

Progress and Linear Time: International Environmental Law and the Uneven Distribution of Futurity

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‘A linear history will lead us to linear politics and neither will serve us well in an asymmetrical world.’

Elsa Barkley Brown, “‘What Has Happened Here’: The Politics of Difference in Women’s History and Feminist Politics”, *Feminist Studies* 18 (1992), 295.

‘Once upon a time I too thought that the future was the only competent judge of our works and actions. Later on I understood that chasing after the future is the worse conformism of all, a craven flattery of the mighty.’

Milan Kundera, *Slowness* (Faber & Faber 1996), 19-20.

Abstract

This article takes off from the observation that the rhetoric of progress in international law is imbued with temporal assumptions. Through its promise

* Assistant Professor at the Amsterdam Law School (UvA) and member of the Amsterdam Center for International Law (ACIL). I wish to express my gratitude to the convenors of this Symposium, the two anonymous reviewers, and the editors of the journal for their generous engagement with my work. This article also benefitted from comments and exchanges with Philipp Dann, Emily Jones, and Anna Saunders, as well as my colleagues at the Amsterdam Center for International Law. Errors and omissions remain my own.

of human progress, international law presumes a linear trajectory of time, which includes a break from an inferior past and embracing of futurity. While the narrative of progress has been analysed and criticised from multiple angles, its temporal dimensions have remained understudied. This article focuses on the distributive effects of the alliance between progress and linear time in the context of the slow ecological emergency. Drawing upon debates in different disciplines, it shows how international law and discourses are involved in upholding temporal assumptions that may reinforce existing inequalities and run against contemporary ecological imperatives. Through the examples of sustainable development, the concept of ambition, and debates around intergenerational justice, I argue that the field's forward-moving temporality fails to adequately account for the uneven distribution of futurity engendered by climate change and environmental devastation. Understanding how certain ideas about time are made, unmade, and remade in/through international law is central to think about the present and future of life on this planet. It also offers a novel perspective to explore the possibilities for contestation and change within and beyond the legal order.

Keywords

progress – linear time – ecological emergency – futurity – intergenerational justice

I. Introduction

Given major power rivalries, anthropogenic climate disruptions, and ordinary and extraordinary acts of violence against oppressed people, speaking today of progress and international law would seem ridiculous, if not obscene. In the last decade or so, the notion that international legalisation is a force for progress, or even a form of progress in itself, has been problematised by a number of scholars.¹ Yet, has the progressive vision of international law been entirely abandoned? Or has the progress discourse simply become less

¹ See e.g. Thomas Skouteris, *The Notion of Progress in International Law Discourse* (T.M.C. Asser Press 2010); Tilmann Altewicker and Oliver Diggelmann, 'How is Progress Constructed in International Legal Scholarship?', *EJIL* 25 (2014), 425–444. In addition to the literature specifically on progress and international law, one must refer also to the work of legal scholars questioning the teleological orientation of the field and the associated civilising narrative. See e.g. Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press 2005).

cruelly optimistic,² and is still underwriting legal norms, debates, and practices? If so, what is it that makes the teleology of progress so inescapable? This article takes off from the observation that the rhetoric of progress in international law is imbued with temporal assumptions. Through its promise of human progress, international law presumes a linear trajectory of time, which includes a break from an inferior past and embracing of futurity.³ While the narrative of progress in international law has been analysed from multiple angles, the distributive effects of its linear temporality have remained understudied. This contribution explores how, by incorporating temporalities that are primarily (though not exclusively) oriented towards the future, international legal norms and discourses place human and non-humans along an imagined line.⁴ In this process, the allocation of life chances, material resources, privileges, and vulnerabilities is not done equally. An analysis of the temporal dimensions of the progress discourse enables to cast the role of international law in legitimising certain distributive outcomes in a new light.

This analysis seems especially needed in the context of contemporary ecological precarities. Scholars from different disciplines and intellectual traditions have shown how the temporalities of industrial capitalism and neoliberal markets are involved in the current environmental catastrophe.⁵ Ideas and practices of speed and acceleration, for instance, have been central building blocks of modernity and of a globalised economy.⁶ Yet, the time-scales of the natural world exist in tension with the abstract and accelerating temporal dynamics of modernity and capitalism.⁷ Given the way climate change and ecological collapse are amplifying the existing inequalities and marginalisations that are produced by the global capitalist economy, the future possibilities open to differently situated individuals and communities are radically unequal.⁸

² Lauren Berlant, *Cruel Optimism* (Duke University Press 2011).

³ Geoff Gordon, 'The Time of Contingency in International Law' in: Ingo Venzke and Kevin J. Heller (eds), *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford University Press 2021), 162-174.

⁴ Fleur Johns, 'The Temporal Rivalries of Human Rights', *Ind. J. Global Legal Stud.* 23 (2016), 39-60 (43).

⁵ See e.g. Barbara Adam, *Timescapes of Modernity: The Environment and Invisible Hazards* (Routledge 1998); Paul Huebener, *Nature's Broken Clocks: Reimagining Time in the Face of the Environmental Crisis* (University of Regina Press 2020).

⁶ Hartmut Rosa, *Social Acceleration: A New Theory of Modernity* (Columbia University Press 2013); for an analysis of the role of international law, see Nicolas Perrone, 'Speed, Law and the Global Economy: How Economic Acceleration Contributes to Inequality and Precarity', *LJIL* 33 (2020), 557-576.

⁷ See e.g. Adam (n. 5).

⁸ Kevin Grove et al., 'The Uneven Distribution of Futurity: Slow Emergencies and the Event of COVID -19', *Geographical Research* 60 (2022), 6-17.

Although often assumed rather than problematised, time is crucial to the ordinary and extraordinary operation of law, to its legitimacy and authority.⁹ When it comes to the field of international environmental law, temporal concepts, and orientations are embedded in legal norms addressing a variety of environmental concerns.¹⁰ Examples include the principles of prevention,¹¹ precaution,¹² intergenerational equity,¹³ and the invocation of rights of future generations in climate litigation.¹⁴ While the topic of time has gathered recent interest in international legal scholarship,¹⁵ when reflecting on the distributive outcomes of the alliance of time and progress there is still a lot to unpack and learn from other fields of study. The question of law's ambivalent, yet constitutive role, in temporal governance has been the object of a prolific debate in socio-legal studies.¹⁶ Scholars working on the interrelation of law and time have built upon a variety of intellectual traditions showing, notably, how the conceptualisation of time as a linear, unidirectional, and measurable entity emerged in a specific historical moment, under the pressure of modern capitalist and imperialist forces.¹⁷ In so doing, this literature has illustrated how modern temporal structures are deeply embedded in Western ideas and epistemologies,

⁹ Renisa Mawani, 'Law as Temporality: Colonial Politics and Indian Settlers', *UC Irvine Law Review* 4 (2014), 65-96.

¹⁰ Benjamin Richardson, *Time and Environmental Law: Telling Nature's Time* (Cambridge University Press 2017); Julia Dehm, 'The Temporalities of Environmental Human Rights' in: Kathryn McNeilly and Ben Warwick (eds), *The Times and Temporalities of International Human Rights Law* (Bloomsbury 2022), 33.

¹¹ Nicolas de Sadeleer, *Environmental Principles: From Political Slogan to Legal Rules* (Oxford University Press 2020).

¹² Jaqueline Peel, *The Precautionary Principle in Practice: Environmental Decision-Making and Scientific Uncertainty* (The Federation Press 2005).

¹³ Richard P. Hiskes, *Human Rights to a Green Future: Environmental Rights and Intergenerational Justice* (Cambridge University Press 2009).

¹⁴ Larissa Parker et al., 'When the Kids Put Climate Change on Trial Youth Focused Rights-Based Climate Litigation around the World', *Journal of Human Rights and Environment* 13 (2022), 64-89.

¹⁵ Most recent contributions include Klara Polackova Van der Ploeg, Luca Pasquet, León Castellanos-Jankiewicz (eds), *International Law and Time: Narratives and Techniques* (Springer 2022); Kathryn McNeilly and Ben Warwick (eds) *The Times and Temporalities of International Human Rights Law* (Bloomsbury 2022); Michelle Staggs Kelsall, 'Disordering International Law', *EJIL* 33 (2022), 729-759.

¹⁶ See e.g. Martijn Stronks, *Grasping Legal Time: Temporality and European Migration Law* (Cambridge University Press 2022); Linette J. Chua, 'Interregna: Time, Law, and Resistance', *Law and Social Inquiry* 46 (2021), 268-291; Tanzil Chowdhury, *Time, Temporality and Legal Judgment* (Routledge 2020); Sian Beynon-Jones and Emily Grabham (eds), *Law and Time* (Routledge 2019); Emily Grabham, *Brewing Legal Times: Things, Form and the Enactment of Law* (University of Toronto Press 2016).

¹⁷ See e.g. Vanessa Ogle, 'Time, Temporality and the History of Capitalism', *Past and Present* 243 (2019), 312-327; Vanessa Ogle, *The Global Transformation of Time 1870-1950* (Harvard University Press 2015).

and mobilised to legitimise the existing unequal structures.¹⁸ Moreover, through an analysis of different domestic and transnational legal regimes, this scholarship has drawn attention to the asymmetrical effects of the temporalities entrenched *within* the law – how temporalities are not just aesthetic qualities of the law, but they determine who is recognised as a legal subject, who has rights, who has access to remedies, and who not.¹⁹ Thus, even at a more granular level, time operates as a legal technique of inclusion and exclusion.²⁰

In this article I build upon an interdisciplinary literature to explore what is at stakes when a future oriented imaginary of time becomes the reference to enact legal responses to ecological collapse and its uneven impacts. While this piece is primarily concerned with the alliance of progress and linear time in the context of the unfolding ecological crisis, it is important to note that notions of spatiality and temporality often operate together to legitimise and reinforce existing patterns of exclusions.²¹ However, a central aim here is to contribute to recent debates on the relationship between law and time by exploring how notions of temporal linearity are imbued in our field and shape the spectrum of legal approaches to what we may call the ecological slow emergency. The concept of slow emergency, like that of slow violence,²² invites to pay particular attention to the temporal dimensions of governance responses to environmental disruptions that often unfold in non-linear, fluid, and discontinuous ways.²³ Furthermore, it illuminates the distinctive racialised and gendered

¹⁸ Kimberly Hutchings, *Time and World Politics: Thinking the Present* (Manchester University Press 2008); Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (1st edn, Princeton University Press 2000).

¹⁹ The notion of ‘temporalities within the law’ is taken from Keebet von Benda-Beckmann, ‘Trust and the Temporalities of Law’, *Journal of Legal Pluralism & Unofficial Law* 46 (2014), 1–17, observing that ‘[t]emporalities within law affect the specific ways in which rights, obligations, and prohibitions entailed in legal relationships, institutions, and procedures are positioned in time, and the differential ways in which these temporalities affect the outcome of legal procedures and decisions’.

²⁰ See Stronks, (n. 16), 2, showing in his book how it is by ‘means of time’ that migration law makes distinctions between different categories of people, distinctions that have fundamental consequences for migrants’ residence entitlements and rights. See also Chowdhury (n. 16).

²¹ The concept of the ‘chronotope’ elaborated by Mariana Valverde acknowledges those interactions, see Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Routledge 2015). See also Gavin Sullivan, ‘Transnational Legal Assemblages and Global Security Law: Topologies and Temporalities of the List’, *Transnational Legal Theory* 5 (2014), 81–127.

²² Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press 2011). See also Eliana Cusato, *The Ecology of War and Peace: Marginalising Slow and Structural Violence in International Law* (Cambridge University Press 2021).

²³ Adam (n. 5), 9, calling attention to how the effects of environmentally harmful conduct are often spatially and temporally dispersed, for instance, diseases have long periods of latency and may ‘work invisibly below the surface until they materialized as symptoms’.

politics involved in the management of interrelated social, economic, political, and ecological emergencies. The dominant linear imaginary of emergency management, which assumes a transition from disruption, to response, and eventually recovery, does not apply equally to all subjects affected by ecological collapse.²⁴ As international law is so central to governing the slow ecological emergency, its temporal orientations deserve a closer scrutiny. How do conceptions of chronological linearity and progress interpenetrate and work together in international environmental law? How are they encoded in/through legal concepts and discourses? What are their broader normative and distributive outcomes in terms of constituting (unequal) legal relationships?

The article proceeds in three parts. Section 2 takes a step back and deals with the preliminary question of international law's temporal assumptions by considering how (Western) notions of linear time emerged and became dominant across the globe through colonial domination, and the role of law in that process. It revisits Carol Greenhouse's socio-legal history of linear time in Middle Age Europe²⁵ to illustrate how conceptions of linear time were from the outset associated with ideas of redemption, modernity, and progress, as well as how those ideas sustained political economic projects that resulted in the commodification of the natural world. Section 3 examines the role of progress narratives within the field of international environmental law. Through a few examples (sustainable development, environmental human rights, and the concept of ambition), I illustrate the embeddedness of progress within the field, as well as the normative and material issues at stake in the relationship between progress and forward moving temporality. Section 4 develops this line of arguments by beginning a reflection – that certainly deserves to be continued – on the distributive implications of legal engagements with the future in the context of recent debates on climate justice and the rights of future generations.²⁶ I contend that dominant disciplinary commitments to the future are problematic for two reasons: first, because, as other have convincingly argued,²⁷ the assumption about the openness of the

²⁴ Ben Anderson, Kevin Grove, Lauren Rickards and Matthew Kearnes, 'Slow Emergencies: Temporality and the Racialized Biopolitics of Emergency Governance', *Progress in Human Geography* 44 (4) (2020), 621–639.

²⁵ Carol Greenhouse, 'Just in Time: Temporality and the Cultural Legitimation of Law', *Yale Law Journal* 98 (1989), 1631–1651.

²⁶ See e.g. Stephen Humphreys, 'Against Future Generations', *EJIL* 33 (2022), 1061. But see Margaretha Wewerinke-Singh, Ayan Garg and Shubhangi Agarwalla, 'In Defence of Future Generations: A Reply to Stephen Humphreys', *EJIL* 34 (2023), 651–668; Peter Lawrence, 'International Law Must Respond to the Reality of Future Generations: A Reply to Stephen Humphreys', *EJIL* 34 (2023), 669–682.

²⁷ See e.g. Julia Dehm, 'International Law, Temporalities, and Narratives of the Climate Crisis', *London Review of International Law* 4 (2016), 167–193.

future fails to account for structural constraints and the burdens inherited from the past; second, because the liberal imaginary of an open future operates to dismiss the uneven distribution of futurity. The latter concept signals how ‘the modern experience of an anticipatory orientation to the future as potential for change, growth, development, and becoming-other-wise to oneself has been conditioned by historically specific de-futuring practices that violently deny these same possibilities to the racialised Others of the modern Self’.²⁸ To put it differently, legally framing the future as an open horizon erases the many foreclosed futurities of living downwind and through ecological devastations.

The overall argument is that ideas of progress in and through law, and their associated temporality, operate to mask the unequal effects of the political economic order and thus legitimise the perpetuation of socio-ecological exclusions. By investigating the alliances of international law and specific notions of linear time, this article shows ‘how the vocabularies created through these alliances became generalised and thereby difficult to escape’.²⁹ Yet, by reflecting the distributive outcomes of linear time, this article also offers a novel perspective to explore the possibilities for contestation and change within and beyond the legal order. If ideas of chronological linearity and progress are implicated in the making of the current (unequal) political, economic, and legal ordering, any proposal to devise more-liveable presents and futures needs to reckon with international law’s temporal foundations.

II. A Brief History of Linear Time: From European Middle Ages to the Rest of the World

While concepts of time vary widely around the world, and different societies engage different temporal logics to organise themselves, the idea of time as a directional line that moves from past to present, towards the future has pervaded modern understandings of the law.³⁰ Although chronological linearity is not the only temporal notion that underwrites juridical concepts, legal discourses, and practices,³¹ Renisa Mawani, among others, has argued that modern law exhibits a common temporal disposition: its pasts are

²⁸ Grove et al. (n. 8), 7.

²⁹ Anna Saunders, ‘Law after Dominion: Thinking with Martti Koskenniemi on Property, Sovereignty and Transformation’, *Transnational Legal Theory* 13 (2023), 475–492.

³⁰ Beynon-Jones and Grabham (n. 16), 19.

³¹ Johns (n. 4), 44, referring for instance to limitations periods, which interrupt law’s forward moving temporality, and the doctrine of intertemporal law, which requires to go back in time to appreciate ‘judicial facts’ in light of ‘the law contemporary with [them]’.

teleological in orientation, reflecting both a continuity and a rupture with what came before.³² Through its promise of human betterment and progress, law creates a temporal trajectory and overarching telos that seeks to (but cannot entirely) absorb ‘Other’, often conflicting, experiences and ideas of time.³³

A useful starting point to explore how notions of linear time have become dominant and influenced legal forms and discourses is the fundamental work of Carol Greenhouse.³⁴ Greenhouse’s historical analysis of the emergence of linear time in the Western tradition is instructive to, then, interrogate the role of law in the management of multiple temporalities and the institutionalisation of a specific future-oriented temporality.

The idea of linear time that now we take for granted in the West came to Europe with Christianity.³⁵ The concept of linear time, as the segment between creation and judgment day, was initially a theological concern and became laicised in a long process. This process included institutional and social changes in public life and thought, as well as the invention of the mechanical clock in the XIV century.³⁶ The expansion of Christianity into Europe brought two ideas about time that had roots in the Jewish tradition: first, the origins of time in the Creation and, second, the end of time in a Day of Judgment. Early theologians wrote about time as a ‘segment of eternity’ and eternity as ‘endless time’. While late medieval Christianity was not a single entity, historians point out the persistence of ideas of time and eternity: time as history of salvation.³⁷ Linear time became associated with the idea of incomplete nature of humanity and individual’s life. The advancement of time toward a Judgment Day thus represented the advancement of human perfectibility – between a struggle for perfection and the impossibility of achieving it.³⁸

Although concerned about the judgment day, ordinary medieval Europeans were not keeping or recording time. The idea of life as a measurable entity received impetus from the invention of the mechanical clock and its widespread diffusion was key to the laicisation of time, becoming one of the

³² Mawani (n. 9), 71.

³³ Mawani (n. 9), 72; see also Dan Edelstein, Stefanos Geroulanos and Natasha Wheatley, ‘Chronocenosis: An Introduction to Power and Time’ in: Dan Edelstein, Stefanos Geroulanos and Natasha Wheatley (eds), *Power and Time: Temporalities in Conflict and the Making of History* (University of Chicago Press 2020), 1-51.

³⁴ Greenhouse (n. 25).

³⁵ See, generally, Jacques Le Goff, ‘Au Moyen Âge: Temps de l’Église et Temps du Marchand’, *Annales* 15 (1960), 417-433.

³⁶ Pereira Salas Eugenio, translated by P. X. Despilho, ‘L’Evolution de la Notion du Temps et Les Horlogers à l’époque Coloniale au Chili, *Annales* 21 (1966), 141-158.

³⁷ See, generally, Jacques Le Goff, *La Civilisation de l’Occident Médiéval* (Arthaud 1964).

³⁸ Greenhouse (n. 25), 1635.

symbols of secular power and dominion.³⁹ As put by Greenhouse, '[t]he ticking clock was not only a *memento mori*, but a reminder of the ownership of time'.⁴⁰ In this process, linear time becomes a 'time with a purpose': the linearity of time reproduced both the call for redemption and the assumption that the individual can find meaning only by participating in a cosmic order – through 'institutions that await the end of time'.⁴¹ This observation provides us with a fundamental insight: linear time's most persuasive claim is that of its own redemptive power in relation to individual and collective life. The promise of redemption associated with religious and then secular notions of linear time is crucial to understand international law's evolutionary ethos and orientation towards the future which play such an important role in the management of the current ecological predicaments, a point to which I shall return later.

Initially, linear time did not displace indigenous time concepts in Europe, but rather it became an addition to them. People's temporalities were cyclical (four seasons) and binary (day/night).⁴² With the development of new institutional forms (the industrial workshops, the centralised state, and the courts) different forms of social time multiplied, often creating tensions. At the same time, the fact that linear time became, and still is, the dominant form of temporality organising public life derives from its popularisation in the West by the church, monarchs, and other elites who found in the image of 'time's unidirectional progress' the symbol of their legitimacy.⁴³ Indeed, as Greenhouse puts it, 'linear time provides a reservoir of symbols with which the legitimacy of hierarchies can be defended and reproduced', similarly to the symbols of the law and how they serve to its authority, power, and legitimacy.⁴⁴

Three historical and social developments resulted in the dominance of conceptions of linear time within Europe (and, later, beyond it). The first is the secularisation of linear time, which happened when the clock was moved 'from the church to the palace'.⁴⁵ Second, secular monarchies resolved the

³⁹ Jacques Le Goff, *Pour un Autre Moyen Age: Temps, Travail et Culture en Occident*, 18 Essais (Gallimard 1991).

⁴⁰ Greenhouse (n. 25), 1636. See also Ogle (n. 17); Edward P. Thompson, 'Time, Work-Discipline and Industrial Capitalism', *Past and Present* 38 (1967), 56-97.

⁴¹ Greenhouse (n. 25), 1636.

⁴² See, generally, Johannes Fabian, *Time and the Other: How Anthropology Makes Its Object* (Columbia University Press 2014).

⁴³ Greenhouse (n. 25), 1637.

⁴⁴ Greenhouse (n. 25), 1636.

⁴⁵ Greenhouse (n. 25), 1638. See Fabian (n. 42), 2, arguing that 'decisive steps toward modernity [...] must be sought not in the invention of a linear conception, but in the succession of attempts to secularize Judeo-Christian time by generalizing and universalizing it'.

contradictions between an enduring kingship and a mortal king with the notion of the ‘two kings two bodies’ – the separation of the monarch from the state. Third, by the time the modern period began, law had become the dominant instrument of conflict resolution in lieu of violence and the use of force. This fact, together with changes in the structure of the economy and social life, led to the emergence of the common law, the law of contracts, juries, and legal academia.⁴⁶ These developments were fundamental in reinforcing what Greenhouse calls ‘the totalizing ambition of the law’: the idea of law as a complete system, which however does not preclude change; law as a human product, but not identifiable as the product of a particular individual or group.⁴⁷ In being both in time (i. e. being a human product) and out of time (i. e. where does the law begin or end?), law exhibits a mythical dimension. This myth is a temporal one.⁴⁸

Ultimately, this brief excursus illustrates that linear time ended up dominating institutional settings and public life due to its ‘transcendent qualities’ that allow it to absorb all other temporal idioms, which were potentially its rivals. In Europe, the belief in the transcendent qualities of linear time emerged in a specific historical moment (the Middle Ages) when linear time moved from the sacred domain to the domain of the everyday, and it was thereafter reproduced in the modern world.⁴⁹

After being institutionalised in Europe, the concept of linear time was ‘exported’ and imposed upon indigenous and non-European people in parallel with the colonisation of space. By 1884, at the height of British imperialism, the institutionalisation of Greenwich Mean Time (GMT) universalised Western time and made Britain the temporal centre of the world.⁵⁰ The governance of time became, thus, the ultimate expression of rationality, imperial authority and supremacy, enabling the centre to rule on the peripheries from afar.⁵¹ As observed by Dipesh Chakrabarty, the authority of Western time has been essential to support global histories of capitalism, as well as prevailing conceptions of the modern political sub-

⁴⁶ Fabian (n. 42), 1639.

⁴⁷ Fabian (n. 42), 1640.

⁴⁸ Fabian (n. 42), 1640.

⁴⁹ Fabian (n. 42), 1650. See also generally Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time* (translated by Keith Tribe, Columbia University Press 2004) on how modernity in the late 18th century, and its promises of freedom, progress, and infinite human improvement, transformed European experience of time and produced a world accelerating toward an unknown and unknowable future.

⁵⁰ Kevin Birth, ‘Standards in the Shadows for Everyone to See: The Supranational Regulation of Time and the Concern Over Temporal Pluralism’ in: Sian Beynon-Jones and Emily Grabham (eds), *Law and Time* (Routledge 2019), 202–211.

⁵¹ Mawani (n. 9), 75. See also Ogle (n. 17).

ject.⁵² To be modern, one had to embrace a Western approach to time.⁵³ Therefore, Western time was also self-imposed by a number of non-European societies, like Russia and Japan, that saw it as a precondition to becoming civilised, industrial, and modern nations.⁵⁴ The universalisation of 'Western time' has been associated with acts of temporal 'Othering'.⁵⁵ By constructing the 'Other', as archaic and backward the West was able to define itself as modern and progressive.⁵⁶ Of course, it is important to highlight that the Western evolutionist perspective on temporality was forcefully opposed and, while it became dominant, was never entirely successful at displacing 'Other' conceptions of time.⁵⁷

International and transnational law were part of the project of making European time the standard across the globe. As Jennifer Beard and others have noted, the contribution of Judeo-Christian values and the teleology associated with them fulfilled a crucial function in determining the manner in which international normative frameworks supported Europe's imperial expansion.⁵⁸ These values and this particular teleology rendered indigenous populations as 'redeemable sons of God', while constructing their territories as 'areas that had to be brought into the political economy of Christendom'.⁵⁹ As put by Antony Anghie, in this 'linear, evolutionary scheme [...] the non-European world is the past and the European world the future,' and 'by examining the primitive [...] the [white, 'European'] modern acquires a better, clearer sense of itself'.⁶⁰ Moreover, Geoff Gordon has shown how global standardised time was encoded in and by transnational law in 19th century to advance particular political economic interests, namely the ends of trade, liberalisation, and commodification of the natural world. He argues that 'the scientific interest in globally standardised time served to affirm the

⁵² Chakrabarty, *Provincializing Europe* (n. 18). See also Achille Mbembe, *On the Postcolony* (University of California Press 2001).

⁵³ Timothy Mitchell, 'The Stage of Modernity' in: Timothy Mitchell (ed.), *Questions of Modernity* (University of Minnesota Press 2000), 7-34.

⁵⁴ Barbara Adam, 'The Gendered Time Politics of Globalisation: Of Shadowlands and Elusive Justice', *Globalization* 70 (2002), 3-29 (16 f.).

⁵⁵ Fabian (n. 42). For a good overview of these debates, see Katharina Hunfeld, 'The Coloniality of Time in the Global Justice Debate: De-Centering Western Linear Temporality', *Journal of Global Ethics* 18 (2022), 100-117.

⁵⁶ Annibal Quijano and Michael Ennis, 'Coloniality of Power, Eurocentrism, and Latin America', *Nepantla: Views from the South* 1 (2000), 533-580.

⁵⁷ Rahul Rao, 'One Time, Many Times', *Millennium* 47 (2019), 299-308.

⁵⁸ Jennifer Beard, *The Political Economy of Desire* (Routledge-Cavendish 2007).

⁵⁹ Luis Eslava, 'Istanbul Vignettes: Observing the Everyday Operation of International Law', *London Review of International Law* 2 (2014), 3-47 (28).

⁶⁰ Anghie (n. 1), 106.

ideology of western progress that supports the colonial project of international law'.⁶¹

From its sacred origins to the secular dimensions, linear conceptions of time became associated with ideas of redemption, modernity, and progress.⁶² Given that, from the onset, progress and linearity were deeply intertwined with Western imaginary and social practices, they also worked to affirm the superiority a certain worldview and legal ordering.⁶³ As eloquently put by Greenhouse,

“We” moderns are supposed to know that time is “really” linear and infinitely so. We are supposed to know that *time is about motion, change, mortality, and progress*. We are supposed to know that linear time rationalized the periodicity of cyclical time and lifted the veils of timelessness from the now-visible face of human experience, and that the clock is the essential technology of modern life.”⁶⁴

The next section turns to an analysis of the idea of progress within the field of international environmental law to illustrate, through a few examples, the mutual reinforcing relationship between law, progress, and linear time. The overarching narrative of progress through international law is challenged by the fact that most ecological problems (climate change, species extinction, ocean acidification, air pollution) are admittedly getting worse rather than better, despite decades of law-making and judiciary decisions.⁶⁵ Yet, this has not resulted in abandoning the idea of progress in/through law.⁶⁶ On the contrary the urgency to tackle those problems at the global level, and the perceived lack of political will to do so, have resulted in even more calls for legal interventions, which reinforce (rather than undermine) the progressive promise of international law to contribute to more sustainable futures.

⁶¹ Geoff Gordon, ‘Imperial Standard Time’, *EJIL* 29 (2019), 1197-1222 (1218).

⁶² As decolonial scholars have argued, the rhetoric of modernity (with the associated ideas of progress, development, growth) and the logic of coloniality are strongly interlinked. See e.g. Annibal Quijano, ‘Coloniality and Modernity/Rationality’, *Cultural Studies* 21 (2007), 168-178; Gurinder Bhambra, *Rethinking Modernity: Postcolonialism and the Sociological Imagination* (1st edn, Palgrave Macmillan 2007); Walter Dignolo, ‘Delinking: The Rhetoric of Modernity, the Logic of Coloniality, and the Grammar of De-Coloniality’, *Cultural Studies* 21 (2007), 449-514.

⁶³ See also Altwickler and Diggelmann (n. 1), 431, pointing out that ideas of progress are closely tied to Western modernist thinking and that law was crucial in the development of the progress narrative (for instance, through Kant’s view of progress in history as legal progress).

⁶⁴ Greenhouse (n. 25), 1633-1634.

⁶⁵ Ingo Venzke, ‘Tragedy and Farce in Climate Commentary’, *European Review of Books*, 19 April 2023, <<https://europeanreviewofbooks.com/tragedy-farce-in-climate-commentary/>>, last access 26 November 2024.

⁶⁶ Gordon (n. 3); Julia Dehm, ‘Reflections on Paris: Thoughts Towards a Critical Approach to Climate Law’, *Revue Québécoise de Droit International* (2018), 61-91.

III. Progress in International Environmental Law: the Temporalities of Sustainability and Ambition Discourses

In his important work on the idea of progress within the theory of international law, Skouteris explains that there are two genres or usages of the term ‘progress’ in international legal discourses. First, in the uppercase, ‘Progress’ is associated with the belief in the possibilities of improvement and betterment of human condition over space and time through international law. This understanding is embedded into Western history of thought and the role of ‘Progress’ in the grand, overarching narrative describing the evolutionary course of humankind through history, as noted in the previous section. As such, it assumes a ‘unified human race, a unified timeframe, and a unified material space, a single telos, and a single greater good’.⁶⁷ Second, Skouteris contends that in the lowercase, the idea of ‘progress’ works through specific doctrines, institutions, policy initiatives to declare measurable advances in the ‘everyday’ practice of international law.

While the meta-narrative of Progress has been forcefully criticised over the past few decades, and for that reason is less openly invoked in contemporary legal debates (although still, arguably, present in the background and occasionally resurfacing), notions of progress in the lowercase maintain a significance within the discipline and practice of international law. As observed by Skouteris, the failure to prevent humanitarian atrocities, persistent poverty and inequalities, and the climate crisis, have all made the belief in the continuous, somehow ‘natural’ improvement of human condition hard to defend. This, together with the work of postcolonial, feminist, queer, and Marxist legal scholars exposing the structural biases and complicities of the field,⁶⁸ makes it harder to defend the view that international law is *per se* an instrument of progress. Yet, the two accounts of progress that Skouteris identifies, namely international legality as progress (i. e. the idea that international legal norms are a desirable and even necessary means to address global challenges) and progress within international law (i. e. the idea that the field is developing

⁶⁷ Thomas Skouteris, ‘The Idea of Progress’ in: Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press 2016), 939-952 (941).

⁶⁸ See e.g. Anghie (n. 1); Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press 2011); Dianne Otto (ed.), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge 2018); Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press 2019); Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar 2020); Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press 2021).

and becoming 'better' in terms of rules, institutions, practices, judicial decisions) occasionally resurface, especially within distinct sub-disciplinary debates, an example being human rights law.⁶⁹

In international environmental law the narrative of a slow, but incremental progressive development from the 1972 United Nations Stockholm Conference is constantly re-enacted.⁷⁰ Paradoxically, this has happened despite (or perhaps against the background of) warnings of ecological collapse. Environmental politics often rely upon and are structured by narratives of catastrophe, disaster, or extinction.⁷¹ Youth movements invoke apocalyptic imaginaries of the future to call for more ambitious climate action in the present. On the one side, such accounts challenge the premise of the progressive linear temporality that sustains international environmental law. On the other, as Hasan Khan has argued, disaster imaginaries (of overpopulation in the case he examines) are often used to reinforce the teleology of the field and its associated promises of improvement. As he puts it 'catastrophic futural visions [that] have always been entangled with the developmental promise'.⁷² Whereas there may be a tension between these temporal tropes (apocalyptic and progressive), this tension is managed in international environmental law to reinforce a forward-moving temporality that justifies progressive change through law, as the following examples clarify.⁷³

While there are different instances to appreciate the interrelation of progress and linear time, perhaps one of the most illustrative examples is offered by the principle of sustainable development. The latter has been defined the 'Grundnorm' of global environmental governance.⁷⁴ As revealed by Jacobus Du Pisani, progress was not only the antecedent to the notion

⁶⁹ See e.g. Kathryn McNeilly, 'Are Rights Out of Time? International Human Rights Law, Temporality, and Radical Social Change', *Social and Legal Studies* 28 (2019), 817-838.

⁷⁰ De Lucia, for instance, argues that approaches like 'ecologism' rely on a linear narrative that international environmental law is inadequate – because it is anthropocentric – and that this problem is and ought to be solved by an ecocentric re-orientation. See Vito De Lucia, 'Beyond Anthropocentrism and Ecocentrism: A Biopolitical Reading of Environmental Law', *Journal of Human Rights and the Environment* 8 (2017), 181-202. See also Dehm, 'Temporalities of Environmental Human Rights' (n. 10).

⁷¹ Dehm, 'Temporalities of Environmental Human Rights' (n. 10), 38.

⁷² Adil Hasan Khan, 'The "Bihar Famine" and the Authorisation of the Green Revolution in India: Developmental Futures and Disaster Imaginaries' in: Matthew Crave, Sundhya Pahuja and Gerry Simpson (eds), *International Law and the Cold War* (Cambridge University Press 2019), 414-446 (415).

⁷³ I am indebted to one of the reviewers for drawing attention to this aspect.

⁷⁴ Rakhyun E. Kim and Klaus Bosselmann, 'International Environmental Law in the Anthropocene: Towards a Purposive System of Multilateral Environmental Agreements,' *Transnational Environmental Law* 2 (2013), 285-309.

of development, but it also brought into existence the whole concept of sustainability.⁷⁵ By the early 1970s the idea of continuous ‘Progress’ of humankind was losing its appeals, with scholars increasingly calling it an illusion or a myth. During the same period, information on the negative impact of economic development and technological advancements upon the natural environment became available to the larger public; ecological disasters received much media attention; the green movement took off in the West and environmental Non-Governmental Organisations were established. Environmental concerns became a matter of general concern, as fear and anxiety grew on whether unrestricted economic growth could endanger the survival of humanity and, to a certain extent, the planet. The well-known report of the Club of Rome *The Limits to Growth* published in 1972 started a broader discussion in academic and policy circles over the need to balance economic development with the conservation of nature. Against discourses of ecological catastrophe, the concept of sustainable development surfaced as a compromise between the two logics (economic growth and preservation of the natural environment) and was indirectly acknowledged in the 1972 Stockholm Declaration⁷⁶ and defined in the 1987 Brundtland Report.⁷⁷

Sustainable development, however, emerged not much as an alternative to previous approaches focused on pure economic growth, but as the ‘heir’ to the concepts of progress and development, inheriting the temporal assumptions implicit in the latter.⁷⁸ While it was framed as a compromise between growth and conservation, sustainable development was not ideologically neutral, as it was intended as an alternative to the zero-growth option and was thus inclined towards modernisation theories.⁷⁹ Similarly to the mainstream, Western idea of development being defended by its proponents as a form of progress through modernisation, and as the primary mean to achieve

⁷⁵ Jacob Du Pisani, ‘Sustainable Development – Historical Roots of the Concepts’, *Environmental Sciences* 3 (2006), 83–96.

⁷⁶ See notably Principles 12–14 of the Stockholm Declaration (1972), ‘Report of the United Nations Conference on the Human Environment Stockholm, 5–16 June 1972’, A/CONF.48/14/Rev.

⁷⁷ Report of the World Commission on Environment and Development: *Our Common Future* (1987), A/42/427.

⁷⁸ See Du Pisani (n. 75); Hasan Khan (n.71); Pahuja (n. 67).

⁷⁹ For a recent critique of sustainable development in international law, see Louis Kotzé and Sam Adelman, ‘Environmental Law and the Unsustainability of Sustainable Development: A Tale of Disenchantment and of Hope, Law and Critique’ 34 (2023), 227–248; see also Philipp Dann, ‘The Law of International Development’ in: Ruth Buchanan, Luis Eslava and Sundhya Pahuja (eds), *Oxford Handbook of International Law and Development* (Oxford University Press 2023), 35–60.

human wellbeing,⁸⁰ sustainable development thus promotes a forward-moving temporality. The mainstream approach of global environmental governance institutions sees green capitalism and sustainable development as a combination of ‘environmental and sustainability discourses with industrial and economic policy ones, in search of “win-win” solutions and virtuous cycles of progress and prosperity’.⁸¹

Historical discussions of sustainable development illustrate how environmental concerns had to become part of the development discourse in order to rescue the latter from increasing discontent and save the idea that, despite the challenges, ‘humanity’ (in the singular form) was still moving and will keep moving in a desirable direction. The language of sustainable development is, therefore, associated with a distinct temporal imaginary that implies a seamless continuity from the present and into the future, without much radical changes.⁸² It is interesting to note that, although sustainable development emerged in a moment characterised by increasing anxiety about future ecological possibilities, it operated as a re-legitimation of narratives of progress in and through law. And yet, by reproducing a linear trajectory and timeline, sustainable development, as the heir of development discourses, also contributes to a temporal division; the ‘underdeveloped’ is imagined as inhabiting a backward and traditional past, while the ‘developed’ is imagined as ‘the’ future.⁸³

A second, less familiar example is the usage of the term ‘ambition’ in international environmental law. Ambition has been invoked by different actors in the context of climate negotiations⁸⁴ and found its way into the 2015 Paris Agreement,⁸⁵ as well as in other legal documents dealing with a

⁸⁰ Eduardo Gudynas, ‘Debates on Development and Its Alternatives in Latin America: A Brief Heterodox Guide’ in: Miriam Lang and Dunia Mokrani (eds), *Beyond Development: Alternative Visions from Latin America* (Transnational Institute 2013), 15–40. See also Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 1995).

⁸¹ Olivia Bina, ‘The Green Economy and Sustainable Development: An Uneasy Balance?’, *Environment and Planning C: Politics and Space* 31 (2013), 1023–1047 (1024).

⁸² Kyrre Kverndokk and Anne Eriksen, ‘Climate Change Temporalities: Narratives, Genres, and Tropes’ in: Kyrre Kverndokk, Marit Ruge Bjærke and Anne Eriksen (eds), *Climate Change Temporalities: Explorations in Vernacular, Popular, and Scientific Discourse* (Routledge 2021), 8–14.

⁸³ Uma Kothari, ‘History, Time and Temporality in Development Discourse’ in: Christopher A. Bayly, Vijayendra Rao, Simon Szreter and Michael Woolcock (eds), *History, Historians and Development Policy: A Necessary Dialogue* (Manchester University Press 2011), 65–70.

⁸⁴ During the negotiations of the Paris Agreement, the Marshall Islands set up a ‘High Ambition Coalition’ (HAC) to bring together like-minded states around the demands considered necessary to design a progressive climate treaty. On this point, Farhana Yamin, ‘The High Ambition Coalition’ in: Henrik Jepsen, Magnus Lundgren, Kai Monheim and Hayley Walker (eds), *Negotiating the Paris Agreement: The Insider Stories* (Cambridge University Press 2021), 216–244.

⁸⁵ See references to ‘ambitious efforts’ in Article 3 and to ‘highest possible ambition’ and ‘progression’ in Article 4(3) dealing with Nationally Determined Contributions (NDCs) which

variety of environmental issues.⁸⁶ As Leslie-Anne Duvic-Paoli has recently argued, an ambition-centred international legal system presents the world through two stories, ‘one that relies on international law to constrain the selfish ambitions of states that can threaten its very ideals; another that portrays the international legal landscape to be reliant on a process of constant betterment, whereby ambition motivates states to tackle complex global challenges’.⁸⁷ In opposing the ambition discourse to the crisis narrative, the author associates the former with more positive attributes, while acknowledging the limitations of the discourse. First, she stresses ambition’s commitment to ‘structural transformation’. In Duvic-Paoli’s words, ‘unlike the crisis narrative that stresses the inadequacies of the system without disturbing the status quo, ambition is a forward-looking concept: it is not interested in the shortcomings of the past or the imperfections of the present, but rather in how to design a better future’.⁸⁸ Second, ambition would play a fundamental role in motivating states to take actions to address far-reaching objectives, particularly helpful in the climate and environmental fields, through a ‘process of continuous improvement’. Lastly, an ambition discourse assumes a distinct forward-moving temporality, by adopting a long-term perspective that favours incremental change (notably, in the progressive realisation of the Sustainable Development Goals).

One could see echoes of the ambition discourse in the field’s enthusiastic attitude towards climate litigation and, more recently, the rendering of advisory opinions by the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights, and the International Court of Justice. Indeed, most legal scholars and advocates see advisory proceedings as part of ‘an epic battle to save planet Earth’, often glossing over the possible drawbacks of such proceedings.⁸⁹ Here the traditional view that an increasing

represent a ‘progression over time’, Paris Agreement of 12 December 2015, 3156 UNTS 79. For a discussion, see Lavanya Rajamani and Emmanuel Guerin, ‘Central Concepts in the Paris Agreement and How They Evolved’ in: Daniel Klein et al. (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press 2017), 74–90.

⁸⁶ See e.g. the 2030 Agenda for Sustainable Development, UNGA Res 70/1 of 21 October 2015, ‘Transforming Our World: the 2030 Agenda for Sustainable Development’, A/RES/70/1, Preamble and para. 39.

⁸⁷ Leslie-Anne Duvic-Paoli, ‘International Law: A Discipline of Ambition’, *LJIL* 36 (2023), 233–249.

⁸⁸ Duvic-Paoli (n. 87), 242.

⁸⁹ For a more skeptical assessment of the desirability of an advisory opinion on climate change, see Benoit Mayer, ‘International Advisory Proceedings on Climate Change’, *Mich. J. Int’l L.* 44 (2023), 41–115. See also Daniel Bodansky, ‘Advisory Opinions on Climate Change: Some Preliminary Questions’, *Review of European, Comparative & International Environmental Law* 32 (2023), 185–192.

judicialisation of international affairs is a sign of disciplinary progress meets the argument that international courts should be ambitious, take a leading role to address one of the most urgent challenges facing humanity, and become actors of progressive legal developments.⁹⁰

Similarly, the recent recognition of the universal right to a safe, clean and healthy environment by the Human Rights Council,⁹¹ first, and the General Assembly,⁹² later, has been presented as a historic achievement in legal debates. Julia Dehm, however, has shown the problems with a celebratory teleological account of environmental human right.⁹³ First, environmental human rights stabilise a linear temporality, which assumes that a progression from the present conditions can lead to a more sustainable future. Second, environmental human rights embrace the idea of an open future, full of possibilities, which will be enabled by rights. Yet, both legal engagements with the future present shortcomings. Even if the 'utopian' human rights discourse creates a sense of opening, hence frames human rights as indispensable in the transition towards an ecologically just future, it is equally marked by the problem of 'false contingency', as it ignores how past decisions (and historical GHG emissions) have already constrained future possibilities.⁹⁴ This approach glosses over the role of capitalism, with its patterns of exploitation and domination, in shaping dominant understandings of time and narrowing down the possibilities of enacting better futures.⁹⁵ Ultimately, the

⁹⁰ Juan Auz and Thalia Viveros-Uehara, 'Another Advisory Opinion on the Climate Emergency? The Added Value of the Inter-American Court of Human Rights', EJIL:Talk!, 2 March 2023, <<https://www.ejiltalk.org/another-advisory-opinion-on-the-climate-emergency-the-added-value-of-the-inter-american-court-of-human-rights/>>, last accessed 26 November 2024.

⁹¹ UNHRC Res 48/13 of 18 October 2021, 'The Human Right to a Clean, Healthy and Sustainable Environment', A/HRC/RES/48/13.

⁹² UNGA Res 76/300 of 28 July 2022, 'The Human Right to a Clean, Healthy and Sustainable Environment', A/RES/76/300.

⁹³ Dehm, 'Temporalities of Environmental Human Rights' (n. 10), 52-55.

⁹⁴ Dehm, 'Temporalities of Environmental Human Rights' (n. 10), 55. This point is also made by O'Connell, who suggests that, in exploring the possibilities of emancipatory human rights, one has to be aware of the material limits, and that 'in framing and constructing them [those alternative temporalities] we do not operate with an entirely free hand, under conditions of our own choosing', see Paul O'Connell, 'Human Rights Futures' in: Kathryn McNeilly and Ben Warwick (eds), *The Times and Temporalities of International Human Rights Law* (Bloomsbury 2022), 211-228 (214).

⁹⁵ O'Connell (n. 94), 214, arguing that 'the capitalist mode of production, which prevails at a global level, instantiates a particular temporality of its own. This, in turn, shapes our understandings of time and temporality, and, importantly, sets firm limits on alternative accounts' [read futures]. See also Ben Golden, 'Beyond Redemption? Problematising the Critique of Human Rights in Contemporary International Legal Thought', *London Review of International Law* 2 (2014), 77-114.

usage of the term ambition in international environmental law is problematic precisely because of the strong connection between the ‘new’ ambition discourse and the more familiar trope of progress in international law.⁹⁶ While Duvic-Paoli recognises that an ‘ambition discourse encourages continuous progress and leaves little space to question this logic’,⁹⁷ she concludes that references to ambition look as a ‘powerful motor for change to maintain trust in the international legal system and to avoid backsliding’.⁹⁸ However, the legal language of ambition and progressive future improvement works to excuse and possibly legitimate the persistent failures in dealing with climate change in the present, which are amply documented.⁹⁹

It is by questioning the continuities between progress and ambition, I contend, that it becomes possible to make sense of the enduring logic of progress in the field, its underlying temporal assumptions, and distributive implications. To do so, it is helpful to recall two elements that, according to Skouteris, characterise the progress argument in international law – and that bring to centre stage the question of legal temporalities. The first is the ‘directionality’ implicit in the idea of progress.¹⁰⁰ Progress is about moving forward and a specific temporal orientation in human history, from a place or condition or status, to another place, condition, or status.¹⁰¹ A theory of causality becomes thus crucial to establish a cause-effect relationship that results in movement, in stepping forward, in advancing. While narratives of progress always imply an interpretation and engagement with the past, they also link distinct (often selective) views of the past to the present and the future.¹⁰² The second is the idea of ‘betterment’. Progress requires ‘an evaluation that the new state of affairs is somehow superior to the previous one and

⁹⁶ See discussion of the narrative of progress and ambition in the Paris Agreement in Dehm, ‘Reflections on Paris’ (n. 66), 71.

⁹⁷ Duvic-Paoli (n. 87), 248.

⁹⁸ Duvic-Paoli (n. 87), 248.

⁹⁹ See e.g. Intergovernmental Panel on Climate Change (IPCC), 2023: ‘Summary for Policymakers’ in: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, IPCC, Geneva, Switzerland, 1–34.

¹⁰⁰ Skouteris (n. 67), 946.

¹⁰¹ On this point, see also Altwicker and Diggelman (n. 1), 432, arguing that one of ‘techniques’ through which progress narratives are constructed in international legal is ‘ascending periodization’, meaning that progress narratives can be created by cutting the history of international law into two or more periods and giving the most recent period the most favourable label.

¹⁰² Altwicker and Diggelman (n. 1), 428.

an axiological criterion on the basis of which the evaluation will be conducted'.¹⁰³

It follows from the above that the notion of progress has not only a descriptive function, indicating a certain directionality, but must be treated as 'normative mode of speaking the world'.¹⁰⁴ In that, progress has both discursive and distributive effects. It creates values, meanings; it includes and excludes; it legitimises and de-legitimises. Furthermore, the relationship between progress and international law is one of mutual co-constitution. Progress is strongly embedded in legal narratives operating at the macro or micro levels, through specific environmental norms, principles, and procedures.¹⁰⁵ Conversely, legality is constituted and emerges from ideas of progress which, as noted, possess an inherent normative dimension.

Temporalities have similar characteristics. Mawani has suggested understanding 'law as temporality', meaning critically exploring the role of law in the production of time as past, present, and future; law's imposition of time on legal subjects, and the tensions between law's overarching time and the multiplicity of lived times.¹⁰⁶ Similarly, Gordon has showed that law and time work together as a 'technology' to advance a specific world-view with material outcomes. International law's temporal orientations, linked to the ideology of progress, contribute to the 'sustained expansion of the humanist project', while supporting the political economic interests that underpin the global order, namely free trade and competitive markets.¹⁰⁷

The next section considers how foregrounding the alliance between progress and linear time may help us better understand the field's engagement with futurity and its distributive effects. Environmental law has been described as 'one of the most future-oriented legal disciplines that, without

¹⁰³ Skouteris (n. 67), 947.

¹⁰⁴ Skouteris (n. 67), 939. See also Sheila Jasanoff, 'The Idiom of Co-Production' in: Sheila Jasanoff (ed.), *States of Knowledge: The Co-Production of Science and the Social Order* (Routledge 2004), 2f., on the co-production of knowledge practices and normative ordering of society.

¹⁰⁵ In addition to the examples discussed above, see the emergence of the so-called principle of 'non-regression' in international environmental law. For a discussion, see Andrew D. Mitchell and James Munro, 'An International Law Principle of Non-Regression from Environmental Protections', *ICLQ* 72 (2023), 35-71. Another example concerns the recent proposal to codify 'ecocide' as an international crime in the Statute of the International Criminal Court, where the proposed article 8ter is presented as part of a progress narrative that, however, erases the material interests underpinning the criminalisation of ecological harm. See Eliana Cusato and Emily Jones, 'The "Imbroglia" of Ecocide: A Political Economic Analysis', *LJIL* 37 (2024), 42-61.

¹⁰⁶ Mawani (n. 9), 69.

¹⁰⁷ Gordon (n. 3).

much conscious effort, involves everyday acts of imagination, anticipation, projection, prediction and promise'.¹⁰⁸ The law on climate change is particularly emblematic of the 'multiple futures at play at any one time', as it deals with carbon budgets, emissions targets, transitional economies, precaution, and sustainability.¹⁰⁹ Futurity plays also a central role in legal debates on the Anthropocene thesis and how to enact just responses to the unfolding ecological catastrophe, including by upholding the rights of future generations. This makes it a productive angle to delve deeper into the distributive outcomes of international environmental law's temporal orientations.

IV. International Law, Ecological Collapse, and Engagements with the Future

The role of law in regulating, framing and producing distinct 'futures' has assumed central stage within debates on the Anthropocene thesis. Without entering into the controversies surrounding the definition of this 'new' geological epoch,¹¹⁰ legal scholars have pointed out how the Anthropocene demands a remaking of dominant temporal accounts, as well as spatial abstractions.¹¹¹ Building on Donna Haraway's work, Anna Grear argues the Anthropocene reflects the imposition of European chronologies on the rest of the world through colonial practices and that the unfolding climate crisis is precisely the material outcome of such imposition and the construction of the 'global'.¹¹²

¹⁰⁸ Elen Stokes and Ben Pontin, 'Historical Futures and Future Futures in Environmental Law Pedagogy: Exploring "Futures Literacy"', *International Journal of Law in Context* 18 (2022), 440-449 (440). Of course, while this article is concerned with the field's engagement with linear temporality and the future, the past is also a very important entry point to question the distributive outcomes of legal times. One example is the recent shift to consider the past via the policies and laws on ecosystem restoration. On this point, see Richardson (n. 10), especially Chapter 5, where the author considers the traditional lack of attention to 'past time' in environmental law, and then recent efforts to correct this in international (and domestic) environmental law.

¹⁰⁹ Stokes and Pontin (n. 108), 440.

¹¹⁰ For an overview of the debate surrounding the Anthropocene thesis or nomenclature, see Kathleen Birrell and Julia Dehm, 'International Law and the Humanities in the Anthropocene' in: Shane Chalmers and Sundhya Pahuja (eds), *The Routledge Handbook of International Law and the Humanities* (Routledge 2021), 407-421. See also Dipesh Chakrabarty, 'Anthropocene Time', *History and Theory* 57 (2018), 5-32; Kathryn Yusoff, *A Billion Black Anthropocenes or None* (University of Minnesota Press 2019).

¹¹¹ Birrell and Dehm (n. 110).

¹¹² Anna Grear, "'Anthropocene Time'? A Reflection on Temporalities in the New Age of the Human' in: Andreas Philippopoulos-Mihalopoulos (ed.), *Routledge Handbook of Law and Theory* (Routledge 2019), 297-315 (302).

The concept of the ‘Capitalocene’,¹¹³ in outlining the role of capitalism in the genesis of the ecological catastrophe, illuminates also the Eurocentric and market-based temporalities that define the Anthropocene.¹¹⁴ This, in turn, demands to take seriously the temporalities that organise our political economic and legal systems, that are involved in the making of the current ecological breakdown, and that may restrict the possibilities of devising more liveable worlds.¹¹⁵

In this section, I continue to interrogate the temporal imaginaries, and specifically the orientation towards the future, that permeates debates in international environmental law. The argument I want to make is twofold: first, the presumed openness of the future is a double-edged sword, which both enables and constrains the legal imagination and the capacity to enact structural responses to the ecological slow emergency; second, international law’s forward-moving temporality (the result of the alliance between progress, modernity, and chronological linearity) masks the uneven distribution of futurity which underpin the global political economic order. Hence, the field’s dominant engagement with the ‘future’ (often, in the singular form) operates to dismiss, or better postpone, distributive questions – questions that may be better answered by turning to the past,¹¹⁶ or at least to the present. This ends up legitimising the current global distribution of life chances and possibilities.

In investigating the relationship between international environmental law and futurity, a helpful starting point concerns the unknown character of the future and its multiplicity.¹¹⁷ The idea of future as being ‘unattainable and unknowable in the present’, in Elisabeth Grosz’s words,¹¹⁸ is often invoked by international lawyers and policy-makers as opening new possibilities,

¹¹³ Jason Moore, *Capitalism in the Web of Life: Ecology and the Accumulation of Capital* (Verso 2015); Donna Haraway, ‘Anthropocene, Capitalocene, Plantationocene, Chthulucene: Making Kin’, *Environmental Humanities* 6 (2015), 159–165.

¹¹⁴ Gear (n. 112), 307.

¹¹⁵ Dehm, ‘International Law’ (n. 27), 167.

¹¹⁶ Stephen Humphreys, ‘Climate Justice: The Claim of the Past’, *Journal of Human Rights and the Environment* 5 (2014), 134; Julia Dehm and Sarah Mason-Case, ‘Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present’ in: Benoit Mayer and Alexander Zahar (eds), *Debating Climate Law* (Cambridge University Press 2021), 170–205; Olúfemi O. Táíwò, *Reconsidering Reparations* (Oxford University Press 2021).

¹¹⁷ Edelstein, Geroulanos and Wheatley (n. 33), 21.

¹¹⁸ Elisabeth Grosz, *Time Travels: Feminism, Nature, Power* (Duke University Press 2005), 75 urging that ‘we must act in the present, with the light the past sheds on that present, but we must, by virtue of the difference that inhabits the present, cede any control of our present act to a future that we cannot foresee or understand’. See generally also Koselleck (n. 49), referring to the ‘unknown quality’ of the future, which emerged with modernity and its promises of freedom, progress, and infinite human improvement.

including for more emancipatory agendas. Because of their utopian dimension, human rights discourses are the best example of the transformative potential associated with open futures.¹¹⁹ Kathryn McNeilly has argued, for instance, that the future of human rights is ‘unsettled and unknowable, capable of moving forwards, backwards or in another direction in response to contingent contexts’ and this openness offers ‘hopeful possibility’.¹²⁰ While this may be true on an abstract level the openness of the future is not only associated with opportunities when it comes to confronting the unequal effects of rising temperatures, mass extinction and biodiversity loss, toxic pollution, ocean acidification, and land degradation.

On the one side, ‘openness’ implies uncertainty. Such uncertainty about the future impacts of present actions can be opportunistically invoked by some actors to postpone much-needed climate mitigation measures and to deny responsibility.¹²¹ Benjamin Richardson notes that, among the many legal temporalities at play in environmental law, ‘the pull of the future is a mirage [...] with the present exerting far greater rein over environmental decisions and habits’.¹²² This implies that decision makers may be more reluctant to take action now in the interest of future benefits or to remedy historical harms, thus creating ‘a mismatch [...] between awareness and action, and between who incurs the costs and who received the benefits of action’.¹²³ Sheila Jasanoff also points out that “future” is an open-ended concept, stretching to infinity, whereas the scope of moral [and, I would add, legal] thinking is ordinarily confined to the immediate past and near-term future’.¹²⁴

On the other side, the presumed ‘openness’ of the future – a horizon of opportunities for change, action, and improvement – has been contested by critical race scholars showing how it is based upon a temporal imaginary of the modern, liberal subject, which ignores that non-white, non-male subjects are denied the same futurity.¹²⁵ Global warming’s disproportionate impacts upon the most vulnerable across space and time exposes some of the prevail-

¹¹⁹ See e. g. Kathryn McNeilly (n. 69).

¹²⁰ Kathryn McNeilly (n. 69), 828-830.

¹²¹ See Chris Hilson, ‘Framing Time in Climate Change Litigation’, *Oñati Socio-Legal Series* 9 (2017), 361-379. See also Phillip Paiement, ‘Urgent Agenda: How Climate Litigation Builds Transnational Narratives’, *Transnational Legal Theory* 11 (2020), 121-143, discussing the arguments put forwards by the Dutch, Irish, and Norway to postpone the adoption of measures to reduce their GHG emissions.

¹²² Richardson (n. 10), 123.

¹²³ Richardson (n. 10), 47.

¹²⁴ Jasanoff (n. 104), 242.

¹²⁵ See Grove et al. (n. 8). See also Katherine McKittrick, ‘Plantation Futures’, *Small Axe* 17 (2013), 1-15; Andrew Baldwin, ‘Whiteness and Futurity: Towards a Research Agenda’, *Progress in Human Geography* 36 (2011), 172-187.

ing and highly ‘uneven distributions of futurity’ that condition forms of life in modern societies.¹²⁶ Furthermore, such ‘openness’ has been questioned also on a material level. Andreas Folkers aptly observes that given the excessive accumulation of fossil residuals in air, water, and earth, the future is not just an ‘open horizon of infinite options’.¹²⁷ Since modern societies are confronted with the persistence of residuals of fossil capitalism in the air, soil, water, they cannot fully emancipate from the past to seize an open future of progress and possibilities.¹²⁸

These arguments have important implications for legal thought and practice. How does the field navigate the tension between an open future, the burdens of past, and the constraints of the present? Are international legal engagements with futurity too optimistic¹²⁹ or hopeful?¹³⁰ And how does international law relate to the political economic and ecological conditions that fundamentally shape these temporalities? What are the possibilities to challenge and disrupt the dominant temporal orientations, so as to recover alternative readings of the past and present, as well as more emancipatory visions of the future?¹³¹ These are big, perhaps too big questions, that I can only begin to unpack here. One way to begin this conversation is to consider ongoing legal debates on intergenerational justice and the rights of future generations.

The concept of intergenerational justice, supported by the principle of intergenerational equity,¹³² is meant to express a sense of responsibility for environmental harms against ‘future generations’. The Maastricht Principles on the Human Rights of Future Generations, adopted in July 2023, represent a recent attempt by civil society and academics to codify the ‘rights of future generations’.¹³³ Intergenerational justice is explicitly at the core of the re-

¹²⁶ Grove et al. (n. 8).

¹²⁷ Andreas Folkers, ‘Fossil Modernity: The Materiality of Acceleration, Slow Violence and Ecological Futures’, *Time and Society* 30 (2021), 223–246 (238). Many thanks to Julia Dehm for suggesting this reading.

¹²⁸ Folkers (n. 127), 225.

¹²⁹ On the role of optimism in dealing with ecological limits, see Venzke (n. 65).

¹³⁰ On international law and hope, see Karin Mickelson, ‘Hope in a TWAIL Register’, *TWAIL Review* 1 (2020), 14–27, drawing a distinction between optimism, hope, and faith.

¹³¹ See e.g. Nicolas Guilhot, ‘The Lull: Our Age of Catastrophic Uneventfulness’, *The Point Magazine* 28 (18 October 2022), <<https://thepointmag.com/politics/the-lull/>>, last access 3 December 2024; Anna Agathangelou and Kyle Killian (eds), *Time, Temporality and Violence in International Relations: (De)fatalizing the Present, Forging Radical Alternatives* (Routledge 2016).

¹³² See e.g. references in Art. 3 No. 1 UN Framework Convention on Climate Change of 9 May 1992, 1771 UNTS 107, and the Preamble of the Paris Agreement on Climate Change (n. 85).

¹³³ The Maastricht Principles on the Human Rights of Future Generations, available online at <<https://www.rightsoffuturegenerations.org/the-principles>>, last access 3 December 2024.

quests for advisory opinions from the Interamerican Court of Human Rights and the International Court of Justice and has also been raised in the context of the advisory proceedings before the International Tribunal on the Law of the Sea.¹³⁴ As observed by Stephen Humphreys, the invocation of responsibility towards future generations is, at first sight, a successful discursive strategy.¹³⁵ The future generations framing is based upon an assumption of intra-generation solidarity and thus it defuses the conflicting positions that have come to characterise climate negotiations over the past few decades. Further, it is empowering, it gives agency to those alive in the present to take action to the benefits of our children and grandchildren (often, the imagined future generations).¹³⁶ Humphreys argues, however, that the turn to future generations in legal responses to climate change generates an ‘epistemological fog’ that obscures, distracts from what is already well understood in terms of equitable climate action in the present – notably, mitigation, adaptation, and loss and damage.¹³⁷ As such, the invocation of responsibility vis-à-vis future generations abjures responsibility towards those who are alive today – those who for historical and economic reasons already bear the burden of climate change.¹³⁸ While Humphrey’s does not argue against an ‘imaginative engagement with the future’, he contends that any appraisal of the futurity would need to go beyond the ambiguity of the future generations discourse. As he puts it:

“We” – but really a (sizeable) minority of us – are, in effect, shaping, even colonizing, future lives and lifestyles, just as past generations colonized the lives of (many) of us alive today. My concern is that “our”

¹³⁴ Intergenerational justice and equity are also at the very centre of strategic youth climate litigation at the regional and domestic levels, see the *Duarte Agostinho et al. v. Portugal et al.* case before the European Court of Human Rights (ECtHR (Grand Chamber), *Duarte Agostinho et al. v. Portugal et al.*, decision of 9 April 2024, no. 39371/20); the 2021 *Neubauer* decision of the German Constitutional Court (Germany, BVerfG, order of 24 March 2021, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20); the 2018 decision of the Colombian Supreme Court in the case of *Demanda Generaciones Futuras v. Minambiente* (Colombia, Corte Suprema de Justicia, decision of 5 April 2018, STC4360-2018, no. 11001-22-03-000-2018-00319-01). For a review of recent case-law, see Wewerinke-Singh, Garg and Agarwalla (n. 26). See also Elizabeth Donger, ‘Children and Youth in Strategic Climate Litigation: Advancing Rights Through Legal Argument and Legal Mobilization’, *Transnational Environmental Law* 11 (2022), 263–289.

¹³⁵ Humphreys, ‘Against Future Generations’ (n. 26), 1062.

¹³⁶ Marie C. Petersmann, ‘Response-abilities of Care in More-than-human Worlds’, *Journal of Human Rights and the Environment* 12 (2021), 102–124 (114), drawing attention to the disjunction between this image of near time underpinning future generations discourse and deep time concerns.

¹³⁷ Humphreys (n. 26), 1064.

¹³⁸ Humphreys (n. 26), 1063. See also Hilson (n. 121), 361.

mode of interpolating “them”, as the nominal beneficiaries of an imagined munificence repeatedly postponed, merely repeats this ancient gesture again.¹³⁹

A central component of the legal rhetoric of future generations is the invocation of sacrifice, although it remains unclear upon whom this sacrifice should fall.¹⁴⁰ Indeed, climate change is already associated with sacrifice – deaths, displacements, species extinction, loss of livelihoods and culture. While it is undeniable that actions to combat climate change require sacrifice, the latter is currently distributed in unequal terms. For some people mitigation may be relatively costless, for other it may entrench endemic poverty; for some, the effects of climate change are lethal, for other, there may be even economic opportunities associated with it.¹⁴¹ While the legal register of future generations suggests some form of solidarity,¹⁴² it seems built upon different premises than those advocated by the Global South: rather than on reciprocity and responsibility, the discourse is more akin to a parent/child relationship.¹⁴³

Although temporalities are not a specific concern of Humphreys’s analysis, a focus on time may offer a distinct angle to consider the problems of dominant intergenerational justice discourses.¹⁴⁴ Time is an implicit, though crucial, component of the concept of intergenerational justice. Political philosopher Christine Winter has noted that mainstream theories and policies on future generations tend to reproduce Western assumptions about unilinear

¹³⁹ Humphreys (n. 26), 1063. Equally problematic is, according to Humphreys, the reference to ‘we’. While the emphasis on ‘we’ (the present generation) assumes the existence of a collective entity, a community, a communion, it also obscures the divide and thorny issues that have characterised climate negotiations for the past 30 years, notably issues of equity, common but differentiated responsibility, and environmental justice. Humphreys (n. 26), 1073.

¹⁴⁰ Humphreys (n. 26), 1068.

¹⁴¹ Humphreys (n. 26), 1083.

¹⁴² See e.g. the reference to international solidarity in Principle 10 of the Maastricht Principles on the Human Rights of Future Generations (n. 133). Principle 10 is framed in a very general and vague language with references to the human right to a clean environment and rights of nature.

¹⁴³ The invocation of future generations in climate change debates is part of a long-standing literature and imagery casting humankind as stewards of the natural world ‘for posterity’, or in colonial language, as ‘trustees’ of humanity. On this point, see Stephen Humphreys and Yoriko Otomo, ‘Theorising International Environmental Law’ in: Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press 2016), 797–819.

¹⁴⁴ When referring to dominant conceptualisations of intergenerational justice, I am aware that those are contested by indigenous communities and subaltern groups. On this point, see Wewerinke-Singh, Garg and Agarwalla (n. 26). It is also important to clarify that not all indigenous peoples and non-Western societies lack a sense of linear time.

time, ‘the present fleeting, the past disengaged’.¹⁴⁵ In other words, the institutional politics of intergenerational justice exist in the now and look at the future. What may happen, asks Winter if, drawing upon Māori epistemology, we think of generations living not in competitive temporal sequences, but synchronically?¹⁴⁶ Would that change our understanding of our obligations to the ‘future’? Would that alter how we imagine intergenerational justice – and perhaps also address some of the concerns raised by Humphrey above? Winter’s reflections call for a new legal conceptualisation of intergenerational justice that not only speaks of a better future but inherits a complicated past that will not go away any time soon.¹⁴⁷

A timid attempt in that direction is made in the Maastricht Principles on the Human Rights of Future Generations through the recognition that ‘States must also redress the *continuing impacts of past injustices* in order to ensure that present and future generations are not subject to similar abuses’.¹⁴⁸ However, tellingly, this is the only reference to ‘past injustices’ in the Maastricht Principles and the relevant obligation to ‘redress’ is framed only in the context of the General Provisions. The sections on ‘State Obligations’ and ‘Accountability and Remedies’, interestingly, contain no references to past injustices. Ongoing debates and efforts to codify the rights of future generations underscore the necessity to expand our understanding of the work of time as a legal technique of inclusion and exclusion in the context of the ecological slow emergency. On the one side, they confirm the problems with the field’s liberal trajectory of futurity that I raised above: how international law’s linear, forward-moving temporality operates to postpone actions and overestimates the possibilities of an ‘open’ future, while entrenching divisions across lives and obscuring the ‘uneven distribution of futurity’ in governance responses to ecological collapse. If the legal language of future generations is a ‘language of redemption’,¹⁴⁹ this language may also be found in Middle Age conceptions of linear time, subsequently laicised and institutionalised through legal developments. Yet, the promise of redemption is accompanied by the constant deferral of political emancipation and redistribution.¹⁵⁰

¹⁴⁵ Christine J. Winter, ‘Does Time Colonise Intergenerational Environmental Justice Theory?’, *Environmental Politics* 29 (2020), 278–296 (290), drawing upon Māori epistemology and ontology of time to decolonise intergenerational justice theory. As Winter put it ‘rather than a notion of time as forward movement through space, it becomes instead spirally bound and emplaced/embodyed. I am concurrently future generations, living, and ancestor. My being and knowledge oscillate between ancient and modern, current and future’, Winter (n. 145), 283.

¹⁴⁶ Winter (n. 145), 279.

¹⁴⁷ Folkers (n. 127), 240.

¹⁴⁸ Maastricht Principles (n. 133), see Principle 6(d). Emphasis added.

¹⁴⁹ Humphreys (n. 26), 14.

¹⁵⁰ Gordon (n. 3).

On the other side, because time is so ingrained into law's operation, and essential to its legitimacy and authority, thinking through time allows to ask more foundational questions about the nature of international law and explore the possibilities for contestation within and beyond the legal order.¹⁵¹ One example is offered by the efforts of environmental justice movements to slow down (or even interrupt) Western time's forward motion. Youth mobilisation to disrupt extractivist imaginaries,¹⁵² as well as Global South demands to redress historical Greenhouse gases emissions emanating from affluent countries and their corporations¹⁵³ are illustrative of how both the past and future are emerging as sites for political and, often, legal struggles. In demanding a more just distribution of carbon liabilities in the present, climate justice movement seek to come to term with a past that has never ended, but that 'materially insists, persists, and thus occupies the horizon of expectations'.¹⁵⁴ Studying law's temporalities can offer a distinct contribution to understand ongoing processes of contestation and transformation, and what is required for those changes to take place. It can sharpen our appreciation of the stakes involved in projects aimed at coming to terms with intersecting injustices, and of the work of law in both embracing and repudiating 'Other' timescales, rhythms, tempos.

V. Conclusion

Despite compelling evidence of planetary limits and mass extinctions, most international lawyers seem to remain attached to the idea of progressive development of the field and law's capacity to adapt to most urgent global

¹⁵¹ Chua (n. 16), 268; Vasuki Nesiah, 'A Double Take on Debt: Reparations Claims and Regimes of Visibility in a Politics of Refusal', *Osgoode Hall Law Journal* 59 (2022), 153-187.

¹⁵² See e.g. Anna Friberg, 'Disrupting the Present and Opening the Future: Extinction Rebellion, Fridays for Future, and the Disruptive Utopian Method', *Utopian Studies* 33 (2022), 1-17.

¹⁵³ Sarah Riley-Case, 'Looking at the Horizon: The Meaning of Reparations for Unbearable Crises', *AJIL Unbound* 117 (2023), 49-54, referring to the speech delivered by the Prime Minister of Barbados, World Leaders Summit, 27th Conference of the Parties to the UNFCCC, 7 November 2022. See also E. Tendayi Achiume, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance of 25 October 2022, 'Ecological Crisis, Climate Justice and Racial Justice', A/77/2990; Report of the Working Group of Experts on People of African Descent, 'Environmental Justice, the Climate Crisis and People of African Descent' of 21 September 2021, A/HRC/48/78, para. 42; International Climate Justice Network, 'Bali Principles of Climate Justice', presented at the United Nations World Summit on Sustainable Development, Johannesburg, South Africa, 29 August 2002, online at <<http://www.ejnet.org/ej/bali.pdf>>, last access 3 December 2024.

¹⁵⁴ Folkers (n. 127), 239.

challenges. Yet, while international lawyers are ‘addicted to progress’, they are often ambivalent about the distributive implications for their discipline.¹⁵⁵ This article explored how Western ideas of chronological linearity and progress work together in international environmental law to advance a specific worldview with normative and material effects. I started by considering the emergence of the notion of linear time in Middle Age Europe, and the role of law in its institutionalisation and subsequent global dominance through the alliance with discourses of progress and modernity. Then I showed how future-directed notion of progress underpin key legal concepts and discourses that are relevant to address the present ecological predicaments, notably sustainable development, environmental human rights, and ambition. Further, I argued that analysing the interplay of linear time and the rhetoric of progress can reveal important insights about the way in which the field deals with the unequal impacts of ecological collapse. Law’s progressive promise and orientation towards an open future, I suggested, obscures the uneven distribution of futurity engendered by climate change and environmental devastation, thereby contributing to the legitimisation of the existing status quo. While one cannot discard the idea of other possible and more ecologically just worlds, in order to envision and act towards them international lawyers need to reckon with the unequal temporalities of the (colonial) past and the (extractive) present – temporalities that are deeply entrenched in the field¹⁵⁶ and that may restrict our legal imagination. In arguing for a critical reflection on the distributive outcome of the temporalities encoded *within* international (environmental) law, it is helpful to conceive of the future as a set of contested legal relationships embedded in the present and emerging from the past, as illustrated by ongoing debates on intergenerational justice.

Far from being a comprehensive study of the role of temporalities in shaping legal norms and discourses (and vice versa), my contention is that international legal scholarship may benefit by attending to the ways in which our discipline and profession are infused with specific notions of time that may entrench, rather than challenge, intersecting exclusions and inequalities. Any conversation on the role of law in working towards more sustainable futures needs to account for the field’s temporal foundations and orientations, its foreclosed promises and possibilities.

¹⁵⁵ Fleur Johns, ‘Disastrous Law: International Law and the Shock-Absorption of Disaster’, *AJIL* 117 (2023), 151–171 (168).

¹⁵⁶ Surabhi Ranganathan, ‘Ocean Floor Grab: International Law and the Making of an Extractive Imaginary’, *EJIL* 30 (2019), 573–600.

