authority and legitimacy considerations. Going beyond the mere capacity of a treaty to change, Barnes substantiates what 'the meaning of life' is through an illuminating metaphorical exploration of the concept. The conclusion is clear that UNCLOS has adapted to a variety of emerging issues. At the same time, the contributors have indicated some of the limits to its adaptability as a result of, for example, the complexity of the interrelationships of the Convention with other realms of international law or certain gaps that nevertheless persist within the UNCLOS framework. It would have been interesting to see more discussion devoted to the consequences of any inadaptability, how this could be dealt with, and what are the implications of potential fragmentation within the law of the sea.

Law of the Sea: UNCLOS as a Living Treaty certainly delivers what it sets out to do, and the topicality of the explored questions is highlighted, for example, within the context of the work cut out for the Preparatory Committee on biodiversity beyond national jurisdiction. A strong feature of the book is the variety of issues and case studies discussed to illustrate the general 'living treaty' theme. Although not all topics are necessarily novel in themselves, the book provides plenty of food for thought and adds to the existing literature with its forward-looking approach to the debate. Through this approach it can also provide useful lessons for other fields of international law. On a theoretical level, the book's systemic treatment of the various applicable mechanisms of treaty evolution is original and illuminating. While accepting the unique character of the law of the sea regime, it is because of this character as the comprehensive framework governing all activities on the oceans and its broad substance that it gets to deal with major global developments in their full complexity, making it a pivotal example of evolving international law. The book is a valuable addition for anyone working on contemporary challenges and developments in international law and policy.

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Environmental Principles and the Evolution of Environmental Law, by Eloise Scotford
Hart, 2017, 320 pp, £60 hb, ISBN 9781849462976

Just as G.W.F. Hegel saw ideas as the motor of history and social change,[1] so too many environmental law advocates worldwide have embraced the importance of ideas to catalyze improvements in human environmental behaviour.[2] They have had much

1 Z.A. Pelczynski (ed.), *Hegel's Political Philosophy: Problems and Perspectives* (Cambridge University Press, 1971).

2 E.g., K. Bosselmann, *The Sustainability Principle: Transforming Law and Governance* (Ashgate, 2008).

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success, ostensibly. Environmental law has become increasingly enriched by evocative ideals – such as the polluter pays principle, the precautionary principle and intergenerational equity – providing guidance on how something happens or functioning as a norm to follow. Many ambitious catalogues of principles have been adopted in international instruments, such as the 1982 World Charter for Nature,[3] the 1992 United Nations Rio Declaration on Environment and Development,[4] and the 2000 Earth Charter.[5] Similarly, domestic legislation commonly enunciates lofty principles, such as those found in Australia's lodestar Environment Protection and Biodiversity Conservation Act 1999,[6] and New Zealand's pioneering Resource Management Act 1991.[7] Furthermore, the scholarly literature has advanced principles for the optimal design of environmental law, notably those associated with Gunningham's and Grabosky's influential model of 'smart regulation'.[8]

However, despite such vision and ambition, many principles have been applied perfunctorily, interpreted inconsistently because of their vague or malleable formulae, or outweighed by competing considerations. Many asserted 'principles' of environmental law might more accurately be described as societal goals – such as the commonly endorsed aspiration of sustainable development – facilitating policy development and public engagement rather than introducing legally required relevant considerations. Yet still, environmental principles remain popular among numerous government regulators, scholars and eco-activists in hope of unifying environmental governance and strengthening its conceptual basis. As the Anthropocene consolidates in the 21st century, calls intensify for a more principled basis to global environmental governance to strengthen international cooperation.[9]

Although not the first to write about such issues,[10] Eloise Scotford's compelling book, *Environmental Principles and the Evolution of Environmental Law*, makes a timely intervention to understand more deeply this complex challenge. In evaluating the anatomy of modern environmental law and its principles, Scotford sets her aims as, firstly, 'demonstrat[ing] how environmental principles are being used by some judges to develop legal reasoning [and for] facilitating … the evolution of legal

3 UNGA Resolution A/RES/37/7, 28 Oct. 1982, available at: http://www.un.org/documents/ga/res/37/a37r007.htm.

4 Adopted by the UN Conference on Environment and Development, Rio de Janeiro (Brazil), 3–14 June 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. I), 14 June 1992, available at: http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.

5 Available at: http://earthcharter.org.

6 No. 91, Australia., available at: https://www.legislation.gov.au/Details/C2016C00777.

7 No. 69, New Zealand, available at: http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html.

8 N. Gunningham & P. Grabosky, *Smart Regulation: Designing Environmental Policy* (Clarendon Press, 1998).

9 A. Akhtarkhavari, *Global Governance of the Environment: Environmental Principles and Change in International Law and Politics* (Edward Elgar, 2010); L.J. Kotzé, *Global Environmental Constitutionalism in the Anthropocene* (Hart, 2016).

10 E.g., N. de Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* (Oxford University Press, 2002); R. Macrory, I. Havercroft & R. Purdy (eds), *Principles of European Environmental Law* (Europa Law, 2004); S. Beder, *Environmental Principles and Policies* (UNSW Press, 2006).

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doctrine' and, secondly, 'show[ing] how environmental principles are significant and highly charged concepts for scholars in thinking about the nature of environmental law as a discipline' (p. 2). In appropriately recognizing the methodological challenges of articulating environmental principles in law, Scotford believes that such principles remain worthwhile for legal scholars to research so long as they apply a 'clearly framed methodology, appreciating both their open-ended nature and symbolic significance in environmental law' (p. 3). Additionally, only 'within discrete legal settings' can we expect, she argues, to render the meanings and application of specific principles sufficiently concrete (p. 3).

Focusing primarily on the European Union (EU) and the Australian state of New South Wales (NSW) as examples, the book spans six chapters. It opens by outlining the book's methodology and thesis and emphasizes the need to move beyond simplistic evocations of global principles in favour of a 'localised analytical framework' (pp. 11, 16), as Scotford calls her approach. The broader significance of environmental principles to the law, and the scholarly motivations for analyzing them, are examined in Chapter 2. With her detailed knowledge of the extant literature, Scotford argues that academics have invested 'too much hope' in environmental principles to solve the problems that the law confronts (p. 27). If such principles are to be useful to the study and practice of environmental law, Scotford recommends we be more attentive to the different legal cultures in which principles may or may not have a role. It is within specific jurisdictions, and in courts specifically, that principles accrue their normative traction.

Beginning in Chapter 3, the book develops its multi-jurisdictional account of the origin and evolution of selected environmental principles, spanning international law to EU and NSW law. It persuasively asserts that 'the precise formulations of such principles are inconsistent, their meanings and legal status unclear or contested' (p. 67). Different socio-legal contexts account for much of the divergences. For instance, the interpretation of principles in NSW courts has been influenced by 'the politics of intergovernmental relations in the Australian federal system' (p. 115), while in the EU context the succession of treaty-making processes has provided the seminal backdrop. Building on this analysis, Chapters 4 and 5, the most detailed parts of the book, delve into the evolution and state of the legal rules of environmental principles in the EU case law and that of the NSW Land and Environment Court. The chapters demonstrate the variable legal settings and judicial reasoning that inform environmental principles. Scotford coherently maps different 'categories' of reasoning of such principles to show their complex and evolving nature. While these chapters confirm the importance of local jurisprudence in enunciations of environmental principles, such as that relating to sustainable development, they also emphasize obstacles to enabling such principles to solve anthropogenic environmental impacts. The application of a principle such as precautionary decision making might succeed in resolving an environmental problem in one setting but not another for a host of reasons relating to the available science, community concerns, and the legal precedents to navigate.

The book concludes in Chapter 6 with a brief reiteration that environmental principles cannot be regarded as universal norms that speak for themselves across

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diverse legal contexts. Scotford discourages scholars from assuming that principles can in themselves 'deliver good environmental outcomes through [their] normative force' (p. 264). Instead she recommends greater 'methodological rigour … to meet the deep analytical challenges of the discipline' (p. 265), as demonstrated by her own fastidious approach in this book.

Seasoned scholars of environmental law whose research is informed by post-modern legality and legal pluralism will not be surprised by some of Scotford's critique. Moreover, her persuasive argument that such principles are too broad and vague to inform environmental governance consistently and effectively across different legal cultures and socio-political contexts is one that can be made about other principles in many other fields of law for similar reasons. Law relating to indigenous peoples, for instance, is similarly populated by overarching international principles such as cultural self-determination and self-governance,[11] and many common law systems also share recognition of Aboriginal land title. Yet, there is significant jurisdictional variation in how these norms have manifested as a result of different national histories, economic contexts and constitutional frameworks.[12] Likewise, in the field of business law, considerable wrangling ensues over the translation of meta-norms about fiduciary responsibility into consistent and predictable rules for the social and environmental performance of corporations and investors.[13]

The underlying difficulties here for the philosophy of law have fascinated scholars for many years. In the 1970s, the Critical Legal Studies movement unveiled the law's political and ideological settings in rejecting the assumed objectivity of Hartian rules or Dworkinian principles. As Canadian legal philosopher Alan Hutchinson explains:

> The law is not simply there in its object-like presence, but is always waiting to be apprehended and fixed by the active crafting of its judicial interpreters and legal artisans … determinacy and indeterminacy are not pre-interpretive features of the law, but products of legal interpretation'.[14]

Even earlier, in the 1930s, the American Legal Realists revolutionized thinking about courts by showing that their precedents could be artifices of tactical manipulation by judges to attain their preferred outcome beneath a veil of legitimacy.[15] Such considerations remain highly germane for environmental law, as one of the most politically contentious domains of contemporary governance.

Thus, we should welcome Scotford's insightful and meticulously researched book in reminding us that environmental law and its underlying principles are variable, complex and fraught. With her disciplined approach, Scotford has made a telling contribution

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[11] United Nations Declaration on the Rights of Indigenous Peoples, UN Doc. A/RES/61/295 (2007), 13 Sept. 2007, Art. 3, available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

[12] B.J. Richardson, S. Imai & K. McNeil (eds), *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Hart, 2009).

[13] B.J. Richardson, *Fiduciary Law and Responsible Investing: In Nature's Trust* (Routledge, 2013).

[14] A. Hutchinson, 'In the Park: A Jurisprudential Primer' (2010) 48(2) *Osgoode Hall Law Journal*, pp. 337–56, at 352.

[15] K.N. Llewellyn, 'A Realistic Jurisprudence: The Next Step' (1930) 30 *Columbia Law Review*, pp. 431–65; J. Frank, *Law and the Modern Mind* (Doubleday, 1963).

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to understanding the precarious conceptual foundations of environmental law and their unreliable articulation in legal doctrine. While her thesis may discourage readers who hope for a renaissance in global environmental governance to counter the Anthropocene, environmental principles need not be abandoned. They can still serve as valuable political narratives and means of mobilizing social concern despite their limitations in directly empowering official legal regulation. Moreover, within the domain of non-state governance such as corporate social responsibility codes, such principles can influence standard setting and discourses. Overall, I highly recommend *Environmental Principles and the Evolution of Environmental Law* as a particularly valuable addition to this field of scholarship.

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