interactions more generally. These ten principles are based on respectful practices of the Asheninka and Yine Peoples who collaborated in the study. However, the decolonial theoretical and methodological approaches of the study have wider implications, pointing towards ways to transform praxis for interactions concerning Indigenous and Originary Peoples’ ancestral forest lands and their desired futures (Vásquez Fernández et al. 2021).

**Common threads**

The interdisciplinary research findings in this special issue establish an agenda for future work, towards greater understanding of the nature of human-forest relations in their widest sense and establishing equitable approaches to forest law and policy moving forward. Understanding human-forest relations encompasses not only ecological, social, cultural and legal interactions between forest peoples and the physical environment. As the anthropologist Eduardo Kohn observes, it also requires a focus on the relations humans have with nonhuman beings, forcing us to step “beyond the human” (Kohn 2013, 42). The contributions by Dancer, Van Wagner and Vásquez Fernández et al. in this collection highlight the failures of modern state law to recognise this dimension of human-forest relations, in contrast with the
ontologies of many forest peoples. Whereas state law almost invariably reinforces an ontological separation between the human and nonhuman, it could instead be framed to recognise the multidimensional physical and metaphysical elements of forests and interactions between what the ecologist and philosopher David Abram first described as the “more-than-human” world (Abram 1996). Van Wagner and Vásquez Fernández et al. point out the lack of such an approach in Canadian and Peruvian law. However, deepening forms of legal pluralism are emerging in some other countries, where Rights of Nature, Indigenous concepts of Pachamama (Mother Earth) and sumak kawsay (buen vivir, or living well), biocultural rights and power-sharing treaties for the governance of ecosystems have been integrated into state law.

A second common thread concerns the psychosocial, political and legal-institutional impacts of top-down policy implementation on forest inhabitants, including commodification of human-forest relations through carbon forestry schemes, and shifting forest tenure relations. In the context of REDD+, Ece and Hjort observe how forest inhabitants are being transformed into optimisers of forest carbon utility through new frameworks that value forests first and foremost as carbon sinks. This disciplining of local peoples to work within the new norms has often been accompanied by subversion of local forestry practices and customary claims to land. Liu and Ravenscroft note that in China, the back and forth of centrist and decentralised policies on forest governance, has created a sense of disconnection and uncertainty about the future among forest communities, which becomes the basis of local people’s assessment of the opportunity cost of timber felling, leading to counter-productive forest management practices. In Canada and Peru, Van Wagner and Vásquez Fernández et al. describe an alienation of Indigenous forest peoples, and violation of their bodies and territories through the extinguishment of their land rights by the state and investors. They highlight the inadequacy of laws that oblige external agents to consult with Indigenous Peoples “honorably” or through “mutual respect”.

The contributions highlight that the policy ecosystem has yet to find solutions that effectively address the crisis over human-forest relations in ways that are equitable for forest peoples. Initiatives such as REDD+ that seek to address climate change through the commodification of carbon, have produced policy solutions that focus behaviour change primarily on forest inhabitants at the sites of deforestation, rather than on behaviours in other parts of the world that create drivers of forest degradation. Global approaches that focus on disciplining forest peoples, deflect attention away from these wider structural socio-economic and political drivers. For example, while corruption and failures of governance at a state level undoubtedly facilitate forest destruction and impede efforts to conserve and restore tropical forests, global demand for beef, soy and palm oil has fuelled deforestation in the tropics for agriculture and ranching. The high consumer demand for cheap timber products in Europe and North America encourages illegal logging and cross-border timber trade between Russia and China, with much of it destined for the West (Newell and Simeone 2014).

Santos has argued that the modernist conception of law has legitimated a massive “juricide” of legal practices that do not conform with it (Santos 2020, 18). Decentring the state and moving law and policy on human-forest relations beyond purely human concerns, as
this special issue invites, throws open debates within legal pluralism studies that have traditionally been concerned with legal relations between coexisting human legal orders. This could for example, invite earth-centred approaches (Cullinan 2002), or “acentric” framings of law “beyond anthropo- / ecocentricity” (Philippopoulos-Mihalopoulos 2011, 7). Ultimately deep legal pluralist approaches require understanding local human-forest relations and co-constructing laws that are both culturally situated in local meanings and interact with global, state and other local normative orders in decolonial, transformative ways. This opens the possibility of a new legal frontier for people and forests of multidimensional more-than-human forms of interlegality.

Notes

1. In United Nations contexts the general practice is to use lower case for “indigenous peoples” except in a restricted sense or specific context where upper case is used, for example in Australia and Canada. However, there is no consensus on the use of initial capitals and lower case, and practice varies according to context, editorial style guides, and the preferences of organisations and individuals. This editorial introduction and the special issue acknowledge this variation in practice and authors have exercised their own discretion.

2. The UN FAO definition of forest as “a land area of more than 0.5 hectares, with a tree canopy cover of more than 10 percent, which is not primarily under agricultural or other specific non-forest land use” is widely accepted at an international policy level (UN FAO 2014).


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