Listening to the World: Sounding Out the Surrounding of Environmental Law with Michel Serres

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Listening to the world: sounding out the surroundings of environmental law with Michel Serres

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Abstract
This chapter draws on the work of the French philosopher Michel Serres and his exposition of appropriation, the distinctions of subjects and objects, hard and soft pollution, and local and global perceptions, and discusses them as essential devices for the legal comprehension of the environment. This chapter has a triple intent. First, it aims to deploy Serres's thinking on nature and its broken relation to humanity in order to recognise how law with its principles, functions and operations plays a significant role in constituting both this break, and this relation. Serres's excogitation on law reveals that our relation with nature is intrinsically a legal one. Second, by identifying Serres's understanding of the relationship between law and nature, this chapter offers a way into 'sounding out' environmental law, and importantly, to recognise law as antecedently 'environmental'. At first glance contradictory but still within the aims of this handbook to provide novel methods to approaching and understanding environmental law, the final aim is to employ Serres's 'anti-method' and understanding of knowledge. This important aspect of Serres's idiosyncratic approach is gradually unfolded in this chapter.

> We do not know what the world is like today; we are only beginning to know it and this knowledge differs from our knowledge of a circumscribed object.
> Michel Serres[1]

The necessity to regulate the relationship between humans and their surroundings, as well as the impact they have on these surroundings, is what constitutes the core of environmental law. In view of the urgency of responding to environmental degradation, environmental law emerged as a modern creation that integrates various legal principles from other areas of law.[2] For these reasons, and in contrast to other legal categories, environmental law has been found to lack the 'philosophical underpinnings'[3] that might provide an exclusive 'disciplinary' epistemological basis to sounding out its subject matter.

Environment (*en* 'in' + *viron* 'circle') is often understood as the ('natural') surroundings that encircle human beings. It is 'the combination of elements whose

[1] Michel Serres, 'Revisiting *The Natural Contract*' (Institute of the Humanities at Simon Fraser University, Canada, May 4 2006) (2006) CTHEORY <www.ctheory.net/articles.aspx?id=515> accessed 22 November 2016
[2] Alan Gilpin, *Dictionary of Environmental Law* (Edward Elgar 2000) 106
[3] Sean Coyle and Karen Morrow, *The Philosophical Foundations of Environmental Law: Property, Rights and Nature* (Hart Publishing 2004) 1-4

complex interrelationships make up the settings, the surroundings and the conditions of life of the individual and of society as they are or as they are felt'. [4] Two terms, consistently reappearing in definitions of environment, call our attention. The first is 'circumstance' (*circum* 'around' + *stare* 'stand') as that which encircles, encompasses, and conditions one's position against the very surrounding. The second is 'condition' (*condicionem* 'agreement', *condicere* 'to speak together'), a 'thing demanded or required as a prerequisite' that allows an act to take place. [5] Environment is thus both a circumstance and a condition that surrounds and determines (human) life. These terms imply and confirm the nature/ society distinction upon which environmental law is fundamentally established. The law follows rather too faithfully the above distinction, and as a consequence acts as if it were just an effect, indeed a *reaction* to emerging necessities. The law, however, is not just a corollary. It is both a circumstance and condition to its surroundings. It affects its surroundings in radical ways, rather than just following suit, reacting to the circumstances and conditions. In a self-contradictory way the law reverses the surroundings by *circum*scribing them: the natural world with its elusive but material force remains objectified in the gaze of the law and is often reduced to an understanding of a natural resource for human enterprises, 'a scene of spectacles'. Delimited by a conceptual circumference (*circum* 'around' + *ferre* 'bear, carry, suffer, endure'), the environment is restricted within a boundary – thus what seems to be a *circum*ferential surrounding, is in fact the object (circumstance) of concern and subject of environmental law regulation.

This chapter draws on the work of Michel Serres and his exposition of appropriation, the distinctions of subjects and objects, hard and soft pollution, and local and global perceptions, and discusses them as essential devices for the legal comprehension of the environment. First, it deploys Serres's excogitation on law which reveals that our relation with nature is intrinsically a legal one. Second, by identifying Serres's understanding of the relationship between law and nature, it offers a way into 'sounding out' environmental law, and importantly, to recognise law as antecedently 'environmental'. Third, it employs Serres's 'anti-method' that provides *epistemic passages* through which we can rearticulate the subject-object relationship, move beyond the common understanding of the environment as surroundings, and edify law to 'listen to the world'.

Introduction: Relations as conditions

Michel Serres's work is hard to pin down. Bearing the title of a philosopher of science, his explorations constantly disperse among different disciplines and

[4] Gilpin (n 2) 92 (omitted footnote)
[5] James O'Connor, *Natural Causes: Essays in Ecological Marxism* (The Guilford Press 1998) 24

intersperse with seemingly disparate categories of knowledge. No wonder he has been dubbed as 'an itinerant theorist'.[6] His oeuvre is constituted by a constant bridging of literature, mythology, religion, law, science, history, communication, and mathematics with a final instruction to obliterate the distinction between soft (humanities) and hard (sciences). In addition to his unique writing style, which challenges established academic conventions, his 'method' of inquiry is quite demanding and requires assiduity on the part of the reader.[7] As rightly remarked, 'Serres is *extracurricular*: you have to read him in your own time (...) and if you study him, you won't find an applicable method that you can use in turning out your own dissertation and books on schedule.' [8] With this in mind, engaging with Serres is not straightforward. But contemplating with him is an edifying and intellectually gratifying experience. His understanding of relations, knowledge, and method are crucial to our discussion here.

In addition to his humanistic background, Serres is an educated mathematician. This largely informed his early work on thermodynamics and information theory, where energy and information, matter and codes, entropy and noise were brought together in order to study disorder as a condition in the formation of complex systems. In his later work, the elements and processes of communication become his main focus in his extensive project, consisting of five books *Hermès* (1961-1980)[9] further pursued with his notion of parasite (noise) in his seminal work *The Parasite*.[10] With its different meanings and disguises,[11] the parasite is introduced as an operator that both establishes and breaks relations, enabling us to recognise the ineluctable presence of the 'third', which Serres traces in different topographies of relations traversing human, political, economic, religious, scientific, natural, and mythic domains. By avoiding static positions and their restricted viewpoints, Serres immerses himself in the middle of the fluid and turbulent aspects of relations.[12] He comments: 'So I don't make my abstractions starting from some *thing* or some *operation* but through a relation, a rapport. A reading of my books may seem difficult,

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[6] Paul A Harris, 'The Itinerant Theorist: Nature and Knowledge/Ecology and Topology in Michel Serres' (1997) 26(2) SubStance 37, 37

[7] See for example: Niran Abbas (ed), *Mapping Michel Serres* (The University of Michigan Press 2005); Steven Brown, 'Michel Serres: Science, Translation and the Logic of the Parasite' (2002) 19(3) Theory, Culture & Society 1; Michalinos Zembylas, 'Michel Serres: a Troubadour for Science, Philosophy and Education' (2002) 34(4) Educational Philosophy and Theory: Incorporating ACCESS 477; P Antonello and RP Harrison (eds), 'Special Issue: Michel Serres' (2000) 8(2) Configurations

[8] William Paulson, 'Writing that Matters' (1997) 26(2) SubStance 22, 22

[9] Michel Serres, *Hermes: Literature, Science, Philosophy* (Josué V Harari and David F Bell eds, John Hopkins University Press 1982)

[10] Michel Serres, *The Parasite* (Lawrence R Schehr tr, University of Minnesota Press 2007)

[11] The equivocal potential of the parasite derives from its different meanings: social, biological, and noise (static).

[12] Serres notes: 'I only describe relationships.' Michel Serres with Bruno Latour, *Conversations on Science, Culture, and Time* (Roxanne Lapidus tr, The Michigan University Press 1995) 127; Elsewhere he states: 'My work has only one title, one subject: connection.' Mary Zouzani, 'The Art of Living: A Conversation with Michel Serres' in Mary Zouzani, *Hope: New Philosophies for Change* (Pluto Press 2003) 203

because it changes and moves all the time.'[13] His main subject of enquiry and method of study complement each other as they are both engaged with relations that traverse space and time, in a constant discovery of prepositions, cords, links, and relations from the multiplicity where forms, systems or structures emerge and transform: 'Relations spawn objects, beings and acts, not vice versa.'[14]

In the exploration of the relations and interrelations between sciences, domains, and topographical extensions, the conception of knowledge is absolutely essential in his work. For Serres, knowledge is an enclosing practice that is based on violence and discipline, an order of representation, a localised language of epistemology, a critique that excludes irregularity and instability and fails to embrace the global; an archipelago of localised islands of stability and rationality, an exception to the rule of disorder. Conversely, knowledge is to be found in the noisy passages that connect islands and this is what largely informs what he terms the 'third instructed' or the new knowledge that has an active role in inventing.[15] In that sense, both ontology and epistemology take place in these relations and passages, and where knowledge becomes 'an *ecology* in which things and ideas interact.'[16] In the midst of the means that establish exchange, distribution, and circulation as well the processes that result from them, 'knowledge is an environment'.[17]

Transcending the limitation of knowledge categories is what characterises his 'non-epistemological' position. Serres refutes epistemology since, in his view, it 'implies that rationality exists only in sciences, nowhere else.'[18] In other words, he is abandoning epistemology since it always entails a judgmental perspective, and implies some sort of critique that engages only with oppositions.[19] One needs to be mindful of this standpoint that Latour succinctly comments about Serres's 'a-critical' philosophy:

> Instead of believing in divides, divisions, and classifications, Serres studies how *any* divide is drawn, including the one between past and present, between culture and science, between concepts and data, between subject and object, between religion and science, between order and disorder and also of course, divides and partitions between scholarly disciplines. Instead of choosing camps and reinforcing one side of the divide, of the crisis, of the critique – all these words are one and the same – Serres sits on the fence.[20]

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[13] Serres with Latour (n 12) 104
[14] ibid 107
[15] Michel Serres, *The Troubadour of Knowledge* (Sheila F Glaser with William Paulson trs, The University of Michigan Press 1997)
[16] Harris (n 6) 39
[17] Sydney Lévy, 'An Ecology of Knowledge: Michel Serres' (1998) 26(2) SubStance 3, 5
[18] Serres with Latour (n 12) 128
[19] ibid 53
[20] Bruno Latour, 'The Enlightenment Without the Critique: A Word on Michel Serres' Philosophy' in Allen P Griffiths (ed), *Contemporary French Philosophy* (Cambridge University Press 1987) 93

This fence, however, is not static but constantly rearranged and displaced depending on the specificity of the medium or the means that enable such a relation. In such a way, his subject matter leads the method by embodying the relation in question, its fluctuation and disordering potentials, bringing science and non-science, law and non-law in proximity: 'All knowledge is bordered by that about which we have no information.'[21] In his view, method imitates the techniques of mastery and closure, implying repetition and thus manifesting redundancy. For that reason he insists that we should return to method's etymological root (*meta* 'beyond' + *hodos* 'a way') in making passages and seeking means to access, go through, invent.[22] For Serres, method 'seeks but does not find',[23] and as Harrari and Bell finely point out, his 'method invents: it is thus an *anti-method*.'[24] By circumventing the edifices of order, rationality and objectivity Serres liberates us from the method. It is a method of a journey[25] that invites us to join Ulysses in his wanderings and circumnavigation around the world.[26]

When crossing these passages, relations and intersections Serres cannot but encounter law. He perceives law as both an abstract and material process through which subjectification and objectification takes place; a mechanism, agency, operation that binds individuals into a collectivity and enables social relations; an analytical tool that delimits and decides upon the right and wrong. The law has played an important role in his writings and substantially informed his work about nature/environment. Regrettably, such a significant resonance of Serres's writings has rarely been recognised in the environmental legal scholarship. To amend this omission, this chapter addresses Serres's thinking about law's relation with environment. While his work has already contributed to the environmental discourse, [27] most notably by his discussion on the *Natural Contract*, this chapter will attempt to expand Serres's thought for the purposes of identifying fresh approaches to environmental law. The epistemic passages presented below lead us to sound out the very borderline that constitutes the *in* and *around* nature and culture, human and in-human, that is, the circumstance of environmental law.

In the following discussion, Serres's work is divided in three segments. It begins with a consideration of appropriation as pollution and it introduces property

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[21] Michel Serres, 'The Origin of Language: Biology, Information Theory, and Thermodynamics' in Serres (n 9) 83
[22] Lucie Mercier, 'Introduction to Serres on Transdisciplinarity' (2015) 32(5-6) Theory, Culture & Society 37, 40
[23] Serres (n 15) 100
[24] Josué V Harari and David F Bell, 'Introduction: *Journal à plusieurs voies*' in Serres (n 12) xxxvi
[25] ibid (*Randonée* means a journey or excursion which etymologically is also related to the English word random.)
[26] Michel Serres, *The Five Senses: A Philosophy of Mingled Bodies* (Margaret Sankey and Peter Cowley trs, Continuum 2008) 259-64
[27] Kerry H Whiteside, *Divided Natures: French Contributions to Political Ecology* (The MIT Press 2002); Mick Smith, *An Ethics of Place: Radical Ecology, Postmodernity, and Social Theory* (State University of New York Press 2001); Luc Ferry, *New Ecological Order* (The University of Chicago Press 1995)

rights as 'natural' rights in which law partakes. The second part deals with his insistence on recognising a natural contract, or better, adding yet another virtual contract to the existing social contract in order to overcome the division between nature and culture. The third part extends to Serres's latest recognition of Biogea (life and earth), and the possibilities of granting nature the legal status of 'person'.

Appropriation

The modern notion of property rights, legally conceptualised as relations between subjects toward an object, are the key principles that inform our relationship with nature. While for seventeenth century natural lawyers the view of property (rights) as a means of organising social life and its surrounding emerged from the intrinsic relation between man and the natural world around him, the liberal thinkers of the eighteenth century saw property (rights) as an instrument that is constructed by law, emphasising individual and possessive ideas with regard to its environment.[28] Despite the continuous changes of legal conceptions, the fact that property is concerned with demarcations, the use of resources, and distribution of rights and duties makes property conceptions fundamentally environmental.[29] Serres invites us to reconsider this before any rationalisation or actualisation of law takes place and suggests that we should look instead into the 'natural' appropriation.

In the first pages of his *Malfeasance,* Serres asks 'How do the living inhabit a place? How do they establish it, recognize it? (…) How do animals crate links as powerful as the law is for humans, links that enable them to appropriate the habitat were they dwell and live?'[30] The short answer is located in the 'natural' behaviour of all living species: through dirt, spit, excrement, sperm, blood. Bodily discharges appropriate places, thus '*appropriation takes place through dirt*. More precisely, what is properly one's own is dirt.'[31] This stercoral theory of property proposes that when something is clean there is no established ownership, no distinctions, just a white space ready to be cultivated, inseminated, polluted, and thus circumscribed. The common becomes one's own by the act of soiling, which instantaneously demarcates the space and makes it a place that is *proper*. Similarly in order to sustain itself the parasite abuses the host, it soils the place in order to appropriate.[32] One of the examples Serres gives is that when one spits in their soup it is clean to them but dirty to others. Here is the paradox: by the very act of making it dirty and polluting it, the

[28] Coyle and Morrow (n 3) 9
[29] ibid 5
[30] Michel Serres, *Malfeasance: Appropriation Through Pollution?* (Anne-Marie Feenberg-Dibon tr, Stanford University Press 2011) 2
[31] ibid 3. Serres here employs the various meanings of the French word *propre* meaning both 'clean' and 'one's own'. See also Serres (n 10) 139-46
[32] *Para* ('near', 'next to'). '*Sitos* in Greek, sometimes means excrement.' For Serres the 'man is the universal parasite, that everything and everyone around him is a hospitable place.' Serres (n 10) 144-45, 24

principle of appropriation is established by clearing out the space.[33] The act of dwelling as something that precedes the building is in actuality preceded by pollution.[34] Pollution becomes a natural act. From soup to appropriation of lands and birth of nations, this is the natural right that precedes positive or conventional right: 'the forgotten foundations of property rights'.[35]

Pollution in legal terms, as Sagoff points out, is a 'form of coercion – an assault upon persons and trespass upon property',[36] which asserts an understanding of pollution as an attack on the delimitations that law has imposed by its property constructions. While environmental law fundamentally builds its edifice from presiding over the access to and the use of property (rights), Serres suggests considering how property rights are primarily a result of an act of pollution. This is further confirmed by Serres's regular use of etymology to show that the verb 'to have' has the same origin as 'to inhabit', thus it turns the Cartesian subjectification into an objectification: 'I inhabit, therefore I have'.[37] While the Cartesian distinction is often recalled in environmental discourse for the purposes of criticising the established separation between human and nature, Serres insistence on considering the distinction of spaces whereby property rights are established, provides us with a position to deem that such acts of natural appropriation precede, or more precisely, inform the objectification and therefore also the subjectification that law as a mechanism maintains as its main activity. Ultimately Serres challenges Rousseau's imaginary dictum that the foundation of social contract lies in the act of the 'first [who] after enclosing a piece of land thought of saying "This is mine"'[38] but rather in the very act of the abuse that precedes possession. Serres, however, takes notice of an important word in Rousseau's account, in which 'enclosed' (*lustrare*) means to 'travel all over a place, go around its periphery, circle it, inspect it', but also means to purify and clean the space, acknowledging that Rousseau was only right for asserting the borders, fences and limits.[39] Pollution as a circumscribing act is indeed a legal practice.

Even though pollution is intrinsically an act of externalisation by which we appropriate, it is also the very process of cultivating the soil that gave rise to culture. Thus what appears as waste actually 'mediates the transition from nature to culture'[40]

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[33] The meaning of *pollution* originates from religious and medical sources as it 'first meant desecration of places of worship by some excrement, and later the soiling of sheets by ejaculation'. Serres (n 30) 34
[34] For a fascinating anthropological investigation of environment see Tim Ingold, *The Perception of the Environment: Essays on Livelihood, Dwelling and Skill* (Routledge 2000). Ingold by drawing on Heidegger notes: 'Only if we are capable of dwelling, only then we can build.' 185-87
[35] Nature comes from *natus* 'born'. Nations, native, innate derive from the same root. The meaning of *pollution* originates from religious and medical sources as it 'first meant desecration of places of worship by some excrement, and later the soiling of sheets by ejaculation'. Serres (n 30) 34
[36] Mark Sagoff, *The Economy of the Earth: Philosophy, Law, and the Environment* (3rd edn, Cambridge University Press, 2008) 6
[37] Serres (n 30) 8
[38] ibid 12-3
[39] ibid 16, 64
[40] Anne-Marie Feenberg-Dibon and Reginald McGinnis, 'Introduction' (2009) 63(3) Western Humanities Review (Special Issue: Nature, Culture, Technology) 4, 10

– that is, it informs the very process of separating nature from culture and turns environment into an object of appropriation. Serres traces pollution from a localised agricultural practice through socio-technological development, it further extends to a globalised cultural practice, from hard to soft, from 'from *pagus* to *page*'.[41] The separation between nature and culture is in the distinction between hard and soft, force and code, and pollution presents itself in both: 'Indeed, we deal with pollution only in physical, quantitative terms, that is, by means of the hard sciences. Well no, what is at stake here are our intentions, decisions, and conventions. In short, our cultures.'[42] Even though today's pollution comes largely from residues and 'transformation related to energy', Serres considers that 'fundamentally it emanates from our will to appropriate, our desire to conquer and expand the space of our properties.'[43] The increase of appropriation, excretion and pollution comes from the body which both '*marks the extension of appropriated space*' and '*the increase in the number of subjects of appropriation* – individual, family, nation.'[44] It is in this natural process of appropriation where law, as a cultural occurrence, can be understood as an act of imitating the natural laws. On the basis of law being an objective rationalisation, it has actualised itself as an objectifying technique that gives rise to subjectification forging its main axis around which all environmental discourses revolve. The global effect of culture, supported by the sciences and their technological means and instruments have turned Earth into an object that lies passively in front of us, a space of limitless appropriation.

Serres views the act of pollution as a marker of space and appropriation, but also emphasises its concomitant feature of diffusing in the atmosphere and spreading out in space. [45] Accordingly, the practices of pollution are not only hard as we most commonly understand the environmental crisis, but also soft, manifested through the workings of law, science, economics, politics, and culture. As communication information technologies successfully envelope the whole world, they widely distribute information, brands, and texts that propagate further pollution and invade the space and our senses. This not only blocks the way in which we perceive the world, but we 'become "possessed" by a more subtle, but potentially even more harmful, form of pollution.'[46] Appropriation is an ongoing process and with that in mind Serres contends that in its growth and continual expansion we come to a point of an 'end of property'[47] – a peculiar abstraction similar in quality to what constitutes property rights. The global pollution urges us to change 'our methods of appropriation' because the space we inhabit is not the same, but a 'new space that

[41] Serres (n 30) 23
[42] ibid 63; Serres indicates elsewhere that 'the hard *[dur]* is not durable, only the softest endures *[perdure]*.' Serres (n 15) 103
[43] ibid 42
[44] ibid 34-5
[45] ibid 43
[46] Feenberg-Dibon and McGinnis (n 40) 10
[47] Serres (n 30) 66

cannot be enclosed at all.' While the old maps supported enclosures, we are now in a space of networks that go beyond the limited and restrained spaces; it is 'a topological space without distances.'[48] The borders are obliterated, and without them the property rights become redundant.

> Indeed, by generalizing or globalizing dirt and so erasing the borders where polluting starts or stops, and hence appropriation, *the right to property suddenly reaches an intolerable threshold and becomes literally unbearable.* We must therefore rethink this right, meaning go beyond its present status where it still resembles animal behaviours. One more step must be taken on the difficult road towards hominization.[49]

Recently there has been a similar call for reconsidering the private right to property for reasons it being a key factor not only for the environmental crisis but also for 'promoting environmental harm.'[50] From an ecocentric position it is argued that modern property law, which is intrinsically anthropocentric needs to recognise the value of Earth community that encompasses human and non-humans and recognise an 'alternative description of private property' where the object of ownership becomes a subject.[51] In contrast, Serres leads us to consider property not as exclusively an anthropocentric attribute. Namely he contends that that the current laws are still informed by the natural laws: once laws become the subject of rationalisation, the processes of objectification manifest anthropocentric qualities disguising their natural origins. In the same vein, as it will be discussed below, Serres is not ecocentric as nature for him does not carry any intrinsic value beyond its being a condition and a circumstance whose presence humans overlook by being engaged with violence and ever-growing urge to expand. For rethinking this right, Serres urges us to primarily recognise that the very act of appropriating through pollution 'without limits' results in an inability 'to enclose a piece of land'.[52] In a counterintuitive manner, Serres leads us to recognise that '[w]hen property knows no limits, the space it occupies no longer belongs to anybody, because property existed only to outline a network of borders of a world.'[53] Serres presents a vision of a world in which appropriation factually brings about a world without property. He challenges the representations in which culture creates distinctions and where law both actualises and maintains such application. Ultimately he admits: 'I dream, for instance that the space of perception would become *res nullius* again.'[54]

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[48] ibid 67
[49] ibid 71
[50] Peter D Burdon, *Earth Jurisprudence: Private Property and the Environment* (Routledge 2015) 10
[51] ibid 102
[52] Serres (n 30) 67
[53] ibid 71
[54] ibid

> *Mundus, res nullius*: the world belongs to no one anymore, not to those who struggle to own it, given what the results of this struggle will be, nor to the others excluded by that very struggle. Without breathable air and indispensable water, without farmable land, without fire from heating, without livestock for food… and so, *res nullius, mundus*: fight no longer for the world, for it no longer belongs to humans. Dis-appropriated, it can no longer be appropriated.[55]

The world is no longer an object of appropriation but a 'global rental' which we do not own and in which we only live as tenants: 'the new contract becomes a rental agreement.'[56] The very impossibility to appropriate the world requires law, and in this case environmental law, to stop imitating the natural laws. In other words, Serres hopes for them to soon 'free themselves from their origins' and 'give birth to a set of conventions or cultural legislations'.[57] In conceiving of these new conventions, Serres proposes that contract plays a significant role as a legal instrument that has the means to both prescribe and settle the relations with nature.

The Natural Contract

Serres's greatest contribution to the articulation of our relation to nature is *The Natural Contract* published in 1990.[58] This work does not fall within any of the discussions about ecology, and as Serres remarks himself, it rather 'deals with the philosophy and the history of Law, and in particular with the question of who has the right to become a legal subject.'[59] Indeed, legal history confirms that the recognition of legal subjects has continuously been 'upgraded' as a response to the social rearrangements. Thus the inanimate has indeed become a new category for consideration.[60] The material world demands rights while the abstract rights require their extension. Even though such a recognition of nature as legal subject informed the environmental movements in the 1970s which advocated for granting nature with legal rights,[61] Serres's project does not fall easily in that discourse since understanding his idea of the natural contract requires recognising other elements that go beyond the merely subjectifying techniques of the law. The natural contract does not imply nor does it argue for rights *sensu stricto*, but it is as an epistemic instrument to inspect the relation that cannot easily be reduced to the division – of human and

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[55] ibid 79-80
[56] ibid 72-3
[57] ibid 14
[58] Serres 'returned' to the natural contract on another three different occasions to rearticulate the necessity to understand what such a contract implies. Michel Serres, *Retour au Contrat Naturel* (Bibilothèque Nationale de France 2000); Serres (n 1); Michel Serres, 'A Return to the Natural Contract' in Jérôme Bindé (ed), *Making Peace with the Earth: What Future for the Human Species and the Planet?* (Berghahn Books and UNESCO 2007)
[59] Serres (n 1)
[60] Patrick Hayden, 'Book Review Michel Serres: *The Natural Contract*', (1998) Environmental Ethics 20(4) 433, 433
[61] Christopher D Stone, *Do Trees Have Standing? Law, Morality and the Environment* (3rd edn, OUP 2010)

non-human – that law supports. For our purposes, Serres helps us to map the position of law in the ongoing dialectic that society is entangled with and, moreover, to recognise that the established relationship between humanity and nature is fundamentally of a legal nature.

Serres regards the notion of a social contract to be an initial 'document' according to which a natural contract can be signed. The social contract has not succeeded in establishing peace and to depict this he begins the book with a painting '*Men Fighting with Sticks'* by Goya in which two adversaries are entangled in a violent act and seem not to notice that they are 'knee-deep in the mud'.[62] This depicts how the social builds and sustains itself constantly on opposing instances of violence. As humanity is embroiled within this violence it overlooks the fact, or even worse, forgets 'the world of things themselves, the sand, the water, the mud, the reeds of the marsh'.[63] History, as well as law, confirms and contributes to the limitations of this bifurcated discussion, of two parties, two sides, two players, two adversaries forgetting the place, the location: the middle where these conflicts emerge – the third party, 'the world itself.'[64] Serres provides us with a square that helps us to consider this third party and to see law's particular role in the relation established with the world:

[62] Michel Serres, *The Natural Contract* (Elizabeth MacArthur and William Paulson trs, The University of Michigan Press 1995) 1
[63] ibid 2
[64] Michel Serres, *Times of Crisis* (Anne-Marie Feenberg-Dibon tr, Bloomsbury Publishing 2014) 31

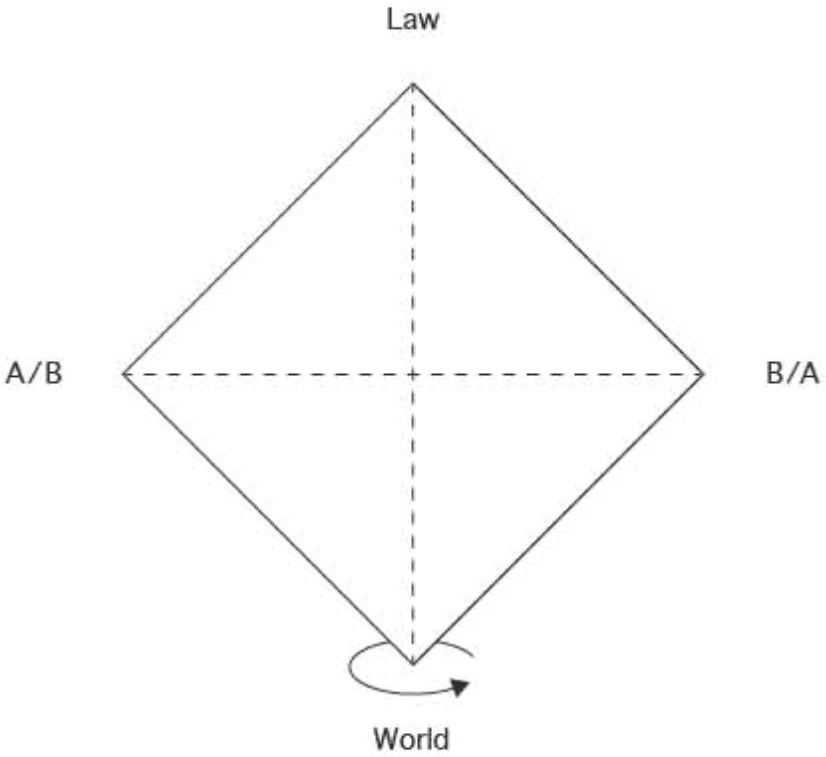

Figure 1. A diagram depicting Serres's exposition in *The Natural Contract*

According to this square, the subjects are always in a dialogue. But before a debate or a combat takes place, there is always an agreement that precedes it, 'a preliminary contract' that stipulates the use of a common code or language. Law limits the violence between subjects from passing the line of no return by rendering war as that which 'protects us from the unending reproduction of violence.'[65] These *subjective wars* are legal relationships 'defined by the law' – the war is, by definition, a legal state. Since the dawn of history these quarrels, conflicts, and furore are fought along a diagonal between the rivals and presented as visible spectacles.[66] However similarly to Goya's picture, the heated debates hide or overlook the '"theater" of hostilities', the 'invisible, tacit, reduced to a stage set', which takes the third corner of the square: the 'worldwide world'. Engaged in their cultural debates, the rivals are subjects 'unconsciously joined together' against the objective world, as they 'press with all their weight on objects, which bear the effects of their actions.'[67] But in addition to the subjective war, Serres contends that there is a necessity to recognise the *objective*

[65] Serres (n 62) 14
[66] ibid 11
[67] ibid

battle – the square 'which shows the two rivals on two opposite corners, restores the presence of invisible, fearsome players in the other two corners: the worldwide world of things, the Earth; the worldly world of contracts, the law.'[68]

> The square turns, standing on one of its corners: such a rapid rotation that the rivals' diagonal, spectacularly visible, appears to become immobile, horizontal, invariant through the variations of history. The other diagonal of the gyroscope, forming a cross with the first one, becomes the axis of rotation, all the more immobile the faster the whole thing moves: a single objective violence, oriented more and more consistently toward the world.[69]

In this square, law is on the top, the world is at the base, and there are two points that hold the positions of the subjects. The law regulates the relation between the subjects, while the world provides the basis for their relation. Now imagine the square oscillating around its static axis, as the revolution (a natural force!) speeds up. The positions of the subjects interchange, one cannot differentiate between them and their identity becomes irrelevant; what endures is the diagonal axis where the world and law remain still. The square's axis is fixed on the world and as it turns the subjects unceasingly change their position but remain in the same subjective violence and overlook the objective violence towards the world. Serres argues that the limit has been reached, as the 'useless vanity of subjective wars' is involuntary replaced by 'the efficacy of objective violence'.[70] Serres indicates that if there is a legal arrangement for the subjective wars, 'there is none for objective violence, which is without limit or rule, and thus without history.'[71] Under this unregulated threat towards the collective,[72] therefore, we have to 'invent a law for objective violence', similar to our ancestors who invented the oldest contract to control the subjective wars. Thus Serres suggests that we need to create a contract with 'the objective enemy of the human world: the world as such. A war of everyone against everything.'[73] This negative recognition of nature paradoxically has the purpose to recognise its positive relevance for the humans who forgot about and only recently became aware again of its 'destructive' power: 'We must decide on peace among ourselves to protect the world, and peace with the world to protect ourselves.'[74] The necessity for recognising the relation that runs along the vertical diagonal requires signing a new contract, which would not replace the existing social contract but establish another fundamental natural contract that intersects with it.[75] However, for law to succeed in legitimising

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[68] ibid 12
[69] ibid
[70] ibid
[71] ibid 14
[72] Bruce Clarke, 'Science, Theory, and Systems' (2001) 8(1) Interdisciplinary Studies in Literature and Environment 149, 156-59
[73] Serres (n 62) 15
[74] ibid 25
[75] ibid 15

this contract, it needs to anthropomorphise nature. But with whom and how can this contract be signed?

The legal subjectification through identifying the intrinsic value of nature as part of the environmental ethics has been reoccurring approach that has dominated the environmental discourse. Environmental law is imbued with environmental ethics whose traditional understanding has been challenged by the radical ecologists as an anthropocentric extension to be applied on non-human surrounding. Similarly, Serres's approach has been strongly criticised for overlooking nature's incapacity to understand its own intentions.[76] However his proposition to recognise nature as legal subject argues against this criticism. In his defence, Serres regrets if he comes across as animist, as he believes nature is not a 'thinking individual'[77] nor an entity that can speak out in order to negotiate the clauses of the contract, let alone use a hand to sign them off.[78] With an aim to disprove such a criticism, he insists that we reconsider the primary social contract that was 'unspoken and unwritten: no one has ever read the original, or even a copy',[79] it is a virtual contract that has based and settled history of men and brought reason upon relations. In that sense, the natural contract similarly to the 'signed' social contract should be only approached as a 'precondition.'[80]

Furthermore, what is remarkable in Serres's thought is that nature does not easily fall under the anthropocentric category of subjects that law requires in order to formalise a contract. Instead he is focusing on the established function of law to present an emerging new role of nature that, conceptualised through our legal categories, attains the role of a subject. Accordingly, in contrast to Stone's position to treat, integrate and recognise the rights of nature through legislative gestures,[81] Serres proposes a view that those objects already present themselves as subjects and that we have tacitly accepted these 'things' as legal subject having rights. He notes that Rio and Kyoto protocols confirm the 'progressive formation of this new global collective subject'[82] by legally recognising it as an entity. While such a promotion of nature as a 'legal person' can be considered as 'not more than a philosophical metaphor',[83] Serres is using such a metaphor to present the concrete appearance of the world as a subject. To further assert the world's subjectivity, Serres argues that humanity with its generated knowledge plays an active role in the process of the world becoming a subject. To this end, he introduces the notion of 'world-objects' that become apparent, as discussed above, by the very ever-expanding anthropogenic pollution through appropriation. The globalising effects of the human socio-technological expansion,

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[76] Ferry (n 27)
[77] Serres, 'A Return to the Natural Contract' in Jérôme Bindé (n 58) 131
[78] Michel Serres, '*Feux et Signaux de Brume:* Virginia Woolf's Lighthouse' (2008) 37(2) SubStance 110, 125
[79] Serres (n 62) 39
[80] Serres (n 1)
[81] Stone (n 61)
[82] Serres (n 1)
[83] Jérôme Bindé, 'The Natural Contract and Development in Twenty-First Century' in Jérôme Bindé (ed), *The Future of Values: 21st-century Talks* (Berghahn Books and UNESCO) 201

this spread of the 'local towards the global' is what engenders world-objects: 'Society knows, moreover, how to construct and use technologies whose spatial, temporal, and energetic dimension are on the scale of worldwide phenomena (…) We're beginning to resemble the Earth',[84] imitating the world's dimension of space, time, speed and energy.[85] These world-objects are not 'lying in front of us',[86] but they envelope us. In parallel with the process of appropriation through pollution and our technological advancement we are able to perceive world's global size and we are immersed in its totality. The boundaries are obliterated and distances are vanishing so 'we now live in those world-objects as we live in the world.'[87] And in this process of reaching 'almost total control and ownership of nature, we end up being owned and controlled more or less by nature. We were going to manipulate nature but in turn it manipulates us.'[88] A new subject with a new face appears, the 'nature has become a protagonist in human culture.'[89] Serres summarises the history of the nature/culture relation in three Acts:

> Act I contrasts those things we can manipulate, and things we cannot manipulate. In Act II, we increasingly manipulate things we formerly could not master. Then suddenly, in Act III, we find ourselves subordinated to those things we manipulate, which because we manipulate them, begin to manipulate us in return. This is the stage at which nature suddenly reconstitutes itself as the sum of its parts and strikes back at us.[90]

There is a reversal of the subject-object relationship. While the world used to be subjected to human's mastery and possession, it now becomes subject and us, in turn, become objects subjugated to its force, change and violence. The nature, or the global object, 'becomes subject because it reacts to our actions like a partner.'[91] While the 'medieval couple of subject-object' and the processes of objectification framed modernity, this relation 'can no longer describe the scene of knowledge and action'.[92]

What is important for us here is that Serres identifies the treatment of objects in the legal condition. For the Western thought (politics, judiciary, or critique) what precedes things [*choses*] are the *causes*, which share the similar etymological root with *causa*, which is a legal term used to designate the case that is brought before the law and adjudicated upon.[93] What appears is that 'objects themselves only existed

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[84] Serres (n 62)
[85] Serres (n 64) 25-6; For a similar conception see Timothy Morton, *Hyperobjects: Philosophy and Ecology After the End of the World* (University of Minnesota Press 2013)
[86] Object (*ob* 'in front of' + *iacere* 'to throw')
[87] Serres (n 1)
[88] Serres (n 64) 29
[89] Steven Connor, 'Michel Serres: Hard and Soft' (University of York, November 2009) <http://stevenconnor.com/hardsoft.html> accessed 30 August 2016
[90] Serres, 'A Return to the Natural Contract' in Jérôme Bindé (n 58) 135
[91] Serres (n 1)
[92] ibid
[93] Michel Serres, *Statues: The Second Book of Foundations* (Randolph Burks tr, Bloomsbury Publishing 2015) 59; Raymond Williams also indicates that the understanding of 'nature as material world' derives from the eighteenth and nineteenth century legal processes of 'interpreting and

according to the debates of an assembly or after the verdict delivered by a jury.'[94] In that sense, the existence of objects is preceded by a debate, decision, or 'something about which there will be a contract.'[95] A legal recognition or 'authority in fact or by right' is required to validate and legitimise knowledge and action upon a thing. It is in this aspect of knowledge creation that law and science share the same roots. They are both based on the 'reason that judges and reason that proves'[96] and as such inform and decide on what is objective: knowledge, objectivity (object), and collectivity (subject) fundamentally occur under legal conditions.[97] Law, as much as it appears to be global, is in practice always spatially localised. Hence for the law, which in principle objectifies, such a comprehension of an object in its totality proves to be a disturbing process.[98] In order to think this new object (condition) Serres does not propose any recognition of some intrinsic value to nature or a return to it[99] but suggests that '*we need to return to the original legal gesture*.'[100] The gesture requires a performative act recognising the link, connection, bond, contract, or accord established with this new emergent object.

A contract is legally regarded as a relation based on an exchange between two subjects. Thus it could be said that a contract is an anthropocentric formation deemed to represent the interests of humans (legal persons). The rule of agreements, Serres finds, is also present in the construction of knowledge, which is always dependent on the tacit invisible contract by which all the 'relations of science and law, reason and judgment' interact.[101] Serres's approach nevertheless does not attempt to refute or neutralise this instilled anthropocentric 'precondition'. Instead he uses the contract as a metaphor to grasp several of its potentials simultaneously, and in that way gain a new understanding of the relation (exchange) that is subject of attention to environmental law. *The Natural Contract* generated criticism because at its heart it contains this literary metaphor;[102] but it is precisely the metaphorical analogy what constitutes Serres's method of breaking and bridging the distinctions of viewpoints, and the fragmentation of knowledge.[103] While contract are legally considered to be an abstraction of obligations (a condition for an exchange), it is the material concreteness of the relation that interests Serres and that can only be perceived through metaphors.

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classifying the laws…shaping new laws from new cases', when nature was not seen as 'an inherent and shaping force but as an accumulation and classification of cases.' Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (Fontana Press 1983) 222-23

[94] Serres (n 93) 59

[95] Serres (n 1)

[96] Serres (n 62) 65

[97] Serres (n 1)

[98] ibid

[99] Harris (n 6) 43; Stéphanie Posthumus, 'Vers une écocritique française: le contrat naturel de Michel Serres' (2011) 44(2) Mosaic: a journal for the interdisciplinary study of literature 85, 88;

[100] Serres (n 1)

[101] Serres (n 62) 65

[102] The 'legal concepts are diluted in the metaphorical pathos'. Alain, Roger, *Court traité du paysage* (Gallimard 1997) 155 in Posthumus (n 99) 92

[103] Serres does not believe in strong distinctions between literal and metaphorical meaning. Serres with Latour (n 12) 94

As Whiteside rightly points out, the natural contract is not necessarily a legal notion 'associated with subjectivity' but it manifests its physical material quality, which Serres traces in the etymological origin of *contrahere* (to draw together).[104] 'In fact', Serres suggests, 'the Earth speaks to us in terms of forces, connections, and interactions, and that's enough to make a contract.'[105] In this way we are presented to consider contract as a relation that precedes both the subject and object by which Serres restores the materiality of *contract* that tightens and pulls. The bonds, he writes:

> …*comprehend*, since they join or grasp or seize several things, beasts, or men together. The bond is doubtless the first quasi-object suited to making our relations visible and concrete; the real chains of obligation, which are light and unburdensome within a space, weigh us down at its edges.[106]

In that sense, Serres proposes 'that the first legal object was the cord, the bond…which we read only abstractly in the terms *obligation* and *alliance*, but more concretely in *attachment*, a cord that materializes our relations or changes them into things.'[107] Hence it is in the specificity of this relation where law imitates nature and becomes, as Serres rightly puts it, 'the refined technology of our relations.'[108] The contract, however, should not be reduced only to an understanding of that which establishes a contact but also as an act that makes distinctions between inside and outside, law and non-law, private and public: it symbolises the balancing of the relation. Assad rightly points out that Serres's interests lies in the 'contractual activity' that not only determines the relationship but also the act of exclusion which is 'sine qua non of any binary understanding.'[109] What Serres urges us to see is that what informs law, but also the creation of knowledge and the way in which we comprehend our surroundings, is an act of deciding that entails excluding of the middle. In a distinctive way, *The Natural Contract* attempts to bring to the fore the excluded third, or the nature, the other, the excluded outside 'which does not participate in the hominization process.'[110]

For these reasons, Serres introduces us with the 'symbiotic rights' that reject the 'traditional contractual consciousness'[111] and its intrinsic necessity to exclude. Instead, they go beyond the legal instinct for a contractual locality and recognise the global quality of the natural contract. In other words, the global is hardly to be integrated within a system (the tradition of legal contracts) whose function is always localised. However, one must not forget: despite law's potential to metamorphose and

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[104] Whiteside (n 27) 122
[105] Serres (n 62) 39
[106] ibid 107
[107] ibid 45
[108] ibid 105-06
[109] Maria L Assad, *Reading with Michel Serres: An Encounter with Time* (SUNY 1999) 151-52.
[110] ibid
[111] ibid

effect locally, law is one of those objects that have global standing. Responding only to the needs of the legal subjects the abusive parasitism on things is maintained. Thus only when objects become legal subject, Serres argues, equilibrium becomes achievable.[112] The rights of symbiosis are defined by reciprocity: 'however much nature gives man, man must give that much back to nature, now a legal subject.[113]

Yet with this view of law, it seems that Serres allows himself to be drawn into the mythic existence of law as a natural force that provides order. As Smith correctly indicates, Serres deems law as a 'natural home of ethics', overlooking how law is the very instrument that is used to constrain and discipline and set hierarchical relations.[114] To this end, while Smith supports Serres's attempt to revise the relation between society and nature, he contends that 'we need genuine dialectic with nature rather than a *formal* "balance" or contract.'[115] Serres would agree to an extent, but he regards contract as a means through which law confirms 'our rather stable existence', whereas it is the politics that attest 'our unstable history.'[116] Environmental law in its most general capacity and common view has the role, responsibility, and function to balance out, regulate and hold-tight the principles by which the environment is treated. The balance with Earth, however, should not be understood only through law's declaratory (declamatory) objective of achieving equilibrium, but as an objective balance through which we conceptualise and understand our symbiotic relationship with it. While the contract could be criticised as an unsuitable way in which to recognise the symbiotic correlation, Serres invites us to trace the different material qualities of contracts as an inherent principle in which nature and culture function. It is situated in the cords that bind and connect together, and these binds exist not only between us but extended to nature as well, to that 'which we have continually sought to disengage from.'[117] The symbiotic right, as Assad comments, 'is globalized: subject and object, human and earth, enter a contract which falls outside all contractual modes, because it knows no exclusion. Yet it will recuperate and subsume all laws, that is, the Law.'[118] In this manner Serres confronts the criticisms that his ethical-legal approach to nature, following the anti-humanist tradition of the environmental movements, aims to deconstruct the tradition of humanism and create a legal status for the inanimate.[119] Serres's project is fundamentally a humanistic one – only legal subjects can 'proclaim the rights of objects.'[120]

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[112] Serres (n 62) 37
[113] ibid 38
[114] Smith (n 27) 147-49; It has also been rightly argued that contract is the very 'myth to justify political domination and economic oppression.' John Clarke, 'Aujourd'hui l'écologie?' (1996) 1 Terra Nova: Nature & Culture 112, 118-9
[115] ibid
[116] Serres (n 10) 124
[117] Steve Brown, '*The Angelology of Knowledge*: Michel Serres' (2000) 48(1) The Sociological Review 147, 151
[118] Assad (n 109) 153
[119] Ferry (n 27) 63, 70-71
[120] Serres (n 1); See in particular Claire Colebrook, *Death of the PostHuman: Essays on Extinction, Vol.1* (Open Humanities Press 2014) 158-184

While contract may well be a global balancing mechanism that intends to set an order, this cannot be read outside the surroundings and circumstances which turn law into a local instrument of particular interests and specific actors. After all, law does claim, together with the sciences, to be in a position to *circumvent* crisis in a way that is guided by reason and judgment. Law partakes of the process of deceiving or outwitting nature, it impersonates the parasite that pretends not to be present, who mimics its host and manifests itself as if the host cannot do without it. Indeed law has always been performative.

Denouement: Unmasking Circumstances

The sounding out of the surroundings of environmental law leads us back from where we started. In *The Five Senses*, Serres engages closely with circumstances that could be perceived as lines that encircle and give rise to forms and beings. The form(ation) could also be considered as 'a kind of knowledge' that sustains itself through a habit of repetition reducing existence to a mere redundancy.[121] A circumstance is a condition that always determines the same effects; the very 'identity of the circumstance' gives rise to an identity (stability of experience) by means of recurring: 'Without it, no logic, no manipulation or philosophy.'[122] The episteme through its logic of reason considers equilibrium as a state that is based on a stasis thus any existence of 'other' is excess, a defect. For Serres 'existence is not deduced from identity' but on the contrary: 'Existence, a deviation from equilibrium, refers to circumstances. The circumstance creates the total set – without the possibility of a balance sheet or accounting – of existences themselves, of deviations, imbalances'.[123] More precisely a circumstance is not merely the surroundings we are conditioned by but should be understood as a kind of exchange that negotiates the passage: 'The global (matter, energy, information ... law) comes to a locality (cell, body, town ... an element of the countryside) through its surroundings (membrane, skin, peripheral walls, borders ... circumstances).[124] This forces us to recognise that the environment as a circumstance is not the other, but engenders the middle, the relation, as a third party in our social relations that challenges our instilled binary perceptions.[125] The third or the middle is the milieu – 'the totality of the social collective that surrounds those who talk of him'.[126] The milieu is not necessarily an entity with a particular

[121] Serres (n 26) 282
[122] ibid 283
[123] ibid 285
[124] ibid 300
[125] For a critical reading of the notions centre and middle within the environmental (law) discourse see Andreas Philippopoulos-Mihalopoulos, 'Actors or Spectators? Vulnerability and Critical Environmental Law' in Anna Grear and Evadne Grant (eds), *Thought, Law, Rights and Action in the Age of Environmental Crisis* (Edward Edgar 2015) 46-75
[126] Serres (n 15) 47. The words means, medium, and milieu have the same etymological root as middle.

material quality but it is something that changes forms and modes, from hard to soft, from earthquakes to tsunamis, from soil to climate change. It is this third party that Serres calls *Biogea*, 'an archaic and new country, inert and alive, water, air, fair, the earth, the flora and fauna and all the living species.'[127] If environment law needs to negotiate with this 'condition' – drawing on the notion's original meaning – then it needs to be able 'to speak together' with it.

How can we act upon this condition and be able to speak together? We are fixed in a form of observation that maintains the artificial distance performed by the eye as the only valid aspect of engaging and comprehending the world. As Macnaghten and Urry note, the hegemony of the vision and 'its ability to organise the other senses produced a transformation of nature as it was turned into spectacle.'[128] In order to move beyond the visual domination that is exerted over both nature and society, they stress the necessity to 'articulate the embodied character of our relationship to nature', which can be achieved through recognising our relationship with senses.[129] Recently, Daniel Botkin called for a change of perspective in solving environmental issues that goes beyond the sciences. In order to attain this perspective, he writes, 'we must break free of old assumptions and myths about nature and ourselves while building on the scientific and technical advances of the past.'[130] Botkin contends that we are not listening or even hearing this dynamic nature, as we believe that the environment can be returned to an idealised state where equilibrium is possible. The climate change and its indeterminacy are nevertheless immediate and we are becoming aware of the conditions upon which we have to act upon. But to act upon does not mean to come up with any 'short-term solutions' provided by the disciplines because in that way we risk of reproducing 'the causes of the problem by reinforcing them.'[131] As Paulson suggests, Serres wants us to engage with thinking not about the 'subject's knowledge of an object, but the real time of mutual interaction.'[132] Serres urges us to see that 'We are parts of the world (…) The objective and the subjective flow into one another, intermixing.'[133]

To achieve this we need to edify environmental law to perceive the world differently. In the West, vision has been considered 'rational, detached, analytical and atomistic'; Ingold, however, suggests that hearing yields 'a kind of knowledge that is intuitive, engaged, synthetic and holistic.'[134] Hearing, as opposed to vision, goes beyond our 'face-to-face' observations that deal in appearances and representations.

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[127] Serres (n 64) 31
[128] Phil Macnaghten and John Urry, *Contested Natures* (Sage Publications 1998) 113
[129] ibid 117, 107; On the role of senses in the human experience of environment see Paul Rodaway, *Sensuous Geographies: Body, Sense and Place* (Routledge 1994)
[130] Daniel B Botkin, *The Moon in the Nautilus Shell: Discordant Harmonies Reconsidered* (OUP 2012) 6-7
[131] Serres (n 62) 6
[132] William Paulson, 'The Natural Contract: Governance and Citizenship in Real Time' (2009) 63(3) Western Humanities Review 118, 124.
[133] Serres (n 78) 124
[134] Ingold (n 34) 245

To engage with hearing 'establish[es] the possibility of genuine intersubjectivity, of a participatory communion of self and other through shared immersion in the stream of sound. Vision, in this conception, defines the self individually in opposition to others; hearing defines the self socially in relation to others.'[135] This distinction of seeing and hearing however does not proclaim any hierarchy of the senses; rather, Serres emphasises their 'intermingling'.[136] Hearing leads us to consider the necessity for moving away from the localised centres that diffuse culture and aim for a universality that requires 'radical decentering' actualised by 'bringing together intersections' that sound as a quality encompasses.[137] Serres suggests that the quality of sound indicates no specific place since it occupies space thus globality in contrast to vision's locality.[138]

The Cartesian gesture of understanding the universe as mind and mechanism, Thomas Berry suggests, killed the planet and all living beings, and in that moment '[t]he thousandfold voices of the natural world suddenly became inaudible to the human. The mountains and rivers and the wind and the sea all became mute insofar as humans were concerned.'[139] However, while law has contributed to this 'muteness', the threatening rocks, clouds, lightning, thunder, volcanoes, and hurricanes are all gestures in which the world still speaks to us.[140] And this certainly should not be understood as yet another anthropocentric fable that renders nature in our own image but as an attempt to understand that the very anthropomorphising act of giving a voice to nature is a form of fighting anthropocentrism.[141] The word 'person' might had originated from *personare* or 'to sound through' causing law not granting rights to the 'voiceless' animate and inanimate natures that cannot speak out or express their intentions. But law is still capable of integrating abstract bodies and recognising them as legal persons. 'Persona' also bears a second meaning – that of a mask. Persona is not to resound everywhere but to 'wear the skins of wild beasts'. Giambattista Vico suggests that ancient law 'introduced so many empty masks without subjects, *iura imaginaria*' making all the rights of men an invention. He continues: 'It rested its entire reputation on inventing such fables as might preserve the gravity of the laws and do justice to the facts,' thus the doctrine of the law of persons (*de iure personarum*) comes from the masks, that is, the 'persons' it had brought 'into the forum.'[142] We the main protagonists took the central space of the amphitheatre.

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[135] Drawing on Don Ihde, Ingold suggests that 'vision objectifies' and 'sound personifies.' ibid 246-47.
[136] Serres (n 26)
[137] Michel Serres, 'Science and the Humanities: The Case of Turner' (1997) 26(2) SubStance 6, 20
[138] Michel Serres, 'Panoptic Theory' in Thomas M Kavanagh (ed), *The Limits of Theory* (Stanford University Press 1989) 39-40
[139] Thomas Berry, 'Into the Future' in Roger S Gottlieb (ed), *This Sacred Earth: Religion, Nature, Environment* (Routledge 1996) 410
[140] Michel Serres, *Biogea* (Randolph Burks tr, Univocal 2012) 118-19, 131-33
[141] Émilie Hache and Bruno Latour, 'Morality or Moralism? An Exercise in Sensitization' (2010) 16(2) Common Knowledge 311, 322
[142] Giambattista Vico, *The New Science* (first published 1744, Cornell University Press 1948) 349-50

Methods in environmental law research need to consider reversing circumscription by acknowledging the position of the world in the middle and by situating the humans on the periphery. This change in methodological basis is not achieved by pursuing the 'judgmental' quality of epistemology, and therefore contributing to the redundant narrative of divisions, but rather distancing from it and finding new epistemic encounters and passages.[143] In other words, one such method is to follow Serres's steps, acknowledging the multiple 'circumstantial' voices of and within the world and pursuing a 'pluralized' epistemology.[144] But *-ology* here does not lend itself to its meaning as a branch of knowledge, but that coming from *legein* (to speak).

Serres argues that ontologically nothing distinguishes us 'from a crystal, a plant, an animal, or the order of the world'. This complexity, before knowledge made attempts to stabilise it, 'was [once] called being.'[145] The distinctions between nature and culture, ontology and epistemology, human and non-human that both law and sciences perform through their objectifying techniques can be also recognised in the separation of laws and sciences and their respective treatment of nature. They both confirm that in their procedural dealings, they contribute to creating knowledge that becomes specialised, implying separated territories and disciplines. To use Serres's proposition, knowledge indeed appropriates through pollution (or pollutes through appropriation for that matter). He compels our 'hope for a theory of knowledge that reunites the exact and human sciences. A new knowledge, a new epistemology, a new man, a new education: we will escape our collective death only on that condition.'[146]

[143] Andreas Philippopoulos-Mihalopoulos, 'Epistemologies of Doubt' in Anna Grear and Louis J Kotzé (eds), *Research Handbook on Human Rights and the Environment* (Edward Elgar 2015) 28-45
[144] Josué V Harari and David F Bell, 'Introduction: *Journal à plusieurs voies*' in Serres (n 12) xiv, citing Serres (footnote omitted)
[145] Serres (n 21) 83
[146] Serres (n 138) 46-7