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# Populism, environmental law, and the post-pandemic order\*

## Populismo, direito ambiental e a ordem pós-pandemia

Alessandra Lehmen\*\*

### Abstract

Environmental law is particularly prone to being antagonized by populist politics. This assertion entails relevant theoretical and practical implications, yet it has received scarce attention from scholars and policymakers. This paper aims at analyzing the dynamics of this opposition, as well as its manifestations in the Global South. Furthermore, against the backdrop of the COVID-19 pandemic, this article explores the relationship between the environment and epidemiological outbreaks. Lastly, the future of environmental law in the post-pandemic world order is discussed, considering in particular the idea of a *reflux of globalization* – a phenomenon that reinforces nationalisms and casts a shadow on multilateralism – and how the inherent tension with populism should play out in this scenario. In doing so, this study hypothesizes that a widespread health emergence could potentially change the public's risk perception so significantly that populist politics would no longer be able to eschew the environmental agenda and its public health implications.

**Keywords:** Populism. Environmental law. Environmental governance. Climate change. Public health. COVID-19 coronavirus pandemic.

### Resumo

O Direito Ambiental é particularmente propenso a ser antagonizado por políticas populistas. Esta afirmação tem implicações teóricas e práticas relevantes, que, entretanto, receberam pouca atenção por parte de estudiosos e de formuladores de políticas públicas. Este artigo tem por objetivo analisar a dinâmica desse antagonismo, bem como suas manifestações no Sul Global. Explora-se, além disso, a relação entre meio ambiente e emergências epidemiológicas no contexto da pandemia de COVID-19. Por fim, discute-se o futuro do Direito Ambiental na ordem mundial pós-pandemia, considerando, em particular, a ideia de um refluxo da globalização – fenômeno que reforça nacionalismos e eclipsa o multilateralismo – e de como a inerente tensão com o populismo se desenvolve neste cenário. Ao fazê-lo, este estudo levanta a hipótese de que uma emergência generalizada de saúde teria o potencial de mudar a percepção de risco do público de forma tão significativa que políticas populistas não mais seriam capazes de desviar-se da agenda ambiental e das implicações desta para a saúde pública.

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**Palavras-chave:** Populismo. Direito Ambiental. Governança ambiental. Mudanças climáticas. Saúde pública. Pandemia de COVID-19.

## 1 Introduction

This paper argues that the relationship between Environmental Law and populism is inherently antagonistic. Environmental law is pluralistic by design – in the sense that, to be effective, it needs to take into account the interests of a myriad of stakeholders –, and derives its legitimacy, as well as its ability to seek responses for complex environmental issues, from a set of highly institutionalized practices. Populism, conversely, is antipluralist; a complex phenomenon that, paradoxically, strives to offer simple and immediate solutions. Unearthing the dynamics of this antagonism is of extraordinary relevance, both theoretical and practical.

This study begins by discussing the major characteristics of populism, and its particular features in the Global South. The following section unearths the inherently tense relationship between environmental law and populism, exploring the manifold reasons why the environmental agenda is often targeted by populist politics. Next, it delves on the reciprocal implications of environmental law, climate change, public health, and pandemics, including the causal links between the environment and epidemiological outbreaks. Finally, this paper ponders the future of environmental law and governance in a post-pandemic world order, and hypothesizes that a widespread health emergence could change the public's risk perception so significantly that not even populist politics would be able to further eschew the environmental agenda and its public health implications.

## 2 Populism(s) and the Global South

Populism is not a univocal concept. As a starting point, this article adopts the basic notion, borrowed from political science, that populism confronts two antagonistic groups, namely the (pure) people and the (corrupt) elite: Mudde and Kaltwasser posit that

[b]eyond the lack of scholarly agreement on the defining attributes of populism, agreement is general that all forms of populism include some kind of appeal to “the people” and a denunciation of

“the elite.” Accordingly, it is not overly contentious to state that populism always involves a critique of the establishment and an adulation of the common people. More concretely, we define populism as *a thin-centered ideology that considers society to be ultimately separated into two homogeneous and antagonistic camps, “the pure people” versus “the corrupt elite,” and which argues that politics should be an expression of the volonté générale (general will) of the people.*<sup>1</sup>

Although the manifestations of populism may have distinct features in the Global North and in the South, it is generally understood as a phenomenon that occurs all across the political spectrum, which is why it is perhaps more aptly named as “populisms”. Indeed, Mudde and Kaltwasser describe populism as “one of the main political buzzwords of the 21st century. The term is used to describe left-wing presidents in Latin America, right-wing challenger parties in Europe, and both left-wing and right-wing presidential candidates in the United States”.<sup>2</sup>

Müller argues that, at its core, populism is essentially antipluralist: “[i]n addition to being elitist, populists are always *antipluralist*. They claim that they, and they alone, represent the people”.<sup>3</sup>

What counts as “the people”, one might ask? For populism, the people is an abstract, homogenous, and virtuous ideation, represented in discourse as “the real people”. Populism, therefore, seeks to draw its legitimacy directly from the people, as if in a distorted version of direct democracy that is ultimately - and fundamentally, to the extent it often degenerates into autocratic regimes - antidemocratic.

Populism often appeals to the “silent majority”, that is, to those social groups that feel overlooked in the democratic process. Mamonova defines it as

the majority of the ‘ordinary’, ‘simple’, ‘little’ people, who are the main supporters of authoritarian populism. The silent majority is commonly portrayed as (1) consisting of ‘irrational’, ‘politically short-sighted’ people, who vote against their self-interests; (2) it is analyzed as a homogeneous group, without attempting to distinguish different motives and interests among its members.<sup>4</sup>

<sup>1</sup> MUDDE, Cas and KALTWASSER, Cristóbal Rovira. *Populism: A Very Short Introduction*. Oxford: Oxford University Press, 2017, p. 5-6.

<sup>2</sup> *Ibid.*, p 1.

<sup>3</sup> MÜLLER, Jan-Werner. *What is Populism?* Philadelphia: University of Pennsylvania Press, 2016, p.

<sup>4</sup> MAMONOVA, Natalia. Understanding the silent majority in authoritarian populism: what can we learn from popular support

Moffitt<sup>5</sup> argues that populism is a political style that, with the impulse of new media formats, has spread globally, and that, among other features, this style encompasses the adoption of “bad manners”. By behaving in a way that is uncharacteristic for politicians, the populist leaders distances themselves from the elite, and draws closer to the people.

Urbinati<sup>6</sup>, citing Rosanvallon, posits that populism takes advantage of the mechanisms of “negative politics”, by presenting itself essentially as anti-establishment – even after it ascends to power. Perpetuating a state of crisis is a known tactic, deployed so as to allow populist politicians to remain on the offensive, aiming to preempt criticism from opposing political forces.

Fukuyama<sup>7</sup> states that populist movements “are threatening democracy from within”, by “threatening the constitutional checks and balances that are really part of a functioning liberal democracy”. Diamond<sup>8</sup> coined the expression “democratic recession”, which he identifies with “the decline of democratic efficacy, energy, and self-confidence in the West”.

Populism is often centered around the person of a charismatic leader, which accounts for a tendency to autocracy, or at least to concentration of powers in the hands of said leader. It is important, however, to note that this tendency is not absolute. As Mudde and Kaltwasser argue,

[w]hile there is a close association between populist leaders and strongmen, it is important not to conflate the two. In fact, only a minority of strongmen are populists and only a minority of populists is a strongman. The notion of the strongman is often related to authoritarian regimes. Leaders like Juan Manuel de Rosas in Argentina (1793–1877), Porfirio Díaz in Mexico (1830–1915), and Francisco Franco in Spain (1892–1975) are common examples of strongmen in the scholarly literature. All these leaders can be considered as absolute rulers and thus anything but democrats. But

as populism maintains an ambivalent relationship with democracy, the authoritarian characteristic of the strongman is not inherent to populism.<sup>9</sup>

Populist leaders are also highly adaptable to what the people seemingly want in a certain quadrant of history, a characteristic that makes populism particularly versatile and powerful. Although this may, at times, entail some progress towards in satisfying concrete popular demands, self-serving manipulation of a notion of the general will may be deployed as an instrument to meet the desire to hold on to power:

[w]hatever its manifestation, the monist core of populism, and especially its notion of a “general will,” may well lead to the support of authoritarian tendencies. In fact, populist actors and constituencies often share a conception of the political that is quite close to the one developed by the German political theorist Carl Schmitt (1888–1985). According to Schmitt, the existence of a homogeneous people is essential for the foundation of a democratic order. In this sense, the general will is based on the unity of the people and on a clear demarcation of those who do not belong to the demos and, consequently, are not treated as equals. In short, because populism implies that the general will is not only transparent but also absolute, it can legitimize authoritarianism and illiberal attacks on anyone who (allegedly) threatens the homogeneity of the people.<sup>10</sup>

In the Global South, populism has peculiar roots, features, and incarnations. From Latin American “etnopopulism” to Middle Eastern “petropopulism”, populisms emerged as alternatives to the basic inability of the State to provide for their citizens. Disenfranchised and disillusioned, the people turn to anti-establishment populist leaders, in the hope that their basic needs will be met.

Populism has spread unevenly in the Global South. In the words of Mudde and Kaltwasser, “Latin America is the region with the most enduring and prevalent populist tradition.”<sup>11</sup> This is due to a combination of socioeconomic inequality and a tradition of holding periodic elections in which voters can channel their dissatisfaction against the establishment, often embodied in corrupt oligarchies. Although these democracies may be deeply flawed, as the declaration by the Organization of American States that the 2019 presidential elec-

for Putin in rural Russia? *The Journal of Peasant Studies*, Abington-on-Thames, v. 46 n. 3, p. 564, 2019.

<sup>5</sup> MOFFITT, Benjamin. *The global rise of populism: performance, political style, and representation*. Stanford: Stanford University Press, 2016, p. 5.

<sup>6</sup> URBINATI, Nadia. Political Theory of Populism. *Annual Review of Political Science*, Palo Alto, v. 22, p. 113, 2019.

<sup>7</sup> SKY NEWS. *Populism is a threat to democracy but don't panic, warns Francis Fukuyama*. Available at: <https://news.sky.com/story/populism-is-a-threat-to-democracy-but-dont-panic-warns-francis-fukuyama-11855062>. Access on: Nov. 9, 2019.

<sup>8</sup> DIAMOND, Larry. Facing Up to the Democratic recession. *Journal of Democracy*, Washington, v. 26, n. 1, p. 152, Jan. 2015.

<sup>9</sup> DIAMOND, Larry. Facing Up to the Democratic recession. *Journal of Democracy*, Washington, v. 26, n. 1, p. 152, Jan. 2015.

<sup>10</sup> *Ibid.*, 18.

<sup>11</sup> *Ibid.*, p. 27.

tion in Bolivia was rigged, and the grasp of power of Venezuela's Chávez and Maduro, the fact that the region has, at least nominally, a democratic tradition, allowed populism to flourish in Latin America. Conversely, populism is largely absent in Africa, where many countries remain plainly authoritarian. Middle Eastern populism has become increasingly visible in countries like Israel and Turkey, and it can be argued that some populist tendencies were at play, to some extent and unevenly in the countries involved, at the 2011 Arab Spring. Australasia has been characterized by the rise of ethnic populist manifestation, aiming to cater to the interests of aboriginal and Maori populations. Finally, Southeast Asia saw the appearance of populism – which took the form of attacks to neoliberal policies and globalization – in the wake of the 1997 Asian Tigers financial crisis.

Interestingly, the phenomenon of populism in the Global South has been studied as a parameter for similar manifestations that followed suit in the North. Wahby<sup>12</sup> argues that the recent wave of populist movements in the North can be understood along the lines of the experiences of the South – namely the failure of the social contract, networks of urban informality and elite privilege, and exclusionary populist movements –, stating that

strong contestation against the hegemony of the urban center has long emerged in the Global South, with the latest 'populist' backlash in the North following suit to express an anti-establishment sentiment (Ridley 2016). These are compounded by global experiences of urban-rural inequalities, desolation of industrial cities, and the exploitation of state failures by nonstate actors bearing nationalistic and/or religious divisive discourses (Ben Nefissa 2009; Roy 2009).

Populist politics, as defined in this section, contradict environmental law in several manners, and the Global South is more susceptible to some of these manifestations. The next chapter explores these dynamics.

### 3 Populism and Environmental Law: Polar Opposites?

Environmental law is, in general terms, particularly susceptible to being antagonized by populist politics.

<sup>12</sup> WAHBY, Noura. Institutions and Populism in the Global South - Lessons for the Brexit-Trump Era, *City & Community*, Hoboken, v. 16 n. 2, p. 139, Jun. 2017.

This is a relevant assertion, yet it has received scarce attention from scholars and policymakers. This section aims at analyzing the reasons why Environmental Law and populism may be considered polar opposites, namely:

(1) Environmental law, in the sense that it holds “that society is divided into a broad variety of partly overlapping social groups with different ideas and interests”,<sup>13</sup> is highly reliant on pluralism, while populism is essentially antipluralist.

(2) The complex nature of environmental problems requires sustained, long-term action, while populism relies on delivering immediate results.

(3) Environmental law depends on sound science and institutions, while populism typically sees scientists and bureaucrats as an expert elite - “the others” - that is not to be trusted<sup>14</sup>.

(4) Environmental law ideally derives its legitimacy from the rule of law, while populism is “impatient with the rule of law”<sup>15</sup>, typically seen as in undesirable constraint, limiting the leader's powers and hindering the direct communication between them and their constituents.

(5) In spite of recent stalemates, multilateralism remains a main source of environmental law, while populism tends to reject (with serious diplomatic consequences) global institutions in favor of a nationalistic approach. In this context, the environment often

<sup>13</sup> On the direct opposition between pluralism and populism, Mudde and Kaltwasser (op.cit., p. 7-8) argue that “[w]ithin pluralism diversity is seen as a strength rather than a weakness. Pluralists believe that a society should have many centers of power and that politics, through compromise and consensus, should reflect the interests and values of as many different groups as possible. Thus, the main idea is that power is supposed to be distributed throughout society in order to avoid specific groups—be they men; ethnic communities; economic, intellectual, military or political cadres, etc.—acquiring the capacity to impose their will upon the others.”

<sup>14</sup> “There is then a need to analyse the demand for populist rule, which frequently appears as a voice for the curtailing of environmental regulation. Considering that populism depends on bureaucracies as culprits, to generate betrayal stories around environmental law, and that environmental law is overwhelmingly procedural in nature, this makes environmental law especially susceptible to populist pressures.” BOGOJEVIĆ, Sanja. The Erosion of the Rule of Law: How Populism Threatens Environmental Protection. *Journal of Environmental Law*, Oxford, v. 31, p. 393, 2019.

<sup>15</sup> “The populist style of politics, ‘impatient with the rule of law’, puts pressure on environmental protection. Populism is a broad spectrum of political tendencies, and the way different populist regimes restrain the rule of law will inevitably also vary.” Ibid., 393.

appears in populist politics as a political proxy for questions of security and citizenship, such as the reinforcement of sovereignty over natural resources and the idealization of landscape as a symbol of national unity<sup>16</sup>.

(6) Multilevel governance of the environment presupposes a high level of public participation and access to information, while populism relies on centralizing information and building official narratives.

(7) Lastly, and perhaps more importantly, environmental law creates a series of tangible constraints to individual activity, while populism preaches on the idea that the people needs to “regain control” and be free as possible to act as they please.

From the standpoint of environmental governance, given the peculiarities of its object – environmental issues are transboundary and systemic by nature –, success depends largely on the existence a multilevel institutional architecture, one that relies heavily on cooperation across scientific domains (including environmental law), stakeholders, and global institutions.

In this sense, Fisher<sup>17</sup> posits that

environmental law has developed a complex architecture to mediate between different interests and to ensure that environmental decisions are as robust, legitimate, and fair as they can be. It is the ultimate legal expression of the fact that we live in a pluralistic society. In being so, environmental law engages all the institutional and legal resources of a constitutional democracy to operate - public

<sup>16</sup> “Very old and very dangerous links between ideas about the environment and ideas about governance are resurfacing in the authoritarian and populist turn around the globe. Current politics of nativism, masculinism, white supremacy, and the hardening of borders are deeply intertwined with ideas linking racialized, gendered, and national identities to specific environments, territories, and the alleged existential struggle for scarce resources. Likewise, metaphors of the nation as an organism that can be healthy or diseased, contaminated or cleansed, are closely linked to particular imaginaries of national environments. In a more straightforwardly economic register, natural resources within indigenous or otherwise contested territories are being claimed as assets both critical for, and rightly belonging to, the “nation” to be used for purposes of national development. Among the many problems with such frameworks, the intense impulse to recode ‘nature’ as ‘national’ - the national territory, national resources, national self-sufficiency in energy or food, and so on - tends to obscures global and transboundary connections and processes”. MCCARTHY, James. *Authoritarianism, Populism, and the Environment: Comparative Experiences, Insights, and Perspectives*, *Annals of the American Association of Geographers*, Abington-on-Thames, v. 109, n. 2, p. 306-7, 2019.

<sup>17</sup> FISHER, Elizabeth. *Unearthing the Relationship Between Environmental Law and Populism*, *Journal of Environmental Law*, Oxford, v. 31, n. 2, p. 2, 2019.

discourse, expertise, public administration, legislation, accountability, dispute resolution, multi-level governance and much else besides.

It hasn’t always been the case. Environmental law has emerged from the realization that a purely utilitarian perspective towards natural resources was unsustainable. The dissemination and popularization of the environmental agenda was jumpstarted by the United Nations Conference on the Human Environment, held in 1972 in Stockholm. Environmental problems began to be perceived as a global issue, and the importance of striking a balance between environmental protection and economic development, which would later evolve into the fundamental concept of sustainable development, made its way into the order of the day.

Environmental matters are, more often than not, transversal to other vital questions such as health, peace and security, food safety, and international trade. As such, the benefits of increased coordination extend well beyond the environmental arena. A good illustration of this point is the scope of Sustainable Development Goals (SDGs): they are, by design, intertwined, and environmental rights, although more explicitly connected to some of the Goals, are instrumental for all SDGs - even those that do not expressly mention the environment. Indeed, environmental rights provide an important focal point to ensure adequate governance, that is, that the framework of environmental laws and institutions develops continuously and reaches new levels of effectiveness. Ultimately, environmental rights are a compass that, if duly implemented, are able to ensure that all development is made in a sustainable manner.

As Stockholm+50 approaches, strengthening environmental rights at the global, regional, and national levels is a topic of vital importance. UN Environment’s *Global Report on Environmental Rule of Law*<sup>18</sup>, the first-ever report on the matter, emphasizes that the environmental rule of law’s benefits for the international community extend well beyond the environmental domain, and needs to be factored in by all actors involved in global governance. The report’s findings are a contribution towards understanding the root causes of why, despite the proliferation of environmental norms, these are still not fully implemented: although there are still gaps in international environmental law – as recognized

<sup>18</sup> UNITED NATIONS. UN Environment, *Environmental Rule of Law: First Global Report*, 2019.

by UNGA Resolution 72/277<sup>19</sup> – efforts for implementation of the extensive framework of existing environmental norms lie at the heart of the matter.

Indeed, almost five decades after Stockholm, there is sufficient accumulated experience to assess the effectiveness of the efforts to incorporate the environmental agenda into international discussion forums. The multiplicity of actors, locations, and themes involved in the environmental regime creates complexities that need to be constantly articulated. Local, regional, national, and global initiatives have been flourishing in both the public and private sectors, and these efforts need robust coordination. This leads to the perception that addressing international environmental issues in a casuistic, ad hoc, fashion is less than ideal, and that a greater degree of coordination is needed.

This pluralistic, complex, coordinated, and – because it aims to strike a delicate balance among conflicting, and often irreconcilable, interests of a multitude of actors – intrinsically incomplete approach is in direct opposition to the basic tenets of populism: the aspiration to provide simple (or, rather, simplistic), straightforward, and immediate solutions that radiate from one individual (the populist leader) directly towards one diffuse group (the people).

There are, however, other particular, and nonetheless very relevant circumstances in which environmental impact of populism is not deliberate, but something of a side effect: impoverished populations of countries (frequently in the Global South) under populist rule are, more often than not, too focused on survival to even consider environmental action. The same applies to countries depleted by military conflict or other economic, religious, or environmental causes of forced migration.

All this holds true in the current geopolitical configuration. The world as it is known is nevertheless undergoing profound changes, triggered by the COVID-19 coronavirus pandemic. Is it possible that these changes are intense enough to force even populist politicians to acknowledge the environmental agenda? Or, to the contrary, will the environment be relegated to an afterthought in a world struggling for economic recovery? To address these questions, it is necessary to

explore, first, the reciprocal implications between the environment and epidemiological outbreaks.

## 4 Environmental Law, Climate Change, and Public Health: Reciprocal Implications and Takeaways from the COVID-19 Pandemic

The relationship between the environment and pandemics is an important one, that needs to be properly established before delving into its implications for the dynamics of the opposing views of populism and Environmental Law.

Von Schirnding et al<sup>20</sup> summarize the fundamental linkage between the environment and health by positing that “[e]nvironmental factors are increasingly responsible for ill-health in many parts of the world. This is particularly true in the Global South and among poor and vulnerable groups, who are most at risk of exposure to environmental hazards associated with poverty, industrialization, and rapid urbanization”. In this context, the authors also highlight that diseases are increasingly transnational, and that, given States’ inability to address health threats within their borders, these need to be addressed by international law, as “[q]uestions of health and the environment have become serious global concerns requiring increased international legal cooperation”.

A pandemic is defined as “an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people”.<sup>21</sup> Zoonotic outbreaks such as that of COVID-19 are highly influenced by inadequate management of human resources. In this sense, Morse posits that

[e]cological changes, including those due to agricultural or economic development, are among the most frequently identified factors in emergence. They are especially frequent as factors in outbreaks of previously unrecognized diseases with high case fatality rates, which often turn out to be zoonotic introductions. Ecological factors usually precipitate emergence by placing people in contact with a natural reservoir or host for an

<sup>19</sup> UNITED NATIONS. *United Nations General Assembly*, Resolution A/RES/72/277, 2018.

<sup>20</sup> Yasmin Von Schirnding, William Onzivu, and Andronico O. Adede. International environmental law and global public health. In: *Bulletin of the World Health Organization* 2002, 80 (12), 970-4.

<sup>21</sup> J LAST, John M. (ed.). *A dictionary of epidemiology*. Oxford: Oxford University Press, 2001.

infection hitherto unfamiliar but usually already present (often a zoonotic or arthropod-borne infection), either by increasing proximity or, often, also by changing conditions so as to favor an increased population of the microbe or its natural host (2,4). The emergence of Lyme disease in the United States and Europe was probably due largely to reforestation (14), which increased the population of deer and the deer tick, the vector of Lyme disease. The movement of people into these areas placed a larger population in close proximity to the vector.<sup>22</sup>

Furthermore, human behavior influences the likelihood of outbreaks in two main aspects: inadequate management of natural resources, such as inordinate changes in land use, and shifts in the patterns of occupation of space and of movement of people and goods, e.g. those caused by increased global travel and urbanization. In this sense, Morse<sup>23</sup> highlights, with regard to environmental causes of infectious diseases, that “[b]ecause humans are important agents of ecological and environmental change, many of these factors are anthropogenic”.

Similarly, Jones et al<sup>24</sup> argue that “[e]merging infec-

tious diseases (EIDs) are a significant burden on global economies and public health”, and that “[t]heir emergence is thought to be driven largely by socio-economic, environmental and ecological factors”. Among said environmental factors, climate change deserves to be singled out, not only because of the scale of its implications, but also because it has a “pandemic” nature of sorts: it is a silent and somewhat intangible threat to life on the planet that, despite its potential to affect the Global South first and more severely, should leave no single nation unscathed.

In addressing the relationship between the environment and infectious outbreaks, Morse<sup>25</sup> emphasizes that “[a]gricultural development, one of the most common ways in which people alter and interpose themselves into the environment, is often a factor.” The Intergovernmental Panel on Climate Change (IPCC) Special Report on Climate Change and Land Use, released in 2019<sup>26</sup>, states that human use directly affects more than 70 percent of the global, ice-free land surface, and that between a quarter and one-third of all land is utilized for food and energy production, which amounts to a 46 percent deforestation rate.

The report also states that the impacts are reciprocal: land use contributes to climate change and climate change affects land use. Degraded land becomes less productive, restricting the types of crops that can be grown, thus reducing the soil’s ability to absorb carbon. This exacerbates climate change, which in turn triggers land degradation in several significant ways.

The World Health Organization COP24 Special report on Health & Climate Change<sup>27</sup>, released in 2018

<sup>22</sup> MORSE, Stephen S. Factors in the Emergence of Infectious Diseases, *Emerging Infectious Diseases*, Atlanta, v. 1, n. 1, p. 7-15, Jan.-Mar. 1995.

<sup>23</sup> Ibid.

<sup>24</sup> “Emerging infectious diseases (EIDs) are a significant burden on global economies and public health. Their emergence is thought to be driven largely by socio-economic, environmental and ecological factors, but no comparative study has explicitly analysed these linkages to understand global temporal and spatial patterns of EIDs. Here we analyse a database of 335 EID ‘events’ (origins of EIDs) between 1940 and 2004, and demonstrate non-random global patterns. (...) Furthermore, 71.8% of these zoonotic EID events were caused by pathogens with a wildlife origin—for example, the emergence of Nipah virus in Perak, Malaysia and SARS in Guangdong Province, China. The number of EID events caused by pathogens originating in wildlife has increased significantly with time, controlling for reporting effort (GLMPJID  $F = 60.7$ ,  $P < 0.001$ , d.f. = 57), and they constituted 52.0% of EID events in the most recent decade (1990–2000) (Fig. 1). This supports the suggestion that zoonotic EIDs represent an increasing and very significant threat to global health. It also highlights the importance of understanding the factors that increase contact between wildlife and humans in developing predictive approaches to disease emergence. Vector-borne diseases are responsible for 22.8% of EID events in our database, and 28.8% in the last decade (Fig. 1). Our analysis reveals a significant rise in the number of EID events they have caused over time, controlling for reporting effort (GLMPJID  $F = 49.8$ ,  $P < 0.001$ , d.f. = 57). This rise corresponds to climate anomalies occurring during the 1990s, adding support to hypotheses that climate change may drive the emergence of diseases that have vectors sensitive to changes in environmental conditions such as rainfall, temperature and severe weather events. However, this controversial issue requires further analyses to test causal relationships between EID events and climate

change”. JONES, Kate E., PATEL, Nikkita G., LEVY, Marc A., STOREYGARD, Adam, BALK, Deborah, GITTLEMAN, John L., and DASZAK, Peter. Global trends in emerging infectious diseases. *Nature*, London, v. 451(7181), p. 990-3, 2008.

<sup>25</sup> Op. cit., 9.

<sup>26</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE. *Special Report on Climate Change and Land*, 2019.

<sup>27</sup> “Climate change can affect human health directly and indirectly. The direct health impacts include physiological effects of exposure to higher temperatures, increasing incidences of NCDs such as respiratory and cardiovascular disease and injuries and death due to extreme weather events such as droughts, floods, heatwaves, storms and wildfires. Climate change has indirect effects on health due to ecological changes, such as food and water insecurity and the spread of climate-sensitive infectious diseases, and also to societal responses to climate change, such as population displacement and reduced access to health services. As indirect effects of climate change may result from long causal pathways, they are particularly difficult to anticipate. The effects may be short- or long-term and direct or in-



in order to support the negotiations of the United Nations Framework Convention on Climate Change (UNFCCC), explores the interconnection between climate change and health. Its findings include evidence that climate change can affect human health both directly and indirectly in a myriad of ways, ranging from food insecurity<sup>28</sup> to mental health issues. With regard to infectious diseases, the report acknowledges that “[th]e capacity of disease vectors to spread infectious diseases is increasing as a result of climatic shifts”.

Morse<sup>29</sup> also identifies that “[h]uman population movements or upheavals, caused by migration or war, are often important factors in disease emergence”. Migration and war are, in turn, increasingly caused by climate change. Indeed, the World Meteorological Organization<sup>30</sup> reports that out of the 17.7 million Internally Displaced Persons tracked by the International Organization for Migration, over 2 million people, as of Sep-

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direct, sometimes with life-long consequences for health and well-being. For example, NCDs such as mental illness after extreme weather events, climate-related displacement, immigration and loss of culture can be lifelong. The capacity of disease vectors to spread infectious diseases is increasing as a result of climatic shifts; for example, the vectorial capacity of the mosquitoes that are primarily responsible for the transmission of dengue fever has risen by approximately 10% since the 1950s. Ecological shifts as a result of climate changes may have further health effects, by affecting water and sanitation and causing food insecurity and malnutrition. Malnutrition is anticipated to be one of the greatest threats to health resulting from climate change, and the young and the elderly will be particularly affected. Climate variation and extremes are among the leading causes of severe food crises, and the cumulative effect is undermining all dimensions of food security, including availability, access, use and stability. Rising temperatures, floods and droughts also affect food safety; for example, rising temps can increase the levels of pathogens in food sources (such as ciguatera in fish) and in food, and flooding increases the risk that pathogens will spread from livestock”. WORLD HEALTH ORGANIZATION. *COP24 Special Report on Health & Climate Change*, 2018, p. 20.

<sup>28</sup> See also FOOD AND AGRICULTURE ORGANIZATION. *The State of Food Security & Nutrition around the World*, 2018: “Food security: Exposure of the agriculture sector to climate extremes is threatening to reverse gains made in ending malnutrition. New evidence shows a continuing rise in world hunger after a prolonged decline, according to data compiled by United Nations agencies including the Food and Agriculture Organization and World Food Programme. In 2017, the number of undernourished people was estimated to have increased to 821 million, partly due to severe droughts associated with the strong El Niño of 2015–2016”.

<sup>29</sup> Op. cit., 11.

<sup>30</sup> “According to UNHCR’s Protection and Return Monitoring Network, some 883 000 new internal displacements were recorded between January and December 2018, of which 32% were associated with flooding and 29% with drought”. World Meteorological Organization. WMO Statement on the State of the Global Climate in 2018, 32.

tember 2018, were displaced due to disasters linked to weather and climate events.

Climate change also intensifies migratory movements and conflict over scarce natural resources.<sup>31</sup> Mach et al<sup>32</sup> found that intensifying climate change will increase the risk of violent conflict. It estimates that climate has influenced between 3% and 20% of armed conflict risk over the last century, and that these figures are likely to increase significantly. Both of these phenomena – migrations and war – affect the Global South disproportionately, imposing a heavy toll on vulnerable populations. The large masses of people displaced - often in subhuman conditions -, in South-South migratory waves triggered by the conflicts in Syria, the Democratic Republic of Congo, Bangladesh and Yemen are pungent examples of this assertion, and so are the rise in conflicts over the shrinking Lake Chad, a life source for neighboring populations in Chad, Niger, Nigeria, and Cameroon, and the growing threat of submersion of small island countries caused by climate-change induced sea level rise.<sup>33</sup>

There are, in sum, important reciprocal implications among the environment, climate change, public health, food security, migrations, armed conflict, and pandemics. Environmental Law must be prepared to deal with this state of interconnectedness. The peculiarities of its object, that is, the nature of the issues that it investigates - diffuse or collective, cross-border, and directly linked to the understanding of the environment in its physical dimension - creates the need for a transversal approach

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<sup>31</sup> Extensive environmental damages are also committed in the course of armed conflict. An open letter signed by 24 scholars urges international lawmakers to adopt a fifth Geneva convention that recognizes damage to nature alongside other war crimes, so as to provide legal instruments for protection of crucial natural resources. DURANT, Sarah M., BRITO, José A. et al. Stop military conflicts from trashing environment. *Nature*, London, v. 571, p. 478, Jul. 2019.

<sup>32</sup> MACH, Katharine J., KRAAN, Caroline M., ADGER, W. Neil et al. Climate as a risk factor for armed conflict. *Nature*, London, v. 571, p. 193-7, 2019.

<sup>33</sup> “As global climate change is affecting already not only the sea level rise, but also is responsible for flooding, droughts and recurrent extreme weather, being painfully visible especially in the Pacific Ring of Fire. All of this will make coastal areas (literally almost 100% of the PICT territories) gradually uninhabitable, leading to submersion of urban centres, migrations of displaced people, becoming now called as “ecological refugees”, and finally economic and political upheaval.” SIEKIERA, Joanna. Implementation of legal mechanisms of environmental protection by the South Pacific regional organizations. *Revista de Direito Internacional/Brazilian Journal of International Law*, Brasília, v. 16, n. 2, p. 115-124, 2019.

not only with other subjects within the law but also, and mainly, with other sciences. Environmental law interacts intensively with various areas of knowledge.

An interdisciplinary approach is one that analyzes, synthesizes and harmonizes points of contact between various sciences into a coherent whole. In the domain of the law, interdisciplinarity can materialize through the creation of themes designed collaboratively by several areas involved and replacing the uncoordinated study of the parts related to each subject. But that is not all - Environmental Law constitutes particularly fertile ground for the application of the notion of *transdisciplinarity* proposed by Piaget<sup>34</sup>, corresponding to a global integration of all sciences, that is, to what it is between disciplines and beyond subjects. When it comes to global environmental governance, this perspective may materialize in that it may be insufficient to consider the specific inflows of, e.g., international law, environmental law, political science, international relations, sociology, epidemiology, and that it may be necessary to integrate these domains in a field of research that does not fall properly within any of them. In short, research, education, and practice of environmental law cannot do without a multiple disciplinary approach, either through aggregation (multidisciplinarity), cross-interactions (interdisciplinarity), holistic interactions (transdisciplinarity), or a continuum therebetween. Although this process is not new, it will presumably be intensified in the post-pandemic world order, in which the production of knowledge will have to grapple with fundamental shifts in our world view, from geopolitics to global governance.

Also noteworthy is the fact that the world has come to the realization that, while it is true that the Global South is hit the hardest by a pandemic due to more fragile economies and already burdened public health systems, the COVID-19 pandemic is unprecedented in the sense that it affects the Global South and North, democracies and autocracies, and all socioeconomic strata across the board. The next section discusses how this realization might play out in the post-pandemic world order, considering in particular the implications for the tension between environmental law and populism.

<sup>34</sup> PIAGET, Jean. L'épistémologie des relations interdisciplinaires, *L'interdisciplinarité: Problèmes d'enseignement et de recherche dans les universités*, Paris, Broché, 1972.

## 5 The Future of Environmental Law and Governance in a Post-Pandemic World

To help ensure its continued development, it is essential to reflect upon the future of environmental law in the post-pandemic world order. To this end, this study considers that a few scenarios, described below, are possible and worthy of consideration, especially as a means of giving policymakers' leeway to anticipate these trends and shape their actions accordingly.

On the one hand, there is abundant scientific evidence, discussed in the previous section, in the sense that the world's ability to prevent and adequately respond to future outbreaks hinges essentially on the adequate management of natural resources, and that increased global cooperation is needed in order to achieve this goal.

On the other hand, populism has a well-documented track record of overlooking environmental governance and compliance, or, rather, of shunning the matter intently, as a means to ensure that their constituents are free from environmental constraints. This fits the general populist discourse in the sense that the people should regain control, that bureaucrats are not to be trusted, and that science is a hermetic domain, inaccessible to the layperson. In the economic recession likely to be entailed by the pandemic, it is plausible that this discourse might gain traction among constituents who are too invested in their own survival to entertain environmental concerns. Indeed, both the Global North and the South have witnessed a rollback of environmental policies amidst the pandemic by governments, namely those of the United States of America<sup>35</sup> and Brazil<sup>36</sup>, that rose to power by appealing to groups – such as Corn Belt and Rust Belt workers in the first case, and social conservatives in the second – that felt overlooked in the democratic process.

Another salient effect of the pandemic, potentially reinforcing populism and hindering environmental law, is what this study chooses to call the *reflux of globaliza-*

<sup>35</sup> SCIENTIFIC AMERICAN. *Rolling Back Environmental Protections under Cover of the Pandemic*. Available at: <https://www.scientificamerican.com/article/rolling-back-environmental-protections-under-cover-of-the-pandemic/>. Access on: 17 Sep. 2020.

<sup>36</sup> THE GUARDIAN. *Brazil scales back environmental enforcement amid coronavirus outbreak*. Available at: <https://www.theguardian.com/world/2020/mar/27/brazil-scales-back-environmental-enforcement-coronavirus-outbreak-deforestation>. Access on: 17 Sep. 2020.

tion, that is, the closing of borders and restrictions on the movement of persons and goods – something that Kissinger, in a recent op-ed for the Wall Street Journal, calls “an anachronism, a revival of the walled city in an age when prosperity depends on global trade and movement of people”<sup>37</sup>. Even if done for epidemiological reasons, it entails the dangers of reinforcing nationalist tribalism and of restricting civil liberties as a new normal.

Also significantly, this process could cast a shadow on multilateralism.<sup>38</sup> Already strained by an overabundance of treaties<sup>39</sup> and deadlocks in environmental and climate negotiations, it remains nonetheless the quintessential arena in which environmental governance unfolds. Environmental matters are seldom insulated, and can only be adequately tackled by multilevel governance “according to intended levels (e.g., local, regional, global), domains (national, international, transnational), modes (market, network, hierarchy), and scales (global regimes to local community groups)”<sup>40</sup>.

<sup>37</sup> “Third, safeguard the principles of the liberal world order. The founding legend of modern government is a walled city protected by powerful rulers, sometimes despotic, other times benevolent, yet always strong enough to protect the people from an external enemy. Enlightenment thinkers reframed this concept, arguing that the purpose of the legitimate state is to provide for the fundamental needs of the people: security, order, economic well-being, and justice. Individuals cannot secure these things on their own. The pandemic has prompted an anachronism, a revival of the walled city in an age when prosperity depends on global trade and movement of people. The world’s democracies need to defend and sustain their Enlightenment values. A global retreat from balancing power with legitimacy will cause the social contract to disintegrate both domestically and internationally. Yet this millennial issue of legitimacy and power cannot be settled simultaneously with the effort to overcome the Covid-19 plague. Restraint is necessary on all sides - in both domestic politics and international diplomacy. Priorities must be established”. KISSINGER, Henry. The Coronavirus Pandemic Will Forever Alter the World Order, *Wall Street Journal*, New York, Apr. 15, 2020.

<sup>38</sup> LEHMEN, Alessandra and BORGES, Caio. Climate Fund Case: Climate Litigation reaches the Brazilian Supreme Court, *Oxford Human Rights Hub*. Available at: <<https://ohrh.law.ox.ac.uk/climate-fund-case-climate-litigation-reaches-the-brazilian-supreme-court/>> Access on: 20 Sep. 2020.

<sup>39</sup> Op. cit..

<sup>40</sup> “The same phenomenon occurred with the classic sources of international environmental law: the phenomenon of treaty congestion and the recent stalemates in negotiations of environmental treaties, namely in the climate change domain, have resulted in a multilateralism crisis”. LEHMEN, Alessandra. The Case for the Creation of an International Environmental Court: Non-State Actors and International Environmental Dispute Resolution. *Colo. Nat. Resources, Energy & Envtl. L. Rev.*, Boulder, v. 26 n. 2, p. 179-217, 2015. See also BROWN WEISS, Edith. New Directions in Inter-

It is interesting to observe that there is no clear-cut divide, in terms of success in the response to the pandemic, between democracies and autocracies. Elaborating on that fact, Fukuyama<sup>41</sup> argues that “[w]hat matters in the end is not regime type, but whether citizens trust their leaders, and whether those leaders preside over a competent and effective state”. However, the fact that it is difficult to envision the replication of the unprecedentedly severe Chinese measures in a democracy should not be downplayed. Cultural features aside, the level of success attained by different countries raises the pressing question – or, rather, revives the question asked in the wake of the 9/11 attacks – of how far can a surveillance State go, and of what portion of their civil liberties citizens are willing to relinquish, in an emergency and beyond. Furthermore, whether the Western “brand” will be tarnished by its response to the pandemic – and, with it, its core values of democracy, pluralism, and freedom – still remain to be seen as of this writing, in April 2020, but is a relevant issue to keep track of.

In the post-pandemic order, whether the systole – the contraction represented by nationalist views - of

national Environmental Law. *International Law as a Language for International Relations: Proceedings of the United Nations Congress on Public International Law*, New York, March 13-17, 1995, U.N. Sales T. 96. v. 4, p. 273-75, 1996: “The number and variety of environmental agreements has reached the point that some critics ask whether they may not severely strain the physical and organizational capacity of countries to handle them. There are signs of treaty congestion, in the form of separate negotiating forums, separate secretariats and funding mechanisms, overlapping provisions or inconsistencies between agreements and severe demands on local capacity to participate in negotiations, meetings of parties and associated activities. This affects the international community as a whole, since there will always be limited resources to address difficult issues and some countries may suffer particular inequities in their ability to participate effectively in new regimes (...) [w]ith such a large number of international agreements, there is great potential for overlapping provisions in agreements, inconsistencies in obligations, significant gaps in coverage, and duplication of goals and responsibilities (...) International environmental law has developed in a piecemeal, almost random, manner (...) Treaty congestion also contributes to significant inefficiencies in implementing international agreements. There are usually separate secretariats, monitoring processes, scientific councils, financing mechanisms, technical assistance programs and dispute resolution procedures (...) Finally, treaty congestion leads to overload at the national level in negotiating and implementing the agreements (...) Even industrialised [s]tates with well-developed regulatory mechanisms and bureaucracies show signs of being overwhelmed. As attention shifts to the need to comply with existing agreements, the burden on the administrative capacity of [s]tates will become more acute”.

<sup>41</sup> FUKUYAMA, Francis. The Thing That Determines a Country’s Resistance to the Coronavirus. *The Atlantic*, Washington, 30 Mar. 2020.

populism or the diastole – the expansion beyond national borders and interests – of global cooperation will prevail is also a matter of which discourse will resonate more successfully. Institutions and science matter immensely, but it is their task to make themselves heard not only by peers but by a larger audience, outside the walls of international organizations and academia, in order to be able to counter the antipluralist designs of populist politics. Effective communication is an important piece of this puzzle.

A caveat seems, however, to be in order: while science generally negates the tenets of populism, the contention that it at times appropriates populist methods is not to be taken lightly. The possibility that science, by evolving, may contradict or invalidate prior science, is essential to the scientific method, and should not be precluded by the need to communicate. For example, Fisher, citing Latour<sup>42</sup>, refers to “the ‘epistemological delirium’ which is climate change denial” as one of the manifestations of populist politics concerning the environment. Although the validity of the body of climate science should not be denied – to the contrary, it is very much needed, including, from a communications standpoint, to counter denialism –, it is noticeable that their conclusions are often taken as a given, which could ultimately hinder its evolution much in the same way that populism reductionism would. As Hilson<sup>43</sup> points out, “[t]he science there is more sacrosanct; there is a fear of epistemological questioning of the relevant knowledge for fear of lapsing into climate denialism”.

Furthermore, to communicate effectively, scientists and policymakers must grasp the limitations of hard science in terms of generating behavioral change. Even if science may be able to gradually generate a shift in public awareness towards environmental and health issues, awareness alone does not necessarily entail change.

<sup>42</sup> FUKUYAMA, Francis. The Thing That Determines a Country’s Resistance to the Coronavirus. *The Atlantic*, Washington, 30 Mar. 2020.

<sup>43</sup> “[I]n a recent article, I made a start by exploring the extent to which climate change litigation might be regarded as an example of populism—both in terms of the type of litigant (with the EU ‘People’s Climate Case’ perhaps the most obvious example) and the style of argument (eg the populist, autobiographical narrative style of the witness submissions in Juliana). I labelled these ‘populist legalism’ and ‘legal populism’, respectively. HILSON, Chris. Climate Populism, Courts, and Science, *Journal of Environmental Law*, Oxford, v. 31, n. 2, p. 1-4, 2019.

Studies<sup>44</sup> have shown a contradiction between climate change risk perception and policy preferences, or, to put it differently, a gap between concern and willingness to take action in the environmental domain. One obvious driver of this phenomenon is economic in nature: in survival mode, the environment becomes an afterthought. This holds especially true in times of recession. It is, therefore, intuitive that a larger contingent of people may be attracted to populist anti-environmental policies in the aftermath of the pandemic, and even as it unfolds. This is an assumption that needs to be seriously taken into consideration in the framework of post-pandemic environmental governance. Indeed, policymakers and economic actors worldwide have started to press<sup>45</sup> for the implementation of a Green New Deal, or, generally, to advocate that environmental and climate measures should be expressly factored into any economic stimulus packages designed to deal with the COVID-19 recession, in order to “build back better”<sup>46</sup> by means of a green restart in the post-pandemic. Conversely, however, similar initiatives have been put aside under the assumption that they are secondary to the more pressing issue of passing an economic relief package.<sup>47</sup>

Another possible cause of dissonance between awareness and action is that, concerns of intergenerational equity aside, the public does recognize the magnitude of the environmental and public health problems, but unconsciously dismisses the policies to address them because they are, as mentioned above, too indirect. As a result, people do not necessarily perceive the adverse effects of, e.g., climate change, as pressing enough to

<sup>44</sup> E.g. LEISEROWITZ, Anthony. Climate Change Risk Perception and Policy Preferences: The Role of Affect, Imagery, and Values, *Climatic Change*, Cham, v.77, n. 1-2, p. 45-72, 2016, and KOLLMUSS, Anja and AGYEMAN, Julian, Mind the gap: why do people act environmentally and what are the barriers to pro-environmental behavior? *Environmental education research*, Abington-on-Thames, v. 8, n. 3, p. 37-41, 2002.

<sup>45</sup> CLIMATE CHANGE NEWS. *Governments have ‘historic opportunity’ to accelerate clean energy transition, IEA says*, 17 Mar. 2020. Available at: <https://www.climatechangenews.com/2020/03/17/governments-historic-opportunity-accelerate-clean-energy-transition-iea-says/>. Access on: 10 Apr. 2020.

<sup>46</sup> THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE. *Build Back Better: The five key areas for a post-pandemic recovery*. Available at: <https://www.lse.ac.uk/News/Latest-news-from-LSE/2020/g-July-20/Build-Back-Better-The-five-key-areas-for-a-post-pandemic-recovery>. Access on: 17 Sep 2020.

<sup>47</sup> THE WASHINGTON TIMES. *It’s about COVID’: Nancy Pelosi retreats on stimulus ‘wish list’*, Washington, Mar. 25, 2020.

affect them in their life span. Be it out of selfishness (a “why bother?” attitude towards something that one does not perceive as affecting them directly) or helplessness (a sense that facts likely to occur after one’s death are outside one’s locus of control), a sense of impending human finitude and mortality can arguably be a relevant factor underlying the abovementioned contradiction. This leads to the following hypothesis: one’s notion of mortality<sup>48</sup> may affect willingness to take action in the environmental domain, and the extent to which people’s worldviews with regard to human finitude can affect their risk perception and lead to inaction.<sup>49</sup> By devising empirical studies in order to understand how people shape their reactions to environmental problems based on their perceptions of their stake in the future, policymakers – and, generally, all those who would benefit from a deeper understanding of public choices – may be able to tailor more effective policy communications directed at groups of people who are either

<sup>48</sup> “[T]he heaviest weight is indeed the fact that we cannot live our lives over again, but instead must find a way to make the most of the life we have. It is the concrete fact of human mortality that forces us to respond to Nietzsche’s demon, or to lapse into an acceptance of our own mediocrity. The ‘heaviest weight’ is the gravity of our own shortcomings super-positioned over the background noise of our ticking biological clock”. MARRONE, Stephen S. *The Heaviest Weight: The Influence of Human Finitude and Mortality in Nietzsche*. Available at: [https://www.academia.edu/1814399/The\\_Heaviest\\_Weight\\_The\\_Influence\\_of\\_Human\\_Finitude\\_and\\_Mortality\\_In\\_Nietzsche](https://www.academia.edu/1814399/The_Heaviest_Weight_The_Influence_of_Human_Finitude_and_Mortality_In_Nietzsche). Access on: 10.Dec.2019.

<sup>49</sup> To answer these questions, we have devised, during a course at the Stanford School of Earth Sciences, in the Spring quarter of 2014, a survey to be directed at people from 21 to 70 years of age. Participants would be asked until what age they expect to live, and will then be presented with a series of consequences of climate change (e.g. drastic change in temperature, loss of biodiversity, loss of agricultural land, ocean rise, polar melting) and be asked to rate their concern on each topic. Subsequently, they would be presented with scenarios stating that these consequences are likely to happen in 1, 5, 10, 20, 30, 50, and 100 years, and asked to rate their willingness to take action to mitigate each problem. Actions would be described as ranging from less demanding, such as recycling, to progressively more demanding, such as adjusting air conditioning temperature, changing consumption and leisure habits, paying extra for renewable energy, and paying a carbon tax. The results would then be measured to verify if a) concern and b) willingness to take action vary depending on whether respondents believe they will still be alive to witness a particular adverse consequence of climate change. As a secondary line of investigation, the survey would also ask a) whether respondents have or plan to have children, as a means of verifying concerns of intergenerational equity (that is, increased willingness to take action not for oneself, but for close ones who will outlive the respondent), and b) respondents’ religious affiliation, as a means of verifying if religious worldviews with regard to continuity (reincarnation, second coming, absence of life after death) can affect respondents’ willingness to take action.

devoid of intergenerational concerns or skeptical about if, and how, these problems could directly affect them in their life span.

In any event, it is clear that most environmental threats cannot be experienced firsthand, and are therefore perceived as too remote, uncertain, or indirect to justify action, thus reinforcing the conditions under which a populist antienvironmental agenda can flourish. The COVID-19 pandemic, however, could be the harbinger of a shift in this perception. The threat to survival is now imminent.

Indeed, the dramatic and unprecedented impact of COVID-19 has surprised the public and contradicted political leaders’ calculations that their respective countries would weather the pandemic and remain relatively unscathed. Environmental and public health matters are, as discussed above, significantly intertwined, to the point that the mishandling of natural resources has an established causal effect on the emergence of infectious diseases. Climate change, in particular, holds similarities to the pandemic in the sense that both know no borders or socioeconomic rank, and constitute an invisible, somewhat intangible threat.

In sum, the impacts of pandemic are sufficiently concrete, urgent, and widespread to muster the attention of the people, perhaps significantly enough that even populist politicians – who claim to rule for the people, and the people alone - will no longer be able to eschew the environmental agenda and its public health implications.

This reflection leads us to the following hypotheses: the pandemic might constitute an inflection point to amalgamate two polar opposites – environmental law and populism – around a common agenda. A widespread health emergence might change public perception significantly enough to become a driver for a shift away from populist denial of environmental issues. In other words, it could be an element to bypass, at least to some extent, the inherent antagonism of environmental law and populism. In the meantime, environmental scholars, lawyers, and policymakers should vigorously strive for the enlightenment of both the public at large and their representatives, populist or not, by developing sound science and getting it across effectively.

## 6 Concluding remarks

This article aims at offering a new perspective on the relationship between environmental law and populism, a theme with important theoretical and practical implications, but still largely unexplored. Environmental law is particularly susceptible to being antagonized by populist politics. This study concludes that the fundamental reasons why environmental law and populism may be considered polar opposites are manifold, and include the following: (1) Environmental law is pluralist, while populism is essentially antipluralist; (2) Environmental problems require complex and sustained, long-term action, while the populist discourse favors simple and immediate solutions; (3) Environmental law depends on sound science and institutions, which are shunned by populism as elite experts who are not to be trusted; (4) Environmental law derives its legitimacy from the rule of law, while populism claims to derive theirs directly from the people, and sees the rule of law as an inconvenient constraint; (5) Environmental law unfolds mainly in the multilateral arena, which populism tends to reject in favor of a nationalistic approach; (6) Multilevel governance of the environment requires ample public participation and access to information, while populism relies on centralizing information and building official narratives; and (7) Environmental law constrains individual activity, while the populist discourse typically praises individual freedom, represented by the notion that the people should “regain control”. Lastly, an indirect impact of populism on the environment – one that falls within a category of its own, and to which the Global South is particularly susceptible – is that impoverished populations of countries under populist rule are generally too focused on survival to consider taking environmental action.

These conclusions hold true in the current geopolitical configuration. Against the backdrop of the profoundly altered world that is likely to emerge from the COVID-19 coronavirus pandemic, however, some reflections are in order. The environment and pandemics are inextricably linked, and the public’s risk perception with regard to environmental issues, once confronted with an actual, concrete threat, is likely to change. Is it possible that these changes are intense enough to force populist politicians to acknowledge the environmental agenda? Or, to the contrary, in a world struggling for economic recovery, will the environment be relegated to an afterthought?

Pondering the future of environmental law in the post-pandemic world order is an imperative for policymakers, so as to anticipate future developments and shape actions accordingly. Whether the systole of populism or the diastole of global cooperation will prevail is largely a matter of which discourse will resonate deeper within society. Institutions matter, as does science, but environmental policymakers and scientists must understand these trends and communicate effectively, in order to make themselves heard outside the walls of international organizations and academia, and, ultimately, to stand a fighting chance to counter the antipluralist, antiliberal, and antidemocratic designs of populist politics.

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